

Senator Joseph R. Biden, Jr.
Questions for the Record for Karen Tandy

I. Earlier this year I wrote a letter to the Appropriations Committee requesting that the DEA receive \$26 million more than the President requested in his budget.

When the FBI transferred 567 agents from counter-drug investigations to counter-terrorism investigations, the DEA was left to fill in the gap without adequate funding: the President's 2004 budget only provides funding for an additional 233 Special Agents. By shutting down popular programs such as the Mobile and Regional Enforcement Teams, DEA has been able to shuffle around 362 agents, making them look like new agents when they are not.

Ms. Tandy, if confirmed you will have a tough job ahead of you fighting for scarce resources and keeping the drug issue on the national agenda. As Administrator, how will you make sure that drug investigations remain a priority – both in terms of the attention given to the investigations as well as the resources devoted to them?

If confirmed as Administrator, I will be committed to insuring that, as the federal government's only single-mission drug law enforcement agency, the DEA will continue to focus the bulk of its resources on Priority Drug Trafficking Organizations (PDTOs) – drug trafficking organizations having the most significant impact in America today at the national, regional, and local levels. By targeting PDTOs in each domestic field division and dismantling the transportation, distribution, and financial networks that link them to international targets, we will disrupt the drug market, reduce availability, and produce longer lasting results. At present, 35 percent of all PDTO investigations designated by DEA worldwide are "local impact" type investigations.

I have been advised that, in FY 2002, DEA conducted a review of its resource allocation and analyzed its investigative work hours based on an internal, intelligence-driven domestic threat assessment. Based on this assessment, DEA determined that an additional 300 Special Agents were required to sustain the nation's offensive against illegal drugs in FY 2004.

Between the FY 2003 enacted appropriation, and the FY 2004 President's budget request, if enacted, DEA will add 449 new agents along with funding to support another 100 State and local Task Force officers. DEA will also redirect 362 MET/RET agents to priority targets, and away from "street sweeps," which have limited long-term value.

The President's FY 2004 President's budget takes significant steps toward addressing the gaps in drug enforcement identified by the GAO in its recent report on the FBI Reorganization. These increases will allow DEA to maximize its available resources with regard to the FBI's shifting priorities.

Even with the personnel changes after September 11, 2001, DEA has continued to conduct investigations that impact the Nation's drug availability. This is something I have repeatedly witnessed while collaborating with DEA through OCDETF. If confirmed as Administrator, I will make certain that significant drug investigations will continue to receive the attention and resources required to maximize the DEA's contribution to our nation's counterdrug strategy.

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2 Ms. Tandy, there have been a number of press reports about a DEA Agent in Billings, Montana who misinterpreted the Illicit Drug Anti-Proliferation Act when he approached the manager of the local Eagles Lodge to warn her that she may be violating the new law if the Lodge allowed the National Organization to Reform Marijuana Laws (NORML) to have a fundraiser at their facility.

I was troubled to hear this because, according to press reports, the Eagles Lodge had no knowledge that there might be drug activity at their location before the DEA approached them. And following the DEA Agent's visit, the Lodge decided to cancel the NORML event, leading to an outcry from various groups that the new law has stifled free speech.

As I'm sure you know, the law only applies to those who have "knowingly and intentionally" held an event "for the purpose of" drug use. It does not seem that the Eagles Lodge actions came anywhere close to that high legal standard.

Representatives from the DEA's chief counsel's office assured my staff that they shared my understanding of the law and that this interpretation of the statute was conveyed to all DEA field offices shortly after the bill was signed into law. Supplemental guidance was issued last week in a memo to field agents making clear that:

property owners not personally involved in illicit drug activity would not be violating the Act unless they knowingly and intentionally permitted on their property an event primarily for the purpose of drug use. Legitimate property owners and event promoters would not be violating the Act simply based upon or just because of illegal patron behavior.

As Administrator, will you continue to abide by this interpretation of the Illicit Drug Anti-Proliferation Act?

Yes. If confirmed as Administrator, I will honor all requirements of the statute, including specifically those elements addressing an owner or manager's state of mind. I appreciate that the Act's standards regarding "knowledge" and "intent" exist to protect those innocently involved, such as legitimate event promoters or sponsors, as well as managers and owners of locations where events may be held.

Was the DEA legal guidance provided just to certain Agency personnel (e.g., Special Agents in Charge, Offices of Legal Counsel), or to all Agency staff? If it has not been provided to all staff, do you believe that providing this broad circulation would help ensure accurate interpretation and application of the law going forward? If it has been provided to all staff, please explain process by which it was so provided.

I have been advised that DEA guidance has been made broadly available. To date, DEA has issued the following guidance on the statute: (1) On May 15, 2003, a memorandum from DEA's Chief Counsel, describing the IDAPA amendments to 21 U.S.C. § 856, was issued to all DEA divisions. This memorandum was also posted on DEA's internal website, making it readily available to all DEA personnel. (2) On June 17, 2003, the Acting Administrator issued a teletype to "DEA Worldwide," entitled "Specific Guidance for Utilization of the Illicit Drug Anti-Proliferation Act of 2003; Amendment to "Crackhouse" Statute, Title 21, U.S.C. 856." This teletype referenced the May 15, 2003, Chief Counsel memorandum noted above. It also provided DEA personnel additional legal and procedural guidance regarding use of this statute. (3) In an article dated June 20, 2003, DEA posted guidance on this statute on DEA's publicly available internet website, www.dea.gov. This guidance is also available to DEA personnel via the website. (4) On July 3, 2003, DEA posted a synopsis of a recent Federal appellate court decision involving 21 U.S.C. § 856(a)(2), *McClure v. Ashcroft*, No. 02-30357, 2003 WL 21418097 (5th Cir. Jun. 20, 2003), on DEA's internal website. This is an illustration of the continuing efforts of DEA's Office of Chief Counsel to disseminate timely information on pertinent legal developments.

How can you reassure people who may be skeptical of my legislation that it will not be enforced in a manner that has a chilling effect on free speech?

I am mindful of the potential impact on First Amendment protections that may arise in the enforcement of this statute. I understand that DEA already has issued guidance to its personnel alerting them to the potential First Amendment implications of the statute, and directing close consultation with Headquarters senior management and agency legal counsel prior to any investigative or enforcement activity under the statute. DEA now requires an individual management and legal review of any proposed investigative or enforcement activity under the statute. In addition, the guidance directs DEA personnel to undergo similar Headquarters review prior to contacting the public or advising any person or organization that the statute may apply to a specific event.

As Administrator, I would continue to emphasize and enforce internal procedural safeguards to ensure that our mission is conducted in a manner that fully complies with First Amendment and other constitutional protections.

Will Agents continue to have to contact DEA Headquarters before using the law in order to make sure that it is interpreted properly? Will this requirement to contact headquarters apply to informal situations such as the one in Billings, Montana or just to more formal matters such as initiating an investigation?

I have been advised that current DEA policy requires close consultation with Headquarters senior management and agency legal counsel prior to any investigative or enforcement activity under the statute as well as prior to advising any person or organization that the statute may apply to a specific event. If confirmed as Administrator, I would insure adherence to the current guidelines under all applicable scenarios.

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3. As you know, methamphetamine and other drugs have come to rural America. International trafficking organizations are working their way into small towns and rural areas --and rural America is completely unprepared to handle this problem.

Not only are there insufficient treatment beds for those who get hooked, but also as a report from The National Center on Addiction and Substance Abuse at Columbia University showed, many of these towns don't have enough people in their narcotics unit to conduct a single technical surveillance organization on one of these trafficking groups. Some of them can't even afford any drug enforcement training for their officers *at all*.

DEA has done a great job addressing this shortfall by training about 65,000 state and local cops each year at its training facility in Quantico, Virginia.

How do you envision the DEA helping rural areas and smaller towns deal with this in terms of training, task forces, etc.?

Under my leadership, the DEA's State and Local Task Force Program would continue to be utilized as a "force multiplier" for federal, state, and local law enforcement agencies. In the 2004 Budget, DEA requested funding for \$3,950,000 in non-personnel funding for an additional 100 S&L Task Force Officers to help compensate for enforcement operations in outlying areas.

In addition to conducting investigations, the DEA would continue to focus on providing training to address the increasing problem of methamphetamine in rural areas. The DEA, in coordination with the Federal Law Enforcement Training Center (FLETC) in Glynn, Georgia, the Drug Law Enforcement School for Patrol Officers; the Drug Enforcement Training Program; the Train-the-Trainer School; and the Drug Task Force Supervisors' School, has displayed a sincere effort to aid in the education of our state and local counterparts. I understand that, in FY 2003, DEA anticipates training a total of roughly 1,100 students through FLETC's Small Town and Rural "STAR" rural law enforcement training programs.

I believe that it is important for DEA's State and Local Clandestine Laboratory Training program to continue to meet current needs for rural law enforcement training. As you know, it is often state and local police officers that first encounter clandestine laboratories, and who must ensure that these labs are investigated, dismantled, and disposed of in a safe and proper manner.

I understand that DEA provides law enforcement training to state and local police officers and sheriffs in rural areas of the country through the operation of the agency's 21 domestic field divisions and also provides training to our state and local law enforcement

counterparts through the two week Drug Unit Commanders Academy, the Narcotics Commander Leadership Program, and the Federal Law Enforcement Analysts Training "FLEAT" programs, both at the DEA Training Academy and across the United States.

If confirmed as Administrator, I pledge that DEA will continue its commitment to rural law enforcement agencies and will make available a variety of initiatives, programs, and training in support of this cooperative effort. Dismantling and disrupting international trafficking organizations, particularly those that infiltrate our rural communities with methamphetamine laboratories and distribution organizations, remain in the vanguard of the DEA mission.

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4. Since 1986 the DEA has had a small demand reduction unit with one agent in each of the 22 field offices dedicated to prevention and education activities. Rather than providing funding for local prevention activities like most federal demand reduction programs, the Agents provide community leaders, parents and others with timely, accurate information about the local drug threat as well as provide support to local agencies working to prevent drug abuse.

As you know, the Illicit Drug Anti-Proliferation Act, which recently became law, authorizes DEA to hire a demand reduction coordinator in each state. This was a provision that I worked closely on with Asa Hutchinson because of the importance he placed on this issue.

What do you think DEA's role should be in demand reduction activities in communities?

Demand Reduction plays a critically important role as part of a balanced approach to reducing illegal drug use across the nation. Although DEA's Demand Reduction program represents less than one percent of its budget, DEA has a proud record of participation in the nation's efforts to reduce drug use. If I am confirmed, the agency's Demand Reduction role will continue in several key areas. Specifically, DEA Special Agents will continue to provide a credible law enforcement perspective and useful, first-hand knowledge of drug trends to DEA's counterpart agencies and coalitions whose core competencies are in education, treatment and prevention. The Special Agents perform a critical role by providing an enforcement view of the adverse consequences of drug trafficking on individual lives. In addition, DEA will participate in a strategically implemented Sanctions Based Demand Reduction initiative that will raise public awareness regarding the impact of drug trafficking on communities nationwide.

Do you intend to place a demand reduction coordinator in each state?

DEA fully supports the President's FY 2004 Budget. If I am confirmed, I would ensure that DEA's Demand Reduction Program receives all budgeted resources and administers its programs to achieve the maximum benefit in the Demand Reduction community. Under my leadership, this would include placing a Demand Reduction Coordinator in each state, if funded by the Congress.

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5. A few years ago I worked with Sens. Hatch, Levin and Moynihan to pass the Drug Addiction Treatment Act to allow qualified doctors to dispense certain anti-addiction medications (including buprenorphine) from their offices rather than requiring patients to go to special clinics to get the medicine (as is the case with methadone and LAAM). At the time, some individuals at the DEA fought this bill rather vigorously because they were worried that the medication might be diverted. They were focused more on potential costs than the possible benefits.

Do you support the use of anti-addiction medications to treat drug addiction?

I support expanding access to treatment services and increasing the quality of care received for opioid dependence. I have been advised that the challenge facing DEA, other law enforcement agencies, as well as the treatment community, is to provide effective treatment while preventing the abuse of the treatment drug itself.

I believe that the benefits of the therapeutic environment are enhanced by maintaining compliance with existing laws, whether treatment is provided via the traditional opioid treatment program or by the newly established office-based treatment options using buprenorphine products. However, treatment must go beyond just providing a drug; it must also include the development of job skills, counseling, and other associated services.

Will the DEA fight any effort to move buprenorphine to a more stringent Schedule (under the CSA) without adequate cause?

I understand that scheduling under the Controlled Substances Act (CSA) is a very rigid process involving both the DEA and the Department of Health and Human Services, that must be based on scientifically verified and legally defensible data that involves a formal rulemaking process with the opportunity for a hearing. Please be assured that, if I am confirmed as Administrator, the DEA will not initiate the rescheduling of buprenorphine (or any other substance) without adequate cause and consideration of all information.

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6. I have been working to develop legislation, building on my 1990 Anabolic Steroid Control Act, to schedule a number of the steroid precursors (including androstenedione, the substance that Mark McGuire was taking when he broke the single season home run record) that are currently legal and are often abused by teen athletes. A number of agents and other experts at DEA have been quite helpful, providing my office with technical assistance about some of the chemicals of concern.

To what degree are you concerned about the abuse of so-called steroid precursors, substances which metabolize into testosterone and estrogen in the body and are only legal because of an unintended loophole in the 1990 law?

I acknowledge that the abuse of anabolic steroids poses a significant health risk, particularly to our nation's young people. Consequently, I am very concerned about the proliferation of non-controlled steroids that are now available in the dietary supplement market.

I have been advised that more than 37 different steroids are now purported to be sold in dietary supplement products and that a significant majority of these products have not been examined for effectiveness and safety in humans.

Moreover, I understand that additional studies to determine the effects of steroids on muscle growth are required, and are currently underway. If confirmed as Administrator, I pledge the DEA's continuing investigative and technical assistance in addressing this issue.

Would you support legislation to Schedule androstenedione and other such steroid precursors?

Yes. I support balanced legislative efforts to streamline the process by which anabolic steroids are controlled under the CSA. I understand that the DEA has favored removing the requirement to prove that a steroid promotes muscle growth and modifying a provision in the CSA to prevent the potential automatic exclusion of dietary supplements containing controlled steroids from regulatory control.

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In the past year, coca cultivation in Colombia has decreased by 15 percent and opium poppy cultivation has decreased by 25 percent. By contrast, cultivation increased in Peru and Bolivia, by 8 percent and 23 percent, respectively. This type of "balloon effect" is what a number of people feared when Plan Colombia was originally envisioned three years ago. What do you think we should be doing to bolster our efforts in Peru and Bolivia so this situation does not get worse?

As you know, the US State Department is the lead agency in the eradication process. I have been advised that, according to DEA intelligence, there is no indication that recent coca production trends in Bolivia and Peru are directly due to the effects of eradication efforts under Plan Colombia.

I understand that, from 1997 through 2001, coca cultivation in Bolivia steadily decreased due to the unprecedented coca eradication program ordered by former Bolivian President Hugo Banzer as part of his "Plan Dignity" program. Under the current administration of President Gonzalo Sánchez de Lozada, Bolivian eradication efforts have slowed significantly due in great part to cocalero rioting and political unrest in the country.

I have been advised that the recent increase in Peru's cultivation also can be attributed to slowing eradication efforts in 2002. Peru is also being affected by a cocalero movement to stop coca eradication. Because of cocalero protest in February and March of 2003, the Peruvian Government issued a presidential decree to suspend eradication efforts in most of the principal coca growing areas.

Although DEA has no active role in coordinating eradication efforts with the governments of Bolivia and Peru, if confirmed as Administrator, I would insure that DEA supports these efforts by supplying real-time intelligence relative to locations of coca cultivation areas. As always, DEA would continue to complement these eradication efforts through a comprehensive program of providing investigative assistance, training, intelligence, and institution building to our host-country counterparts.

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8. Last month the Judiciary Committee held a hearing on narco-terrorism. During the hearing, the Committee heard a great deal of specific testimony about the amount of money that Colombian terrorist groups receive from the drug trade as well as evidence that Al Qaeda and Hezbollah are benefiting from drug proceeds, but none of the four Administration witnesses were able to quantify the nexus between fundamental Islamic groups, particularly Al Qaeda, and the drug trade. That raises the question of whether anyone in the Executive branch is able to quantify at this time how much money Islamic fundamentalist groups like Al Qaeda make from drug production, drug trafficking, or taxing the production or flow of drugs.

Given the excellent work that you have done at the Department of Justice on money laundering, do you believe that at this time anyone in the Executive Branch has a good estimate of how much money Islamic fundamentalist groups like Al Qaeda make from drug production, drug trafficking, or taxing the production or flow of drugs?

If so, what do you think is the extent of the link? If not, will you work to try to quantify this link?

I have been advised that DEA receives periodic information indicating that Islamic fundamentalist groups may generate funds from drug trafficking activities; however, the agency has not received adequate information to quantify how much drug income is received by these elements. If confirmed as Administrator, I can assure you that DEA would continue to work to determine any link between illicit drugs and terrorist elements. This would include active coordination and information sharing with other agencies and international bodies at the headquarters and field levels.

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9. Current law requires the DEA to limit the export of Schedule II controlled substances to the country of final destination; a company cannot ship U.S.-made product to a central warehouse facility abroad and then re-export the product to a third country. Some pharmaceutical companies have urged Congress to change the law, complaining that it requires them to make many more shipments, resulting in higher costs and an incentive to move their manufacturing plants abroad.

Do you believe that the current way of doing business is the only way to ensure that U.S. products do not get diverted? Would you be open to changing the law to create a new system that would allow responsible companies to re-export Schedule II controlled substances as long as the new system included proper safeguards to prevent diversion?

One of the primary purposes of the Controlled Substances Act (CSA) is to prevent the diversion of controlled substances through a closed system of distribution while maintaining an adequate supply of medicines in the United States. A critical component of this system is the control of the importation and exportation of narcotic and psychotropic pharmaceuticals as required of signatories of the international treaties. These treaties established only the minimum standards to be adopted by all countries in a cooperative worldwide effort to prevent the diversion of such legitimately manufactured substances into illicit traffic. Controlled substances are most vulnerable to diversion while in international trade.

The CSA established strict control measures based upon prior U.S. experience. It requires Schedules I and II substances and narcotic substances in Schedules III and IV to be utilized exclusively for legitimate medical or scientific uses in the country of import. I understand that there is a re-export provision for U.S. exporters of Schedules III and IV psychotropic substances and Schedule V narcotic and psychotropic substances under certain conditions, if made known to DEA when the notice of planned exportation is filed. These substances have a lower abuse potential than the substances described above. I have been advised that the DEA, however, has seen very few U.S. companies utilize this provision. Therefore, I believe that the need to amend existing statutes is questionable when U.S. firms are not making use of existing re-export provisions. The CSA restriction on re-export is also supported by the Department of State, Department of Commerce, and the International Narcotics Control Board. Nonetheless, if confirmed as Administrator, I would be open to further consideration if facts were to show that an amendment is warranted, and that such action would not result in an increased risk of diversion of controlled substances.

Countries throughout the world recognize the United States as a leader in drug control efforts aimed at preventing the diversion of narcotic and psychotropic substances. The current U.S. re-export prohibition policy, in existence since 1914, is consistent with the spirit of the 1961 Single Convention on Narcotic, which is to limit the movement of narcotics to only those countries that have a legitimate need for them. Consequently, I would want to ensure that any amendment to the CSA would not weaken controls so as to increase the possibility of diversion.