# SENATE—*Monday, January 30, 1984*

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. THURMOND).

## PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

*O praise the Lord, all ye nations: praise him, all ye people. For his merciful kindness is great toward us: and the truth of the Lord endureth forever. Praise ye the lord.*—Psalm 117.

Almighty God, Lord of Heaven and Earth, we thank Thee that history is not capricious, that it is not absurd as one existentialist noted—that in the word of one of Shakespeare's characters, history is not a "tale told by an idiot, full of sound and fury, signifying nothing." We thank Thee that history has meaning and purpose—that it is going somewhere because Thou dost have a plan. We thank Thee that we are part of that plan. Give us the humility to acknowledge this and to conform our lives to Thy purpose.

We want to thank Thee, gracious Heavenly Father, for the long years of service in this Chamber of Ben Firshein, Official Reporter of Debates, and commend his loved ones to Thee in their loss. May they enjoy Thy comfort and peace. In the name of Him who is the Lord of life and history, we pray. Amen.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

## SENATE SCHEDULE

Mr. BAKER. Mr. President, pursuant to the order issued on Friday by the Senate, the reading of the Journal has been dispensed with; the call of the calendar has been dispensed with; no resolutions shall come over under the rule; and the morning hour is deemed to have expired. After the two leaders are recognized, Mr. President, under the standing order, special orders have been provided in favor of three Senators for 15 minutes each, to be followed by a period for the transaction of routine morning business.

Mr. President, at the conclusion of the time for routine morning business, the Senate will resume consideration of S. 1762, which is the so-called crime package, at which time, committee amendments will be taken up and considered, to be followed by amendments that may be offered from the floor. I understand that the distinguished Senator from Maryland (Mr. MATHIAS) has a number of amendments that he will offer, but that it should not require an excessive length of time to consider them. It is the hope of the leadership then that we may be able to finish this bill today; if not today, by tomorrow.

I anticipate a regular session today, extending until 5:30 or 6 o'clock. There may be votes today, depending on disposition of several amendments that may be offered.

### PROPOSED SCHEDULE

After this bill is disposed of, it is the intention of the leadership on this side to ask the Senate to turn to the consideration of five other measures that may be ancillary to the consideration of this package. They are the death penalty bill, the habeas corpus bill, the exclusionary rule bill, the Federal Torts Claim Act, and the career criminal bill—not necessarily in that order. I believe it is important that we try to dispose of this entire package, including these five items, before we go out for the Lincoln Day break, which begins on February 10. I hope that we can do some other things as well.

For instance, the Export Administration Act comes to mind and perhaps a nomination or two. I am thinking particularly of the nomination of Ambassador Wilson to be the President's representative to the Vatican, which has been submitted but not yet reported.

Mr. President, that concludes the outlook as I can identify it at this time. I plan to ask the minority leader if he will agree to meet with me sometime before our caucuses on Tuesday and we shall discuss this matter further at that time. That is an overview, as I see it, through February 10.

## THE PRESIDENT'S DECISION TO STAND FOR RENOMINATION AND REELECTION

Mr. BAKER. Mr. President, I take this opportunity to commend the President of the United States and the Vice President of the United States for the announcement that was made last evening by the President that they will both stand for renomination and reelection. I was asked by the press how I felt about that, and I told them what I would like to repeat now: I think the President has earned the right to continue with undertakings that he has begun in his first term. I hope that he will be reelected. I shall work hard for that purpose.

I also hope that we may see the resumption of what I think of as a normal two-term cycle for Presidents and Vice Presidents of the United States.

This is not the time to explore in detail nor argue at length the political ramifications of this matter, but I wish the record to show that I enthusiastically support the President's decision made last evening. I shall have more to say on that subject in the course of the day and certainly in the course of the next few weeks and months.

Mr. President, I believe I have nothing further to say at this moment. If I have any time remaining, I reserve it. I yield now to the distinguished minority leader.

## RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. MATTINGLY). Under the previous order, the minority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that I may combine my 10 minutes under the standing order with my 15 minutes under the special order and have both run together so that I shall have 25 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that any portion of that 25 minutes that I have not used be under the control of Mr. MOYNIHAN and, following that, by Mr. PELL if there is anything remaining.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. We shall be spending it by talking in concert about a certain matter.

## THE REPORT OF THE LONG COMMISSION

Mr. BYRD. Mr. President, the situation in Lebanon has been marked by agony, anguish and mounting confusion since last summer. American marines, as part of a peacekeeping force, have gradually found themselves embroiled in factional warfare and seemingly endless political turmoil. It has become more and more clear that a peacekeeping force cannot, by definition, perform its mission successfully if a number of parties to the fighting do not perceive that force as neutral.

Last September the Senate engaged in a major debate over the wisdom of keeping U.S. Marines in Lebanon as

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

part of a multinational peacekeeping force there. I and the overwhelming remainder of Democratic Senators had serious misgivings over giving the President an 18-month authorization to keep our men on the ground in Lebanon. We viewed this as essentially an open-ended commitment for a task which the distinguished senior Senator from Georgia, the ranking Democrat on the Armed Services Committee (Mr. NUNN), has aptly termed "mission impossible."

The 18-month authorization for U.S. Armed Forces in Lebanon was passed on the Senate floor on September 29, 1983, by a vote of 54 to 46; 43 of 45 Democratic Senators voted no.

Our marines, over the weeks and months of 1983, became targets for sniper and artillery attacks and then for terrorism which culminated in the terrible tragedy on October 23, 1983—a calculated act of destruction which claimed the young lives of 241 marines.

The same week of that tragedy, on October 29, 1983, the conference of Democratic Senators adopted, without opposition, a resolution that the administration make every effort to replace the current multinational force with other forces which would be perceived as more neutral, or by a U.N. force.

Mr. President, the Senators on this side of the aisle continue to urge the President in the strongest possible terms to begin the process—diplomatically and in concert with our partners in the multinational force—necessary to get our troops off the ground in Lebanon.

Time and time again, Senators came to this floor to voice their reservations over the rather vaguely defined and apparently changing mission of the multinational force in Lebanon. Time and time again I and other Senators wrote the President and questioned his representatives in congressional hearings as to the nature of, first, our policy objectives in Lebanon and, second, the role of American Armed Forces in fulfilling those policy objectives by virtue of their participation in the multinational force.

In the midst of the growing national restlessness and confusion over the situation in Lebanon, we now have the benefit of a report by a Pentagon commission established to conduct an independent inquiry into the attack on the Marine headquarters in Beirut on October 23, 1983. The report is thorough, candid, and remarkably tough. It is an exceptional document, produced by highly respected professional soldiers and analysts, primarily retired military flag officers whose integrity and judgment are unquestioned. It deserves the close study of every Senator and every citizen who is concerned about where we have been in Lebanon, the nature of the problems we confront in that land, and the kind of difficulties we will continue to face there.

The Commission examined in great depth the security measures in place both before and after the October bombing, the adequacy of the intelligence available to us and how well we digest and use it in a real-time operational environment, the handling of the casualties, the problems with the chain of command from top to bottom, and the general problems we confront in an era of state-sponsored terrorism. The report contains lessons which go beyond Lebanon. It includes findings of fact and recommendations which pertain to Lebanon which I believe should be addressed during this session of the Congress.

Mr. President, I believe that if the administration and the Congress follow up on the conclusions and recommendations of the product delivered by Adm. Robert Long's team in a way which matches that report's professionalism, thoroughness and toughness—we can begin together to construct sounder American policies, goals and missions throughout the Middle East.

The key findings of the Long report, findings which disturb me greatly, include the following—and here I am paraphrasing for the sake of conciseness:

First, U.S. policy in Lebanon has relied too heavily on military power and too little on diplomacy, and because of this skewed emphasis, the role of our marines needs reassessment on an urgent basis.

Second, the marines had been placed in a position of unusually great physical risk, and the security precautions in place were inadequate.

Third, the security precautions in place at the time the report was written—that is, as of November 30, 1983, 5 weeks after the bombing—were still inadequate.

Fourth, our intelligence was inadequate, but even that which was available was not followed up properly.

Fifth, accountability for procedures outlined in the rules of engagement and developed in practice should be shared all the way up the chain of command. Since the essence of command is the accountability of responsible officers, the Secretary of Defense should take appropriate "administrative or disciplinary action."

Lastly, the United States is not prepared to deal in an effective way with state-sponsored terrorism—of which the Beirut attack is apparently an example.

So these are just the bare bones of a report which contains a critical analysis of a thinly stretched mission rationale, military inattention to the risks at hand, and lack of preparation for the problem of terrorism. Overall, the report is a devastating critique of a policy in the Middle East which is vague and confused. When policy is muddled, then it is understandable why the military mission is confused. Clearly, the officers in the military chain of command did not understand their role—the military mission was rather vaguely defined and subject to differing interpretations up and down the command chain.

Mr. President, we need to have some assurances that the administration is giving more than lipservice toward meeting the inadequacies of the United States in countering terrorism abroad. The vulnerability of U.S. facilities and forces must be squarely faced. Our intelligence gathering network, processing and followup action needs major revamping. The basic preparation of U.S. Armed Forces to defend against and to effectively counter terrorist warfare must be addressed on an urgent basis.

The Long Commission recommended that DOD "develop a broad range of appropriate military responses to terrorism for review, along with political and diplomatic actions, by the National Security Council." The Senate should be informed and consulted as this process moves along.

The Central Intelligence Agency should also present the Intelligence Committee with its proposals as to how it will upgrade our human intelligence gathering capabilities, and the timely processing of the intelligence gathered to make it quickly usable for our on-scene military commanders. The Commission recommended that the Secretary of Defense establish an "all source fusion center, which would tailor and focus all-source intelligence support to U.S. military commanders involved in military operations in areas of high threat, conflict or crisis." This appears to be a valuable recommendation which should be acted upon.

The Commission also recommended the Secretary of Defense establish a "joint CIA/DOD examination of policy and resource alternatives to immediately improve human intelligence support to our forces in Lebanon and other areas of potential conflict." Progress on this matter should be made in the near future.

Cooperative action with other governments to prepare for and counter the action of state-sponsored terrorism would, I think, be helpful. I believe the administration should upgrade its efforts to work with our allies on this question.

The Long Commission concluded that the security system, weeks after the October attack, was still inadequate. Perhaps it will be necessary to conduct a second review by this same Commission sometime in the near future to evaluate the progress that has been made. It cannot matter what the merits of any policy may be: If

there is not basic protection for our men in a situation of obvious threat, then keeping them in that environment is irresponsible and unjustifiable.

I would hope that the appropriate committees of the Senate will act on the full range of matters raised by this important document.

I ask unanimous consent that a copy of the unclassified portion of the report of the Long Commission be printed in the RECORD following the remarks of Mr. MOYNIHAN and Mr. PELL.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BYRD. Mr. President, under the order as entered, I now yield the remainder of my time to Mr. PELL or to Mr. MOYNIHAN, who in turn will yield the remainder of the time to the other.

Mr. PELL. I thank the minority leader.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. BYRD. Was the request agreed to?

The PRESIDING OFFICER. The request has been agreed to.

Mr. BYRD. I thank the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, I thank the minority leader very much indeed. I listened very carefully to his words, with which I agree.

THE LEBANON CRISIS

Mr. President, in the next several weeks the Senate and the House of Representatives will once again be striving to deal with one of the most vexing problems we face—the need, on one hand to do what we can realistically to move Lebanon toward peace and, on the other hand, to extricate our marines from their present untenable situation.

I fear that, left to its own devices, the administration will continue to drift in its quest for a solution in Lebanon, expressing constant hope for the future, but with little upon which to base that hope.

I have long believed that the United States should do what it can to help Lebanon regain full sovereignty over its territory and achieve internal reconciliation. But there are limits to what we can do.

On January 6, the New York Times quoted an unnamed White House official as saying that "the President wants to stay in Lebanon until there is stability and until there is a plan for the withdrawal of foreign forces."

But except for the period between the two World Wars and sporadically after World War II, since the time of the Crusades, when some of the Christian knights fought and tarried in a sea of Muslims, there has been instability in the area and bloody intercommunal conflict. In the last 8 years, Lebanon has been torn apart as continued instability and chaos have taken a relentless toll. Given that background, the idea of staying until there is stability in Lebanon is not realistic. Moreover, United States and French forces are not perceived as being neutral, but rather as supporters of the status quo involving Christian dominance of the government. The evidence is in the casualty figures. U.S. forces have suffered 258 killed, including 9 from my State of Rhode Island, and 76 French soldiers have been killed. In contrast, the Italians have only suffered two deaths, and the British none. We and the French are targeted and are paying a terrible price.

The administration has not made a persuasive case that U.S. forces can achieve anything in Lebanon; nor has it even explained what would constitute success. Because of this and the fact that U.S. forces are perceived as protagonists in a civil conflict, I believe U.S. forces should be withdrawn and if possible replaced by a U.N. peacekeeping force or by some other truly neutral force.

I am not alone in questioning the wisdom of a continued U.S. military presence in Lebanon.

Mr. President, anyone reading the Long Commission report on the tragic bombing of the marine barracks in October would have to conclude that our marines face continuing hostility and risk. The Long Commission report underscored the need for emphasis upon the diplomatic, rather than the military, with its call for "a more vigorous and demanding approach for pursuing diplomatic options."

Congressman SAM GIBBONS of Florida was recently quoted as saying that, "if the marines are in Lebanon to fight, they are too few; if they are there to die, they are too many."

Last year, during the debate on the war powers authorization for U.S. forces in Lebanon, I proposed both in the Foreign Relations Committee and on the floor of the Senate, that the authorization be reduced from 18 months to 6 months. I lost by 1 vote in the committee and by 24 votes on the floor, and the situation has deteriorated. Shortly before the Senate adjourned, I again renewed my effort in the Foreign Relations Committee to shorten the authorized time period, and I believe my motion is still the pending business before the committee.

It is simply not fair to the marines, their families, or to the American people to have 1,500 young men serving as hostages to vague and perhaps unachievable policies. If the marines are to remain in Lebanon it should be only on the basis of a clear and achievable mission, not a mission impossible.

Mr. MOYNIHAN. Mr. President, I hope now to continue and conclude this colloquy, which our distinguished minority leader has made possible in cooperation with the eminent ranking minority member of the Committee on Foreign Relations. I would like to offer for the record a brief review of the efforts made on this side of the aisle in debate last autumn to modify a policy that was clearly seen to be headed for catastrophe.

We spoke then about the realities of the Middle East and to what we perceived as the leakage of reality in American policy with respect to the Middle East.

It seemed to us that, at the heart of the administration's policy, there was one overwhelming misconception. In the joint resolution Congress adopted, which was drafted originally by officials of the administration, it is declared at the outset that—

> The Congress finds that * * * the removal of all foreign forces from Lebanon is an essential U.S. foreign policy objective in the Middle East.

Mr. President, that was not mere overstatement. It was a declaration of war on the Government of Syria. The joint resolution that became Public Law 98-119 asserted it to be "essential" that we force the Syrian Army out of Lebanon. For it surely cannot be talked out. The only way it can be removed is if it is forced out. This is the task the United States has set for itself by adopting the joint resolution authorizing an extended deployment of marines in Lebanon. If we adopt such language casually, others in the world do not read it casually. They take it very seriously.

Several times during the debate on this floor last September, I felt it necessary to make the simple observation that we do not have the power to achieve that objective. And, as I said then, to declare as essential what cannot be achieved is to insure failure.

In his great book of 1943, "U.S. Foreign Policy: Shield of the Republic" Walter Lippmann said:

> A foreign policy consists in bringing into balance, with a comfortable surplus of power in reserve, the Nation's commitments and the Nation's power.

What we did instead was to commit ourselves to objectives we did not have the power to achieve and to bring us into conflict with an absolutely ruthless Syrian regime. Who murdered our marines and sailors in their barracks in Beirut last October. The Government of Syria did. Everybody knows that. I have just returned from four countries of the region. No one suggested to me that any power other than Syria was responsible for the terrorist incidents that have beset the United States in Lebanon.

The October 23 explosion at the U.S. Marine compound in Beirut was

among the largest manmade explosions in the history of the world. There have been nuclear explosions that were smaller.

Among conventional explosions, I believe only the Black Tom Island explosion in Jersey City Harbor in 1916, if I recall correctly, was greater. Other than that, the Beirut bombing was the largest conventional explosion known to demolitions experts. It was accomplished with a complex chemical called hexagen. Now is available, yes, but only to governments. It is not to be bought in drugstores, not to be found in bazaars. No; it was provided to the suicide bombers by a government. And that government was Syria.

State-sponsored terrorism, the Long Commission called it. Why do we have to use such a word, as if it were a new or novel phenomenon? State-sponsored terrorism is war. As Clamsewitz has described it, war is an extension of diplomacy. So is State-sponsored terrorism.

We declared that we were going to drive Syria out of Lebanon, and Syria set about instead to drive us out. Were we on this side of the aisle wrong in pleading in those days for the administration to consider: What are we committing overselves to? Do we have the power? Is this within our range of real options? Do we know with whom we are getting into conflict? For we are now at odds with Syria. Not factions in the Beirut region, but a nation which has never acknowledged the existence of Lebanon, and which has occupied half of it with its armed forces for a decade.

Yet, though we be embarked upon this course of conflict, the administration seems not to understand who these people are.

In this week's issue of Business Week, it is reported that the Syrian President, Hafez Assad, has had a heart attack, as we know, and is ailing. There is a certain amount of maneuvering as to who will succeed him. I read from the article:

> The U.S. candidate is President Assad's 46-year-old brother, Rifaat, who heads the internal security forces.

Mr. President, do we know where we are? The president's brother is his regime's chief executioner.

In the spring of 1982, irked with the continued activities of the Moslem Brotherhood in the city of Hama—a city of about 15,000 persons, probably the oldest continuously occupied site on Earth—this man, our candidate for the next Syrian presidency, murdered every living creature in that city. That is a very simple way to make sure that you get the persons you are after. They just murdered them all, as they murdered our marines, and with the same indifference to life. yet, there is apparently talk in the administration as if that man is to be considered our candidate.

This kind of indifference to the nature of Rifaat Assad is reminiscent of the broader failure to grasp reality. It was this failure that caused the United States to assist in the boldest manner a formal challenge to a ruthless regime and then not to anticipate that that regime would react in a ruthless manner. Where is the perception of reality, and where is responsibility?

I think the minority leader has made a strong and compelling statement, as has the ranking minority member of the Foreign Relations Committee, the senior Senator from Rhode Island.

I hope that as this debate continues—because it has only just begun. The record will be clear that when it came to analyzing what were America's interests and what was America's power, the Members on this side of the aisle were responsible, were clear, and have not been proved wrong. To the contrary, it is with no pleasure that anyone can say that what the Senator from Rhode Island anticipated last autumn has painfully, cruelly, come to pass.

Mr. BYRD. Mr. President, I wish to thank Senator PELL, the ranking member of the Committee on Foreign Relations, for his comments, and I wish to thank Mr. MOYNIHAN, the ranking member on the Committee on Intelligence, for his very astute and incisive observations and comments.

I know that other Senators will read those statements with great interest. And as the distinguished Senator from New York has said, these comments do not end the debate. It will be a continuing one, and I think as the days come and go, the attitudes and the viewpoints of those Senators who will speak will reflect, in turn, the deep concerns of the American people.

I commend the two Senators for having performed a service.

(EXHIBIT 1)

(NOTE.—Diagrams, photographs, and charts contained in the report are not reproducible in the RECORD.)

REPORT OF THE DOD COMMISSION ON BEIRUT INTERNATIONAL AIRPORT TERRORIST ACT, OCTOBER 23, 1983

PREFACE

On 23 October 1983, a truck laden with the equivalent of over 12,000 pounds of TNT crashed through the perimeter of the compound of the U.S. contingent of the Multinational Force at Beirut International Airport, Beirut, Lebanon, penetrated the Battalion Landing Team Headquarters building and detonated. The force of the explosion destroyed the building resulting in the deaths of 241 U.S military personnel. This report examines the circumstances of that terrorist attack and its immediate aftermath.

EXECUTIVE SUMMARY

*Introduction*

The *DOD Commission on Beirut International Airport (BIA) Terrorist Act of 23 October 1983* was convened by the Secretary of Defense on 7 November 1983 to conduct an independent inquiry into the 23 October 1983 terrorist attack on the Marine Battalion Landing Team (BLT) Headquarters in Beirut, Lebanon. The Commission examined the mission of the U.S. Marines assigned to the Multinational Force, the rules of engagement governing their conduct, the responsiveness of the chain of command, the intelligence support, the security measures in place before and after the attack, the attack itself, and the adequacy of casualty handling procedures.

The Commission traveled to Lebanon, Israel, Spain, Germany, Italy and the United Kingdom, interviewed over 125 witnesses ranging from national policy makers to Lebanese Armed Forces privates, and reviewed extensive documentation from Washington agencies, including the Department of State, Central Intelligence Agency, National Security Council and the Federal Bureau of Investigation, as well as all echelons of the operational chain of command and certain elements of the Department of the Navy administrative chain of command.

The Commission focused on the security of the U.S. contingent of the Multinational Force through 30 November 1983. Although briefed on some security aspects of other U.S. military elements in Lebanon, the Commission came to no definitive conclusions or recommendations as to those elements.

The Commission was composed of Admiral Robert L. J. Long, USN, (Ret), Chairman; the Honorable Robert J. Murray; Lieutenant General Lawrence F. Snowden, USMC, (Ret), Lieutenant General Eugene F. Tighe, Jr. USAF, (Ret), Lieutenant General Joseph T. Palastra, Jr. USA.

*Background*

U.S. military forces were inserted into Lebanon on 29 September 1982 as part of a Multinational Force composed of United States, French, Italian and, somewhat later, British Forces. The mission of the U.S. contingent of the Multinational Force (USMNF) was to establish an environment that would facilitate the withdrawal of foreign military forces from Lebanon and to assist the Lebanese Government and the Lebanese Armed Forces (LAF) in establishing sovereignty and authority over the Beirut area. Initially, the USMNF was warmly welcomed by the local populace. The environment was essentially benign and continued that way into the spring of 1983. The operation was intended to be of short duration.

The destruction of the U.S. Embassy in Beirut on 18 April 1983 was indicative of the extent of the deterioration of the political/military situation in Lebanon that had occurred since the arrival of the USMNF. By August 1983, the LAF were engaged in direct conflict with factional militias and USMNF positions at Beirut International Airport began receiving hostile fire. Attacks against the Multinational Force in the form of car bombs and sniper fire increased in frequency. By September, the LAF were locked in combat for control of the high ground overlooking Beirut International Airport and U.S. Naval gunfire was used in support of the LAF, at Suq-Al-Gharb after determination by the National Security Council that LAF retention of Suq-Al-Gharb was essential to the security of

USMNF positions at Beirut International Airport.

Intelligence support for the USMNF provided a broad spectrum of coverage of possible threats. Between May and November 1983, over 100 intelligence reports warning of terrorist car bomb attacks were received by the USMNF. Those warnings provided little specific information on how and when a threat might be carried out. From August 1983 to the 23 October attack, the USMNF was virtually flooded with terrorist attack warnings.

On October 1983, a large truck laden with the explosive equivalent of over 12,000 pounds of TNT crashed through the perimeter of the USMNF compound at Beirut International Airport, penetrated the Battalion Landing Team Headquarters building and detonated. The force of the explosion destroyed the building, resulting in the deaths of 241 U.S. military personnel.

The Federal Bureau of Investigation (FBI) Forensic Laboratory described the terrorist bomb as the largest conventional blast ever seen by the FBI's forensic explosive experts. Based upon the FBI analysis of the bomb that destroyed the U.S. Embassy on 18 April 1983, and the FBI preliminary findings on the bomb used on 23 October 1983, the Commission believes that the explosive equivalent of the latter device was of such magnitude that major damage to the Battalion Landing Team Headquarters building and significant casualties would probably have resulted even if the terrorist truck had not penetrated the USMNF defensive perimeter but had detonated in the roadway some 330 feet from the building.

*Summary of general observations*

1. Terrorism.—The Commission believes that the most important message it can bring to the Secretary of Defense is that the 23 October 1983 attack on the Marine Battalion Landing Team Headquarters in Beirut was tantamount to an act of war using the medium of terrorism. Terrorist warfare, sponsored by sovereign states or organized political entities to achieve political objectives, is a threat to the United States that is increasing at an alarming rate. The 23 October catastrophe underscores the fact that terrorists warfare can have significant political impact and demonstrates that the United States, and specifically the Department of Defense, is inadequately prepared to deal with this threat. Much needs to be done, on an urgent basis, to prepare U.S. military forces to defend against and counter terrorist warfare.

2. Performance of the USMNF. The USMNF was assigned the unique and difficult task of maintaining a peaceful presence in an increasingly hostile environment. United States military personnel assigned or attached to the USMNF performed superbly, incurring great personal risk to accomplish their assigned tasks. In the aftermath of the attack of 23 October 1983, U.S. military personnel performed selfless and often heroic acts to assist in the extraction of their wounded and dead comrades from the rubble and to evacuate the injured. The Commission has the highest admiration for the manner in which U.S. military personnel responded to this catastrophe.

3. Security following the 23 October 1983 Attack.—The security posture of the USMNF subsequent to the 23 October 1983 attack was examined closely by the Commission. A series of actions was initiated by the chain of command to enhance the security of the USMNF, and reduce the vulnerability of the USMNF to further catastrophic losses. However, the security measures implemented or planned for implementation as of 30 November 1983 were not adequate to prevent continuing significant attrition of USMNF personnel.

4. Intelligence Support.—Even the best of intelligence will not guarantee the security of any military position. However, specific data on the terrorist threats to the USMNF, data which could best be provided by carefully trained intelligence agents, could have enabled the USMNF Commander to better prepare his force and facilities to blunt the effectiveness of a suicidal vehicle attack of great explosive force.

The USMNF commander did not have effective U.S. Human Intelligence (HUMINT) support. The paucity of U.S. controlled HUMINT is partly due to U.S. policy decisions to reduce HUMINT collection worldwide. The United States has a HUMINT capability commensurate with the resources and time that has been spent to acquire it. The lesson of Beirut is that we must have better HUMINT to support military planning and operations. We see here a critical repetition of a long line of similar lessons learned during crisis situations in many other parts of the world.

5. Casualty Handling Procedures.—The Commission examined the adequacy of casualty handling procedures, with the advice and support of professional medical staff.

The Commission found that, following the initial, understandable confusion, the response of the U.S., Lebanese and Italian personnel in providing immediate on-scene medical care was professional and, indeed, heroic. The CTF 61/62 Mass Casualty Plan was quickly implemented: triage and treatment sites were established ashore, and medical support from afloat units was transported to the scene. Evacuation aircraft were requested.

Within thirty minutes of the explosion the British offered the use of their hospital at the Royal Air Force Base in Akrotiri, Cyprus, and this offer was accepted by CTF 61. The additional British offer of medical evacuation aircraft was also accepted. Both offers proved invaluable.

Offers of medical assistance from France and Israel were subsequently received but were deemed unnecessary because the medical capabilities organic to CTF 61 were already operational and functioning adequately, the hospital at Akrotiri was by then mobilized and ready, and sufficient U.S. and Royal Air Force medical evacuation aircraft were enroute. The Commission found no evidence to indicate any considerations but the desire to provide immediate, professional treatment for the wounded influenced decisions regarding these offers of outside assistance.

The Commission found no evidence to indicate that deaths among the wounded in action resulted from inadequate or inappropriate care during evacuation to hospitals.

The Commission did find several serious problem areas in the evacuation of casualties to U.S. military hospitals in Germany. Actions were taken that resulted in some seriously wounded patients being delayed about four hours in arriving at hospital facilities. The Commission believes that these actions warrant further investigation. The Commission found no evidence, however, that any patient was adversely affected by these delays.

6. Accountability.—The Commission holds the view that military commanders are responsible for the performance of their subordinates. The commander can delegate some or all of his authority to his subordinates, but he cannot delegate his responsibility for the performance of the forces he commands. In that sense, the responsibility of military command is absolute. This view of command authority and responsibility guided the Commission in its analysis of the effectiveness of the exercise of command authority and responsibility of the chain of command charged with the security and performance of the USMNF.

The Commission found that the combination of a large volume of unfulfilled threat warnings and perceived and real pressure to accomplish a unique and difficult mission contributed significantly to the decisions of the Marine Amphibious Unit (MAU) and Battalion Landing Team (BLT) Commanders regarding the security of their force. Nevertheless, the Commission found that the security measures in effect in the MAU compound were neither commensurate with the increasing level of threat confronting the USMNF nor sufficient to preclude catastrophic losses such as those that were suffered on the morning of 23 October 1983. The Commission further found that while it may have appeared to be an appropriate response to the indirect fire being received, the decision to billet approximately one-quarter of the BLT in a single structure contributed to the catastrophic loss of life.

The Commission found that the BLT Commander must take responsibility for the concentration of approximately 350 members of his command in the BLT Headquarters building thereby providing a lucrative target for attack. Further, the BLT Commander modified prescribed alert procedures, thereby degrading security of the compound.

The Commission also found that the MAU Commander shares the responsibility for the catastrophic losses in that he condoned the concentration of personnel in the BLT Headquarters building, concurred in the relaxation of prescribed alert procedures, and emphasized safety over security in directing that sentries on Posts 4, 5, 6, and 7 would not load their weapons.

The Commission found further that the USCINCEUR operational chain of command shares in the responsibility for the events of 23 October 1983.

Having reached the foregoing conclusions, the Commission further notes that although it found the entire USCINCEUR chain of command, down to and including the BLT Commander, to be at fault, it also found that there was a series of circumstances beyond the control of these commanders that influenced their judgment and their actions relating to the security of the USMNF.

CONCLUSIONS AND RECOMMENDATIONS

All conclusions and recommendations of the Commission from each substantive part of this report are presented below.

*1. Part One—The Military Mission*

A. Mission Development and Execution

(1) Conclusion: (a) The Commission concludes that the "presence" mission was not interpreted the same by all levels of the chain of command and that perceptual differences regarding that mission, including the responsibility of the USMNF for the security of Beirut International Airport, should have been recognized and corrected by the chain of command.

B. The Expanding Military Role

(1) Conclusion: (a) The Commission concludes that U.S. decisions as regards Leba-

non taken over the past fifteen months have been, to a large degree, characterized by an emphasis on military options and the expansion of the U.S. military role, notwithstanding the fact that the conditions upon which the security of the USMNF were based continued to deteriorate as progress toward a diplomatic solution slowed. The Commission further concludes that these decisions may have been taken without clear recognition that these initial conditions had dramatically changed and that the expansion of our military involvement in Lebanon greatly increased the risk to, and adversely impacted upon the security of, the USMNF. The Commission therefore concludes that there is an urgent need for reassessment of alternative means to achieve U.S. objectives in Lebanon and at the same time reduce the risk to the USMNF.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense continue to urge that the National Security Council undertake a reexamination of alternative means of achieving U.S. objectives in Lebanon, to include a comprehensive assessment of the military security options being developed by the chain of command and a more vigorous and demanding approach to pursuing diplomatic alternatives.

*2. Part two—Rules of engagement (ROE)*

A. ROE Implementation

(1) Conclusions: (a) The Commission concludes that a single set of ROE providing specific guidance for countering the type of vehicular terrorist attacks that destroyed the U.S. Embassy on 18 April 1983 and the BLT Headquarters building on 23 October 1983 had not been provided to, nor implemented by, the Marine Amphibious Unit Commander.

(b) The Commission concludes that the mission statement, the original ROE, and the implementation in May 1983 of dual "Blue Card—White Card" ROE contributed to a mind-set that detracted from the readiness of the USMNF to respond to the terrorist threat which materialized on 23 October 1983.

*3. Part three—The chain of command*

A. Exercise of Command Responsibility by the Chain of Command Prior to 23 October 1983

(1) Conclusions: (a) The Commission is fully aware that the entire chain of command was heavily involved in the planning for, and support of, the USMNF. The Commission concludes, however, that USCINCEUR, CINCUSNAVEUR, COMSIXTHFLT and CTF 61 did not initiate actions to ensure the security of the USMNF in light of the deteriorating political/military situation in Lebanon. The Commission found a lack of effective command supervision of the USMNF security posture prior to 23 October 1983.

(b) The Commission concludes that the failure of the operational chain of command to correct or amend the defensive posture of the USMNF constituted tacit approval of the security measures and procedures in force at the BLT Headquarters building on 23 October 1983.

(c) The Commission further concludes that although it finds the USCINCEUR operational chain of command at fault, it also finds that there was a series of circumstances beyond the control of these commands that influenced their judgment and their actions relating to the security of the USMNF.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense take whatever administrative or disciplinary action he deems appropriate, citing the failure of the USCINCEUR operational chain of command to monitor and supervise effectively the security measures and procedures employed by the USMNF on 23 October 1983.

*4. Part four—Intelligence*

A. Intelligence Support

(1) Conclusion: (a) The Commission concludes that although the USMNF Commander received a large volume of intelligence warnings concerning potential terrorist threats prior to 23 October 1983, he was not provided with the timely intelligence, tailored to his specific operational needs, that was necessary to defend against the broad spectrum of threats he faced.

(b) The Commission further concludes that the HUMINT support to the USMNF Commander was ineffective, being neither precise nor tailored to his needs. The Commission believes that the paucity of U.S. controlled HUMINT provided to the USMNF Commander is in large part due to policy decisions which have resulted in a U.S. HUMINT capability commensurate with the resources and time that have been spent to acquire it.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense establish an all-source fusion center, which would tailor and focus all-source intelligence support to U.S. military commanders involved in military operations in areas of high threat, conflict of crisis.

(b) The Commission further recommends that the Secretary of Defense take steps to establish a joint CIA/DOD examination of policy and resource alternatives to immediately improve HUMINT support to the USMNF contingent in Lebanon and other areas of potential conflict which would involve U.S. military operating forces.

*5. Part five—Pre-attack security*

A. Command Responsibility for the Security of the 24th MAU and BLT 1/8 Prior to 23 October 1983

(1) Conclusion: (a) The combination of a large volume of specific threat warnings that never materialized and the perceived and real pressure to accomplish a unique and difficult mission contributed significantly to the decisions of the MAU and BLT Commanders regarding the security of their force. Nevertheless, the Commission concludes that the security measures in effect in the MAU compound were neither commensurate with the increasing level of threat confronting the USMNF nor sufficient to preclude catastrophic losses such as those that were suffered on the morning of 23 October 1983. The Commission further concludes that while it may have appeared to be an appropriate response to the indirect fire being received, the decision to billet approximately one quarter of the BLT in a single structure contributed to the catastrophic loss of life.

(b) The Commission concludes that the BLT Commander must take responsibility for the concentration of approximately 350 members of his command in the BLT Headquarters building, thereby providing a lucrative target for attack. Further, the BLT Commander modified prescribed alert procedures, thereby degrading security of the compound.

(c) The Commission also concludes that the MAU Commander shares the responsibility for the catastrophic losses in that he condoned the concentration of personnel in the BLT Headquarters building, concurred in the modification of prescribed alert procedures, and emphasized safety over security in directing that sentries on Posts 4, 5, 6, and 7 would not load their weapons.

(d) The Commission further concludes that although it finds the BLT and MAU Commanders to be at fault, it also finds that there was a series of circumstances beyond their control that influenced their judgment and their actions relating to the security of the USMNF.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense take whatever administrative or disciplinary action he deems appropriate, citing the failure of the BLT and MAU Commanders to take the security measures necessary to preclude the catastrophic loss of life in the attack on 23 October 1983.

*6. Part seven—Post-attack security*

A. Redeployment, Dispersal and Physical Barriers

(1) Conclusions: (a) The Commission concludes that the security measures taken since 23 October 1983 have reduced the vulnerability of the USMNF to catastrophic losses. The Commission also concludes, however, that the security measures implemented or planned for implementation for the USMNF as of 30 November 1983, were not adequate to prevent continuing significant attrition of the force.

(b) The Commission recognizes that the current disposition of USMNF forces may, after careful examination, prove to be the best available option. The Commission concludes, however, that a comprehenive set of alternatives should be immediately prepared and presented to the National Security Council.

(2) Recommendation: (a) Recognizing that the Secretary of Defense and the Joint Chiefs of Staff have been actively reassessing the increased vulnerability of the USMNF as the political/military environment in Lebanon has changed, the Commission recommends that the Secretary of Defense direct the operational chain of command to continue to develop alternative military options for accomplishing the mission of the USMNF while reducing the risk to the force.

*7. Part eight—Casualty handling*

A. On-Scene Medical Care

(1) Conclusion: (a) The Commission concludes that the speed with which the on-scene U.S. military personnel reacted to rescue their comrades trapped in the devastated building and to render medical care was nothing short of heroic. The rapid response by Italian and Lebanese medical personnel was invaluable.

B. Aeromedical Evacuation/Casualty Distribution

(1) Conclusions: (a) The Commission found no evidence that any of the wounded died or received improper medical care as a result of the evacuation or casualty distribution procedures. Nevertheless, the Commission concludes that overall medical support planning in the European theater was deficient and that there was an insufficient number of experienced medical planning staff officers in the USCINCEUR chain of command.

(b) The Commission found that the evacuation of the seriously wounded to U.S. hospitals in Germany, a transit of more than four hours, rather than to the British hospital in Akrotiri, Cyprus, a transit of one

hour, appears to have increased the risk to those patients. Similarly, the Commission found that the subsequent decision to land the aircraft at Rhein Main rather than Ramstein, Germany, may have increased the risk to the most seriously wounded. In both instances, however, the Commission has no evidence that there was an adverse medical impact on the patients.

(2) Recommendations: (a) The Commission recommends that the Secretary of Defense direct the Joint Chiefs of Staff, in coordination with the Services, to review medical plans and staffing of each echelon of the operational and administrative chains of command to ensure appropriate and adequate medical support for the USMNF.

(b) The Commission further recommends that the Secretary of Defense direct USCINCEUR to conduct an investigation of the decisions made regarding the destination of aeromedical evacuation aircraft and the distribution of casualties on 23 October 1983.

C. Definitive Medical Care

(1) Conclusion: (a) The Commission concludes that the definitive medical care provided the wounded at the various treatment facilities was excellent, and that as of 30 November 1983, there is no evidence of any mortality or morbidity resulting from inappropriate or insufficient medical care.

D. Israeli Offer of Medical Assistance

(1) Conclusion: (a) The Commission found no evidence that any factor other than the desire to provide immediate, professional treatment for the wounded influenced decisions regarding the Israeli offer; all offers of assistance by Israel were promptly and properly referred to the theater and on-scene commanders. At the time the initial Israeli offer was reviewed by CTF 61, it was deemed not necessary because the medical capabilities organic to CTF 61 were operational and functioning adequately, the RAF hospital at Akrotiri was mobilized and ready, and sufficient U.S. and RAF medical evacuation aircraft were enroute.

E. Identification of the Dead

(1) Conclusion: (a) The Commission concludes that the process for identification of the dead following the 23 October 1983 catastrophe was conducted very efficiently and professionally, despite the complications caused by the destruction and/or absence of identification data.

Recommendation: (a) The Commission recommends that the Secretary of Defense direct the creation of duplicate medical/dental records, and assure the availability of fingerprint files, for all military personnel. The Commission further recommends that the Secretary of Defense direct the Service Secretaries to develop jointly improved, state-of-the-art identification tags for all military personnel.

*8. Part nine—Military response to terrorism*

A. A Terrorist Act

(1) Conclusion: (a) The Commission concludes that the 23 October 1983 bombing of the BLT Headquarters building was a terrorist act sponsored by sovereign states or organized political entities for the purpose of defeating U.S. objectives in Lebanon.

B. International Terrorism

(1) Conclusion: (a) The Commission concludes that international terrorist acts endemic to the Middle East are indicative of an alarming world-wide phenomenon that poses an increasing threat to U.S. personnel and facilities.

C. Terrorism as a Mode of Warfare

(1) Conclusion: (a) The Commission concludes that state sponsored terrorism is an important part of the spectrum of warfare and that adequate response to this increasing threat requires an active national policy which seeks to deter attack or reduce its effectiveness. The Commission further concludes that this policy needs to be supported by political and diplomatic actions and by a wide range of timely military response capabilities.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense direct the Joint Chiefs of Staff to develop a broad range of appropriate military responses to terrorism for review, along with political and diplomatic actions, by the National Security Council.

D. Military Preparedness

(1) Conclusion: (a) The Commission concludes that the USMNF was not trained, organized, staffed, or supported to deal effectively with the terrorist threat in Lebanon. The Commission further concludes that much needs to be done to prepare U.S. military forces to defend against and counter terrorism.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense direct the development of doctrine, planning, organization, force structure, education and training necessary to defend against and counter terrorism.

FOREWORD

*I. The report*

A. Organization

Organization of the report of the DOD Commission on Beirut International Airport Terrorist Act, October 23, 1983 into ten parts reflects the Commission's conviction that a thorough understanding of the circumstances surrounding the bombing of the BLT Headquarters on 23 October 1983 requires comprehension of a number of separate, but closely related, substantive areas. The order of presentation of the several parts is designed to provide a logical progression of information.

Part one of the report addresses the development of the mission assigned to the USMNF, assesses mission clarity and analyzes the continued validity of the assumptions upon which the mission was premised. Part two addresses the adequacy of the rules of engagement that governed the execution of the mission. Part three outlines the chain of command that was tasked with the accomplishment of the military mission and assesses its responsiveness to the security requirements of the USMNF in the changing threat environment. Part four examines the threat to the USMNF, both before and after the attack, and assesses the adequacy of the intelligence provided to the USMNF commander. Part five analyzes the security measures that were in force prior to the attack. Part six provides a comprehensive recapitulation of the tragic events of 23 October 1983. Part seven describes the security measures instituted subsequent to the bombing and assesses their adequacy. Part eight is a reconstruction and evaluation of on-scene casualty handling procedures, aeromedical evacuation and definitive medical care provided to the victims of the attack. Part eight also addresses the circumstances surrounding the Israeli offer of medical assistance and examines the basis for its nonacceptance. Part nine addresses the 23 October 1983 bombing in the context of international terrorism and assesses the readiness of U.S. military forces to cope with the terrorist threat. Part ten lists the Commission's major conclusions and recommendations.

Parts one through nine consist of one or more subparts providing a recitation of the Commission's principal findings of fact in that substantive area, a discussion of the significance of those findings, and, as appropriate, conclusions and recommendations.

B. Philosophy

In preparing this report, the Commission, analyzed those factors bearing upon the security of the USMNF in Lebanon in general, and the security of the BLT Headquarters building in particular. The Commission began with the premise that U.S. participation in the Multinational Force was designed to support the efforts of the United States and its allies to facilitate the withdrawal of foreign military forces from Lebanon and to assist the Lebanese Government in establishing sovereignty and authority over the Beirut area. The Commission did not question the political decision to insert the Marines into Lebanon and did not address the political necessity of their continued participation in the Multinational Force following the 23 October 1983 terrorist attack. Athough those political judgments are beyond the purview of the Commission's Charter, and are not addressed in the report, that fact did not impede the work of the Commission in examining the impact of those policy decisions on the security of the USMNF.

The Commission reviewed the responsiveness of the military chain of command as it pertained to the security requirements of the USMNF. The Commission did not conduct an administrative inspection of any headquarters element during the review process.

The Commission's focus was on the bombing of 23 October 1983 and the security of the USMNF both prior to and subsequent to that catastrophic event. The security of offshore supporting forces was not reviewed in depth by the Commission. The security of other American personnel in Lebanon was not considered, being outside the Commission's Charter.

*II. The commission*

A. Charter

The five member DOD Commission on Beirut International Airport Terrorist Act, October 23, 1983 was established by the Secretary of Defense on 7 November 1983 to conduct a thorough and independent inquiry into all of the facts and circumstances surrounding the 23 October 1983 terrorist bomb attack on the Marine Battalion Landing Team (BLT) Headquarters at the Beirut International Airport (BIA).

The Commission was established pursuant to the Federal Advisory Committee Act (Public Law 92-463) and was governed in its proceedings by Executive Order 12024 and implementing General Services Administration and Department of Defense regulations. The Charter provided that the advisory function of the Commission was to be completed within 90 days.

The Commission was tasked to examine the rules of engagement in force and the security measures in place at the time of the attack. The Commission was further charged to assess the adequacy of the security measures established subsequent to the explosion and to report findings of facts, opinions, and recommendations as to any changes or future actions.

The Charter specified that the Commission was to be granted access to all information pertinent to its inquiry and authorized the Commission to visit such places as it deemed necessary to accomplish its objective.

The Secretary of Defense directed the Commission to interpret its Charter in the broadest possible manner and tasked the Department of Defense, including the Services, the Joint Chiefs of Staff, and the Defense Agencies, to provide such overall support and assistance as the Commission might require.

B. Members

The Commission was composed of the following five members:

Admiral Robert L. J. Long, U.S. Navy (Ret.) Chairman.—Admiral Long retired as the Commander in Chief Pacific in July 1983, after 40 years of commissioned service which included combat duty in World War II and the Vietnam conflict. He has commanded the USS *Sea Leopard*; USS *Patrick Henry*; USS *Casimir Pulaski*; the Submarine Force, U.S. Atlantic Fleet; Submarines, Allied Command; and Submarine Force, Western Atlantic Area. Admiral Long has served as Executive Assistant and Naval Aide to the Under Secretary of the Navy; Deputy Chief of Naval Operations (Submarine Warfare); and Vice Chief of Naval Operations.

Honorable Robert J. Murray.—Mr. Murray is on the faculty of Harvard University. He is a former Under Secretary of the Navy and former Deputy Assistant Scretary of Defense (International Security Affairs) with responsibilities for U.S. policy toward the Middle East. Mr. Murray has served in various positions in the Defense and State Departments since 1961.

Lieutenant General Joseph T. Palastra, Jr., U.S. Army.—Lieutenant General Palastra is currently the Deputy Commander in Chief, and Chief of Staff, United States Pacific Command. The Commander in Chief, United States Pacific Command is responsible to the President of the United States and the Secretary of Defense, through the Joint Chiefs of Staff, and is the U.S. military representative for collective defense arrangements in the Pacific Theater. Lieutenant General Palastra's 29 years of Commissioned service include multiple combat tours in Vietnam, among than duty as an Infantry Battalion Commander. During the past eight years, Lieutenant General Palastra has commanded an air assault infantry brigade and a mechanized infantry division. He has served as Senior Military Assistant to the Deputy Secretary of Defense.

Lieutenant General Lawrence F. Snowden, U.S. Marine Corps (Ret).—Lieutenant General Snowden retired as Chief of Staff, Headquarters, U.S. Marine Corps, in May 1979, after 37 years of active service which included combat duty in World War II, Korea, and Vietnam. Lieutenant General Snowden served as a regimental commander in Vietnam; Director of the Marine Corps Development Center; Chief of Staff, U.S. Forces, Japan; and Operations Deputy of the Marine Corps with the Joint Chiefs of Staff. Upon his retirement, Lieutenant General Snowden joined Hughes Aircraft International Service Company in Tokyo where he is currently Vice President, Far East Area.

Lieutenant General Eugene F. Tighe, Jr., USAF (Ret).—Lieutenant General Tighe retired from the Air Force and as Director of the Defense Intelligence Agency on 1 September 1981 after 39 years of Active and Reserve USAF and U.S. Army duty, which included service in the Southwest Pacific, Korea and Vietnam. Lieutenant General Tighe served as Director, Defense Intelligence Agency for 4 years and as Deputy Director and Acting Director for 2 years. He also held the senior intelligence position at Headquarters, United States Air Force; Strategic Air Command; the U.S. Pacific Command; and Headquarters, Pacific Air Force.

A complete biography of each Commission Member is provided in Annex A.

C. Methodology

The Commission convened on 7 November 1983 in Washington, D.C., and developed its plan for conducting the inquiry. Liaison was established by the Chairman with key members of Congress to ascertain any particular areas of interest that they considered useful for the Commission to explore.

The Commission assembled a staff of experts to advise the Commission in the various technical areas that would be encountered. Experts in the fields of intelligence, planning, operations, special warfare, terrorism, command relations, medicine, and international law were assigned as full time staff assistants. Liaison was also established with non-DOD governmental agencies which were involved in, or had special knowledge of, the events leading up to and following the 23 October 1983 terrorist attack.

The substantive information to be gathered necessarily involved highly classified matters of national security concern. Because these matters could not reasonably be segregated into separate classified categories, all witnesses were interviewed in closed session. Principal witnesses with direct knowledge of the circumstances leading to the formulation of the Multinational Force, the development or execution of the mission of the USMNF, or the events of the October attack and its aftermath, were interviewed by the full Commission. Collateral witnesses were interviewed by individual Commission members accompanied by appropriate staff experts.

The Commission and staff assistants were authorized access to all levels of classified information.

The Commission visited USCINCEUR Headquarters in Stuttgart; CINCUSNAVEUR Headquarters in London; COMSIXTHFLT in USS PUGET SOUND at Gaeta, Italy; CTF 61 in USS AUSTIN offshore Lebanon; and CTF 62 ashore in Beirut. Commission members and staff also visited Tel Aviv, Israel; Rota, Spain; Akrotiri, Cyprus; and Wiesbaden, Germany. During these visits, the Commission received command presentations and technical briefings, interviewed witnesses and acquired written documentation of the events leading up to and following the 23 October 1983 attack.

The Commission arrived in Beirut before the rotation of the 24th MAU from Lebanon. The Commission toured USMNF positions on the perimeter of Beirut International Airport and inspected the rubble of the BLT Headquarters building. Eyewitnesses to the explosion were interviewed in depth. The Commission also met with Ambassador Bartholomew and members of the U.S. Embassy staff; the Commanding General of the Lebanese Armed Forces; and the French, Italian and British MNF Commanders.

The Commission approach to the inquiry was to avoid reaching any preliminary conclusions until the fact finding portion of the mission was completed. The Commission recognized, however, that some of its preliminary findings were time-sensitive, and, upon the Commission's return from Beirut, provided the Secretary of Defense with a memorandum regarding existing security procedures for the USMNF.

A second memorandum was forwarded to the Chairman of the Joint Chiefs of Staff recommending that the Federal Bureau of Investigation's comprehensive briefing on the nature of the explosive devices used in the terrorist attacks on the United States Embassy Beirut and the BLT Headquarters building be received by the Joint Chiefs of Staff at the earliest opportunity.

All written documentation, including planning documents, operational orders, witness interview summaries, Congressional hearings, media reports, technical analyses and after action reports, was assembled and reviewed by the Commission members or staff assistants. All principals involved in the planning and execution of the USMNF mission, and in the events that preceded and followed the explosion, were interviewed.

The analytical work of the Commission was accomplished by first reviewing all available material in each area of inquiry and then compiling a list of principal findings related to that area. Following discussion of the principal findings, conclusion and recommendations were postulated by individual Commission members and discussed in detail. Using this deliberative process, the Commission reached agreement on each conclusion and recommendation.

BACKGROUND

*I. Lebanon Overview*

A. Geography and history

Lebanon, a country approximately the size of Connecticut, contains three million people, seventeen officially recognized religious sects, two foreign armies of occupation, four national contingents of a multinational force, seven national contributors to a United Nations peace-keeping force, and some two dozen extralegal militias. Over 100,000 people have been killed in hostilities, in Lebanon over the past eight years, including the 241 U.S. military personnel that died as a result of the terrorist attack on 23 October 1983. It is a country beset with virtually every unresolved dispute afflicting the peoples of the Middle East. Lebanon has become a battleground where armed Lebanese factions simultaneously manipulate and are manipulated by the foreign forces surrounding them. If Syrians and Iraqis wish to kill one another, they do so in Lebanon. If Israelis and Palestinians wish to fight over the land they both claim, they do so in Lebanon. If terrorists of any polictical persuasion wish to kill and maim American citizens, it is convenient for them to do so in Lebanon. In a country where criminals involved in indiscriminate killing, armed robbery, extortion, and kidnapping issue political manifestos and hold press conferences, there has been no shortage of indigenous surrogates willing to do the bidding of foreign governments seeking to exploit the opportunities presented by anarchy in Lebanon.

Yet a picture of Lebanon painted in these grim colors alone would not be complete. Lebanese of all religions have emigrated to countries as widely separated as the United States, Brazil, Australia, and the Ivory Coast, where they have enrighed the arts, sciences, and economies of their adopted nations. Lebanon has, notwithstanding the events of the past eight years, kept alive the

principle and practice of academic freedom in such institutions as American University Beirut and Saint Joseph University. No one who visits Lebanon can resist admiring the dignity and resiliency of the Lebanese people and their determination to survive.

There is no sense of national identity that unites all Lebanese or even a majority of the citizenry. What it means to be Lebanese is often interpreted in radically different ways by, for instance, a Sunni Muslim living in Tripoli, a Maronite Christian from Brummana, a Greek Orthodox Christian from Beirut, a Druze from Kafr Nabrakh, or a Shiite Muslim from Nabatiyah. This is because the Lebanon of antiquity was Mount Lebanon, the highland chain running north-south through the center of the country, where Maronite Catholicism had over 1,000 years of relative isolation to develop its own national identity. In 1920, France which acquired part of the Levant from the defeated Ottoman Empire, added non-Maronite territory to Mount Lebanon in order to create Greater Lebanon, a new state in which Maronites comprised but 30 percent of the population rather than the 70 percent of Mount Lebanon that they had previously constituted.

B. Religious and political factions

Most politically-conscious non-Maronites, especially Sunni Muslims and Greek Orthodox Christians, were opposed to integration into the new state. The idea of being ruled by Maronites was particularly objectionable to the Sunni Muslims who had been preeminent in the Ottoman Empire; hence their attraction to the concept of a unified Greater Syria. When the French were prepared to leave Lebanon, however, the Maronite and Sunni elites were ready to strike a deal. The unwritten "National Pact" of 1943 stipulated that the Maronites would refrain from invoking Western intervention, the Sunnis would refrain from seeking unification with Syria, and Lebanon's political business would be premised on the allocated of governmental positions and parliamentary seats on the basis of the sectarian balance reflected in the 1932 census, i.e. confessionalism. The National Pact set forth what Lebanon was not. It was not an extension of Europe, and it was not part of a pan-Arab state. It did not establish in positive terms what Lebanon was. As a Lebanese journalist once put it, "Two negations do not make a nation."

Much has been made of the outward manifestations of Lebanese confessionalism. The President of the Republic and Armed Forces Commander-in-Chief are always Maronites; the Armed Minister must be a Sunni; the Speaker of the Chamber of Deputies will be a Shiite; and for every five non-Christian deputies there must be six Christians. This allocation reflects the recognition of the founders of independent Lebanon that sectarian cooperation was the key to the country's survival. Lebanese confessionalism was the mechanism which they hoped would facilitate compromise.

The central government rested not only on confessionalism, but on localism as well. Political power in Lebanon traditionally resides in the hands of local power brokers, i.e. Maronite populists, Druze and Shiite feudalists, and Sunni urban bosses. These local leaders draw their political power from grass-roots organizations based on sectarian and clan relationships. Local leaders periodically have come together in Beirut to elect presidents and form governments, but none of them are prepared to allow the central government to penetrate their constituencies unless it is to deliver a service for which they have arranged and for which they will take credit. They guard their turf jealously against unwanted encroachments by the central government, whether it is in the form of the civilian bureaucracy or the military. If one of their Maronite number becomes President, the rest tend to coalesce in order to limit his power. The basic institutions of government, i.e. the army, the judiciary and the bureaucracy, are deliberately kept weak in order to confirm the government's dependency. If the local chiefs argue among themselves, especially over issues that tend to pit the major sects against one other, the central government simply stops functioning.

This, in essence, is exactly what has happened. Lebanon had survived earlier crises, but the Arab-Israeli confrontation proved to be a fatal overload for this fragile system. Over 100,000 Palestinian refugees fled to Lebanon in 1948, and over time an armed "state within a state" grew on Lebanese territory, a process accelerated by the arrival from Jordan in 1971 of several thousand fighters and the leadership of the Palestine Liberation Organization (PLO). The PLO fired and raided across the border into Israel, and shored up its position in Lebanon by forming alliances with dissident Lebanese groups which hoped to harness Palestinian firepower to the cause of social revolution. This in turn encouraged the more conservative elements of Lebanese society, mainly from the Maronite community, to organize militarily. From 1968 on, the PLO-Israeli confrontation in southern Lebanon caused the progressive polarization of the Lebanese along confessional lines, with Maronite Christians in particular opposing the PLO presence and Muslims in general supporting it. It also caused many of the local power brokers to fall back onto their own resources and to seek support from foreign sources. The central government, deprived of its lifeblood, was left debilitated. In the civil warfare of 1975-1976 it ceased to exist in all but name.

Syria had historically supported the PLO and its Lebanese allies but in June 1976, fearing that a revolutionary regime in Beirut would drag it into a war with Israel, intervened on behalf of the Maronite militias. A stalemante was created, and from 1976 until June 1982 Lebanon lay crippled under the weight of de factor partition and partial occupation by Syria. The basic issues underlying the Lebanese civil war were left unresolved.

On 6 June 1982, Israeli forces launched a massive operation against Palestinian forces based in southern Lebanon, an invasion which brought the Israel Defense Forces to the outskirts of Beirut within three days. The three considerations that prompted Israel's assault were (1) putting an end to the military capabilities and political independence of the PLO; (2) putting Israeli population centers in Galilee beyond the threat of hostile actions emanating from Lebanon; and (3) breaking the internal Lebanese political paralysis in a manner that would facilitate official relations between Israel and Lebanon.

Notwithstanding the evacuation of PLO and Syrian forces from Beirut—an event made possible by American diplomacy backed by U.S. Marines acting as part of a Multinational Force—Lebanon slipped back into chaos and anarchy. No sooner had the PLO departed Beirut than the new Lebanese President-Elect, Bashir Gemayel, was assassinated. That tragedy was followed by the massacre of hundreds of unarmed civilians, Lebanese as well as Palestinians, by Christian milita elements in the Sabra and Shatila refugee camps; an atrocity which, along with similar acts perpetrated by all sides, has come to symbolize the nature of sectarian hatred in Lebanon. This bloodletting, as well as the outbreak of fighting between Druze and Maronite militias in the mountainous Shuf area overlooking Beirut, demonstrated that the reconciliation. Long hoped for by most ordinary Lebanese was not at hand. Exacerbating the political ills that have afflicted Lebanon over the past several years, a new element of instability and violence has been added: the ability of Khomeini's Iran to mobilize a small, but violently extremist portion of the Lebanese Shiite community against the government and the LAF.

In summary, the Government of Lebanon is the creature of confessionalism and localism. Without consensus, any controversial stand taken by the central government will be labeled as sectarian favoritism by those who oppose it.

*II. Major events*

A. June 1982-October 1983

The 6 June 1982 Israeli invasion into Lebanese territory reached the outskirts of Beirut within three days, and by 14 June the Israeli Defense Forces (IDF) had linked up with the Christian Lebanese Forces (LF) militia in East Beirut. The 32d U.S. Marine Amphibious Unit (MAU) deployed to waters off Lebanon and on 23 June 1982 conducted the successful evacuation of U.S. citizens from the port city of Juniyan. On 28 June, the LF began moving up the Beirut-Damascus Highway past Jumhur, and on 29 June entered Alayh, killing twelve Druze militiamen. On 30 June, two key "firsts" occurred: the LF entered the Shuf for the first time, and the first Druze-LF artillery duel occurred.

On 2 July 1982, the IDF instituted a military blockade of Beirut, causing intense diplomatic activity aimed at averting an all-out battle for the capital. Ambassador Habib's efforts were successful and some 15,000 armed personnel (Palestinians and Syrians) were evacuated from Beirut under the auspices of a Multinational Force (MNF) consisting of French and Italian contingents and the 32nd MAU. All MNF forces were withdrawn by 10 September 1982.

The assassination of President-Elect Bashir Gemayel on 14 September 1982, followed by IDF occupation of West Beirut and the massacre of Palestinian and Lebanese civilians in the Sabra and Shatila camps on 16-18 September 1982, resulted in the agreement of France, Italy and the United States to reconstitute the MNF. On 26 September, the French and Italian contingents reentered Beirut, and on 29 September, the 32d MAU began landing at the Port of Beirut.

The 1,200-man Marine contingent occupied positions in the vicinity of Beirut International Airport (BIA) as an interpositional force between the IDF and populated areas of Beirut.

On 3 November 1982, the 24th MAU replaced the 32d MAU. By 15 November, a DOD team had completed a survey of Lebanese Armed Forces (LAF) capabilities and requirements. Marine Mobile Training Teams (MTT) from the USMNF began conducting individual and small unit training for the LAF at BIA. Training of a LAF rapid-reaction force by the USMNF began during the week of 21 December. The last

significant event of 1982 was the beginning of negotiations between Lebanon and Israel on 28 December calling for the withdrawal of foreign forces.

On 5 January 1983, the IDF began conducting patrol operations (including reconnaissance by fire) south of Marine positions along the Old Sidon Road. Stray IDF rounds landed on USMF positions, and there were at least five IDF attempts to penetrate Marine positions during the month. On 2 February, a USMC officer felt obliged to draw his pistol in order to stop an IDF penetration. On 20 January 1983, the Office of Military Cooperation, which had been established in late 1982, was formally opened. On 15 February, the 24th MAU was relieved by the 22d MAU. From 20–25 February, the USMNF, at the request of the Government of Lebanon, conducted emergency relief operations in the Lebanon Mountains in the wake of a mid-winter blizzard and sub-zero temperatures. On 16 March, five Marines were slightly wounded by a terrorist hand grenade in the southern Beirut suburb of Ouzai. Incidents involving IDF elements and USMNF patrols were recorded during the month of March and April as USMNF patrolling was expanded in support of LAF deployments.

On 18 April 1983, the U.S. Embassy in Beirut was destroyed by a massive explosion which took the lives of 17 U.S. citizens and over 40 others. The bomb was delivered by a pickup truck and detonated. U.S. Embassy functions were relocated to the British Embassy and to the Duraffourd Building. The USMNF established a detachment to provide security for both locations.

Fighting between Christian LF and Druze militias in the Shuf spilled over into Beirut in the form of artillery shelling between 5 and 8 May. On 17 May 1983, Israel and the Government of Lebanon signed an agreement calling for the withdrawal of the IDF and the institution of special security measures for southern Lebanon. Israel, however, predicated its own withdrawal on the simultaneous withdrawal of Syrian and Palestine Liberation Organization (PLO) forces from Lebanon, parties which had not been included in the negotiations, Syria refused to initiate withdrawal of its forces while the IDF remaind in Lebanon. The stage was set for renewed violence.

On 30 May 1983, the 24th MAU relieved the 22nd MAU. On 25 June, USMNF personnel conducted combined patrols with the LAF for the first time. On 14 July, an LAF patrol was ambushed by Druze militia elements, and from 15 to 17 July, the LAF engaged the Shia Amal militia in Beirut over a dispute involving the eviction of Shiite squatters from a schoolhouse. At the same time, fighting in the Shuf between the LAF and Druze militia escalated sharply. On 22 July, BIA was shelled with Druze mortar and artillery fire, wounding three U.S. Marines and causing the temporary closing of the airport.

In July 1983, President Amin Gemayel traveled to Washington and obtained a promise of expedited delivery of military equipment to the LAF. On 23 July, Walid Jamblatt, leader of the predominantly Druze Progressive Socialist Party (PSP), announced the formation of a Syrian-backed "National Salvation Front" opposed to the 17 May Israel-Labanon Agreement.

In anticipation of an IDF withdrawal from the Alayh and Shuf districts, fighting between the Druze and LF, and between the Druze and LAF, intensified during the month of August. Druze artillery closed the BIA between 10 and 16 August, and the Druze made explicit their opposition to LAF deployment in the Shuf. The LAF also clashed with the Amal militia in Beirut's western and southern suburbs.

As the security situation deteriorated, USMNF positions at BIA were subjected to increased fire. On 10 and 11 August, an estimated thirty-five rounds of mortar and rocket fire landed on USMNF positions, wounding one Marine. On 28 August 1983, the USMNF returned fire for the first time. On the following day, USMNF artillery silenced a Druze battery after two Marines had been killed in a mortar attack. On 31 August, the LAF swept through the Shia neighborhood of West Beirut, establishing temporary control over the area.

On 4 September 1983, the IDF withdrew from the Alayh and Shuf Districts, falling back to the Awwali River. The LAF was not prepared to fill the void, moving instead to occupy the key junction at Khaldah, south of BIA. On 4 September, BIA was again shelled, killing two Marines and wounding two others. As the LAF moved slowly eastward into the foothills of the Shuf, accounts of massacres, conducted by Christians and Druze alike, began to be reported.

On 5 September, a Druze force, reportedly reinforced by PLO elements, routed the Christian LF militia at Bhamdun and all but eliminated the LF as a military factor in the Alayh District. This defeat obliged the LAF to occupy Suq-Al-Gharb to avoid conceding all of the high ground overlooking BIA to the Druze. USMNF positions were subjected to constant indirect fire attacks; consequently, counterbattery fire based on target acquisition radar data was employed. F-14 tactical airborne reconnaissance/DoD (TARPS) missions were conducted for the first time on 7 September. On 8 September, naval gunfire from offshore destroyers was employed for the first time in defense of the USMNF.

On 12 September 1983, the U.S. National Command Authorities (NCA) determined that the successful defense of Suq-Al-Gharb was essential to the safety of the USMNF. On 14 September, an emergency ammunition resupply to the LAF was instituted. On 19 September, Navy destroyers provided gunfire support of the LAF defenders at Suq-Al-Gharb. The battleship USS NEW JERSEY arrived in Lebanese waters on 25 September. A ceasefire was instituted that same day and Beirut International Airport reopened five days later.

On 1 October 1983, the LAF began to receive additional shipments of APC's, M–48 tanks, and howitzers from the U.S. training of LAF recruits and units by the USMNF resumed. On that date, Walid Jumblatt announced a separate governmental administration for the Shuf and called for the mass defection of all Druze elements from the LAF. Nevertheless, on 14 October the leaders of Lebanon's key factions agreed to conduct reconciliation talks in Geneva, Switzerland.

Although the ceasefire officially held into mid-October, factional clashes intensified and sniper attacks on MNF contingents became commonplace. On 19 October 1983, four Marines were wounded when a USMNF convoy was attacked by a remotely detonated car bomb parked along the convoy route.

B. 23 October 1983

At approximately 0622 on Sunday, 23 October 1983, the Battalion Landing Team (BLT) Headquarters building in the Marine Amphibious Unit (MAU) compound at Beirut International Airport was destroyed by a terrorist bomb. This catastrophic attack took the lives of 241 U.S. military personnel and wounded over 100 others. The bombing was carried out by a lone terrorist driving a yellow Mercedes Benz stakebed truck that accelerated through the public parking lot south of the BLT Headquarters building, crashed through a barbed wire and concertina fence, and penetrated into the central lobby of the building, where it exploded. The truck drove over the barbed and concertina wire obstacle, passed between two Marine guard posts without being engaged by fire, entered an open gate, passed around one sewer pipe barrier and between two others, flattened the Sergeant of the Guard's sandbagged booth at the building's entrance, penetrated the lobby of the building and detonated while the majority of the occupants slept. The force of the explosion ripped the building from its foundation. The building then imploded upon itself. Almost all the occupants were crushed or trapped inside the wreckage. Immediate efforts were undertaken to reestablish security, to extricate the dead and wounded from the building's rubble, and to institute a mass casualty handling and evacuation operation.

Almost simultaneously with the attack on the U.S. Marine compound, a similar truck bomb exploded at the French MNF headquarters.

C. 24 October–30 November 1983

As cleanup and rescue operations continued at the bombing site in the ensuing days, the USMNF came under sporadic sniper fire. Deployment of forces to replace those lost began on the day of the bombing. By the day following, replacement personnel had been airlifted into Beirut. On 28 October, The Secretary of Defense approved the assignment of an additional Marine rifle company to the USMNF. That augmenting force was airlifted into Lebanon and deployed at BIA by the end of October.

On 4 November 1983, the Israeli Military Governor's Headquaters in Tyre was destroyed by a suicide driver in a small truck loaded with explosives. There were 46 fatalities. The Israeli Air Force conducted retaliatory strikes later that day against Palestinian position east of Beirut.

On 8 November 1983, the BLT Company located at the Lebanese Scientific and Technical University was withdrawn to BIA, and subsequently redeployed aboard ship as the USMNF ready reserve.

Ambassador Rumsfeld, appointed by the President on 3 November 1983 to replace Ambassador McFarlane as The President's Special Envoy to the Middle East, began his first Middle East mission on 12 November.

On 16 November 1983, the Israelis conducted additional retaliatory air strikes, hitting a terrorist training camp in the eastern Bekaa Valley. The next day, the French conducted similar strikes against another Islamic Amal camp in the vicinty of the northern Bekaa Valley town of Baalbak.

Throughout the 23 October to 30 November period, USMNF positions at BIA were the target of frequent sniper attacks, and occasional, but persistent, artillery, rocket, and mortar fire. On 16 November, our 122mm rockets impacted at BIA. The MAU received small arms fire several times on 19 November, the date the turnover by the 24th MAU to the 22nd MAU was completed.

Persistent and occasionally heavy fighting between the LAF and Shia militias in the southern suburbs of Beirut continued through November. As the month ended,

the mountainous Shuf continued to be the scene of frequent artillery and mortar exchanges between the LAF and Druze forces.

PART ONE—THE MILITARY MISSION

*I. Mission development*

A. Principal findings

Following the Sabra and Shatila massacres, a Presidential decision was made that the United States would participate in a Multinational Force (MNF) to assist the Lebanese Armed Forces (LAF) in carrying out its responsibilities in the Beirut area. Ambassador Habib, the President's Special Envoy to the Middle East, was charged with pursuing the diplomatic arrangements necessary for the insertion of U.S. forces into Beirut. His efforts culminated in an Exchange of Diplomatic Notes on 25 September 1982 between the United States and the Government of Lebanon which formed the basis for U.S. participation in the MNF. The national decision having been made, the Secretary of Defense tasked the Joint Chiefs of Staff (JCS) to develop the mission statement and to issue the appropriate Alert Order to the Commander in Chief United States European Command (USCINCEUR). Commission discussions with the principals involved disclosed that the mission statement was carefully drafted in coordination with USCINCEUR to ensure that it remained within the limits of national political guidance.

The Joint Operational Planning System (JOPS) Volume IV (Crisis Action System) provides guidance for the conduct of joint planning and execution concerning the use of military forces during emergency or time-sensitive situations.

The mission statement provided to USCINCEUR by the JCS Alert Order of 23 September 1983 read as follows:

"To establish an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area. When directed, USCINCEUR will introduce U.S. forces as part of a multinational force presence in the Beirut area to occupy and secure positions along a designated section of the line from south of the Beirut International Airport to a position in the vicinity of the Presidential Palace; be prepared to protect U.S. forces; and, on order, conduct retrograde operations as required."

The wording ". . . occupy and secure positions along . . . the line . . ." was incorporated into the mission statement by the JCS on the recommendation of USCINCEUR to avoid any inference that the USMNF would be responsible for the security of any given area. Additional mission-related guidance provided in the JCS Alert Order included the direction that:

The USMNF would not be engaged in combat.

Peacetime rules of engagement would apply (i.e. use of force is authorized only in self-defense or in defense of collocated LAF elements operating with the USMNF.)

USCINCEUR would be prepared to extract U.S. forces in Lebanon if required by hostile action.

USCINCEUR repromulgated the mission statement, essentially unchanged, to Commander United States Naval Forces Europe (CINCUSNAVEUR) on 24 September 1982. That OPREP-1 message designated CTF 61 (Commander Amphibious Task Force) as Commander, U.S. forces Lebanon and provided the following concept of operations:

". . . land U.S. Marine Landing Force in Port of Beirut and/or vicinity of Beirut Airport. U.S. forces will move to occupy positions along an assigned section of a line extending from south of Beirut Airport to vicinity of Presidential Palace. Provide security posts at intersections of assigned section of line and major avenues of approach into city of Beirut from south/southeast *to deny passage of hostile armed elements* in order to provide an environment which will permit LAF to carry out their responsibilities in city of Beirut. Commander U.S. Forces will establish and maintain continuous coordination with other MNF units, EUCOM liaison team and LAF. Commander U.S. Forces will provide air/naval gunfire support as required." Emphasis added

The USCINCEUR concept of operations also tasked CTF 61 to conduct combined defensive operations with other MNF contingents and the LAF and to be prepared to execute retrograde or withdrawal operations.

The USCINCEUR OPREP-1 tasked CINCUSNAVEUR, when directed, to:

Employ Navy/Marine forces to land at Beirut.

Provide required air and naval gunfire support to forces ashore as required.

Be prepared to conduct withdrawal operations if hostile actions occur.

Provide liaison teams to each member of the MNF and to the LAF.

That OPREP-1 also included tasking for other Component Commands and supporting CINC's.

On 25 September 1982, JCS modified USCINCEUR's concept of operations for CTF 61 to read ". . . assist LAF to deter passage of hostile armed elements . . ." (vice "deny passage of hostile armed elements . . .").

The original mission statement was formally modified by directive on four occasions. Change One reduced the estimated number of Israeli Defense Force (IDF) troops in Beirut. Change Two, issued on 6 October 1982, defined the line along which the USMNF was to occupy and secure positions. The third change (undesignated) was issued on 2 November 1982, and expanded the mission to include patrols in the East Beirut area. The fourth change (designated Change Three), was issued on 7 May 1983 and further expanded the mission to allow the USMNF to provide external security for the U.S. Embassy in Beirut.

B. Discussion

Although some operational details were added, the original mission statement was repromulgated unchanged down the chain of command through Alert/Execute Orders and OPREP-1's. CINCUSNAVEUR provided position locations for the USMNF forces ashore in Beirut. Commander Sixth Fleet (COMSIXTHFLT) designated CTF 61 as On-Scene Commander and CTF 62 as Commander U.S. Forces Ashore Lebanon and defined the chain of command. CTF 61 promulgated detailed operational procedures for amphibious shipping, boats and aircraft to facilitate ship-to-shore movement. CTF 62 provided the detailed ship-to-shore movement plan for the MAU and the concept of operations for the initial three days ashore.

USCINCEUR engaged in some mission analysis (e.g., crafting the concept of operations and working operational constraint wording with JCS) and provided detailed tasking to subordinates and to supporting CINC's. However, the mission statement and the concept of operations were passed down the chain of command with little amplification. As a result, perceptual differences as to the precise meaning and importance of the "presence" role of the USMNF existed throughout the chain of command. Similarly, the exact responsibilities of the USMNF commander regarding the security of Beirut International Airport were not clearly delineated in his mission tasking.

Clarification of the mission tasks and concepts of operations would not only have assisted the USMNF commanders to better understand what was required, it would also have alerted higher headquarters to the differing interpretations of the mission at intermediate levels of command. The absence of specificity in mission definition below the USCINCEUR level concealed differences of interpretation of the mission and tasking assigned to the USMNF.

The commission's inquiry clearly established that perceptions of the basic mission varied at different levels of command. The MAU commanders, on the ground in Beirut, interpreted their "presence" mission to require the USMNF to be visible but not to appear to be threatening to the populace. This concern was a factor in most decisions made by the MAU Commanders in the employment and disposition of their forces. The MAU Commander regularly assessed the effect of contemplated security actions on the "presence" mission.

Another area in which perceptions varied was the importance of Beirut International Airport (BIA) to the USMNF mission and whether the USMNF had any responsibility to ensure the operation of the airport. While all echelons of the military chain of command understood that the security of BIA was not a part of the mission, perceptions of the USMNF's implicit responsibility for airport operations varied widely. The U.S. Ambassador to Lebanon, and others in the State Department, saw an operational airport as an important symbolic and practical demonstration of Lebanese sovereignty. On television on 27 October 1983, the President stated: "Our Marines are not just sitting in an airport. Part of their task is to guard that airport. Because of their presence the airport remained operational." The other MNF commanders asserted to the Commission that, while BIA is not specifically the responsibility of any one MNF contingent, an operational airport is important to the viability of the MNF concept. The MAU Commanders interviewed by the Commission all believed they had some responsibility for ensuring an open airport as an implicit part of their mission.

C. Conclusion

The Commission concludes that the "presence" mission was not interpreted in the same manner by all levels of the chain of command and that perceptual differences regarding that mission, including the responsibility of the USMNF for the security of Beirut International Airport, should have been recognized and corrected by the chain of command.

*II. The changing environment*

A. Principal Findings

The mission of the USMNF was implicitly characterized as a peace-keeping operation, although "peace-keeping" was not explicit in the mission statement. In September 1982, the President's public statement, his letter to the United Nations Secretary General and his report to the Congress, all conveyed a strong impression of the peacekeeping nature of the operation. The subject lines of the JCS Alert and Execute Orders read, "U.S. Force participation in Lebanon Multinational Force (MNF) *Peacekeeping* Operations." (Emphasis added) Alert and Execute Orders were carefully

worded to emphasize that the USMNF would have a non-combatant role. Operational constraint sections included guidance to be prepared to withdraw if required by hostile action. This withdrawal guidance was repeated in CINCUER's OPREP-1.

A condition precedent to the insertion of U.S. forces into Beirut was that the Government of Lebanon and the LAF would ensure the protection of the MNF, including the securing of assurances from armed factions to refrain from hostilities and not to interfere with MNF activities. Ambassador Habib received confirmation from the Government of Lebanon that these arrangements had been made. These assurances were included by the Government of Lebanon in its exchange of notes with the United States.

It was contemplated from the outset that the USMNF would operate in a relatively benign environment. Syrian forces were not considered a significant threat to the MNF. The major threats were thought to be unexploded ordnance and possible sniper and small unit attacks from PLO and Leftist militias. It was anticipated that the USMNF would be perceived by the various factions as evenhanded and neutral and that this perception would hold through the expected 60 day duration of the operation.

The environment into which the USMNF actually deployed in September 1982, while not necessarily benign was, for the most part, not hostile. The Marines were warmly welcomed and seemed genuinely to be appreciated by the majority of Lebanese.

By mid-March 1983, the friendly environment began to change as evidenced by a grenade thrown at a USMNF patrol in 16 March, wounding five Marines. Italian and French MNF contingents were the victims of similar attacks.

The destruction of the U.S. Embassy in Beirut on 18 April, was indicative of the extent of the deterioration of the political/military situation in Lebanon by the spring of 1983. That targic event also signaled the magnitude of the terrorist threat to the U.S. presence. A light truck detonated, killing over 60 people (including 17 Americans) and destroying a sizable portion of the building. An FBI investigation into the explosion later revealed that the bomb was a "gas enhanced" device capable of vastly more destructive force than a comparable conventional explosive. Although the technique of gas-enhanced bombs had been employed by Irish Republican Army terrorists in Northern Ireland and, on at least two occasions, in Lebanon, the magnitude of the explosive force to the device used in the Embassy bombing was, in the opinion of FBI explosive experts, unprecedented.

During August, rocket, artillery and mortar fire began impacting at BIA. On 28 August 1983, the Marines returned fire for the first time. Following the deaths of two Marines in a mortar attack the following day, the USMNF responded with artillery fire. On 31 August, Marine patrols were terminated in the face of the sniper, RPG and artillery threats.

Fighting between the LAF and the Druze increased sharply with the withdrawal of the IDF from the Alayh and Shuf Districts on 4 September 1983. Two more Marines were killed by mortar or artillery rounds at BIA on 6 September 1983. By 11 September, the battle for Sug-Al-Gharb was raging. The USMNF, under frequent attack, responded with counterbattery fire and F-14 tactical air reconnaissance pod TARPS missions were commenced over Lebanon.

On 16 September 1983, U.S. Naval gunfire support was employed in response to shelling of the U.S. Ambassador's residence and USMNF positions at BIA. On 19 September, following a National Command Authority (NCA) decision, Naval gunfire support was employed to support the LAF fighting at Suq-Al-Gharb. On 20 September, the F-14 TARPS aircraft were fired on by SA-7 missiles.

During the period 14-16 October 1983, two Marines were killed on the BIA perimeter in separate sniper incidents.

By the end of September 1983, the situation in Lebanon had changed to the extent that not one of the initial conditions upon which the mission statement was premised was still valid. The environment clearly was hostile. The assurances the Government of Lebanon had obtained from the various factions were obviously no longer operative as attacks on the USMNF came primarily from extralegal militias. Although USMNF actions could properly be classified as self-defense and not "engaging in combat", the environment could not longer be characterized as peaceful. The image of the USMNF, in the eyes of the factional militias, had become pro-Israel, pro-Phalange, and anti-Muslim. After the USMNF engaged in direct fire support of the LAF, a significant portion of the Lebanese populace no longer considered the USMNF a neutral force.

B. Discussions

The inability of the Government of Lebanon to develop a political consensus, and the resultant outbreak of hostilities between the LAF and armed militias supported by Syria, effectively precluded the possibility of a successful peacekeeping mission. It is abundantly clear that by late summer 1983, the environment in Lebanon changed to the extent that the conditions upon which the USMNF mission was initially premised no longer existed. The Commission believes that appropriate guidance and modification of tasking should have been provided to the USMNF to enable it to cope effectively with the increasingly hostile environment. The Commission could find no evidence that such guidance was, in fact, provided.

*III. The expanding military role*

A. Principal Findings

The "presence" mission assigned to the USMNF contemplated that the contending factions in Lebanon would perceive the USMNF as a neutral force, even handed in its dealings with the confessional groups that comprise Lebanese society. The mission statement tasked the USMNF to "establish an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area." When hostilities erupted between the LAF and Shiite and Druze militias, USMNF efforts to support the LAF were perceived to be both pro-Phalangist and anti-Muslim.

USMNF support to the LAF increased substantially following their arrival in September 1982. The first direct military support to the LAF was in the form of training which the USMNF began to provide in November 1982.

In August and September 1983, the U.S. resupplied the LAF with ammunition. The LAF were engaged in intense fighting against the Druze and various Syrian surrogates. The ammunition came from MAU, CONUS and USCINCEUR stocks and was delivered by Military Sealift Command, Mobile Logistic Support Force (CTF 63), and CTF 61 ships.

On 19 September 1983, naval gunfire was employed in direct support of the LAF at Suq-Al-Gharb.

Following the U.S. action in providing Naval gunfire support for the LAF at Suq-Al-Gharb, hostile acts against the USMNF increased and the Marines began taking significantly more casualties. A direct cause and effect linkage between Suq-Al-Gharb and the terrorist bombing on 23 October 1983, cannot be determined. The views of the senior civilian and military officials interviewed by the Commission varied widely on this issue. Some believe that it was not a consequence of our relationship with any faction; that regardless of its actions, the USMNF would still have been targeted by terrorists. Others believe that certain factions wanted to force the MNF out of Lebanon and that the bombing of the BLT Headquarters building was the tactic of choice to produce that end. The prevalent view within the USCINCEUR chain of command, however, is that there was some linkage between the two events. Whether or not there was a direct connection between Suq-Al-Gharb and the increase in terrorist attacks on the USMNF, the public statements of factional leaders confirmed that a portion of the Lebanese populace no longer considered the USMNF neutral.

B. Discussion

The Commission believes that from the very beginning of the USMNF mission on 29 September 1982, the security of the USMNF was dependent upon the continuing validity of four basic conditions.

(1) That the force would operate in a relatively benign environment;

(2) That the Lebanese Armed Forces would provide for the security of the areas in which the force was to operate;

(3) That the mission would be of limited duration; and

(4) That the force would be evacuated in the event of attack.

As the political/military situation evolved, three factors were impacting adversely upon those conditions. First, although the mission required that the USMNF be perceived as neutral by the confessional factions, the tasks assigned to the USMNF gradually evolved to include active support of the LAF. A second factor was the deep-seated hostility of Iran and Syria toward the United States combined with the capability to further their own political interests by sponsoring attacks on the USMNF. And finally, the progress of diplomatic efforts to secure the withdrawal of all foreign forces from Lebanon faltered. The combination of these three factors served to invalidate the first two conditions and to complicate the third.

U.S. policy makers recognized that the conditions upon which the mission of the USMNF was premised were tenuous and that the decision to deploy the USMNF into Beirut involved considerable risk. The military mission was directed in concert with extensive diplomatic initiatives designed to shore up the Government of Lebanon and establish a climate for political reconciliation. At the same time that the political/military conditions in Lebanon deteriorated, the U.S. military role expanded in the form of increased USMNF training and logistic support for the LAF and in the form of changes to the rules of engagement of the USMNF to permit active support of LAF units engaged in combat with factional forces. That expanded role was directed in an effort to adjust to the changing situation and to continue to move toward realization of U.S. policy objectives in Lebanon. On the diplomatic front, achieving the withdrawal

of foreign troops proved to be more difficult than had been anticipated. The overall result was the continued erosion of the security of the USMNF.

C. Conclusion

The Commission concludes that U.S. decisions regarding Lebanon taken over the past fifteen months have been to a large degree characterized by an emphasis on military options and the expansion of the U.S. military role, notwithstanding the fact that the conditions upon which the security of the USMNF were based continued to deteriorate as progress toward a diplomatic solution slowed. The Commission further concludes that these decisions may have been taken without clear recognition that these initial conditions had dramatically changed and that the expansion of our military involvement in Lebanon greatly increased the risk to, and adversely impacted upon the security of, the USMNF. The Commission therefore concludes that there is an urgent need for reassessment of alternative means to achieve U.S. objectives in Lebanon and at the same time reduce the risk to the USMNF.

D. Recommendation

The Commission recommends that the Secretary of Defense continue to urge that the National Security Council undertake a reexamination of alternative means of achieving U.S. objectives in Lebanon, to include a comprehensive assessment of the military security options being developed by the chain of command and a more vigorous and demanding approach to pursuing diplomatic alternatives.

PART TWO—RULES OF ENGAGEMENT

"Rules of Engagement: Directives issued by competent authority which delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered."—JCS Pub. 1.

*I. Rules of engagement develoment*

A. Principal Findings

The basic Rules of Engagement (ROE) for USMNF forces in Beirut have been in effect since the second USMNF insertion on 29 September 1982. The ROE were promulgated on 24 September 1982 by USCINCEUR, the responsible authority for contingency operations in the Eastern Mediterranean. They are consistent with the guidance provided in the JCS Alert Order of 23 September 1983. The ROE developed by USCINCEUR are derived from U.S. European Command Directive 55-47A, "Peacetime Rules of Engagement." They were tailored to the Lebanon situation by the adaptation of ROE developed through the summer of 1982 for use in the evacuation of PLO elements in Beirut from 24 August to 10 September 1982. There had been extensive dialogue on ROE up and down the European Theater chain of command during July and August 1982.

JCS guidance to USCINCEUR was that USMNF forces were not to engage in combat and would use normal USEUCOM peacetime ROE. Force was to be used only when required for self-defense against a hostile threat, in response to a hostile act, or in defense of LAF elements operating with the USMNF. USCINCEUR incorporated the JCS guidance and elaborated thereon. Reprisals or punitive measures were forbidden. USMNF elements were enjoined to seed guidance from higher authority prior to using armed force for self-defense unless an emergency existed. The ROE defined "hositle act" and "hostile force," and designated the Combined Amphibious Task Force Commander (CTF 61) as the authority to declare a force hostile. "Hostile threat" was not defined. If non-LAF forces infiltrated or violated USMNF assigned areas or lines, they were to be informed they were in an unauthorized area and could not proceed. It they failed to depart, the USMNF Commander (CTF 62) was to be informed and would determine the action to be taken. The LAF had resonsibilility for apprehension and detention of any intruders. The USMNF was authorized to use force only if the intruder committed a hostile act. Finally, commanders were to be prepared to extract forces if necessary.

By message to subordinate commands on 28 September 1982, CINCUSNAVEUR elaborated on the ROE provided by USCINCEUR and directed that further ROE development for U.S. forces ashore be for self-defense only. Detailed ROE, consistent with command guidance, were issued by CTF 62 on 27 October 1982, and again on 12 November 1982.

Following the terrorist bombing of the U.S. Embassy in Beirut on 18 April 1983, a USMNF unit was formed to provide external security for U.S. Embassy functions relocated at the Duraffourd, Building, the British Embassy, and the U.S. Ambassador's Residence at Yarze. On 1 May 1983, CTF 62 requested specific ROE to counter the vehicular and pedestrian terrorist threat to those buildings. On 7 May 1983, USCINCEUR promulgated ROE specifically for that security force which expanded the definition of a hostile act to encompass attempts by personnel or vehicles to breach barriers or roadblocks established on approaches to the Duraffourd Building, the British Embassy or the U.S. Ambassador's Residence.

Following the 4 September 1983 IDF pullback to the Awwali River, fighting intensified in the mountainous Shuf region southeast of Beirut. Phalange and Druze militias fought for control of the territory vacated by the IDF. LAF units also moved to gain control of the strategically important Shuf high ground, and were engaged by Druze forces in heavy fighting at Suq-Al-Gharb. When defeat of the LAF appeared imminent, the National Command Authorities (NCA) authorized the use of naval gunfire and tactical air strikes in support of the LAF at Suq-Al-Gharb. Occupation of the dominant terrain in the vicinity of Suq-Al-Gharb by hostile forces would pose a danger of USMNF positions at BIA. Direct support of the LAF in those circumstances was to be considered as an act of self-defense authorized by the existing ROE. Early on 12 September 1983, the acting CJCS notified USCINCEUR of that decision. Later that day, USCINCEUR directed CINCUSNAVEUR to inform his subordinate commands to provide fire support to the LAF when the U.S. ground commander (CTF 62) determined that Suq-Al-Gharb was in danger of falling to an attack by non-Lebanese forces. USCINCEUR directed in the same message, "Nothing in this message shall be construed as changing the mission or ROE for USMNF."

In the aftermath of the 23 October 1983 terrorist attack at the BLT Headquarters, review of the basic USMNF ROE was conducted at virtually every level of command. ROE were promulgated to govern the use of electronic warfare, and reviews of specific ROE for F-14/Tactical Aerial Reconnaissance PODS (TARPS) flights, for air defense, and for defensive activities of afloat elements of the U.S. presence (i.e. CFT 60 and CTF 61) were conducted. Late on 23 October, CTF 61 submitted a ROE change request to COMSIXTHFLT requesting that USMNF personnel at BIA be authorized to take under fire any civilian vehicle which approached USMNF positions at a high rate of speed and failed to acknowledge signals to stop. COMSIXTHFLT forwarded the request up the chain of command. On 25 October 1983, USCINCEUR responded that the authority requested was already covered under the self-protection rules of the ROE in effect. The USCINCEUR response noted that the promulgation in early May 1983 of additional ROE for the U.S. Embassy security tasking was considered necessary because the USMNF had been assigned an additional mission which went beyond its self-defense. On 26 October 1983, CINCUSNAVEUR approved the ROE modification requested by CTF 61. On 26 November 1983, COMSIXTHFLT proposed to CINCUSNAVEUR that the ROE be further changed to authorize the taking of prompt, forceful action against any unauthorized attempt to gain entry into an area occupied by the USMNF. CINCUSNAVEUR and USCINCEUR responded on 27 November 1983 that such action was already authorized by existing ROE. USCINCEUR, however, agreed to provide specific rules in a forthcoming revision of the original ROE.

B. Discussion

The ROE were developed in accordance with established JCS guidance, and promulgated by the appropriate command authority, USCINCEUR. Although the rapid deterioration of the situation in Beirut which led to reinsertion of the USMNF caused understandable compression in the process, each command echelon participated in the development of the ROE provided to the USMNF.

The environment into which the USMNF was inserted on 29 September 1982 was clearly permissive. The judgment that the USMNF was perceived as a neutral, stabilizing presence by most, if not all, factions in the Beirut area can be drawn from the general absence of hostile reactions in the initial months of their presence. The ROE were appropriate for such a permissive environment. But the environment proved to be dynamic, and became increasingly hostile to the USMNF component as the U.S. presence stretched beyond the brief stay envisioned by the original Exchange of Notes.

The Commission believes that for any ROE to be effective, they should incorporate definitions of hostile intent and hostile action which corresponds to the realities of the environment in which they are to be implemented. To be adequate, they must also provide the commander explicit authority to respond quickly to acts defined as hostile. Only when these two criteria are satisifed do ROE provide the on-scene commander with the guidance and the flexibility he requires to defend his force. By these measures, the ROE in force at BIA subsequent to the U.S. embassy bombing in April were neither effective nor adequate. That event clearly signaled a change in the environment: the employment of terrorist tactics by hostile elements.

The emergence of the terrorist threat brought the guidance and flexibility afforded by the ROE into question. The modified ROE promulated for the security force assigned to U.S. Embassy facilities were necessary. For the first time, threatening actions

such as attempts to breach barriers or checkpoints were specifically defined as hostile acts justifying the use of military force. USMNF personnel providing security for the Embassy were authorized to take adequate defensive action in those circumstances. But the commander of the USMNF perceived that the new ROE from USCINCEUR were for use only by the Embassy security element. The presumption at HQ USEUCOM, subsequently apparent in both messages and discussions with principals, was that the USMNF Commander had already been given sufficient guidance and authority to respond to vehicular terrorist attacks against his forces at BIA in the original ROE promulated on 24 September 1982. In the view of the Commission, the ROE provided in May for the Embassy security contingent should have been explictly extended to the entire USMNF.

The Commission believes that ROE developed for the insertion of the USMNF into Lebanon in late September 1982, were appropriate to the relatively benign environment that existed at that time. That environment, however, was dynamic and became increasingly anti-USMNF. The Commission also believes that development by the chain of command of ROE guidance for the USMNF at BIA did not keep pace with the changing threat.

*II. Rules of engagement implementation*

A. Principal Findings

The ROE contained in the 24 September 1982 USCINCEUR OPREP-1 were implemented Commander Amphibious Task Force/Commander U.S. Forces Lebanon (CTF 61), and Commander 32d Marine amphibious Unit-Commander U.S. Force Ashore Lebanon (CFT 62), upon inserting of the USMNF into Beirut on 29 September 1982. CTF 62 implemented the ROE for the USMNF through the issuance of specific instructions to his personnel on 27 October and 12 November 1982. (COMSIXTHFLT and CTF 61 were information addressees on that traffic.) The central guidance for implementation of the ROE was that USMNF elements would only engage in defensive actions.

Briefly summarized, the following points constitute the ROE guidance utilized by the individual members of the USMNF from 29 September 1982 until 7 May 1983.

Action taken by U.S. forces ashore in Lebanon would be for self-defense only.

Reprisal or punitive measure would not be initiated.

Commanders where to seek guidance from higher headquarters prior to using armed force, if time and situation allowed.

If time or the situation did not allow the opportunity to request guidance from higher headquarters, commanders were authorized to use that degree of armed force necessary to protect their forces.

Hostile ground forces which had infiltrated and violated USMNF lines by land, sea, or air would be warned that they could not proceed and were in a restricted area. If the intruder force failed to leave, the violation would be reported and guidance requested.

Riot control agents would not be used unless authorized by the Secretary of Defense.

Hostile forces would not be pursued.

A "hostile act" was defined as an attack or use of force against the USMNF, or against MNF or LAF units operating with the USMNF, that consisted of releasing, launching, or firing of missiles, bombs, individual weapons, rockets or any other weapon.

Following the 18 April 1983 destruction of the U.S. Embassy, USCINCEUR promulgated an expanded set of ROE for use by USMNF personnel assigned to provide security for the British Embassy and the Duraffourd Building where U.S. Embassy functions had been relocated. Those expanded ROE were implemented by CTF 62 through the issuance to each Marine assigned to Embassy security duty of an ROE card, the so called "Blue Card". Since the USCINCEUR expanded ROE were promulgated for specific use of those members of the USMNF assigned to provide security for the Embassy, USMNF elements at BIA continue to operate under the ROE previously provided. In order to ensure that each Marine of the USMNF understood what set of ROE were applicable to him at any given time, CTF 62 issued a "White Card" delineating the ROE for those not assigned to Embassy duty, as follows:

"The mission of the Multi-national Force (MNF) is to keep the peace. The following rules of engagement will be read and fully understood by all members of the U.S. contingent of the MNF:

When on post, mobile or foot patrol, keep a loaded magazine in the weapon, weapons will be on safe, with no rounds in the chamber.

Do not chamber a round unless instructed to do so by a commissioned officer unless you must act in immediate self-defense where deadly force is authorized.

Keep ammunition for crew-served weapons readily available but not loaded in the weapon. Weapons will be on safe at all times.

Call local forces to assist in all self-defense efforts. Notify next senior command immediately.

Use only the minimum degree of force necessary to accomplish the mission.

Stop the use of force when it is no longer required.

If effective fire is received, direct return fire at a distinct target only. If possible, use friendly sniper fire.

Respect civilian property; do not attack it unless absolutely necessary to protect friendly forces.

Protect innocent civilians from harm.

Respect and protect recognized medical agencies such as Red Cross, Red Crescent, etc.

These rules of engagement will be followed by all members of the U.S. MNF unless otherwise directed."

All USMNF personnel were required to carry the appropriate card and know its content at all times while on duty. The practical result was that USMNF elements operated under two sets of ROE from early May 1983 until after the 23 October 1983 bombing of the BLT headquarters building.

The Blue Card/White Card ROE guidance continued in effect until 24 October 1983 (the day following the BLT headquarters bombing) when CTF 62 sought a ROE change from USCINCEUR, via the chain of command, to allow USMNF personnel to take under fire speeding vehicles approaching USMNF positions at BIA. On 26 November 1983, COMSIXTHFLT requested that USMNF personnel be authorized to fire, without warning if necessary, on vehicles attempting unauthorized access to an area of USMNF positions. As noted in Section I of this Part, on both of those occasions CINCUSNAVEUR and USCINCEUR held the view that the original ROE (24 September 1982) authorized CTF 62 to take such actions as he, the on-scene commander, considered necessary to defend his force against hostile action. Nonetheless, approval was provided to CTF 62.

B. Discussion

CTF 62 determined that restraint in the use of force was key to accomplishing the presence mission he was assigned, and that strict adherence to the ROE was necessary if his forces were to maintain the "neutral" stance that the presence role entailed.

The Commission views with concern the fact that there were two different sets of ROE being used by USMNF elements in Beirut after the Embassy bombing on 18 April 1983. Those ROE used by the Embassy security detail were designed to counter the terrorist threat posed by both vehicles and personnel. Marines on similar duty at BIA, however, did not have the same ROE to provide them specific guidance and authority to respond to a vehicle or person moving through a perimeter. Their "White Card" ROE required them to call local forces to assist in all self-defense efforts.

Message transmissions up and down the USCINCEUR chain of command revealed that COMSIXTHFLT subordinate elements had different perceptions of the commander's latitude in implementing ROE than did CINCUSNAVEUR and USCINCEUR. The latter believed authority to forceably halt vehicles attempting unauthorized entry into the area of USMNF positions was inherent in the original 24 September 1982 ROE. CTF 62 obviously did not share that view.

The Commission believes there were a number of factors which cumulatively affected the "mind-set" of the Marines at BIA. One factor was the mission, with its emphasis on highly visible presence and peace-keeping. Another was the ROE, which underscored the need to fire only if fired upon, to avoid harming innocent civilians, to respect civilian property, and to share security and self-defense efforts with the LAF. Promulgation of different ROE for those performing Embassy security duties contributed to a sense among the officers and men at BIA that the terrorist threat confronting them was somehow less dangerous than that which prevailed at the Embassy. The "White Card-Blue Card" dichotomy tended to formalize that view. Interviews of individual Marines who performed duty at the two lacations confirm this mind-set. In short, the Commission believes the Marines at BIA were conditioned by their ROE to respond less aggressively to unusual vehicular or pedestrian activity at their perimeter than were those Marines posted at the Embassy locations.

C. Conclusions

The Commission concludes that a single set of ROE providing specific guidance for countering the type of vehicular terrorist attacks that destroyed the U.S. Embassy on 18 April 1983 and the BLT Headquarters building on 23 October 1983 had not been provided to, nor implemented by, CTF 62.

The Commission further concludes that the mission statement, the original ROE, and the implementation in May 1983 of dual "Blue Card"—"White Card" ROE contributed to a mindset that detracted from the readiness of the USMNF to respond to the terrorist threat which materialized on 23 October 1983.

PART THREE—THE CHAIN OF COMMAND

*I. Exercise of command responsibility by the chain of command*

A. Principal Findings

The operational chain of command for the U.S. Multinational Force (USMNF) in Lebanon illustrated in Figure 3-1. Command authority and responsibility flows from the President to the Secretary of Defense, through the Joint Chiefs of Staff to Commander in Chief, U.S. Forces Europe (USCINCEUR). In the theater, operational command runs from USCINCEUR to Commander in Chief, U.S. Naval Forces Europe (CINCUSNAVEUR), and from CINCUSNAVEUR to Commander, Sixth Fleet (COMSIXTHFLT). Operational command flows from COMSIXTHFLT to Commander, Amphibious Task Force (CTF 61), who is designated Commander, U.S. Forces Lebanon. The MAU Commander, CTF 62, is Commander, U.S. Forces Ashore Lebanon; subordinate to him is the Battalion Landing Team (BLT) Commander, who has immediate command of the Marine combat Companies assigned to the MAU. CTF 62 is also Commander, USMNF.

The Commission sought to determine the degree of command involvement in supporting the USMNF throughout the period of its development, with particular emphasis on the initial thirteen months, from September 1982 through 23 October 1983. The several areas of specific concern to the Commission correspond to the major Parts of this report. Detailed findings and discussion on each Part pertain in varying degrees to the findings in this Part.

As has been described in the text addressing the mission and rules of engagement (ROE), each level of the chain of command recognized that the environment in which the USMNF was operating changed from generally benign to increasingly hostile through the spring and summer of 1983. The assigned mission, however, remained unchanged. ROE were modified by USCINCEUR at the request of CTF 62 following the bombing of the U.S. Embassy, but the modifications (at least in CTF 62's view) applied only to USMNF elements providing external security to the Embassy buildings. Although the tasks assigned to the USMNF increased in scope, to include training the LAF, patrolling jointly with them, and eventually providing naval gun fire support to the LAF at Suq-Al-Gharb, the Commission was unable to document any alteration of the original mission. USCINCEUR did recommend to CJCS on 18 October 1983 that long term objectives of the USMNF presence be reassessed in light fo the increasing threat and that withdrawal of the force be considered.

Security measures taken by the USMNF elements at BIA prior to 23 October 1983 are described in detail in PART FIVE of this report. Documentation available to the Commission contains little to indicate that these measures were subject to effective scrutiny by the operational chain of command. In fact, the Commission's inquiry revealed a general attitude throughout the chain of command that security measures in effect ashore were essentially the sole province of the USMNF Commander and that it would somehow be improper to tell him how best to protect his force. As a consequence, the chain of command promulgated no direction to USMNF elements ashore with respect to physical security at RIA prior to 23 October 1983.

The Commission was apprised of a HQ USEUCOM staff element with specific responsibility for analyzing security against terrorist attack. The Special Assistant for Security Matters (SASM) went to Beirut following the terrorist bombing of the U.S. Embassy to evaluate the security of the operations of the Office of Military Cooperation (OMC) against terrorist actions. SASM subsequently initiated a number of anti-terrorist actions designed to enhance the security of OMC personnel. (This effort is more fully described in PART NINE of this report.) The SASM survey team was not charged by USCINCEUR to evaluate the anti-terrorist defenses of the USMNF elements at BIA, and did not do so.

Principals and senior staff officers within the operational chain of command visited the USMNF at BIA prior to 23 October 1983. There is no evidence that any visit resulted in recommendations through the chain of command to enhance the security of the USMNF there. (Specific security measures in effect at the MAU compound preceding and at the time of the 23 October 1983 attack are addressed in PART FIVE of this report.)

B. Discussion

The Commission holds the view that military commanders are responsible for the performance of their subordinates.

The commander can delegate some or all of his authority to his subordinates, but he cannot delegate his responsibility for the performance of any of the forces he commands. In that sense, the responsibility of military command is absolute. This view of command authority and responsibility guided the Commission in its analysis of the effectiveness of the exercise of command authority and responsibility of the chain of command for the USMNF in Lebanon.

The Commission believes there was a fundamental conflict between the peace-keeping mission provided through the chain of command to the USMNF, and the increasingly active role that the United States was taking in support of the LAF. The Commission believes that as the political/military situation in Lebanon evolved, aggressive follow-up and continuing reassessment of the tasks of the USMNF and the support provided by the chain of command were necessary. As the environment changed, the unique nature of the "presence" mission assigned to the USMNF demanded continuing analysis and the promulgation of appropriate guidance to assist the USMNF Commander to take those actions necessary to protect his force.

Although the documentation gathered by the Commission clearly established that every echelon of the chain of command was concerned with the safety of the USMNF in the deteriorating political/military environment of Beirut, the Commission's investigation revealed a lack of systematic and aggressive chain of command attention to the anti-terrorist security measures in use by the USMNF on the ground at BIA. This was in sharp contrast to the direct involvement of the USCINCEUR SASM team in the security posture of the OMC in Beirut against terrorist attack. The prompt, positive action taken by USCINCEUR to improve the security of the OMC is illustrative of the aggressive command involvement that could and should have been directed toward the USMNF as well. We note here and in our findings and discussion on terrorism in PART NINE of this report that USCINCEUR has taken action subsequent to the 23 October 1983 attack to include the security of the USMNF in the charter of the SASM. A further example of how its aggressive involvement might have assisted the USMNF Commander, was the positive action of the chain of command prior to 23 October 1983 to enhance the protection of ships of CTF 61.

C. Conclusions

The Commission is fully aware that the entire chain of command was heavily involved in the planning for, and support of, the USMNF. The Commission concludes, however, that USCINCEUR. CINCUSNAVEUR, COMSIXTHFLT and CTF 61 did not initiate actions to effectively ensure the security of the USMNF in light of the deteriorating political/military situation in Lebanon. In short, the Commission found a lack of effective command supervision of the USMNF prior to 23 October 1983.

The Commission concludes that the failure of the USCINCEUR operational chain of command to inspect and supervise the defensive posture of the USMNF constituted tacit approval of the security measures and procedures in force at the BLT Headquarters building on 23 October 1983.

The Commission further concludes that although it finds the USCINCEUR operational chain of command at fault, it also finds that there was a series of circumstances beyond the control of these commanders that influenced their judgement and their actions relating to the security of the USMNF.

D. Recommendation

The Commission recommends that the Secretary of Defense take whatever administrative or disciplinary action he deems appropriate, citing the failure of the USCINCEUR operational chain of command to monitor, and supervise effectively the security measures and procedures employed by the USMNF on 23 October 1983.

PART FOUR—INTELLIGENCE

*I. The threat*

A. Principal Findings

Intelligence assessments available to the National Command authorities and the military chain of command, and produced in support of this Commission, divided the spectrum of threat to the USMNF into two broad categories: conventional military action, and terrorist tactics. These assessments highlight the complexity of the threat environment confronting U.S. military units in Lebanon.

The potential use of terrorist tactics against American targets in Beirut—The USMNF, U.S. Embassy offices in the Duraffourd Building and co-located with the British Embassy, the U.S. Ambassador's Residence, apartments housing U.S. military and Embassy personnel, hotels housing U.S. officials, and even American University Beirut—is not the exclusive province of Iranian-backed Shiite terrorists. Radical Palestinian and Lebanese groups, some in conjunction with or with the support of Syria, could also employ terrorist tactics against the USMNF or other American targets. Stockpiles of explosives, built up over a decade prior to the Israeli invasion of June 1982, are reportedly still in place and available for future terrorist operations in and around Beirut.

B. Discussion

As demonstrated elsewhere in this report, political and military developments on the ground in Lebanon caused the USMNF to be viewed in some quarters not as a peacekeeper, but as a belligerent.

An abundance of open-source statements by Syrian and Druze spokesmen makes it clear that there is a widespread belief among its adversaries that the key actors within the Government of Lebanon—the President of the Republic and the Commander in Chief of Lebanese Armed Forces—are Maronite Phalangists first and foremost, and that Muslim and Druze officials and soldiers in the government or serving in the LAF are either traitors, opportunities, or unwitting dupes of the Maronite establishment. The factual basis of this perception is moot. What counts is that certain measures undertaken by the USMNF, such as training the LAF and providing naval gunfire support to the defenders of Suq-al-Gharb, has—in the eyes of the LAF's opponents—confirmed their belief that by 23 October 1983, the USMNF had long since abandoned its peace-keeping/presence position.

A number of watershed political/military events marked the steady evolution of the threat from the relatively benign environment of August-September 1982 to that which confronted the USMNF on 23 October 1983. Lebanon's current military predicament began during the last week of June 1982, when the Maronite-dominated Lebanese Forces (LF) militia began to move steadily up the Beirut-Damascus highway toward Alayh, where it engaged militia elements of the Druze Progressive Socialist Party (PSP). The LF, in an effort to establish its presence in new areas, moved into Saida and the western fringes of the Shuf by the end of the month. It was in the Shuf, under the watchful eyes of the IDF occupation force, that the LF and PSP maneuvered toward an inevitable confrontation. The significance of the LF advance is that it rekindled the Lebanese civil war.

Political lines within Lebanon were hardened considerably by the Israel-Lebanon Agreement of 17 May 1983. The agreement had, among other things, established Lebanese-Israeli security arrangements for southern Lebanon, and made provision for the withdrawal of the IDF. Yet the IDF predicated its own withdrawal upon that of two parties not included in the negotiations: Syria and the PLO.

Israel began in July 1983 to plan for the withdrawal of its forces from the Alayh and Shuf Districts to the Awwali River line. In anticipation of this withdrawal, the PSP, LAF, and LF began to maneuver for position. LAF-PSP clashes in the Shuf resulted in Druze shelling of BIA on 22 July which closed the airport and wounded three Marines. LF-PSP fighting spilled over in the form of artillery attacks that closed BIA from 10-16 August. During the same timeframe (15-17 July) the LAF engaged the Shiite Amal militia in Beirut following the LAF's eviction of Shiite squatters from an area near the Holiday Inn.

As the LAF struggled to establish control over the Shiite neighborhoods (a process which eventually failed), the IDF prepared to evacuate Alayh and the Shuf. On 4 September 1983, the IDF withdrew to the Awwali River and the Lebanese civil war resumed in earnest in the hills overlooking BIA.

On 5 September 1983, the LF began to feel the full impact of its ill-considered move into the Alayh District over a year before, as its forces were routed in Bhamdun. The disaster was later extended to the Shuf, as an estimated 1,000 LF fighters were trapped in Dayr-Al-Qamar.

These then, were the events that led to the LAF's stand at Suq-Al-Gharb. In the view of the Commission, U.S. support of the LAF in that operation, timely and effective though it was, nevertheless confirmed definitively, in the eyes of the LAF's enemies, the belligerent status of the USMNF.

The Commission recognizes that there was abundant evidence that Syrian, Druze, and some Shiite leaders had come to consider the USMNF as a partisan participant on the Lebanese scene well before Suq-Al-Gharb. CINCUSNAVEUR advised the Commission that "by mid-to-late August 1983, Druze, Shia, and Syrian leaders had begun making statements to the effect that the Multinational Forces, especially the U.S. element, was one of 'the enemy'." On 25 August PSP leader Walid Jumblatt claimed that "the Marines have bluntly and directly threatened us. This is proof of the U.S. alliance with the Phalange Party."

The Conventional threat to the USMNF—land, sea, and air—is largely a function of the progress (or lack thereof) toward an internal Lebanese political settlement acceptable to Syria. All data available to the Commission suggest that a strong relationship exits between Lebanon's steady slide back toward anarchy and the tendency of some parties to label the USMNF a belligerent. It is obviously not the intention of the United States to place its power and prestige at the disposal of one or more of Lebanon's sectarian-based political factions. It is undeniable, however, that the facts of political life in Lebanon make any attempt on the part of an outsider to appear nonpartisan virtually impossible. The Government of Lebanon is not an antiseptic instrument of a collective Lebanese will; nor is it a collection of disinterested public servants isolated from the forces of family, clan, religion, and localism that are fundamental to life in Lebanon. President Gemayel is a Maronite Phalangist who is the son of the Phalange Party's founder and the brother of the man who built the LF militia. General Tannous is likewise a Maronite who has a history of close connections with the Phalange Party and the LF militia. Whatever their true intentions may be concerning the future of Lebanon, they are caught in the same tangled web of distrust, misunderstanding, malevolence, conspiracy, and betrayal that has brought Lebanon to political bankruptcy and ruin. Whatever good will, decency, competence and dedication they now bring to bear in the execution of their duties, they can neither undo that which they have been in the past nor renounce their origins. No Lebanese can easily escape the rigid categorizations that begin with the circumstances surrounding his birth. For someone named Gemayel, the escape is all the more difficult.

The Commission views Lebanon as an ideal environment for the planning and execution of terrorist operations. For over eight years, Beirut has been an armed camp featuring indiscriminate killing, seemingly random acts of terror, and massive stockpiling of weapons and ammunition. We are told that it is difficult, if not impossible, to find a Lebanese household which does not possess firearms. Notwithstanding the opportunity presented the Government of Lebanon by the evacuation of the PLO and the dispersal of LNM militias in September 1982, there are still neighborhoods in and around Beirut's southern suburbs which the LAF dare not enter.

The Iranian connection introduces a particulary ominous element to the terrorist threat in that the incidence of Iranian-inspired terrorism need not be connected directly with the reconciliation process in Lebanon. Iranian operatives in Lebanon are in the business of killing Americans. They are in that business whether or not the USMNF trains the LAF or provides indirect fire support to the defenders of Suq-Al-Gharb. If the reconciliation process succeeds in restoring domestic order and removing foreign forces, it may be more difficult for Iranian inspired terrorists to avail themselves of the support mechanisms (personnel, basing, supply, training) now so readily available. It is clear, however, that progress toward reconciliation in Lebanon will not dissuade Iran from attempting to hit American targets; indeed, any evidence of such progress may spur new Iranian-sponsored acts of political violence as a means of derailing the progress. The only development which would seriously impede the terroriest activites of Iranian-dominated Shia groups in Lebanon, short of a change of regime in Tehran, would be a decision by Syria to shut down the basing facilities in the Bekaa Valley and sever the logistical pipeline.

In the wake of the 23 October 1983 bombing, intelligence reporting continues to be voluminous regarding the plans of various groups to use terrorist tactics against the USMNF. None of the reports specify the date or time of the purported operations. Moreover, most individual reports cannot be independently verified. It is difficult to overstate the magnitude of the intelligence problem in a milieu where high casualty terrorist acts are relatively easy to perpetrate yet hard to stop. The types of attacks mounted thus far in Beirut—and those most likely to be attempted, according to available reporting—require little in the way of material resources or manpower, making them particularly difficult to intercept in the planning stage. The fact that political and sectarian affinity is reinforced by family and clan solidarity, particularly among radical Shiites, makes timely intelligence penetration problematical at best.

As noted above, the entire spectrum of threat—conventional and terrorist—is further complicated by something which, over the past eight years, has assumed the character of a national pastime in Lebanon: covert provocation. "X" hidden from view, hits "Y" with the expectation that "Y" will lash out at "Z", who is the mortal enemy of "X". The USMNF and other American personnel in Lebanon are ideal targets for this sort of activity. The USMNF is well aware of this prospect, which constitutes yet another threat multiplier in what amounts to a veritable jungle of threats.

The Commission believes it important to recognize that the "threat" to the USMNF, as described above, did not exist in that form when the USMNF was inserted into Lebanon in the wake of Sabra-Shatila refugee camp massacre by Christian militia forces. A good many Lebanese Shiites were among the victims of that massacre, and American Marines arriving to position themselves between the largely Shiite populace of the southern Beirut suburbs and the IDF were initially welcomed by that populace as heroes and protectors. Clearly, important segments of that citizenry no longer regard them as such, to say nothing of the hostility manifested toward the USMNF by Iranian-inspired fanatics and Syrian-supported Druze gunners. In the view of the commission, the threat confronting the USMNF evolved incrementally to its present alarming state, and reflects the fact that internally, Lebanon continues to suffer from

violent political competition among a number of domestic sectarian groups, some of whom consider the MNF troops to be less peace-keepers than supporters of the Maronite Christian faction of the Lebanese ethnic fabric.

The warmth of the reception first accorded the USMNF did not, however, reflect the U.S. intelligence community's estimation of the likely pitfalls that awaited American peace-keepers in Lebanon. The Commission considers the following passage from a study dated 23 July 1982 (weeks before the first insertion of U.S. Marines) to be particularly instructive:

"If a peacekeeping force is to avoid the problems of divining the intentions of armed elements and avoiding entrapment in Lebanese internal conflicts, it will be essential for the question of extralegal armed presence in the area to be settled before its deployment. If a multinational force is to be used, basic issues affecting its ability to accomplish its mission must be settled in advance. If these issues are not clarified and resolved during a predeployment phase, no one should be surprised if the peacekeeping force encounters intractable political and military problems on the ground (as was the case with UNIFIL)."

In short, the experience of the United Nations Interim Force in Lebanon (UNIFIL) demonstrated that a peace-keepiong force requires certain conditions to be present if it is to operate effectively. In the context of Lebanon, this meant that extralegal militias could not be allowed to operate in or near the MNF area of responsibility. There was, however, no force in being to prevent them from doing so.

*II. Intelligence support*

A. Principal Findings

Intelligence provided over 100 warnings of car bombings between May and 23 October 1983, but like most of the warning information received by the USMNF, specific threats seldom materialized. Seldom did the U.S. have a mechanism at its disposal which would allow a follow up on these leads and a further refinement of the information into intelligence which served for other than warning.

The National Command Authorities and the chain of command received regular updates on the broadening threat to the USMNF.

Although intelligence was provided at all levels that presented a great deal of general information on the threats, there was no specific intelligence on the where, how and when of the 23 October bombing.

It should be noted that the FBI report on the 18 April 1983 bombing of the U.S. Embassy in Beirut, a report which described the use of explosive-activated bottle bombs in that incident, stayed within FBI, CIA, and Department of State channels. The report demonstrated that the gas-enhancement process, which requires only small amounts of explosives to activate the explosion of ordinary gas bottles, introduces a sizeable blast multiplier effect, and is relatively simple to employ. The necessary materials are readily available throughout the world and are relatively easy to deliver to the target. Indeed, oxygen, propane and similar gas bottles are common in most parts of the world. With regard to the BLT Headquarters bombing, FBI forensic experts have stated that it was the largest non-nuclear blast that they have ever examined; perhaps six to nine times the magnitude of the Embassy bombing.

Intelligence support to conventional, tactical military requirements received praise from many in the administrative and operational chains of command. The ability to locate hostile artillery positions, tanks, and militia strong-holds was considered excellent.

At the direction of the Deputy Under Secretary of Defense for Policy, the DOD conducted a survey from 13 to 27 May 1983 to determine whether there was a need to improve military intelligence or counterintelligence support to the USMNF.

B. Discussion

Intelligence provided a good picture of the broad threat facing the USMNF in Lebanon. Every intelligence agency in the national community and throughout the chain of command disseminated a great amount of analysis and raw data. Key Defense officials and the military chain of command were alert to, and concerned with, the insights it provided them. There was an awareness of the existing dangerous situation at every level, but no one had specific information on how, where and when the threat would be carried out. Throughout the period of the USMNF presence in Lebanon, intelligence sources were unable to provide proven, accurate, definitive information on terrorist tactics against our forces. This shortcoming held to be the case on 23 October 1983. The terrorist threat was just one among many threats facing the USMNF from the many factions armed with artillery, crew served weapons and small arms.

Technical intelligence was responsive to the USMNF Commander's conventional tactical needs. Organic CTF 61/62 intelligence, reinforced by national level support, were able to keep track of the growing conventional military threat.

The intelligence staffs at various echelons within the European Command initiated some innovative measures and, in general, tried to improve U.S. intelligence capabilities against adversaries in the region. The situation as of 30 November 1983, shows improvement as a result of the chain of command's efforts.

The USMNF was operating in an urban environment surrounded by hostile forces without any way of pursuing the accuracy of data in order to head off attack. The intelligence structure should be reviewed from both a design and capabilities standpoint. We need to establish ourselves early in a potential trouble spot and find new techniques to isolate and penetrate our potential enemies. Once established, our military forces (and especially ground forces) need to have aggressive, specific intelligence to give the commander the hard information he needs to counter the threats against his force. U.S. intelligence is primarily geared for the support of air and naval forces engaged in nuclear and conventional warfare. Significant attention must be given by the entire U.S. intelligence structure to purging and refining of masses of generalized information into intelligence analysis useful to small unit ground commanders.

It is also essential that all government agencies develop a heightened awareness of the potential intelligence significance to the USMNF commander of information they develop or hold for their own needs. If DOD elements had been provided the relevant data pertaining to the characteristics of the explosive device employed against the U.S. Embassy in Beirut on 18 April 1983, specifically with regard to the capacity terrorists have to greatly enhance destructive effects through relatively simple means, the USMNF Commander may have acquired a better appreciation of the catastrophic potentialities arrayed against him.

In summary, the U.S. did not have the specific intelligence, force disposition or institutional capabilities sufficient to thwart the attack on the BLT Headquarters building on 23 October 1983. The USMNF commander received volumes of intelligence information, but none specific enough to have enabled the prevention of the attack or provide him other than general warning. There was no institutionalized process for the fusion of intelligence disciplines into an all-source support mechanism.

C. Conclusions

The Commission concludes that although the USMNF commander received a large volume of intelligence warnings concerning potential terrorist threats prior to 23 October 1983, he was not provided with the timely intelligence, tailored to his specific operational needs, that was necessary to defend against the broad spectrum of threats he faced.

The Commission further concludes that the HUMINT support to the USMNF commander was ineffective, being neither precise nor tailored to his needs. The Commission believes that the paucity of U.S. controlled HUMINT provided to the USMNF commander is in large part due to policy decisions which have resulted in a U.S. HUMINT capability commensurate with the resources and time that have been spent to acquire it.

D. Recommendations

The Commission recommends that the Secretary of Defense establish an all-source fusion center, which would tailor and focus all-source intelligence support to U.S. military commanders involved in military operations in areas of high threat, conflict or crisis.

The Commission further recommends that the Secretary of Defense take steps to establish a joint CIA/DOD examination of policy and resource alternatives to immediately improve HUMINT support to the USMNF contingent in Lebanon and other areas of potential conflict which would involve U.S. military operating forces.

PART FIVE—PRE-ATTACK SECURITY

*I. 24 MAU, BLT 1/8 Headquarters compound*

A. Principal Findings

The USMNF/MAU Headquarters compound primarily occupied three buildings in the administrative area of the Beirut International Airport (BIA). BIA is an active international airport which serviced an average of some 35 flights and 2,400 passengers a day during the two-week period preceding the bombing of the BLT Headquarters building. Approximately 1,000 civilians are employed at BIA, and ground traffic to and from the area is estimated at about 3,000 vehicles daily.

Figure 5-1 depicts the major features referred to hereafter. The MAU Headquarters was located in the former Airport Fire Fighting School facilities at Beirut International Airport. The structure is a two-story building with floors, ceiling, and walls constructed of reinforced concrete. The first (ground) floor consists of six vehicle bays accessed by metal doors, several offices and a utility room.

The second floor, accessed by a circular staircase, consists of administrative offices. Exposed openings had been reinforced with protective sandbag walls. The roof, accessed

by an exterior ladder, was used as an antenna farm. The MAU Service Support Group (MSSG) Headquarters was located immediately across the road to the northwest of the MAU Headquarters building. The structure is a single story, reinforced concrete and steel building which was reinforced at exposed openings by protective sandbag walls.

The Battalion Landing Team (BLT) Headquarters was located in a four-story building southwest of the MAU Headquarters. (The BLT Building is described in detail in the following section).

Buildings utilized by Lebanese Civil Aviation Authorities in the immediate vicinity of the USMNF facilities included the Civil Aviation School directly west of the MAU Headquarters, the airport maintenance building directly east of the MAU Headquarters, and the airport power Plant and the air conditioning building directly east of the BLT Headquarters. These buildings, along with other buildings throughout the area, were facilities utilized by Lebanese nationals in the daily activities of airport business. Normal access to the compound area on 23 October 1983 was via public roads into and within BIA, and then through a gate in the immediate vicinity of the MAU Headquarters building. (A complete description of the security posts and barriers in the area is found in Section IV, Security Guard Organization and Execution.) Overall security for BIA was the responsibility of the LAF. Between the hours of 2100 and 0600 daily, civilian traffic into BIA was not permitted. This prohibition was controlled by the LAF checkpoint known as "Cocodee" on the main airport access road.

B. Discussion

Interviews with personnel of the LAF liaison element and with LAF soldiers who manned checkpoint "Cocodee" on the morning of 23 October 1983 confirm the restricted access to BIA. Vehicles already in the BIA administrative area by 2100, however, were not required to depart. In fact, because of the extensive repair and construction activity at BIA, many vehicles, including large trucks similar to the vehicle utilized in the bombing, routinely remained in the area overnight.

*II. BLT Headquarters building*

A. Principal Findings

The BLT Headquarters was located in a bombed-out, fire-damaged, four story building located north of the BIA terminal building and just south of the building utilized as the 24th MAU Headquarters (See Figure 5-2). The building was constructed of steel and reinforced concrete. At one time large plate glass windows encompassed the second, third and fourth stories. All of the windows on the upper three floors had been replaced with an assortment of plywood, sand bag cloth, screen, and plastic sheeting. The ground floor was an open area which has been enclosed with substantial sand bagging and barbed wire. At the center of the building was an open courtyard extending to the road with a ventilated covering to ward off rain while providing for cooling and illumination of the building's interior. There were two inoperable elevator shafts which had been fire damaged. Access to upper stories was gained via two concrete stairwells located on the east and west ends of the courtyard.

The building originally housed the headquarters of the Government of Lebanon's Aviation Administration Bureau. It has been successibly occupied by the PLO, the Syrians, and finally by the Israelis, the latter using it as a field hospital during their 1982 invasion. The first U.S. Marine Corps unit ashore in September 1982 occupied the building as the command post for a Battalion Landing Team (BLT).

Initially, security for the force was not the paramount consideration of the USMNF. The Marines, for the most part, were welcomed, particularly so in clearing up mines and unexploded ordnance left behind as a result of the PLO/Israeli conflict. Tactical security was established appropriate to mission tasking and the perceived threat. Subsequently, as military involvement between warring Lebanese confessional groups worsened, LAF training was halted, mobile patrols were reduced and security enhancements were instituted as follows: Bunkers were hardened; the number and depth of defensive positions were increased; and perimeter security was improved.

Security provisions from 29 September 1982 to 22 October 1983 were such that, despite occasional light to heavy hostile artillery, rocket and sniper fire, Marine casualities were relatively light. The limited number of casualties was attributable in part to the fact that the reinforced concrete construction of the BLT headquarters building provided good protection from the attacks by fire that the BLT Headquarters received. During this period, no one was ever wounded or killed in that building.

Starting on 29 MAY, BLT 1/8 (24th MAU) relieved BLT 2/6 (22d MAU) in place at the BIA. During this relief period from 26 May to 30 May, Commanding Officer, BLT 1/8, and the Commanding Officer, BLT 2/6, conferred extensively on the situations at BIA, at the U.S. and British Embassies, and at the Lebanon Scientific and Technical University.

The changeover of the two BLTs at the airport was normal. The infantry companies occupied previously prepared defensive positions on the airport perimeter and the U.S. Embassy responsibility; "B" Company assumed the eastern and northern airport perimeter and check points 76 and 11; and "C" Company located at the Lebanese Scientific and Technical University and check points 35 and 69. The Weapons Company was put into a supporting role; its 81mm morter platoon occupied a position on the eastern perimeter, slightly west of check point 11. Subsequently, the companies were rotated, and on 23 October 1983, BLT 1/8 was positioned as shown on Figure 5-3.

Upon assuming BIA defensive positions, BLT 1/8 continued the security enhancement work of BLT 2/6. Sandbags were filled and emplaced within all positions. It is estimated that from 29 May to 23 October 1983, some 500,000 sandbags were filled and emplaced in addition to 10,000 feet of concertina wire, and 1,000 engineer stakes. This equates to approximately 20 tons of materials.

On 30 May 1983, BLT 1/8 (24th MAU) occupied the building. The 1st Battalion, 8th Marine Regiment formed the nucleus of BLT 1/8. The battalion consisted of three infantry companies, a weapons company, and a headquarters and service company. BLT 1/8 had a strength of approximately 1,250 personnel. This figure remained relatively constant. On any given day from 30 May 1983 until 23 October, BLT 1/8 consisted of approximately 59 Marine officers, 1,143 enlisted Marines, 3 Navy officers, 52 Navy enlisted, 3 Army officers and 28 Army enlisted.

B. Discussion

The mission of the USMNF at the time of its deployment at BIA was to be one of presence. The decision to occupy BIA was based upon several factors:

BIA was an important symbol of the new Lebanese government's influence and control.

Israel would not agree to withdraw from BIA unless replaced by U.S. units.

The airport was a comparatively favorable position for the USMNF, away from the refugee camps and inner city of Beirut. Yet it enabled the Marines to visibly assist the Lebanese government in an area of practical and symbolic importance. The airport location also facilitated both ingress and egress for U.S. Forces ashore.

The BLT Headquarters building was occupied from the outset for a variety of reasons. The steel and reinforced concrete construction of the BLT Headquarters building was viewed as providing ideal protection from a variety of weapons. The building also afforded several military advantages that could be gained nowhere else within the BLT's assigned area of responsibility. First, it provided an ideal location to effectively support a BLT on a day-to-day basis. Logistic support was centrally located, thus enabling water, rations and ammunition to be easily allocated from a single, central point to the rifle companies and attached units. The Battalion Aid Station could be safeguarded in a clean, habitable location that could be quickly and easily reached. Motor transport assets could be parked and maintained in a common motor pool area. A reaction force could be mustered in a protected area and held in readiness for emergencies. The building also provided a safe and convenient location to brief the large numbers of U.S. Congressmen, Administration officials, and flag and general officers who visited Beirut from September 1982 to October 1983. In sum, the building was an ideal location for the command post of a battalion actively engaged in fulfilling a peace-keeping and presence mission.

Second, the building was an excellent observation post. From its rooftop, a full 360 degree field of vision was available. From this elevated position, forward air controllers, naval gunfire spotters and artillery forward observers could see into the critical Shuf Mountain area. Also from this position, observers could see and assist USMNF units in their positions at the Lebanese Science and Technical University. Further, this observation position facilitated control of helicopter landing zones that were critical to resupply and medical evacuation for the MUA. In sum, many of the key command and control functions essential to the well-being of the USMNF as a whole could be carried out from the building. No other site was available within the bounds of the airport area which afforded these advantages.

Third, the building provided an excellent platform upon which communications antennae could be mounted. In that the supporting ships were initially as far as 3,000 to 6,000 yards off shore, antenna height was a major factor in maintaining reliable communications with the supporting elements of the 6th Fleet. Reliable communication with the ships of CTF 60 and CTF 61 was critical to the defense and safety of not only the USMNF, but to the U.S. Embassy, the U.S. Ambassador's residence, the Duraffourd building, and our allies in the MNF as well. Reliable communications meant that naval gunfire missions could be directed at hostile

artillery and rocket positions in the Shuf Mountains when they fired into the airport. Line-of-sight communications are also essential in calling for and adjusting air strikes. Moreover, such communications were key to the rapid evacuation of casualties via helicopter to secure medical facilities offshore.

In summary, the Commission believes that a variety of valid political and military considerations supported the selection of this building to house the BLT Headquarters. The fact that no casualties were sustained in that building until 23 October 1983, attested to its capability to provide protection against the incoming fire received by the BLT Headquarters, while simultaneously providing the best available facility to allow the USMNF to conduct its mission.

*III. BLT Headquarters organization, operation and security*

A. Principal Findings

The basement of the building consisted of two larger rooms connected by an east-west passageway (See Figure 5-4). The west room was basically a storage area for foodstuffs for the field mess to include produce, dry storage, canned goods, paper materials, and dairy products. The east room was divided between a troop recreation area and the battalion aid station. An access tunnel into this room was securely blocked and guarded 24 hours a day (See Figure 5-5). In the recreation area were picnic chairs and tables, pool and ping-pong tables, video games, and a television set with a video cassette recorder for movies. Beer, soda and snacks were stored and sold in this area. In the aid station, the battalion's medical equipment was arranged to handle normal sick call, emergencies, and, if required, casualty triage. All battalion medical records were stored in this area.

The ground floor lobby (See Figure 5-6) was kept clear for security reasons. Should the building be penetrated, fire could be directed from the upper stories down into an open area. The field mess was located beneath the extreme western side of the building overhang, behind a sandbag and screen wall which completely enclosed the area. Seating capacity for the mess was approximately 150 personnel. Adjacent to the mess, and within the building proper, were the armory and S-4 (logistics) storage areas. A small number of anti-tank missiles prepositioned here for use in building defense and on foot and mobile patrols. A definitive listing of ordnance involved cannot be compiled until the final results of the FBI's forensic investigation are made available. From available information, however, it appears that the only other ordnance in the building was the basic load of ammunition carried by individual Marines.

The TOW (anti-tank missile) section was billeted behind a sandbag wall beneath the overhang on the extreme eastern side. Adjacent to the TOW section, and within the building, was the Lebanese vendor's shop. The vendor sold soda, candy, souvenirs, and health and comfort items. He often slept in his shop's storage area and is believed to have been killed in the explosion on 23 October. Adjacent to the vendor's area was another storage room used for beer and soda.

In the northeast corner of the lobby was a weight lifting machine; in the southeast corner was a storage area for portable food (pre-packaged) containers. In the southwest corner were battalion storage and work areas partitioned off by stacked supply bosed. The S-4 (logistics) working area was located in the northwest corner. The Sergeant of the Guard's post was located in a small structure beneath the overhang at the main entrance on the south side of the building.

The first floor housed the key personnel of the battalion's command structure (See Figure 5-7). In the western-most offices were the Battalion Commander, the Intelligence Officer, the Operations Officer, and the Sergeant Major. Adjacent to their offices was the Combat Operations Center from where the battalion's day-to-day functions were controlled and coordinated. The eastern section of the first floor housed the battalion's administrative offices, classified material storage, and postal services. In the southern connecting hallway were the quards' quarters. There were small rooms in the northern hallway where company grade officers and staff NCO's lived and worked.

The second floor (See Figure 5-8) was more open then the first floor. The battalion's communications platoon worked and resided in the west section which contained their maintenance, battery, and wire shops. The east section housed the engineers and their portable equipment storage area. The north hallway housed the reconnaissance platoon and the south hallway housed that portion of the weapons company which had not been attached to the outlying rifle companies or deployed to general support positions (81mm mortar platoon).

The third floor (See Figure 5-9) was the most open and least populated of the three floors. The west section contained a small chapel, and a recreation area and movie room for staff NCO's and officers. The west section also housed the cook and messmen. The east section contained a small library and the chaplain's office. The battalion medical officer and senior enlisted members of the medical platoon also resided in this area. Medical supplies were stored there, and sick call had been held in the southeast corner room until early August. Both the north and the south hallways housed a variety of key personnel who manned roof top positions. They included teams of artillery forward observers, naval gunfire spotters, forward air controllers, and counter-battery radarmen. At each corner of this floor on the exterior balcony were sandbagged machinegun (7. 62mm) emplacements.

On the roof (See Figure 5-10) were several sandbagged observation positions used by the various team members. Also on the roof were over a dozen communications antennae, including those on HF, VHF, and UHF frequencies.

Two enlisted Marines from the Forward Air Control (FAC) team were asleep on the roof on the morning of the explosion and escaped unharmed. They testified that the IOS was manned 24 hours a day, everyday. These team members manned the position on the extreme eastern end of the roof in order to observe their area of primary interest: the Shuf Mountains. It should be emphasized that these teams were not responsible for security in the immediate vicinity of the building proper; that was the responsibility of the Security Guard Force.

B. Discussion

The interior of the building was utilized in a manner that facilitated command, control, coordination and communication both within the battalion and to senior, subordinate and supporting units. Effective use was made of the rooftop by key supporting arms team members. The total number of personnel billeted and working in and around the building averaged approximately 350 out of an average BLT strength of 1250. Since the BLT Headquarters building contained the only field mess in the 24th MAU, the number of personnel in and around the building during meal hours may have exceeded 400.

Notwithstanding the utility derived from the use of the building in question, and acknowledging the fact that the building did provide protection to personnel from incoming fire, the BLT commander failed to observe the basic security precaution of dispersion. The practice of dispersion is fundamental and well understood by the military at every echelon. It basically is the spreading or separating of troops, material activities, or establishments to reduce their vulnerability to enemy action. The BLT commander did not follow this accepted practice and permitted the concentration of approximately one-fourth of his command in a relatively confined location thereby presenting, a lucrative target to hostile elements. The MAU commander condoned this decision.

*IV. Security guard organization and execution*

A. Principal Findings

The BLT Commander was responsible for the security of the MAU/BLT compound and the BLT Headquarters. The Officer of the Day (OOD) was appointed on a 24-hour rotational basis to represent the BLT Commander in his absence. The BLT Commander designated the H&S Company Commander as the permanent Guard Officer. A noncommissioned officer was designated as the permanent Commander of the Guard and was directly responsible to the Guard Officer for the instruction, discipline and performance of the guard. The Sergeant of the Guard (SOG) was directly accountable for the instruction, discipline and performance of the guard force during his twenty-four hour tour of duty. The three Corporals of the Guard (COG) rotated on four-hour shifts as the direct supervisors of the guard reliefs. These posts were manned by sentries organized into three reliefs, each of which stood four-hour rotational shifts. Like the COG, the sentries were appointed for two-week tours. The MAU/BLT compound security chain of command is illustrated in the following diagram.

BLT Commander—Officer of the day
H&S Company Commander (Guard Officer)
Commander of the Guard
Sergeant of the Guard
Corporal of the Guard (3)
Sentries of the Guard (3 Reliefs)

Battalion Landing Team Order 1601.8, dated 15 July 1983, was the basis for the security guard at the 24 MAU/BLT compound (Annex F). This order provided a coordinated structure of the various MAU/BLT elements within the compound to establish security. Instructions common to all posts were covered in the basic order. Special orders were provided for each position and post in separate enclosures. Modifications and changes to the guard order were promulgated from the BLT Commander, through the Executive Officer and Guard Officer, for implementation by the Commander of the Guard. Additionally, the MAU Commander (CTF 62) issued two directives in message form that prescribed four alert conditions with required specific actions for each condition. Changes were to be logged by the Commander of the Guard.

Permanently designed posts on the MAU/BLT compound are indicated on the diagram at figure 5-11. Specific actions for

each post were determined by the designated alert status and the guard order. There were four alert conditions, with Alert Condition I being the highest state of alert. The appropriate level of alert was determined in the Combat Operations Center (COC).

In practice, modification were made to the guard order. For instance, only sentries at Posts 1, 2, and 3 kept magazines in their weapons at all times. Post 4, 5, 6, and 7 were manned with one sentry during daylight hours. Post 8 was not manned at the time of the attack. The BLT Order specified that such modifications would be noted in the Guard Logbook, which is presumed to have been destroyed in the explosion. The security posture on 23 October 1983 at the MAU/BLT compound, as described in testimony by surviving witnesses, was not in compliance with published directives for Alert Conditions II or III.

Marines assigned to the BLT guard wore the utility uniform with helmet, flak jacket, belt suspenders, M16 rifle, flashlight and a cartridge belt containing two filled canteens, first aid kit, two magazine pouches with six magazines and a total of 120 rounds. The SOG was armed with a .45 caliber pistol. All personnel carried an ROE card in their flak jacket. During hours of darkness, night vision goggles were issued. There were no anti-tank weapons on any post. Anti-tank missile launchers (TOW) were, however, positioned on the roof.

B. Discussion

Every Marine interviewed expressed concern over the restrictions against inserting magazines in weapons while on interior posts during Alert Condition II, III, and IV. The most outspoken were the sentries on posts 6 and 7 where the penetration of the compound occured on 23 October 1983. The MAU Commander explained that he made a conscious decision not to permit insertion of magazines in weapons on interior posts to preclude accidental discharge and possible injury to innocent civilians. This is indicative of the emphasis on prevention of harm to civilians, notwithstanding some degradation of security. The threat to the MAU/BLT compound was perceived to be direct and indirect fire, ground attack by personnel, stationary vehicular bombs and hand grenade/RPG attack. In accordance with existing ROE (White Card), instructions pertaining to moving vehicles involved search and access procedures at gates. Hostile penetration of the perimeter by cars or trucks was not addressed in these instructions provided by the BLT guards.

The testimony of the Marines who stood post at the MAU/BLT compound was consistently in agreement concerning the activities of the guard force. Guard duty appears to have been professionally performed. All sentries interviewed were knowledgeable of the unique requirements of the various posts where they had performed duty.

Whether full compliance with the actions prescribed for Alert Condition II would have prevented, in full or in part, the tragic results of the 23 October 1983 attack cannot be determined, but the possibility cannot be dismissed. (See also PART SIX of this report).

*V. Command responsibility for the security of the 24th MAU and BLT 1/8 prior to 23 October 1983*

A. Principal Findings

The Commanders of the 24th MAU and BLT 1/8 took a number of actions to enhance the security of their forces while performing the assigned USMNF mission. The 24th MAU Commander was aware of the deteriorating situation in the late summer and early fall of 1983 which resulted in a wide spectrum of threats to his command, ranging from conventional military threats to the use of terrorist tactics. Although deluged with daily threat information, the MAU Commander received no specific warning of the time, place or technique of the 23 October 1983 attack. Moreover, he was not briefed on the 18 April 1983 bombing of the U.S. Embassy in specific terms until after the BLT Headquarters bombing. He was not apprised of the detailed information derived by the analysis of the Embassy bombing as to the destructive potential of gas-enhanced explosive devices.

B. Discussion

Competing with the MAU commander's reaction to the growing threat to his force was his dedication to the USMNF mission assigned to his command and his appreciation of the significance of peace-keeping and presence in achieving U.S. policy objectives in Lebanon. He perceived his mission to be more diplomatic than military, providing presence and visibility, along with the other MNF partners, to help the Government of Lebanon achieve stability. He was a key player on the U.S. Country Team and worked closely with the U.S. leadership in Lebanon, to include the Ambassador, the Deputy Chief of Mission, the President's Special envoy to the Middle East and the Military Advisor to the Presidential Envoy. Through these close associations with that leadership and his reading of the reporting sent back to Washington by the Country Team, the MAU commander was constantly being reinforced in his appreciation of the importance of the assigned mission.

Given his understanding of the mission, coupled with the perception that the greatest real threat to the MAU and to the BLT Headquarters personnel was from conventional small arms, mortar, rocket, and artillery fire, the BLT Commander enacted security procedures concurred in by the MAU Commander which resulted in billeting approximately 350 personnel in the BLT Headquarters building. Similarly, guard orders and procedures were characterized by an emphasis on peaceful neutrality and prevention of military action inadvertently directed against the civilian population using the airport. The security posture decisions taken by the MAU and BLT Commanders were further reinforced by the absence of any expression of concern or direction to change procedures from seniors in the military chain of command during visits to the MAU prior to 23 October 1983.

C. Conclusions

The combination of a large volume of specific threat warnings that never materialized, and percieved and real pressure to accomplish a unique and difficult mission contributed significantly to the decisions of the MAU and BLT commanders regarding the security of their force. Nevertheless, the Commission concludes that the security measures in effect in the MAU compound were neither commensurate with the increasing level of threat confronting the USMNF nor sufficient to preclude catastrophic losses such as those that were suffered on the morning of 23 October 1983. The commission further concludes that while it may have appeared to be an appropriate response to the indirect fire being received, the decision to billet approximately one-quarter of the BLT in a single structure contributed to the catastrophic loss of life.

The commission concludes that the Battalion Landing Team Commander must take responsibility for the concentration of approximately 350 members of his command in the Battalion Headquarters building thereby providing a lucrative target for attack. Further, the BLT Commander modified prescribed alert procedures, degrading security of the compound.

The Commission also concludes that the MAU Commander shares the responsibility for the catastrophic losses in that he condoned the concentration of personnel in the BLT Headquarters building, concurred in modification of prescribed alert procedures, and emphasized safety over security in directing that sentries on Posts 4, 5, 6, and 7 would not load their weapons.

The Commission further concludes that although it finds the BLT and MAU Commanders to be at fault, it also finds that there was a series of circumstances beyond their control that influenced their judgement and their actions relating to the security of the USMNF.

D. Recommendation

The Commission recommends that the Secretary of Defense take whatever administrative or disciplinary action he deems appropriate, citing the failure of the BLT and MAU Commanders to take the security measures necessary to preclude the catastrophic loss of life in the attack on 23 October 1983.

PART SIX—23 OCTOBER 1983

*I. The terrorist attack*

A. Principal Findings

Five eyewitnesses described a large yellow Mercedes Benz stakebed truck traveling at a speed reportedly in excess of 35 MPH moving from the public parking lot south of the BLT Headquarters building through the barbed wire and concertina fence, into the main entrance of the buildings where it detonated at approximately 0622, Beirut time on Sunday, 23 October 1983. The truck penetrated the perimeter barbed and concertina wire obstacle (See Figure 6-1), passed between guard Posts 6 and 7 without being engaged, entered an open gate, passed around one sewer pipe and between two other pipes, flattened the Sergeant of the Guard's sand bagged booth, entered the interior lobby of the building and exploded.

An eyewitness was defined as an individual who actually saw the truck but not necessarily its driver. Four of the eyewitnesses are Marines who were members of the guard: three lance corporals and a sergeant. The other eyewitness was a Marine corporal who had just returned from a security patrol. Their accounts are detailed and corroborative.

In general, based on descriptions provided by the eyewitnesses who saw him, the driver of the truck was a young adult caucasian male with black hair and mustache and wearing a blue or green shirt, open at the front. No other individuals were seen in the truck by the eyewitnesses.

A similar yellow Mercedes Benz type truck was observed at about 0500 by the sentry on Post 6 entering the parking lot south of the BLT Headquarters building. The truck circled once, then exited to the south. Because that truck did not stop, it was not reported.

A truck was observed by the sentry on Post 6 accelerating westward and parallel to the wire barricade (See Figure 6-2). The truck then abruptly turned north, ran over the wire barricade, and accelerated northward between Posts 6 and 7.

The sentry on Post 7 heard the truck as it ran over the wire, then observed it and immediately suspected it was a vehicle bomb. He inserted a magazine in his M-16 rifle, chambered a round, shouldered the weapon, and took aim but did not fire because by that time the truck had already penetrated the building.

Both sentries realized the truck was, in fact, a "car bomb" and therefore took cover within their respective bunkers. One sentry hid in the corner of his bunker and did not observe the detonation. The other sentry partially observed the detonation from behind the blast wall to the rear of the bunker. He saw the top of the building explode vertically in a V-shape. He then took cover inside his bunker for protection from the falling debris.

The sentry on Post 5 also spotted the truck as it accelerated northward into the building. The truck passed so quickly that he could not react in any way although he understood the truck's purpose. He was unable to take cover in his bunker and was knocked to the ground by the blast; however, he escaped uninjured.

A reconnaissance NCO was standing near a water trailer located approximately 25 meters east of the southeast corner of the building. He had just returned from a security patrol. He was facing east when he heard an accelerating engine behind him. Thinking it was a large Marine truck speeding, he turned westward and saw the terrorist's truck accelerating from left to right in his field of vision. He, too, immediately suspected the truck's hostile purpose. As the vehicle entered the building, he turned to run for cover in a nearby shower gutter but was knocked down by the blast.

Meanwhile, the Sergeant of the Guard was at his post located at the building's main entrance (south). His post was a small booth-shaped structure, similar in size and positioning to that of a ticket vendor's booth in a movie theater. The structure had been reinforced with a double-wall of sandbags around its girth.

The Sergeant of the Guard was alone at his post, facing inward (north) toward the lobby, when he heard noises to his rear, to include a high-revving engine. He turned and saw the truck closing rapidly on his post as it passed through the open gate of the permanent (Lebanese-constructed) fence (See Figure 6-3). His first reaction was a surprised question: "What is that truck doing inside the perimeter?" or thoughts to that effect. Immediately thereafter he realized the truck was hostile and ran out of his post and across the lobby toward the rear entrance (north). As he ran, he repeatedly yelled "Hit the deck! Hit the deck!" and glanced back over his shoulder as the truck continued toward the front entrance. He saw the truck breach the entrance (the cab was apparently too tall for the height of entrance archway) and without hesitation, run easily over his guard post and come to a halt near the center of the lobby. As the Sergeant of the Guard continued to run, there was an interval of one to two seconds between the truck's halt and its detonation. He actually saw the detonation which he described as being "more orange than yellow." He was then blown through the air, struck the ground, and was seriously injured. He came to on the roadway on the north-west side of the building's rubble as the debris fell around him.

When the truck exploded (See Figure 6-4), it created an oblong crater measuring 39' by 29'6" and 8'8" in depth (See Figure 6-5). The southern edge of the crater was thirteen feet into the lobby. To create such a crater, the explosion penetrated and destroyed the concrete floor which measured 7 inches in thickness and which was reinforced throughout with 1¾" diameter iron rods. Because of the structure of the building—it had a large covered courtyard extending from the lobby floor to the roof—the effect of the explosion was greatly intensified. This was caused by the confinement of the explosive force within the building and the resultant convergence of force vectors. This "tamping effect" multiplied the blast effect to the point that the bottom of the building was apparently blown out and the upper portions appeared to have collapsed on top of it. The force of the explosion initially lifted the entire building upward, shearing the base off its upright concrete columns, each of which was 15 feet in circumference and reinforced throughout with 1¾" diameter iron rods. The building then imploded upon itself and collapsed toward its weakest point—its sheared undergirding.

The Federal Bureau of Investigation (FBI) assessment is that the bomb employed a "gas-enhanced" technique to greatly magnify its explosive force which has been estimated at over 12,000 pounds effective yield equivalent of TNT.

The FBI Forensic Laboratory described the bomb as the largest conventional blast ever seen by the explosive experts community. Based upon the FBI analysis of the bomb that destroyed the U.S. Embassy on 18 April 1983, and the FBI preliminary findings on the bomb used on 23 October 1983, the Commission believes that the explosive equivalent of the latter device was of such magnitude that major damage to the BLT Headquarters building and significant casualties would probably have resulted even if the terrorist truck had not penetrated the USMNF defensive perimeter but had detonated in the roadway some 330 feet from the building.

B. Discussion

Many individuals of the USMNF performed selfless and often heroic acts to assist their fellow Soldiers, Sailors and Marines. The response of the Lebanese citizens and the Italian MNF was superb. An example of this spontaneous outpouring of help was the response of a Lebanese construction company, which arrived with more heavy equipment than could physically be employed at one time and began immediate salvage and rescue efforts. The Italian soldiers assisted by moving the wounded and dead to Lebanese ambulances for evacuation to Lebanese hospitals or to the helicopter landing zones.

The MAU Commander remained concerned with his depleted security posture until he was reinforced with an additional rifle company deployed from the United States several days later. The MAU Commander properly perceived that his command was extremely vulnerable to a follow-on attack during the rescue/salvage operation.

The Commission takes particular note that the monumental demands placed upon the MAU Commander in the immediate aftermath of the attack required virtually superhuman effort. His situation was not enhanced by the large number of important visitors who arrived at his command in the days that followed. Throughout, the MAU Commander carried these burdens with dignity and resolve. In short, he performed admirably in the face of great adversity.

*II. The aftermath*

A. Principal Findings.

The aftermath of the attack left a scene of severe injury, death and destruction (See figure 6-6). the dust and debris remained suspended in the air for many minutes after the explosion, creating the effect of a dense fog. There was a distinct odor present, variously described as both sweet and acrid, which one individual remembered as being present after the bombing of the U.S. Embassy in April 1983. The carnage and confusion made it difficult to establish control immediately. The explosion had eliminated the entire BLT Headquarters command structure. The initial actions of individual survivors were in response to their first impression of what had happened.

In his headquarters, the MAU Commander thought the MAU COC had been hit and went downstairs to investigate. The sentries closest to the BLT Headquarters building thought the compound was being subjected to a rocket attack and tried to report by telephone to the Sergeant of the Guard. Some personnel at the MSSG Headquarters area thought an artillery attack was in progress and went to Alert Condition I.

Once it was realized that a catastrophe had occurred, the independent actions of individual Marines in various stages of shock and isolation began to meld into coordination, teamwork and cooperation. Lebanese civilians in the immediate area, the Lebanese Red Cross, Italian soldiers (engineers) from the Italian MNF, and Lebanese construction crews with heavy equipment converged on the scene and went to work, acting instinctively from their many previous experiences in Beirut.

The MAU Commander assumed operational control of the remaining BLT elements. He determined his priorities to be the rescue/medical evacuation effort and the re-establishment of the fire support coordination function. Because he anticipated the possibility of a follow-on attack, he charged the MAU Operations Officer with coordination of security on the scene. Additionally, an effort was made to preserve as much evidence as possible through photography and preliminary EOD work. Resources continued to arrive on scene and by early afternoon order was re-established. The last survivor extricated from the rubble was found at approximately 1300 that day.

PART SEVEN—POST-ATTACK SECURITY

*I. Redeployment, dispersal, and physical barriers*

A. Principal Findings

Since the 23 October 1983 bombing of the BLT Headquarters building, numerous security measures and actions have been planned and implemented by the operational chain of command to increase the security of U.S. military forces in Lebanon against recurrence of a catastrophic terrorist attack. USMNF and other U.S. forces have been repositioned and dispersed within the Beirut International Airport area. Many support personnel have been returned to ships offshore. Major construction by U.S. Navy Seabees of perimeter positions, protective bunkers, barriers and obstacles is ongoing. Security procedures in the areas of access control, searches, and response to threat warnings have been examined and improved. Additionally, more responsible ROE, similar to those previously approved for use at the Embassy, have been issued to all personnel.

The enhanced security measures were taken in the face of a steadily growing threat. Intelligence assessment of 1 December 1983 determined that the threat to U.S. personnel and facilities in Lebanon remains extremely high and is increasing. The political, military, cultural and religious environment in and around Beirut is inherently conducive to a broad spectrum of options for states, indigenous factions and extremist groups seeking to thwart U.S. objectives in Lebanon by attacking the USMNF. That environment makes the task of detecting and defending against threats in general, and terrorist attacks in particular, extremely difficult. It therefore becomes increasingly costly for the UNMNF to maintain and acceptable level of security for the force while continuing to provide a visible peace-keeping presence in Beirut, to sustain the Government of Lebanon, and to actively support the LAF.

The USMNF has remained essentially static, occupying the same terrain since its insertion into Lebanon in September 1982. The Marines continue to be positioned at the BIA, bounded on the west by the Mediterranean Sea and the heavily traveled coastal road, on the north by the slums of the Shia and Palestinian suburbs of Beirut, and on the east and south by the old Sidon Road and the Druze controlled coastal mountains (Shuf) that dominate the whole airport area. BIA serves a cosmopolitan city of one million and the daily vehicular traffic to the airport facilities, which are literally interspersed among USMNF positions, is very heavy. Security for the BIA is the responsibility of the LAF who are also present in the area.

BIA is undermined by a labyrinth of tunnels. Prior to the recent Israeli invasion, numerous factions, including the PLO and Syrians, occupied BIA and the BLT Headquarters building. The static nature of the USMNF under the continuous observation of numerous hostile factions and within range of their weapons, results in a constant high threat environment for the USMNF. This threat is exacerbated by the familiarity with, and access to the dominant terrain, and to BIA itself, by hostile factions.

B. Discussion

Activities to reduce the vulnerability of the USMNF fall into six categories: Dispersal of troops; construction of protective structures; improved security procedures; key weapons employment; rules of engagement; and physical barriers.

Dispersal of troops has taken the form of redistribution of activities within the BIA area to present a less concentrated target, and the removal to ships offshore of all personnel whose presence is not considered immediately required to operate the USMNF ashore. The redistribution is proceeding as protected work and living spaces are constructed, but has the disadvantage of placing some troops in structures which are more vulnerable to indirect fire than the concrete buildings which they vacated.

Construction of protective structures, including work spaces, living accommodations and fighting positions, has received attention by utilizing a variety of protective measures. Traditional sandbagging, dirt berms, locally fabricated wooden frames to support sandbags and a dirt covering, and large SeaTrain containers (obtained from the Government of Lebanon) that are dug in and reinforced to provide modular protected work spaces, have been utilized in this effort. Much of the proposed construction, however, has been hampered by a shortage of material and labor.

Actions taken to improve security procedures include closing two lanes of the main airport road which runs adjacent to the MAU area, thereby creating a buffer zone; restricting vehicular access in the MAU perimeter to U.S. vehicles only; blocking all but essential entrances to the area; excluding non-essential civilians; relocating LAF personnel outside of the perimeter; and employing spot U.S. roadblocks and vehicle searches on the main airport road.

ROE are addressed separately in PART TWO of this report.

An integrated obstacle and barrier plan has been devised to complement the other security measures discussed above.

C. Conclusions

The Commission concludes that the security measures taken since 23 October 1983 have reduced the vulnerabiluty of the USMNF to catastrophic losses. The Commission concludes, however, that the security measures implemented or planned for implementation for the USMNF as of 30 November 1983, are not adequate to prevent continuing significant attrition of the force.

The Commission recognizes that the current disposition of USMNF forces may, after careful examination, prove to be the best available option. The Commission concludes, however, that a comprehensive set of alternatives should be immediately prepared and presented to the National Security Council.

D. Recommendation

Recognizing that the Secretary of Defense and the JCS have been actively reassessing the increased vulnerability of the USMNF as the political/military environment in Lebanon has changed, the Commision recommends that the Secretary of Defense direct the operational chain of command to continue to develop alternative military options for both accomplishing the mission of the USMNF and reducing the risk to the force.

PART EIGHT—CASUALTY HANDLING

*I. (U) Introduction*

At approximately 0622 local Beirut time on 23 October 1983, an explosion of enormous magnitude destroyed the BLT Headquarters building. This catastrophic event resulted in 241 deaths and approximately 112 wounded in action (WIA). The only medical officer ashore was killed and a majority of the hospital corpsmen billeted at the building were either killed or wounded. The battalion aid station was destroyed.

Within minutes of the explosion, the CTF 61/62 Mass Casualty Plan was implemented. The remaining medical assets of the MAU Service Support Group (MSSG) were organized into two triage teams. Additional medical support was mobilized from afloat units and rapidly transported ashore. As wounded were recovered from the rubble they were immediately treated. Many were initally taken to local civilian hospitals or to the Italian military field hospital while U.S. forces were recovering from the first shock and were regrouping.

The majority of the wounded were transported by helicopter to the USS *Iwo Jima*, an LPH (Amphibious Helicopter Platform) which served as the primary casualty receiving and treatment ship. Necessary resuscitation and surgery were accomplished. After appropriate stabilization, and as air evacuation aircraft arrived, the wounded were transferred to the airport runway area for evaucation to definitive medical care facilities.

Within 30 minutes of the explosion, the British offered the use of the Royal Air Force hospital at Akrotiri, Cyprus. The offer was accepted. The support of the RAF proved to be invaluable. Aeromedical evacuation aircraft of the USAF, USN and RAF were directed to BIA. Casualties were evacuated to Cyprus, Germany and Italy, where there had been virtually a total mobilization of all major medical treatment facilities. Following definitive medical treatment at these overseas facilities, patients were returned to hospitals in the United States as their condition permitted.

*II. On-scene medical care*

A. Principal Findings

On-scene medical personnel and resources were both ashore and afloat. Ashore were a General Medical Officer, two Dental Officers, a Medical Preventive Medicine Officer (entomologist), two Dental Technicians and almost 70 Hospital Corpsemen. The explosion killed the Medical Officer and killed or wounded 19 Hospital Corpsmen.

Aboard the ships of the Amphibious Task Force there were, as part of normal ships' and embarked aircraft squadron's complement, seven General Medical Officers (including one Flight Surgeron) and 62 Hospital Corpsmen. In addition, a Surgical Team was embarked aboard the USS *Iwo Jima*, the principal afloat medical facility. The Surgical Team consisted of a general surgeon, an orthopedic surgeon, an anesthesiologist, a nurse anesthetist, an operating room nurse, a medical adminstrative officer, and thirteen Hospital Corpsmen. Medical spaces aboard the USS *Iwo Jima* included two operating rooms.

There were ample medical supplies available both ashore and afloat. Despite the destruction of the battalion aid station, sufficient supplies were initally available in the MSSG Headquarters building, and, prior to 23 October, the USS *Iwo Jima* had received additional medical supplies ensuring the capability to manage at least one hundred casualties for several days.

Immediately following the explosion, the Mass Casualty Plan was implemented by CTF 61. Before help arrived from the ships, other actions were underway. Marine and Navy personnel turned immediately to rescuing the wounded from the wreckage and giving them first aid. The two Navy dentists and the remaining corpsmen established one triage and casualty receiving stations adjacent to the demonolished building and another one at the MSSG Headquarters. Ambulance, medical personnel, and volunteers from the Italian contingent, of the MNF, and from local Lebanese medical facilities, arrived and evacuated casualties to their hospitals. These patients were later transferred to U.S. facilities, the last one arriving onboard USS IWO JIMA on 2 November 1983.

By 0640B (local Beirut time), approximately twenty minutes after the explosion, radio communication was established between the MSSG casualty receiving station and the helicopter landing zone at the airport (LZ Brown). By 0800B, all surviving casualties at the MSSG had been triaged, treated, and sent to LZ Brown for medical evacuation (MEDEVAC) to USS *Iwo Jima* by helicopter. By approximately 0730B, as medical personnel arrived from the ships, another triage and casualty receiving station was established close to the destroyed BLT Headquarters building. Here too, pa-

tients received immediate treatment, were triaged, and then moved to LZ Brown for subsequent MEDEVAC to the ship. The first wounded arrived aboard USS *Iwo Jima* at 0740B, approximately one hour and twenty minutes after the attack, having first been triaged and provided field medical treatment ashore.

The goal of the medical personnel on USS *Iwo Jima* was to treat, stabilize, and evacuate the casualties as rapidly as possible, in order to be prepared for the arrival of subsequent casualties.

Triage aboard USS *Iwo Jima* was performed on the hangar deck. Several surgical procedures were required aboard ship, but the main task was to stabilize and prepare the wounded for subsequent aeromedical evacuation. Of the 62 WIA's brought to the USS *Iwo Jima* on 23 October, one died onboard and the remainder were evacuated to the RAF hospital in Akrotiri, Cyprus, or to U.S. military hospitals in Landstuhl, Frankfurt, and Wiesbaden, Germany and Naples, Italy.

At 1000B, the Red Cross, in conjunction with U.S. military personnel, set up an emergency field treatment unit in a parking lot adjacent to the bombed BLT Headquarters building. This facilitated the remaining casualty care required.

The last survivor was recovered at approximately 1300B, 23 October 1983. The total number of WIA, including those treated for relatively minor wounds and returned to duty, was approximately 112. Of these, seven subsequently died. The total number of deaths resulting from the bombing attack is 241 as of the date of this report.

On-scene immediate medical care appears to have been appropriate, adequate, and timely.

B. Discussion

The Commission's inquiry confirmed that CTF 61/62 executed a well-understood, and frequently exercised, mass casualty plan. Execution of the plan provided timely response to the mass casualty requirement for on-scene medical care despite the destruction of the battalion aid station and the death of the only doctor ashore.

The immediate aftermath of the massive explosion was, understandably, a scene of disorientation and initial confusion. This sudden, unexpected attack of enormous destruction devastated an entire unit. (It was during this initial period that numerous Lebanese and Italian volunteers arrived on-scene and provided early, needed casualty assistance.) The recovery of the shattered unit was rapid. There was a heroic rescue effort to pull survivors from the rubble and efficient and appropriate field medical treatment was instituted without delay. There were ample assets for the rapid transfer of the wounded from the disaster site to the treatment areas. No delays were encountered in the helicopter transfer of patients to the ship.

The CTF 61/62 Mass Casualty Plan for the MAU ashore placed the BLT medical officer and/or the Leading Chief Petty Officer in charge of triage and medical regulating. When both were killed, there was no longer a well-defined medical command structure ashore. Future medical planning should anticipate such losses. A medical regulating team should be included in the normal CTF 61 medical complement.

C. Conclusion

The Commission concludes that the speed with which the on-scene U.S. military personnel reacted to rescue their comrades trapped in the devastated building and to render medical care was nothing short of heroic. Additionally, the rapid response by Italian and Lebanese medical personnel was invaluable.

*III. Aeromedical evacuation/casualty distribution*

A. Principal Findings

Standard EUCOM operating procedures were in effect prior to 23 October 1983 to enabling CTF 61/62 to call upon EUCOM medical evacuation (MEDEVAC) aircraft as needed. No medical evacuation aircraft were specifically deployed for full time support to CTF 61/62.

CTF 61 called for aeromedical evacuation support within 15 minutes of the explosion. Fortuitously, the nearest U.S. MEDEVAC aircraft, a USAF C-9, was in Incirlik, Turkey. CTF 61 was given an ETA of 1030B for its arrival in Beriut. The ETA proved inaccurate; the actual time of arrival of the C-9 was 1240B.

The British offer to provide MEDEVAC aircraft was accepted at 1029B, when it became clear that the original ETA for the Incirlik C-9 was in error. A RAF C-130 aircraft arrived at 1310B, thirty minutes after the arrival of the USAF C-9 aircraft from Incirlik.

Two additional MEDEVAC aircraft were used on 23 October 1983: the first, a U.S. Navy C-9 from Sigonella, Italy arrived at BIA at 1340B, while the second, a USAF C-141, arrived at BIA at 1940B.

Aeromedical evacuation of patients out of the Beriut area began at approximately 1230B with the initial helicopter lift of casualties to BIA from USS *Iwo Jima*. The fixed wing MEDEVAC aircraft departed BIA as follows: The RAF C-130 left at 1421B for Akrotiri; the USAF C-9 left at 1512B for Germany; the USN C-9 left at 1551B for Naples, Italy; and the C-141 left at 2249B for Germany. It is apparent to the Commission that all patients received excellent care by medical personnel enroute.

The early British offer of the RAF hospital at Akrotiri, Cyprus was important. Since CTF 61 medical officers had visited and were familiar with the RAF hospital at Akrotiri, its use was immediately incorporated into the evacuation plan. Life-saving medical care and support were provided to some of the most seriously wounded by British doctors, medical staff and volunteers.

The initial intention of CTF 61 was to transport the seriously wounded patients to Akrotiri. At some point, however, a decision was instead made to transport many of the seriously wounded to Germany. The Commission has been unable to determine who made this decision.

The evacuation of patients to U.S. military hospitals in Germany and Italy was in accordance with existing procedures, but was deficient in several respects: First, erroneous ETA's (Estimated Time of Arrival) were initially provided to CTF 61 regarding the C-9 MEDEVAC aircraft being dispatched from Incirlik, Turkey; this aircraft arrived two hours later than the initial ETA provided. Logistical considerations (obtaining medical supplies) appear to have been the delaying factor. Second, seriously wounded patients were flown to Germany, a flight of just over four hours, while a competent and closer Royal Air Force facility was available and ready at Akrotiri, Cyprus just one hour away. And, third, the first MEDEVAC aircraft was directed to Rhein-Main air base, rather than Ramstein air base, resulting in additional transport time for the most seriously wounded.

There was no evidence to indicate that any patients were adversely affected from the longer evacuation flights. The Commission is concerned, however, that under other circumstances the outcome could have been less favorable.

Aeromedical evacuation and medical support plans do not recognize or provide for the peculiar and unique situation of CTF 61/62. USCINCEUR's aeromedical evacuation plans and resources are designed for routine, peacetime operations.

There was a lack of adequate numbers of experienced medical planning staff at all levels of the theater chain of command from CTF 61 up through COMSIXTHFLT, CINCUSNAVEUR, and USCINCEUR. In consequence, responsibility for medical support for the USMNF as diffuse, knowledge of regional medical facilities and potential sources of support was poor, and overall medical planning was inadequate.

B. Discussion.

Naval Warfare Publications, such as The Amphibious Task Force Plan (NWP 22-1) and Operational Medical Dental Support (NWP 6) provide an adequate framework for effective planning of operational medical support. The end result of the process should be a plan addressing such items as a statement of the medical situation; a statement of the evacuation policy (including alternate plans); clear delineation of medical responsibilities throughout the operational of medical responsibilities throughout the operational and administrative chains of command; and procedures for keeping necessary records and reports of the flow of casualties. Directives from higher echelons should provide the guidance and support to permit effective execution of the plans. Responsibilities for casualty evacuation medical regulating must be clearly defined, sufficiently detailed for comprehension at all levels, capable of implementation, and regularly exercised.

Inflight medical care for the first 56 patients evacuated from Beirut was uneventful, with the exception of one patient who expired approximately 20 minutes after departure for Germany. This patient died of massive injuries sustained in the explosion and had not been expected to live.

The last MEDEVAC flight of 23 October 1983 departed at 2249B for Germany with 13 wounded. Subsequent MEDEVAC flights on following days moved patients who had been treated in local civilian hospitals to U.S. treatment facilities in Germany.

Distribution of patients among medical facilities in Germany was directed by USAFE personnel at Rhein Main vice the appropriate Joint Medical Regulating Office (JMRO). Procedures used were not in consonance with current directives. There is, however, no evidence that this patient distribution irregularity affected patient care or outcome.

C. Conclusions

The Commission found no evidence that any of the wounded died or received improper medical treatment as a result of the evacuation or casualty distribution procedures. Nevertheless, the Commission concludes that the overall medical support planning in the European theater was deficient and that there was an insufficient number of experienced medical planning staff officers in the USCINCEUR chain of command.

The Commission found that the evacuation of the seriously wounded to U.S. hospitals in Germany, a transit of more than four hours, rather than to the British hospi-

tal in Akrotiri, Cyprus, a transit of one hour, appears to have increased the risk to those patients. Similarly, the Commission found that the subsequent decision to land the aircraft at Rhein Main rather than Ramstein, Germany, may have increased the risk to the most seriously wounded. In both instances, however, the Commission has no evidence that there was an adverse medical impact on the patients.

D. Recommendations

The Commission recommends that the Secretary of Defense direct the Joint Chiefs of Staff, in coordination with the Services, to review medical plans and staffing of each echelon of the operational and administrative chains of command to ensure appropriate and adequate medical support for the USMNF.

The Commission further recommends that the Secretary of Defense direct USCINCEUR to conduct an investigation of the decisions made regarding the destination of aeromedical evacuation aircraft and the distribution of casualties on 23 October 1983.

*IV. Definitive medical care*

A. Principal Findings

Medical care provided to the wounded by the various treatment facilities was excellent. The disaster plan of the Princess Mary RAF hospital at Akrotiri, Cyprus was exceptionally effective in concept and execution. The ability to use this facility, under these extreme circumstances, significantly minimized mortality and morbidity.

Mortality and morbidity sustained by casualties could be predicted on the basis of the injuries and does not appear to have been adversely affected by any of the definitive medical care.

B. Discussion

The RAF effort was extraordinary. During the flight on their C-130 to Akrotiri, one patient received intubation and ventilation. The entire base was prepared to facilitate the casualty care. Patients were rapidly triaged and moved by ground ambulances to the hospital where further resuscitation was continued and surgery performed. Approximately 150 people volunteered to donate blood, and 50 units were drawn. There were thirty nurses and two physicians from amongst the spouses of the military personnel who also volunteered their services. Back-up medical personnel and supplies were flown to Cyprus from the U.K. One patient died shortly after arrival at the Akrotiri facility, but his wounds were of such magnitude to preclude survival.

In Europe, patients were transferred either to U.S. Army hospitals in Frankfurt and Landstuhl, the U.S. Navy hospital in Naples or the U.S. Air Force hospital in Wiesbaden. These hospitals had implemented their disaster plans, recalled their entire medical staffs, organized resuscitation teams, discharged ambulatory inpatients to provide extra beds, prepared additional blood for use and prepared ground and air ambulance capabilities. Their efforts were complete, dedicated and professional. Throughout the night of 23 October, and well into the following day, the performance of the U.S. military medical community in Europe was outstanding.

C. Conclusion

The Commission concludes that the definitive medical care provided the wounded at the various treatment facilities was excellent, and that as of 30 November 1983, there is no evidence of any mortality or morbidity resulting from inappropriate or insufficient medical care.

*V. Israeli offer of medical assistance*

A. Principal Findings

The Government of Israel communicated an offer of medical assistance to the United States Government approximately two hours (0830 Israel/Beirut local time) after the bombing attack. The initial offer of assistance was made by telephone from the IDF Chief of External Affairs to the U.S. Defense Attache in Tel Aviv who immediately directed the Duty Officer to report to the Embassy and send a message to CTF 61 informing him of the offer. The offer was general in nature and specifics were not requested because the Duty Officer was not aware of the enormity of the disaster or the nature of the non-scene requirements.

The Israeli offer of assistance was relayed within an hour (0922B) by flash message to CTF 61 stating: "Reference the attack on the BLT HQ at BIA this morning. Per telecom with Col Alter, Chief of External Relations, IDF, the GOI offers whatever assistance may be desired by the USG in the evacuation/medical treatment of casualties."

CTF 61 saw the message at approximately 1030 to 1045 local time. His message response, after consultation with his medical staff, to the U.S. Defense Attache Office in Tel Aviv at 1145B stated: "Offer of assistance reference (a) sincerely appreciated. Currently have ample assets enroute or on station to meet requirements."

Similar Israeli offers were subsequently transmitted by telephone calls involving the Secretary of Defense, Chairman of the Joint Chiefs of Staff, USCINCEUR and COMSIXTHFLT.

CFT 61 asked separately for Israeli support in providing 200 body bags for the dead. Israeli authorities in Tel Aviv immediately provided the bags which were forwarded to Beirut by U.S. Navy aircraft.

Although there had been informal government-to-government level discussions in 1981 concerning Israeli medical support for U.S. forces, no agreement existed, and very few in the chain of command were familiar with those discussions or with Israeli military hospital facilities.

B. Discussion

The Commission found no evidence that any considerations other than a desire to provide immediate, professional care for the wounded influenced the decision not to take advantage of the Israeli offer of medical assistance. The Commission's interview with CTF 61 revealed that his only concern was for the appropriate care and evacuation of the casualties. He did not review the message from Tel Aviv immediately upon receipt because of the large volume of critical traffic requiring his attention. When he did review it (between 1030 and 1045 local time) he had a reasonable estimate of the casualty situation (including the number of wounded requiring further care); of the estimated time of arrival of aeromedical aircraft then enroute; and of the fact that the RAF Hospital at Akrotiri, Cyprus, was prepared to receive the most seriously wounded. Thus, after consultation with the medical staff, CTF 61 felt that adequate capabilities were already available or enroute.

CTF 61 and his medical staff had no direct communications with the Israelis (as they did with the British through the British liaison officer onboard USS IWO JIMA). Further, CTF 61 had no details about the Israeli offer; whether, for example, it included MEDEVAC aircraft, or the nature of available hospital facilities in Israel.

When asked why he did not pursue these questions, CTF 61 replied that there was no need—the facility at Akrotiri was already mobilized and evacuation to Cyprus had been arranged.

Subsequent offers of assistance to U.S. representatives conveyed by Israel were promptly and properly referred down the chain of command. By this time, however, evacuation was well underway to hospitals in Cyprus, Germany and Italy.

Discussions between a Commission member and senior officials of the IDF confirmed the substance and spirit of the offers. The discussions also revealed, however, that the Israeli authorities were not really aware of the resources CTF 61/62 had available locally or enroute.

C. Conclusion

The Commission found no evidence that any factor other than the desire to provide immediate, professional treatment for the wounded influenced decisions regarding the Israeli offer; all offers of assistance by Israel were promptly and properly referred to the theater and on-scene commanders. At the time the initial Israeli offer was reviewed by CTF 61, it was deemed not necessary because the medical capabilities organic to CTF 61 were operational and functioning adequately, the RAF hospital at Akrotiri was mobilized and ready, and sufficient U.S. and RAF medical evacuation aircraft were enroute.

*VI. Identification of the dead*

A. Principal Findings

Current USCINCEUR instructions direct that the handling of deaths occurring in Lebanon will be the responsibility of United States Air Forces Europe (USAFE). Following the bombing attack on the BLT Headquarters and the resultant mass casualties, HQ USAFE was appointed by USCINCEUR as the executive agent responsible for coordinating the evacuation, identification, and preparation of the human remains.

The decision was made at Headquarters Marine Corps, in coordination with the Naval Medical Command and Army Mortuary Affairs personnel, to use the Frankfurt mortuary facility. Once the estimate of human remains requiring processing was reasonably established, a split operation was established to accomplish initial identification at a temporary facility at Rhein Main Air Base, with completion of the process and final preparation of the remains at the Frankfurt mortuary.

The first 15 remains were returned to the United States on 28 October. The final shipment occurred on 9 November. The total number of remains processed at Frankfurt was 239. Of these, 237 were U.S. military personnel, one was a French soldier, and one is believed to be a Lebanese civilian. Two additional remains were sent on 10 November to the U.S. Army Identification Facility in Hawaii for final identification.

B. Discussion.

The decision to process the remains of the U.S. military personnel in Germany was premised on the fact that the Frankfurt facility is the largest of the U.S. mortuaries in the EUCOM area, and that it is located near a major USAF air terminal (Rhein Main AB). (When that decision was made, it was estimated that the total KIA would be less than 100.)

The one other facility actively considered was Dover Air Force Base in Delaware,

where mass casualties had been processed in the past. It was considered, however, that the slow, detailed identification process required could best be accomplished away from the anguish and inquiries of families and friends. The Commission found no evidence of manipulation of the processing of remains for political or media relations purposes.

When it became apparent that additional support facilities would be required, the split operation utilizing a temporary identification facility at Rhein Main, was a logical and practical solution to the problem of saturation of the Frankfurt facility. The Commission wishes to make special note of the superb and spontaneous offers of support from virtually every quarter. Personnel augmentation was rapidly provided by all the services and included assistance from the Federal Bureau of Investigation. Invaluable assistance was provided by approximately 800 volunteers from local commands.

Positive identification of human remains is a slow, detailed, and laborious process. Even so, over 98 percent of the human remains were processed within one week of the bombing. Identification of the dead was accomplished expeditiously and precisely.

Complicating factors in the identification process included the destruction or temporary loss of medical and dental records, and the fact that most of the casualties did not have dog tags on their person. The medical and dental records were stored in the building that was bombed. Duplicate medical and dental records are no longer maintained by the Services, and this complicated and prolonged the identification process. Fingerprint files were not available for all personnel; the FBI team provided critical support to obtain fingerprints.

One set of human remains have been tentatively identified as those of a Lebanese civilian, presumably the custodian who lived in the building.

The respective Services notified and assisted the families involved in a sensitive and timely manner. No noteworthy problems in this area were identified to the Commission.

C. Conclusion

The Commission concludes that the process for identification of the dead following the 23 October catastrophe was conducted very efficiently and professionally, despite the complications caused by the destruction and/or absence of identification data.

D. Recommendation

The Commission recommends that the Secretary of Defense direct the creation of duplicate medical/dental records, and assure the availability of fingerprint files, for all military personnel. The Commission further recommends that the Secretary of Defense direct the Service Secretaries to jointly develop improved, state-of-the-art identification tags for all military personnel.

PART NINE—TERRORISM

*I. 23 October 1983—A Terrorist Act*

A. Principal Findings

DOD Directive 2000.12 defines terrorism as "the unlawful use or threatened use of force or violence by a revolutionary organization against individuals or property, with the intention of coercing or intimidating governments or societies, often for political or ideological purposes." The terms are not further defined, but unlawful violence commonly refers to acts considered criminal under local law or acts which violate the Law of Armed Conflict.

The bombing of the BIT Headquarters building was committed by a revolutionary organization within the cognizance of, and with possible support from two neighboring States. The bombing was politically motivated and directed against U.S. policy in Lebanon in the sense that no attempt was made to seize Marine positions or to drive the Marines from the airport.

The BLT Headquarters building provided the greatest concentration of U.S. military forces in Beirut. The lawless environment in Beirut provided ideal cover for collecting intelligence on the target and preparing the attack. The experitise to build a bomb large enough to destroy the BLT Headquarters building existed among terrorist groups in Lebanon, as did the necessary explosives and detonating device. The availability of a suicide driver to deliver the bomb significantly increased the vulnerability of the BLT Headquarters building.

For the terrorists, the attack was an overwhelming success. It achieved complete tactical surprise and resulted in the total destruction of the headquarters, and the deaths of 241 U.S. military personnel.

B. Discussion

The Commission determined that the 23 October 1983 bombing met the criteria of a terrorist act as defined in DOD Directive 2000.12. While those responsible appear to qualify as a revolutionary organization, the Commission notes that the formal DOD definition of terrorism does not include conduct or participation in such acts by sovereign States. Since at least indirect involvement in this incident by Syria and Iran is indicated, the Commission believes that the DOD definition should be expanded to include States which use terrorism either directly or through surrogates.

The use of terrorism to send a political or ideological message can best be understood when viewed from the mindset of a terrorist. The strength of that message depends on the psychological impact generated by the attack. This, in turn, largely depends on the nature and breadth of media coverage. The political message in the 23 October 1983 attack was one of opposition to the U.S. military presence in Lebanon. An attack of sufficient magnitude could rekindle political debate over U.S. participation in the MNF and possibly be the catalyst for a change of U.S. policy. There were ample military targets in Beirut that were vulnerable to terrorist attack, but the symbolic nature of the BLT Headquarters building, and the concentration of military personnel within it, made it an ideal terrorist target of choice. The building was extremely well-constructed and located inside a guarded perimeter.

This apparent security, however, may have worked to the advantage of the terrorists because the target, in fact, was vulnerable to a very large truck bomb delivered by a suicidal attacker. The first challenge would be to gain access to the USMNF perimeter at the parking lot south of the BLT Headquarters building. Once there, the barbed wire barriers could not prevent a large truck from penetrating the perimeter into the compound. Civilian traffic around the airport aided in reaching the parking lot undetected. From that point on, the terrorists had reasonable confidence of succeeding. First, there would be the symbolic success of penetrating the guarded compound. Second, the bomb carried was of such size that once through the perimeter, it would cause sufficient damage and casualties to have a major psychological impact and receive worldwide media coverage.

From a terrorist perspective, the true genius of this attack is that the objective and the means of attack were beyond the imagination of those responsible for Marine security. As a result, the attack achieved surprise and resulted in massive destruction of the BLT Headquarters building and the deaths of 241 U.S. military personnel. The psychological fallout of the attack on the U.S. has been dramatic. The terrorists sent the U.S. a strong political message.

C. Conclusion

The Commission concluded that the 23 October 1983 bombing of the BLT Headquarters building was a terrorist act sponsored by sovereign states or organized political entities for the purpose of defeating U.S. objectives in Lebanon.

*II. International terrorism*

A. Principal Findings

While the figures vary according to collection criteria, overall there has been a three to fourfold increase in the number of worldwide terrorist incidents since 1968. The Defense Intelligence Agency (DIA) notes that over the past decade, 53 percent of all recorded terrorist incidents were directed against U.S. personnel and facilities. Terrorism against military personnel and facilities is becoming more frequent. According to DIA figures, incidents in which U.S. military personnel or facilities were targeted jumped from 34 in 1980, to 57 in 1981, to 67 in 1982.

In addition, there is a growing lethality of terrorism. According to the Rand Corporation, the number of terrorist incidents involving fatalities has been increasing about 20 percent a year since the early 1970's. Of this number, incidents involving multiple fatalities have risen approximately 60% this year, as compared to a 37% average increase of the previous three years. Through November 1983, there have been 666 fatalities due to terrorism, compared to 221 in 1982 and 374 in 1981. Even excluding the massive carnage of the 23 October 1983 bombing of the BLT Headquarters building in Beirut, terrorism has already killed more people in 1983 than in any other year in recent history (See Figure 9-1).

B. Discussion

Terrorism is deeply rooted in the Eastern Mediterranean region. Mr. Brian Jenkins, a recognized expert on terrorism, calls this area "the cradle" of international terrorism in its contemporary form. He notes that the ideological and doctrinal foundations for campaigns of deliberate terrorism, which exist today in Lebanon, emerged from the post-World War II struggles in Palestine and the early guerrilla campaigns against colonial powers in Cyprus and Algeria.

Certain governments and regional entities which have major interests in the outcome of the struggle in Lebanon, are users of international terrorism as a means of achieving their political ends. Such nationally-sponsored terrorism is increasing significantly, particularly among Middle Eastern countries. The State Department has identified 140 terrorist incidents conducted directly by national governments between 1972 and 1982. Of this total, 90 percent occurred in the three year period between 1980-1982. More importantly, 85 percent of the total involved Middle Eastern terrorists. As an integral part of the political/military landscape in the Middle East, international

terrorism will continue to threaten U.S. personnel and facilities in this region.

C. Conclusions

The Commission concludes that international terrorist acts endemic to the Middle East are indicative of an alarming worldwide phenomenon that poses an increasing threat to U.S. personnel and facilities.

*III. Terrorism as a mode of warfare*

A. Principal Findings

The political/military situation in Lebanon is dominated by a host of diverse national, subnational and local political entities pursuing their own ends through an expedient but orchestrated process of negotiation and conflict. The spectrum of armed conflict in Lebanon is bounded by individual acts of terrorism on one end and formal conventional operations on the other. Within these boundaries, warfare continues on three levels: conventional warfare, guerrilla warfare and terrorism. As discussed in part four of this report, the conflict in Lebanon is a struggle among Lebanese factions who have at their disposal regular armies, guerrillas, private militias and an assortment of terrorist groups. The terrorist groups themselves are openly assisted or covertly sponsored by sovereign states, political and religious factions, or even other terrorist groups.

There is little about conflict in Lebanon that reflects the traditional models of war. The distinctions between war and peace are blurred. The use of military force varies from constrained self-defense by the MNF participants, to terrorism by others. Military successes are therefore temporary and hard to measure. Ceasefires have become an inherent part of the process, providing exhausted belligerents with needed respite to regroup, mobilize patron support or switch to a more suitable form of struggle; all of which ensure that the armed struggle will continue in this open-ended fashion.

In Lebanon, violence plays a crucial role in altering an opponent's political situation. Therefore, the solutions are political ones in which the losers are not defeated, but maneuvered into a politically untenable position. Terrorism is crucial to this process because it is not easily deterred by responsive firepower or the threat of escalation. Terrorism, therefore, provides an expedient form of violence capable of pressuring changes in the political situation with minimum risk and cost.

The systematic, carefully orchestrated terrorism which we see in the Middle East represents a new dimension of warfare. These international terrorists, unlike their traditional counterparts, are not seeking to make a random political statement or to commit the occasional act of intimidation on behalf of some ill-defined long-term vision of the future. For them, terrorism is an integrated part of a strategy in which there are well-defined political and military objectives. For a growing number of States, terrorism has become an alternative means of conducting state business and the terrorists themselves are agents whose association the state can easily deny.

The terrorists in Lebanon and the Middle East are formidable opponents. In general, they are intensely dedicated and professional. They are exceptionally well-trained, well-equipped and well supported. With State sponsorship, these terrorists are less concerned about building a popular base and are less inhibited in committing acts which cause massive destruction or inflict heavy casualties. Armed with operational guidance and intelligence from their sponsor, there are few targets beyond their capability to attack. Consequently, they constitute a potent instrument of State policy and a serious threat to the U.S. presence in Lebanon.

B. Discussion

The Commission believes that terrorism as a military threat to U.S. military forces is becoming increasingly serious. As a super power with world-wide interests, the United States is the most attractive terrorist target and, indeed, statistics confirm this observation. Terrorism is warfare "on the cheap" and entails few risks. It permits small countries to attack U.S. interests in a manner, which if done openly, would constitute acts of war and justify a direct U.S. military response.

Combating terrorism requires an active policy. A reactive policy only forfeits the initiative to the terrorists. The Commission recognizes that there is no single solution. The terrorist problem must be countered politically and militarily at all levels of government. Political initiatives should be directed as collecting and sharing intelligence on terrorist groups, and promptly challenging the behavior of those states which employ terrorism to their own ends. It makes little sense to learn that a State or its surrogate is conducting a terrorist campaign or planning a terrorist attack and not confront that government with political or military consequences if it continues forward.

U.S. military forces lack an effective capability to respond to terrorist attacks, particularly at the lower ends of the conflict spectrum. The National Command Authorities should have a wide range of options for reaction. Air strikes or naval gunfire are not always enough. The whole area of military response needs to be addressed to identify a wider range of more flexible options and planning procedures.

State sponsored terrorism poses a serious threat to U.S. policy and the security of U.S. personnel and facilities overseas and thus merits the attention of military planners. The Department of Defense needs to recognize the importance of state sponsored terrorism and must take appropriate measures to deal with it.

C. Conclusion

The Commission concludes that state sponsored terrorism is an important part of the spectrum of warfare and that adequate response to this increasing threat requires an active national policy which seeks to deter attack or reduce its effectiveness. The Commission further concludes that this policy needs to be supported by political and diplomatic actions and by a wide range of timely military response capabilities.

D. Recommendation

The Commission recommends that the Secretary of Defense direct the Joint Chiefs of Staff to develop a broad range of appropriate military responses to terrorism for review, along with political and diplomatic actions, by the National Security Council.

*IV. Military preparedness*

A. Principal Findings

Not only did the terrorist's capability to destroy the BLT Headquarters building exceed the imagination of the MAU and BLT Commanders responsible for the Marine security of the USMNF at BIA, it also surprised the chain of command. From the beginning, the mission statement development and ROE formulation for the USMNF failed to recognize that terrorism is endemic to Lebanon and would constitute a long term threat to the security of the USMNF. The ROE, and supporting instructions, were all written to guide responses to a range of conventional military threats.

Preparatory training for a deploying MAU focuses little on how to deal with terrorism. The only instruction the Commission was able to identify was a one-hour class presented to the infantry battalions by the attached counterintelligence NCO and segments of a command briefing by the U.S. Army 4th Psychological Operations Group. USMC counterintelligence personnel are considered qualified in counterterrorism after attendance at a 5 day Air Force course titled "The Dynamics of International Terrorism." This course provides an excellent overview of terrorism for personnel being assigned to high threat areas, but does not qualify an individual to instruct others regarding terrorism, nor does it provide sufficient insight into the situation in Lebanon to prepare an individual for that environment.

Terrorism expertise did exist at EUCOM Headquarters in the form of the Office of the Special Assistance for Security Matters (OSASM). OSASM had responsibility for the Office of Military Cooperation's (OMC) security in Lebanon. The director of that office understood well the terrorist mindset. After inspecting and evaluating the 18 April 1983 bombing of the U.S. Embassy, the SASM concluded in his report that the Embassy bombing was the prelude to a more spectacular attack and that the U.S. military forces present the "most defined and logical target."

Based on that report, USCINCEUR took a number of initiatives to improve the security of the OMC against terrorists. An OMC Lebanon Security Working Group was established under the chairmanship of OSASM, to track the threat on a day-to-day basis and to take appropriate measures to enhance security when the circumstances warranted. Second, a counterintelligence/security specialist was sent TDY to the OMC to assist the Commander in his anti-terrorism efforts and to keep EUCOM advised of the security situation. Third, a major effort was initiated to reduce the number of OMC personnel billeted in individual buildings. This action was based on the OSASM conclusion that regardless of the security provided by the hotels housing U.S. personnel, determined terrorists of the caliber operating in Lebanon would find a way to penetrate them. OSASM's strategy was to reduce the attractiveness of the target by reducing its political value. Small concentrations of OMC individuals, while vulnerable, would not provide the spectacular results the terrorists were seeking.

The SASM stated that he met with the USMNF Commander and discussed with him the terrorist threat and his plan to disperse OMC personnel. The SASM did not look at the MAU's security, because he considered it improper to ask an operational commander if he could inspect his security. In addition, the SASM did not have a charter to look at MAU security. This changed on 1 November 1983, when DCINCEUR directed that the OMC Lebanon Security Working Group be redesignated the Lebanon Security Working Group and that its charter be expanded to include all U.S. forces in Lebanon.

B. Discussion

Of great concern to the Commission is the military's lack of preparedness to deal with the threat of State sponsored terrorism.

The Commission found two different mindsets in Beirut regarding the nature of the threat and how to counter it. The USMNF units at the airport, behind their guarded perimeter, perceived the terrorist threat as secondary and could not envision a terrorist attack that could penetrate their base and cause massive destruction. The Commission found nothing in the predeployment training provided to the MAU that would assist them to make such an assessment. In the Commission's judgment, the Marines were not sufficiently trained and supported to deal with the terrorist threat that existed on 23 October 1983. At a minimum, the USMNF needed anti-terrorism expertise of the caliber that supported the OMC.

OSASM conducted a responsive anti-terrorist campaign that tried to anticipate changes in the threat and take appropriate measures to counter them. Unfortunately, neither USCINCEUR, the MAU nor OSASM saw the need to coordinate their anti-terrorist efforts, nor did they seem aware that different approaches to security were being pursued by the MAU and by the OMC. Approximately 350 Marines were concentrated in the BLT Headquarters building on the premise that it offered good protection against shelling and other small arms fire, the primary threat. The OMC, however, was dispersing its people on the premise that a large concentration of Americans offered an attractive target which a determined terrorist would find a way to attack. The Commission does not suggest that coordination of the security efforts of the MAU and the OMC would have prevented the disaster of 23 October 1983 because there were many other considerations. It does, however, concur with DCINCEUR's recent decision to expand OSASM's anti-terrorism responsibilities to include all U.S. forces in Lebanon.

Terrorism will continue to be an integral part of conflict in Lebanon and will present difficult challenges to our military forces.

The effective use of military forces in an environment like that in Lebanon needs to be studied and emphasized in our professional military schools. Doctrine, mission development and ROE formulation need to consider the terrorist dimension, particularly as it pertains to the security of U.S. personnel. In the Commission's judgment, organizational support for the USMNF was not sufficiently responsive to the changes in the political/military situation. For missions like this, military organizations have to be tailored to the local environment in a way not required for conventional warfare. If a large intelligence staff or more area specialists are needed, then the organizations need to quickly provide them. Normal programming and budgeting procedures may not be suitable and could delay necessary responses to the point that mission and security are compromised.

The Commission believes that the responsibility for countering terrorists, or operating in terrorist areas, should not be exclusively assigned to special units. Special units are necessary for certain types of responses, but terrorism is a threat to all U.S. forces and all military personnel assigned overseas can expect to encounter terrorism in some form. Consequently, they need some understanding of the terrorist threat and how to combat it. It is a common practice to send personnel to special survival schools when their duties put them in arctic or jungle environments. The same philosophy should apply for hostile environments like that in Lebanon. Such training currently exists in some services for Central America. A similar effort should be considered for Lebanon.

In its inquiry into terrorism, the Commission concluded that the most effective defense is an aggressive anti-terrorism program supported by good intelligence, strong information awareness programs and good defensive measures. Each element plays a critical role in the overall program and none can stand alone. Responses must be commensurate with the threat and the value of the targets. Not everyone or everything can be fully protected. The object is not absolute security, but reduced vulnerability for the individuals and facilities, and diminished chances of success for the terrorist.

In the Commission's judgment, too much faith is put in physical defenses. The British heavily fortified their positions in Palestine after World War II but the terrorists continually came up with ingenious methods to penetrate and attack them. The same is true today. Israel, with its excellent intelligence and capability to fight terrorism, still had its security breached and its military headquarters in Tyre bombed.

C. Conclusion

The Commission concludes that the USMNF was not trained, organized, staffed or supported to deal effectively with the terrorist threat in Lebanon. The Commission further concludes that much needs to be done to prepare U.S. military forces to defend against and counter terrorism.

D. Recommendation

The Commission recommends that the Secretary of Defense direct the development of doctrine, planning, organization, force structure, education and training necessary to defend against and counter terrorism.

PART TEN—CONCLUSIONS AND RECOMMENDATIONS

All conclusions and recommendations of the Commission from each substantive part of this report are presented below.

*1. Part one—The military mission*

A. Mission Development and Execution

(1) Conclusion: (a) The Commission concludes that the "presence" mission was not interpreted the same by all levels of the chain of command and that perceptual differences regarding that mission, including the responsibility of the USMNF for the security of Beirut International Airport, should have been recognized and corrected by the chain of command.

B. The Expanding Military Role

(1) Conclusion: (a) The Commission concludes that U.S. decisions as regards Lebanon taken over the past fifteen months have been, to a large degree, characterized by an emphasis on military options and the expansion of the U.S. military role, notwithstanding the fact that the conditions upon which the security of the USMNF were based continued to deteriorate as progress toward a diplomatic solution slowed. The Commission further concludes that these decisions may have been taken without clear recognition that these initial conditions had dramatically changed and that the expansion of our military involvement in Lebanon greatly increased the risk to, and adversely impacted upon the security of, the USMNF. The Commission therefore concludes that there is an urgent need for reassessment of alternative means to achieve U.S. objectives in Lebanon and at the same time reduce the risk to the USMNF.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense continue to urge that the National Security Council undertake a reexamination of alternative means of achieving U.S. objectives in Lebanon, to include a comprehensive assessment of the military security options being developed by the chain of command and a more vigorous and demanding approach to pursuing diplomatic alternatives.

*2. Part two—Rules of engagement (ROE)*

A. ROE Implementation

(a) The Commission concludes that a single set of ROE providing specific guidance for countering the type of vehicular terrorist attacks that destroyed the U.S. Embassy on 18 April 1983 and the BLT Headquarters building on 23 October 1983 had not been provided to, nor implemented by, the Marine Amphibious Unit Commander.

(b) The Commission concludes that the mission statement, the original ROE, and the implementation in May 1983 of dual "Blue Card-White Card" ROE contributed to a mind-set that detracted from the readiness of the USMNF to respond to the terrorist threat which materialized on 23 October 1983.

*3. Part three—The chain of command*

A. Exercise of Command Responsibility by the Chain of Command Prior to 23 October 1983

(1) Conclusions: (a) The Commission is fully aware that the entire chain of command was heavily involved in the planning for, and support of, the USMNF. The Commission concludes, however, that USCINCEUR, CINCUSNAVEUR, COMISXTHFLT and CTF 61 did not initiate actions to ensure the security of the USMNF in light of the deteriorating political/military situation in Lebanon. The Commission found a lack of effective command supervision of the USMNF security posture prior to 23 October 1983.

(b) The Commission concludes that the failure of the operational chain of command to correct or amend the defensive posture of the USMNF constituted tacit approval of the security measures and procedures in force at the BLT Headquarters building on 23 October 1983.

(c) The Commission further concludes that although it finds the USCINCEUR operational chain of command at fault, it also finds that there was a series of circumstances beyond the control of these commands that influenced their judgment and their actions relating to the security of the USMNF.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense take whatever administrative or disciplinary action he deems appropriate, citing the failure of the USCINCEUR operational chain of command to monitor and supervise effectively the security measures and procedures employed by the USMNF on 23 October 1983.

*4. Part four—Intelligence*

A. Intelligence Support

(1) Conclusion: (a) The Commission concludes that although the USMNF Commander received a large volume of intelligence warnings concerning potential terrorist threats prior to 23 October 1983, he was not provided with the timely intelligence, tailored to his specific operational needs, that was necessary to defend against the broad spectrum of threats he faced.

(b) The Commission further concludes that the HUMINT support to the USMNF Commander was ineffective, being neither precise nor tailored to his needs. The Commission believes that the paucity of U.S. controlled HUMINT provided to the USMNT Commander is in large part due to policy decisions which have resulted in a U.S. HUMINT capability commensurate with the resources and time that have been spent to acquire it.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense establish an all-source fusion center, which would tailor and focus all-source intelligence support to U.S. military commanders involved in military operations in areas of high threat, conflict or crisis.

(b) The Commission further recommends that the Secretary of Defense take steps to establish a joint CIA/DOD examination of policy and resource alternatives to immediately improve HUMINT support to the USMNF contingent in Lebanon and other areas of potential conflict which would involve U.S. military operating forces.

*5. Part five—Pre-attack security*

A. Command Responsibility for the Security of the 24th MAU and BLT 1/8 Prior to 23 October 1983

(1) Conclusion: (a) The combination of a large volume of specific threat warnings that never materialized and the perceived and real pressure to accomplish a unique and difficult mission contributed significantly to the decisions of the MAU and BLT Commanders regarding the security of their force. Nevertheless, the Commission concludes that the security measures in effect in the MAU compound were neither commensurate with the increasing level of threat confronting the USMNF nor sufficient to preclude catastrophic losses such as those that were suffered on the morning of 23 October 1983. The Commission further concludes that while it may have appeared to be an appropriate response to the indirect fire being received, the decision to billet approximately one quarter of the BLT in a single structure contributed to the catastrophic loss of life.

(b) The Commission concludes that the BLT Commander must take responsibility for the concentration of approximately 350 members of his command in the BLT Headquarters building, thereby providing a lucrative target for attack. Further, the BLT Commander modified prescribed alert procedures, thereby degrading security of the compound.

(c) The Commission also concludes that the MAU Commander shares the responsibility for the catastrophic losses in that he condoned the concentration of personnel in the BLT Headquarters building, concurred in the modification of prescribed alert procedures, and emphasized safety over security in directing that sentries on Posts 4, 5, 6, and 7 would not load their weapons.

(d) The Commission further concludes that although it finds the BLT and MAU Commanders to be at fault, it also finds that there was a series of circumstances beyond their control that influenced their judgment and their actions relating to the security of the USMNF.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense take whatever administrative or disciplinary action he deems appropriate, citing the failure of the BLT and MAU Commanders to take the security measures necessary to preclude the catastrophic loss of life in the attack on 23 October 1983.

*6. Part seven—post-attack security*

A. Redeployment, Dispersal, and Physical barriers

(1) Conclusions: (a) The Commission concludes that the security measures taken since 23 October 1983 have reduced the vulnerability of the USMNF to catastrophic losses. The Commission also concludes, however, that the security measures implemented or planned for implementation for the USMNF as of 30 November 1983, were not adequate to prevent continuing significant attrition of the force.

(b) The Commission recognizes that the current disposition of USMNF forces may, after careful examination, prove to be the best available option. The Commission concludes, however, that a comprehensive set of alternatives should be immediately prepared and presented to the National Security Council.

(2) Recommendation: (a) Recognizing that the Secretary of Defense and the Joint Chiefs of Staff have been actively reassessing the increased vulnerability of the USMNF as the political/military environment in Lebanon has changed, the Commission recommends that the Secretary of Defense direct the operational chain of command to continue to develop alternative military options for accomplishing the mission of the USMNF while reducing the risk to the force.

*7. Part eight—casualty handling*

A. On-Scene Medical Care

(1) Conclusion: (a) the Commission concludes that the speed with which the on-scene U.S. military personnel reacted to rescue their comrades trapped in the devastated building and to render medical care was nothing short of heroic. The rapid response by Italian and Lebanese medical personnel was invaluable.

B. Aeromedical Evacuation/Casualty Distribution

(1) Conclusions: (a) The Commission found no evidence that any of the wounded died or received improper medical care as a result of the evacuation or casualty distribution procedures. Nevertheless, the Commission concludes that overall medical support planning in the European theater was deficient and that there was an insufficient number of experienced medical planning staff officers in the USCINCEUR chain of command.

(b) The Commission found that the evacuation of the seriously wounded to U.S. hospitals in Germany, a transit of more than four hours, rather than to the British hospital in Akrotiri, Cyprus, a transit of one hour, appears to have increased the risk to those patients. Similarly, the Commission found that the subsequent decision to land the aircraft at Rhein Main rather than Ramstein, Germany, may have increased the risk to the most seriously wounded. In both instances, however, the Commission has no evidence that there was an adverse medical impact on the patients.

(2) Recommendations: (a) The Commission recommends that the Secretary of Defense direct the Joint Chiefs of Staff, in coordination with the Services, to review medical plans and staffing of each echelon of the operational and administrative chains of command to ensure appropriate and adequate medical support for the USMNF.

(b) The Commission further recommends that the Secretary of Defense direct USCINCEUR to conduct an investigation of the decisions made regarding the destination of aeromedical evacuation aircraft and the distribution of casualties on 23 October 1983.

C. Definitive Medical Care

(1) Conclusion: (a) The Commission concludes that the definitive medical care provided the wounded at the various treatment facilities was excellent, and that as of 30 November 1983, there is no evidence of any mortality or morbidity resulting from inappropriate or insufficient medical care.

D. Israeli Offer of Medical Assistance

(1) Conclusion: (a) The Commission found no evidence that any factor other than the desire to provide immediate, professional treatment for the wounded influenced decisions regarding the Israeli offer; all offers of assistance by Israel were promptly and properly referred to the theater and on-scene commanders. At the time the initial Israeli offer was reviewed by CTF 61, it was deemed not necessary because the medical capabilities organic to CTF 61 were operational and functioning adequately, the RAF hospital at Akrotiri was mobilized and ready, and sufficient U.S. and RAF medical evacuation aircraft were enroute.

E. Identification of the Dead

(1) Conclusion: (a) The Commission concludes that the process for indentification of the dead following the 23 October 1983 catastrophe was conducted very efficiently and professionally, despite the complications caused by the destruction and/or absence of identification data.

(2) Recommendation: (a) The Commission recommeds that the Secretary of Defense direct the creation of duplicate medical/dental records, and assure the availability of fingerprint files, for all military personnel. The Commission further recommends that the Secretary of Defense direct the Service Secretaries to develop jointly improved, state-of-the-art identification tags for all military personnel.

*8. Part nine—Military response to terrorism*

A. A Terrorist Act

(1) Conclusion: (a) The Commission concludes that the 23 October 1983 bombing of the BLT Headquarters building was a terrorist act sponsored by sovereign States or organized political entities for the purpose of defeating U.S. objectives in Lebanon.

B. International Terrorism

(1) Conclusion: (a) The Commission concludes that international terrorist acts endemic to the Middle East are indicative of an alarming world-wide phenomenon that poses an increasing threat to U.S. personnel and facilities.

C. Terrorism as a Mode of Warfare

(1) Conclusion: (a) The Commission concludes that state sponsored terrorism is an important part of the spectrum of warfare and that adequate response to this increasing threat requires an active national policy which seeks to deter attack or reduce its effectiveness. The Commission further concludes that this policy needs to be supported by political and diplomatic actions and by a wide range of timely military response capabilities.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense direct the Joint Chiefs of Staff to develop a broad range of appropriate military responses to terrorism for review, along with political and diplomatic actions, by the National Security Council.

D. Military Preparedness

(1) Conclusion: (a) The Commission concludes that the USMNF was not trained, organized, staffed, or supported to deal effectively with the terrorist threat in Lebanon. The Commission further concludes that much needs to be done to prepared U.S. military forces to defend against and counter terrorism.

(2) Recommendation: (a) The Commission recommends that the Secretary of Defense direct the development of doctrine, planning, organization, force structure, education and training necessary to defend against and counter terrorism.

## AFGHANISTAN: THE FORGOTTEN WAR

Mr. BYRD. Mr. President, 4 years after the Soviet invasion of Afghanistan we hear and read very little about that brutal war. But, after 4 years of courageous struggle, the Afghan resistance fighters have overcome traditional rivalries and are forming a unified front against Soviet aggression. A recent issue of Newsweek quotes U.S. intelligence sources as saying that the freedom fighters are working together and fighting better. In some areas, the Afghan rebels so completely control the countryside that isolated Soviet garrisons must be resupplied by air because freedom fighters control all roads.

Two articles in the Wall Street Journal of January 17, 1984, point out the importance of continued attention to the gallant struggle underway in Afghanistan. As one points out, the Afghan freedom fighters are making great gains, though world attention for their plight has declined. The other article reports that the Soviets are engaged in massive efforts to strip Afghanistan of its natural resources.

Mr. President, I believe it is important that the American people be aware of the heroism and the progress of the freedom-loving peoples of Afghanistan.

I believe that we should not let this sordid and brutal invasion by the Soviets be forgotten. We should not let the memory of Afghan students standing before the rifles of Soviet soldiers and being shot down in cold blood fade from our view. We should not let the indications that chemical warfare is being utilized against the Afghans go uncriticized and unnoticed.

There was much ado about the American press not being allowed to go to Grenada. I hope that the press throughout the world will rise up in indignation and ask to report from an inside view what is going on in Afghanistan. Not that that expression of indignation by the world press would be heeded by the Soviets, but nevertheless in good conscience it should be made, and even though we may anticipate the negative response from the Soviet Union, yet that response should be spread on the records of history.

The Afghans have very bravely stood their ground and with great losses. Millions of Afghans or at least hundreds of thousands have been forced to leave the country and they have done so rather to subject themselves to the slavery that would be imposed upon them by the Soviet aggressors.

The Soviet Union bit off more than it thought it would have to chew, and I am quite sure that there has been disappointment and chagrin within the Soviet hierarchy as to the results of the invasion. I think the Soviets met with greater resistance than they anticipated. It is taking longer than they anticipated for them to subjugate the very independent and brave people of Afghanistan.

Nor can I understand why the Moslem world does not rise up in anger and in righteous indignation against the Soviet invasion of Afghanistan. I cannot understand why the Moslem population inside the Soviet Union has not become very restive as they see their fellow Moslems in Afghanistan being maimed and killed by Soviet soldiers.

It is something which we should talk about more, and, as far as I am concerned, I have tried to call attention frequently on this floor to what is going on before the eyes of the world, which the eyes of the world to a considerable extent fail to see. It is a kind of international glaucoma which removes from the periphery of the vision something that is very sordid, very brutal, and we should not allow this to be the case.

I think it is our duty to continue to talk about this brutal invasion, and continue to support in whatever way we can, continue to urge that the world press be allowed into Afghanistan. Why do not the Soviets wish the press to see and to be able to report on what is going on? Surely the Soviets perfer to keep hidden that which should be brought to light.

Mr. President, I ask unanimous consent to have printed in the RECORD articles from the Wall Street Journal of January 17, 1984, entitled "Unheralded Afghans In Their Finest Hour," and "Afgan Resources Flowing to U.S.S.R. Despite the War; Hungary Seek Dollars."

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

UNHERALDED AFGHANS IN THEIR FINEST HOUR

(By Maggie Gallagher and Charles Bork)

Afghanistan used to be news. When the Russians invaded in 1979, the U.S. government was shocked, the American people were outraged and the U.S. media were interested. In the years since, Russian brutality in Afghanistan has become passe. One of the most important conflicts of the decade has all but disappeared from public view.

For the first eight months of 1980, the year following the Soviet invasion, the index to the New York Times lists more than 15 pages of articles devoted to Afghanistan. But during the same period in 1983, the listings for Afghanistan drop to only 1½ pages.

Over the past year, stories the media deemed the most newsworthy were either that the Soviets are invincible, or that the U.S.-sponsored peace negotiations between Pakistan and Kabul were progressing very nicely. After three years of threadbare, mostly third-hand coverage of the war itself, the barons of public opinion suggested that peace for Afghanistan was soon to be arranged between representatives of Pakistan and the Soviet-controlled regime of Babrak Karmal. Now, as these speculations become untenable, some journalists attribute the failure of the negotiations to lack of U.S. support.

The indirect talks between the governments of General Zia and President Karmal aim to find a diplomatic solution that will bring about a peaceful withdrawal of Soviet troops from Afghanistan. Pakistan is a party to these negotiations because three million Afghan refugees have settled within its borders. Pakistan is also the main route through which what outside military aid the mujahedeen receives is channeled. It is one of those polite diplomatic fictions that President Karmal, whose government remains in power only by virtue of Soviet tanks, is the representative from Afghanistan in these negotiations.

The Soviets have adroitly used these negotiations to mitigate the political damage they incur from their occupation of Afghanistan. The invasion caused the Soviet Union to lose credibility in much of the Third World and blunted its carefully cultivated image in Europe as the peace-loving superpower. By allowing the Karmal government to negotiate, the Soviets raise hopes that a peaceful resolution to the war is just around the corner—making the U.S. appear the aggressive power for continuing to urge the mujahedeen to resist.

There are many problems with the peace plan under discussion, but the insurmountable stumbling block is the Soviet Union's insistence on its right to maintain a government in Kabul that is "friendly" to it. A friendly government is one that would retain Soviet military advisers and could be counted on to reissue the famed "invitation" to an invasion should the Afghan freedom fighters become too successful.

But how can Afghanistan have a government that is at once acceptable to the Soviet Union and the Afghan people? There is, after all, some difference of opinion between the two sides: One will tolerate only a Soviet-controlled regime, and the other wants to kill every Russian in Afghanistan, along with the Russians' collaborators and sympathizers.

Hundreds of thousands of Afghans have died since the Soviets began their war on Afghanistan. The fighting hasn't been limited to soldiers. Because the vast majority of Afghans oppose the Soviet presence, the Soviets bomb whole villages and round up and massacre unarmed civilians. In the long run, the cruelest practice of the Russians is the firebombing of harvest-ripe fields. A country that five years ago was on the brink of agricultural self-sufficiency now faces massive starvation. The Afghanistans will not soon forgive the Soviet Union.

One headline announced earlier this year that the occupiers were "Nearing a Pullout From Afghanistan." Accompanying this optimism regarding Soviet intentions in the area are some oddly pessimistic accounts of

the chances of the Afghan resistance. Here, for example, is an excerpt from a piece by Drew Middleton that recently appeared in the New York Times:

"... Afghanistan is not the Russians' Vietnam. The Soviet Union faces many military and political problems in the country, but none are of a magnitude to suggest that the Russians face military defeat or political turbulence."

Stories like these imply that, in the long run, the Afghan freedom fighters are sure to be crushed, and that the people of Afghanistan had best be satisfied with concluding a quick deal with the Soviet Union.

It is true that without the kind of substantial military assistance the U.S. seems unwilling to provide, the Afghan resistance won't be able to reach its ultimate goal: the retreat of Soviet troops and the overthrow of the Karmal regime. Neither, however, has the Soviet Union been able to defeat the freedom fighters and bring Afghanistan under Russian control. The 1983 edition of "Soviet Military Power," published by the Pentagon, concludes that the Soviets "find themselves embroiled in a counterinsurgency campaign that cannot be won with current force levels."

In reality, the military success of the Afghan resistance has been extraordinary. Although they lack weapons, money and organization, the mujahedeen have fought more than 100,000 Soviet troops to a standoff. Most of the countryside is under resistance control; the mujahedeen control more territory now than they did immediately following the Soviet invasion. In addition, close to one-third of the provincial capitals are in resistance hands. In the larger cities, the mujahedeen are unlikely to surrender at the negotiating table victories won at great cost on the battlefield.

During the 1920s and 1930s, in the course of subduing Central Asia, the U.S.S.R. killed more than four million people. The events in Afghanistan prove that such brutality didn't die with Stalin. The success of the Afghan rebels demonstrates that—even in this technological age—courage, patriotism and faith are still the most valuable resources a people can possess.

The French journalist Gerard Chaliand wrote, "one must admire the courage of the Afghans who, alone among peoples overrun by the Russians, have refused to acknowledge this foreign occupation and continue to fight against all odds." In their own backward, ignorant, uneducated way, the Afghan freedom fighters have refused to realize that their defeat is inevitable.

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AFGHAN RESOURCES FLOWING TO U.S.S.R. DESPITE THE WAR; HUNGARY SEEKS DOLLARS

(By Amity Shlaes)

Being bogged down for four years in a military campaign against Afghanistan's Moslem tribesmen hasn't stopped the Soviet Union from exploiting and importing Afghanistan's natural resources—gas, copper and, reportedly, uranium.

The extent of this exploitation isn't known for certain. The Afghan rebels, including former officials of the Soviet-backed government's Ministry of Mines, say the Soviets credit the value of the resource imports against Afghanistan's large debt to Moscow. Even so, sources agree that the value of the Afghan exports don't come close to repaying Moscow for the cost to it of propping up the communist government in Kabul. The State Department estimates that cost to be $12 billion since the Soviets invaded Afghanistan in December 1979.

Natural gas, Afghanistan's largest export, is piped from two large fields in northern Afghanistan to Soviet Central Asia. Radio Kabul, the government radio station, reported recently that 84 billion cubic feet of gas was exported to the Soviet Union last year. But according to the Washington-based Institute of Strategic Trade, the Soviets have pumped as much as four times that amount of Afghan gas annually in recent years.

No one outside the Soviet Union knows for sure, perhaps not even the Afghan regime, because the meters that measure the gas flow are on the Soviet side of the border. The Soviet Union developed Afghanistan's natural gas fields in the late 1960s, and it has been the principal customer.

The rebel tribesmen have blown up part or all of the pipeline at least three and perhaps as many as seven times since the invasion, according to the Center for Afghanistan Studies, affiliated with the University of Nebraska.

"What keeps the Soviet Union so interested in (Afghanistan's) gas is that they need it for development in the Central Asian Soviet republics," says Thomas Gouttierre, the center's director. Some of the gas, he says, serves to replenish gas that is piped from the Soviet Union to Western Europe.

More recently, the Soviets have launched a copper mining and smelter project near Kabul, according to the center. If the project is completed in the next several years it could give Afghanistan about 2 percent of world production, John F. Shroder of the center said in a report. Some predictions put Afghanistan's copper ore reserves at 3.5 million metric tons.

And according to a former member of the Afghan Ministry of Mines who defected recently to Pakistan, the Soviets have begun mining uranium at newly discovered fields near Kabul.

Hungary is the Soviet bloc's most successful exporter of farm products—and it appears to be seeking recognition of that fact from Moscow.

American economists who monitor Soviet bloc affairs read that interpretation into a recent article on Hungary's agricultural achievements in the Budapest newspaper Nepszava (People's Voice). The newspaper noted that Hungarian farms increased production 42 percent between 1970 and 1981, one and a half times better than the next best East bloc agricultural exporter, Bulgaria. The article said that even such relatively high growth was "inadequate" and that more should be done to increase exports of farm goods.

The article is part of a Hungarian campaign to get the Soviet Union to renew an 8-year-old trade agreement under which Moscow pays U.S. dollars to Hungary for agricultural shipments above a certain level. In turn, the Hungarians pay dollars for Soviet petroleum above a certain amount.

Hungary earned $719 million from this arrangement in 1982, according to Northwestern University economist Michael Marrese, who studied Hungarian government statistics. Without this hard-currency windfall, the Hungarians would have faced an overall dollar trade deficit of about $200 million, Mr. Marrese said.

The Hungarians are particularly eager to renew the Soviet agreement, which expires next year, because of their tenuous credit position with Western banks.

But the Soviets aren't sure. Faced with slowing economic growth and lower world market prices for farm goods, they aren't interested in continuing such high subsidies to Hungary, according to Mr. Marrese.

The good news for Poles is that their government has bowed to public pressure and trimmed food-price increases that were scheduled for the new year. But the bad news is that some food, specifically meat, may be harder to get when the higher prices go into effect next month.

This at least is the suggestion in the Polish daily Zycie Warszawy (Warsaw Life). An article by university professor Ryszard Manteuffel notes that Poland's 1983 summer animal census showed that the cattle population since the previous summer had dropped 5.4 percent, while the number of pigs was down 20 percent. This situation would probably result in distribution of more lower-quality meat products and shortages at restaurants and stores that sell processed meats, he said. Prof. Manteuffel predicted the government, the nation's main meat distributor, would purchase 16 percent less meat this year.

The February price increase will vary from a low of 8 percent for lard to as high as 42 percent for ham, the state-controlled news media announced last week. Prices will rise for such staples as bread and butter, but won't be increased for some basic food items such as margarine, vegetable oil and low-quality beef, the government said.

Rationing will continue for such staples as rice, sugar, meat, and grains, which remain in short supply, the Associated Press reported from Warsaw.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, how much time do I have remaining under my control?

The PRESIDING OFFICER. The Senator has 18 minutes and 50 seconds remaining.

Mr. BYRD. I thank the Chair.

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## THE ADMINISTRATION'S LATEST RECORD: OUR $69.4 BILLION TRADE DEFICIT

Mr. BYRD. Mr. President, last Friday, we learned from the Department of Commerce that the Nation suffered a merchandise trade deficit of $69.4 billion in 1983. This is the largest trade deficit in our history, and its cause can be found in an administration policy which promotes high interest rates, high deficits, and an overvalued dollar.

There is a real danger that the nearly $70 billion trade shortfall will strike most people as one more numbing, huge dollar figure cooked up in Washington. There is a temptation to think of a trade deficit as being like the national debt. Both are at record levels but it is very hard for most of us

to appreciate how these enormous numbers translate into the economic realities that govern our daily lives. I was not surprised to read in a recent public opinion poll that deficits figured near the bottom of a list of the concerns that people have. It is hard to be concerned about a problem that seems to have nothing to do with our lives and our pocketbooks. Fifteen percent of the people in my State are unemployed, as of the last report. They are concerned about finding a job, and keeping their families fed in the meantime. A trade deficit seems very far away, indeed, when you are in their situation.

But we should not deceive ourselves. One of the reasons that so many Americans are out of work is precisely because of these enormous trade shortfalls. High interest rates have given us a dollar that is overvalued against other currencies by as much as 20 percent. This artificial strength means that foreign buyers must pay more for American goods. Even though our companies are struggling to stay competitive and our workers have been forced to accept wage increases that last year averaged below the rate of inflation, we cannot make our products competitive in the international market. In fact, the high dollar has made American firms 28 percent less competitive than they were in 1979. This has caused a major slowdown in domestic output. Companies cannot sell their products overseas, so they do not increase production capacity. Workers are laid off.

The Department of Commerce estimates that a $1 billion decline in exports results in the loss of 25,000 American jobs. West Virginia ranks third in the Nation in the percentage of its total manufactured shipments which go to export. When you put those two facts together, it becomes a great deal easier to understand why the trade deficit has a very real impact on our lives. And it is easy to see that last year's record trade deficit has had a profound effect on the lives of West Virginians, and of all Americans.

Many of the issues I have raised were discussed by my colleague from Maryland, Senator CHARLES MATHIAS, in his address last week to the Conwest Conference on the U.S. Economy and the International Marketplace. As chairman of the Foreign Relations Subcommittee on International Economic Policy, Senator MATHIAS brings a deep insight to this problem of high trade deficits and high interest rates. He challenges the policies of the current administration and brings home the very real dangers that those policies hold for the economic life of this country.

Mr. President, I ask unanimous consent that the statement by Senator MATHIAS be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE U.S. ECONOMY AND WORLD ECONOMIC RECOVERY: ENGINE OR CABOOSE?

(By Senator Charles McC. Mathias, Jr.)

I would like to congratulate Conwest-USA, Vice-chairman John Buchanan, and the Bank of America for putting together this important conference. Any effort to expand the economic horizon of U.S. policymakers beyond our shoreline is to be applauded.

Economics has always been known as the "dismal science" and one accepted method of making it seem less dismal is by the use of metaphor. As a result, the language of economists is rich in metaphor. They speak of economic expansions and economic contractions; credit balloons and credit crunches; bear markets and bull markets, and booms and busts. Even that dreaded word "inflation" is a metaphor.

So when I was asked to talk today about whether the U.S. economy is the engine or the caboose for world economic recovery, I was not surprised. As a layman, I welcome such metaphors. If I had to substitute for the word "inflation" the phrase "the annual percentage increase in price levels" or—worse yet—the "fixed-weighted GNP price deflator", you and I would really be in the dismal depths.

On the whole, I like the engine/caboose image. It suggests that the United States economy cannot be analyzed in isolation from the rest of the world. Nor can the world economy be analyzed isolated from the United States. But, in a world of growing interdependence, the engine/caboose metaphor has its limitations. The U.S. economy certainly is powerful enough to be the locomotive for the world recovery, but in many ways it needs to be pulled along by others. Our economic security depends on the economic policies of other nations; their economic security depends to an enormous degree on us. That's what interdependence means. So we really need a more organic image for the world economy than the linear metaphor of a train.

Few Americans realize what a tremendous capacity for good or bad U.S. economic policies have for world economic performance. We represent about 25 percent of total world production of goods and services. The dollar is the currency of exchange for about 80 percent of the transactions in the noncommunist world and it comprises three-quarters of central bank reserves. Despite our recent abysmal trade performance the United States still exports about half of all goods and service exported in the world. Obviously the United States has a greater influence on the world economy than any other country. And, even if that doesn't necessarily make us the engine for world recovery, it does give us special responsibilities.

I wish I could report that in the present U.S. recovery we are living up to those responsibilities, but I cannot.

U.S. domestic and international economic policies are imposing a terrible burden on the world: High interest rates, skyrocketing dollar exchange rates, misleading low U.S. inflation, and exploding U.S. trade deficits. Our economic partners are up in arms about these policies, and we should pay attention to their complaints. Eventually the distortions U.S. economic policies are creating in the global economy will rise up to smite us too.

Three years ago the Administration and Congress enacted a domestic economic policy of massive tax cuts combined with a massive shift of federal spending toward defense procurements. The supposition was that this policy would produce a high savings, high investment economy. I didn't buy that supposition and was the only Republican in the Senate to vote against the 1981 Economic Recovery Tax Act. At the time, I took a lot of heat for that vote, but things have worked out just as I feared they would. That policy produced the worst recession in post-war history.

Now, we are again embarked on a dangerous economic course. We are buying recovery with the misguided tactic of encouraging high consumption at the price of low investment. The time-bomb tied to this policy is the enormous federal deficit programmed for this year and for every single year in the foreseeable future.

The heart of the problem with the deficits, of course, is the record high real interests rates they produce and the resulting record high dollar. No one seems to know exactly why real interest rates are so high, but at least three factors, all deficit-related come into the equation:

First, is the "crowding out" fear of financial markets. The expectation that the borrowing needs of the government will clash with the borrowing needs of the private sector.

Second, markets are apprehensive that, with so demonstrably little leadership in Washington, we will succumb to the temptation of trying to inflate our way out of this deficits crisis.

Third, financial markets may be pricing interest rates at the point necessary to attract the foreign capital necessary to finance budget shortfalls.

Whatever the reason for high interest rates, they have attracted foreign capital to this country like ants to a picnic. Billions and billions of converted foreign currencies have flooded into the United States, driving up the dollar to the point where U.S. exporters can no longer compete abroad and U.S. manufacturers must compete against a surge of cheaper imports.

I am sure you have already heard the statistics. We will have a merchandise trade deficit of around $70 billion for 1983—the largest in history—and we can expect it to be well above $100 billion for 1984. Data Resources Inc., reports that, because of the high dollar, American companies are about 28 percent less competitive today than they were in 1979.

You've no doubt also already heard some vivid, anecdotal testimony today about the damage being done to U.S. firms by the high dollar. But I'd like you to think for just a minute about what a high dollar means for Third World debtor countries and oil importers. Most international debts are reckoned in dollars. High dollar interest rates already have the poor countries on their knees, now the high dollar exchange rate is crushing them. As the dollar skyrockets, Third World debtors must sell more and more commodities to meet the same dollar loan payments. Attempts to sell more commodities tends to lower their price, which makes the debtor nation's predicament even worse.

Oil is also priced in dollars, so most oil importers have not been able to enjoy the lower price of petroleum which, incidentally, helps to keep our inflation rate down. West Germany, for instance, now must pay three-and-a-half percent more in Deutsche Marks for oil in the spot market than it did

five months ago, even though the dollar cost of oil has dropped three percent.

The massive influx of foreign capital into the United States, which has bid the dollar so high and wrought such havoc, has had at least one dramatic short-term benefit. It provides all the capital we need to finance our huge deficits, thus delaying any "crowding out" phenomena. So far, there is no shortage of investment capital in the United States and the cheaper imports created by the over-priced dollar also hold down inflation.

But these so-called benefits are a dangerous illusion.

Foreign capital could leave this country as fast as it came in. Eventually currency traders are going to get cold feet contemplating the fundamental contradiction between a high dollar and a dangerously flawed U.S. trade position. If they decide to move out of the dollar quickly, billions could leave our country, worsening the expected crunch between the credit demands of the U.S. Treasury and the private sector. Double digit interest rates like those of the Carter years would be a distinct possibility, and we would be headed toward another global recession.

The bottom line to all of this is that unless we get the U.S. budget deficits under control there is little hope for healthy, extended economic expansion for either the United States or the world—both engine and caboose will be derailed.

By steadily reducing the deficit and allowing the dollar to decline slowly to a more realistic value, we could prevent the train wreck ahead. But that brings us to the question of political will. The old adage "where there's a will, there's a way" is operative here. And, regrettably, all evidence points to a lack of political will at both ends of Pennsylvania Avenue this year. Raising taxes, one of the bitter pills that must be swallowed to bring the deficits down, doesn't play well in New Hampshire or anywhere else in an election year.

Nonetheless, a group of responsible and concerned members of the Senate has repeatedly offered to work with the Administration on a deficit reduction package. Their overtures have been consistently spurned. And, until the President's State of the Union address last night, the Administration seemed determined to stick with a policy that insures another 12 months of declining trade and rising deficits.

I welcome the President's apparent change of heart on this because the country, and the rest of the world, cannot afford to wait another year for action. We must confront the deficits now.

Of course, this is also a delicate issue for the Congress, the kind of issue that is usually saved for a lame-duck session where political damage can be minimized. So, perhaps we should pursue an ingenious solution Senator Tsongas proposed earlier this week. Confronting the lack of political will issue directly, Senator Tsongas suggested that the Majority Leader convene a mini-lame-duck session immediately to come up with a deficit reduction package. As he pointed out:

There are four of us in this body not running for reelection—myself, Senator Baker, and the distinguished Senators from West Virginia and Texas, Mr. Randolph and Mr. Tower.

One liberal, two moderates, one conservative. Two Democrats and two Republicans. The symmetry is rather clear. . . .

We are a uniquely positioned foursome. Perhaps we can provide a desperately needed service to our country before we return to private life.

I endorse Senator Tsongas' proposal. Such a service is so desperately needed that I predict that winged ducks as well as lame ducks will flock to the cause. I hope all of you here today will do your part pushing for action now to curb these fatal deficits.

The deficits are like a drug. We are enjoying the high right now, but we will pay a price for them far beyond any transitory pleasure they might give us. And like drug abusers, we hurt not only ourselves but those around us. The world economy, along with the United States economy, is going to pay the price for our folly.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BURDICK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DANFORTH). Without objection, it is so ordered.

## SPEAK ENGLISH, PLEASE!

Mr. BURDICK. Mr. President, last September, I cosponsored Senate Joint Resolution 167, an amendment to the Constitution to designate English the official language of the Nation. I take pride in my cosponsorship, for I know that the protection of our common language is an urgent item worthy of my colleagues' attention.

I have been asked several times just what it is that this amendment would do, and I want to take this opportunity to respond to this important question. The answer may well disappoint those who believe that a constitutional amendment should bring about profound and fundamental changes in our society. The English language amendment—the ELA—will alter very little in the lives of most Americans. Elegant French restaurants will continue to print French menus; seminarians will continue their Latin studies; our Jewish youngsters will continue to attend Hebrew school; opera lovers will still hear their favorite works in Italian, German, or French; as before, immigrant families and friends will meet and greet each other in their native tongue; high schools and colleges will go on teaching foreign languages as an academic subject—hopefully to more students and in better ways in the future than in the past. Our precious first amendment will continue to protect free speech, as it always has and as it always must.

The ELA, then, will not create any great upheavals in American society, and that, indeed, is precisely our intention. It will formally grant a measure of legal protection for English, our historic language, and thus assure that its primacy does not ever slip away from us.

The ELA is the path of prudence. The English language has been the centripetal force in American society, bringing together in the rewards and obligations of citizenship people from all races, religions, and cultural traditions. Americans know instinctively that, without a common language, our differences, now a source of national strength and personal pride, would become unmanageable and irreconcilable. For that reason, our definition of American citizenship has always included an acceptance—though not necessarily full mastery—of our language.

We now find ourselves in the midst of the largest immigration wave in American history. Because so many new immigrants speak the same language, we are drifting toward ever greater quasi-official recognition of that language. For too long, we have allowed ourselves to be pressured into giving up on the time-tested ways of acculturating new immigrants. In too many cases, we have permitted English to take a back seat in the public schools, while we instruct non-English-speaking students in their native language. We have acquiesced to separating English from the essence of citizenship, and while our naturalization laws still call for a knowledge of simple English, our voting laws require us to provide ballots and voting materials in certain foreign languages. Instead of expecting applicants for publicly subsidized benefits to struggle with standard application forms, we have taken on the burden of translating these government forms into the applicant's native language.

The same trends are at work in State and local governments. In 30 States, an applicant for a driver's license need not know English to get an operator's license—the test is given in the applicant's preferred language. Some States have given civil service examinations in a foreign language, as well as professional licensure examinations in such fields as medicine, engineering, and nursing.

What started out nearly two decades ago as a gesture of good will and courtesy toward those newly joining our society has been reinterpreted as a matter of "language rights" and, all too often, this has been accompanied by resistance to the learning of our common language. In the absence of any protection or formal acknowlegement of the uniqueness of English, the trend toward the total acceptance of non-English speaking citizens into every facet of society will continue to grow. On the contrary, that trend must be stemmed.

The suggestion that the English language amendment is the antithesis of bilingualism is unfounded. Bilingualism—and indeed multilingualism—is absolutely necessary, if not the primary ingredient, in bringing together

the peoples of the various nations and cultures of this world. We must continue to encourage such interaction. What must be discouraged are practices which allow citizens of this country not to learn English.

Therefore, in fact, the ELA is opposed to monolingualism where the language is not English. In order for this country to strengthen and in order for its individual citizens to progress, to achieve higher goals, and to compete with fellow citizens in education, in employment, and in political stature, we must all know English. Our former colleague, Sam Hayakawa of California, said it best when he noted:

> The language we share is at the core of the identity as citizens, and our ticket to full participation in American political life. We can speak any language we want at the dinner table, but English is the language of public discourse, of the marketplace, and of the voting booth.

An indication of the support for Sam Hayakawa's position on the language issue is the extraordinary success of U.S. English, a national public interest organization founded just a year ago by him, upon his retirement from this body. The organization has publicized the plight of English and the growth of language separatism, and the response from the American people has been most extraordinary. People all over the country are coming to the fore to defend our common language from further displacement, and we are beginning to see the protection of English arise as a potent political issue that we would ignore at our peril.

Prudent legislators will look at all these trends—the record immigration we are experiencing, the new resistance to the acceptance of English, the laissez-faire language policies now in effect; they will note the strong desire of American people to preserve the language that holds us together; and they will review available options, see the benign effect of a constitutional amendment, and they will decide that the national interest will be well served by such legislation.

We have the opportunity to leave behind, as a permanent legacy to generations of Americans yet unborn, the instrument of our social cohesion and of our national unity. A greater gift no Congress can ever hope to bestow.

I urge all my colleagues to join me in this endeavor.

Mr. BURDICK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold?

## ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 5 minutes each.

## APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. DANFORTH). The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d-276g, as amended, appoints the following Senators as members of the Senate delegation to the Canada-United States Interparliamentary Group during the 2d session of the 98th Congress, to be held in Puerto Rico, on March 8-12, 1984: the Senator from South Carolina (Mr. THURMOND), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. STAFFORD), the Senator from Idaho (Mr. MCCLURE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from North Dakota (Mr. ANDREWS), the Senator from Georgia (Mr. MATTINGLY), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Virginia (Mr. TRIBLE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from North Dakota (Mr. BURDICK), the Senator from Vermont (Mr. LEAHY), and the Senator from Maryland (Mr. SARBANES).

## THE ANNIVERSARY OF GANDHI'S DEATH: POIGNANT REMINDER OF THE NEED FOR RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, 36 years ago today, Mohandas Gandhi, affectionately known by his people as the Mahatma or great soul of India, was tragically slain by a young Brahmin extremist. The loss that day was not just India's alone; it was a loss shared by the entire world.

And who was Gandhi? In a phrase, he was a man of peace. One of those rare individuals who refused to accept the world as he found it. Determined to make it a better place. Determined to raise the level of self-respect of his fellow countrymen. Determined to unite and free his people from colonial rule.

One of the great humanitarians of our time, Gandhi's philosophy was a complex amalgam of passive resistance and active cooperation—a pacifist philosophy which won the hearts of the British people and freedom for an entire subcontinent.

But as the Oscar-winning movie, "Gandhi," so accurately portrayed, emancipation came only at a great price. The violence borne of the iron colonial grip was all too quickly supplanted by violence based on religious hatred.

To the very end Gandhi used every means at his disposal to quell the religious and political in-fighting to permit his people to get on with the tasks of development. Tragically, Gandhi was killed by the very forces that he so energetically opposed. And today those forces—religious rivalry, ethnic hatred—still hold sway in far too many parts of the globe.

But Gandhi's life is not a story of futility. It is a life which is both an inspiration and a challenge. If one man can face such overwhelming odds, with such courage and determination, what more can we do to further these same goals of peace and respect for human rights?

Mr. President, each of us in this room have a unique opportunity to contribute to the development of human rights law, which will help to safeguard the very principles for which Gandhi ultimately gave his life.

We can give our advice and consent to the numerous human rights treaties that are still awaiting Senate ratification, beginning with the Genocide Convention. That treaty is a particularly appropriate starting point.

Why? Because it begins with the most fundamental and sacred right known to man—the right to live—for all ethnic, racial, religious, and national groups.

Approved by the United Nations at the urging of the American delegation, the Genocide Convention was endorsed by the General Assembly the same year as Ghandi's death. And despite numerous endorsements from successive administrations and careful consideration and support from the Senate Foreign Relations Committee we have yet to act.

Mr. President, former Chief Justice Earl Warren once remarked, "We should have been the first to ratify the Genocide Convention."

My prayer today is that we will not be the last.

## ONE PERSON CAN MAKE A DIFFERENCE

Mr. PROXMIRE. Mr. President, one of the enduring strengths of our Nation is the willingness of one neighbor to help another in time of need. That spirit of voluntarism is so much a part of the fabric of America that we often fail to recognize it.

At a time of overreaching Government bureaucracy it is important to once again recall that one person can make a difference. One such person living and working in Wisconsin is Dr. Bill Needler.

For the past 7 years Bill Needler has devoted hundreds of hours of his own time in volunteer service in helping the unemployed obtain jobs. His job forum organization has no paid staff and yet provides thousands of hours of job search training and counseling for jobseekers through seminars and support groups. All of these activities cost the taxpayers absolutely nothing.

Bill Needler is a management training consultant. But much of his time is devoted to volunteer work with the

unemployed. Each week in the Milwaukee area there is a group meeting that is attended by hundreds of jobseekers. Each week Bill Needler and a volunteer guest speaker discuss different aspects of the job market with the unemployed. He has also established smaller job-seeking support and networking groups throughout southeastern Wisconsin.

Dr. Needler also meets with individuals who desire or need one-on-one assistance. He encourages people to call him at home as well as in his office.

He conducts seminars for the families of unemployed workers. These workshops offer employment and psychological counseling to both the unemployed worker and his or her spouse. He has presented job-seeking skill workshops for disabled persons who may face unusual problems in the job market.

Bill Needler has a weekly TV show called Job Search on a local public broadcasting station. On this show Dr. Needler helps jobseekers in the audience and answers questions phoned in by people watching the program at home. This is truly a great story of one man's enthusiastic dedication to helping others and I am pleased to call it to the attention of my colleagues.

Mr. President, I have worked with the Wisconsin Job Service and I am aware of the fine job it does. There are also a number of outstanding private job consulting and placement services in my State. But there is something very special in the kind of private sector voluntarism exemplified by Dr. William Needler that is essential if all the unemployed are to be helped. This is exactly the kind of constructive volunteer work that will keep our Nation great and growing.

## NUCLEAR ARMS CONTROL VERIFICATION: AN OPPORTUNITY AND A PROBLEM

Mr. PROXMIRE. Mr. President in the Friday, January 27 issue of the New York Times, Joel Wit writes a brief article designed to put verification of nuclear arms control agreements into perspective. Mr. Wit is the deputy director of the project on arms control of the Association of the Bar of the city of New York. Verification has become a central arms control issue. Indeed, by far the biggest objection to nuclear arms control has constantly been that the Russians would cheat. Critics argue that they would use the arms control agreement to deceive the United States into abandoning its nuclear arms program. Then they would proceed to move vigorously ahead with research, testing, production, and deployment of nuclear weapons. This would ultimately give the Soviet Union a massive advantage and make their nuclear power supreme. The Soviets like many nations throughout history indeed do have a long record of justifying any kind of lying, cheating, and surreptitious violations of treaties if they think they can get away with it. The whole purpose of verification is a recognition of this fact and the provision of sufficient monitoring and inspection to assure that neither side can get away with cheating. A verification system does not have to be perfect. It does not have to provide an ironclad 100-percent assurance that any departure from any clause of the treaty will be instantly exposed. It does have to be sufficiently strong and effective to detect any violation which as Mr. Wit argues could be detected before posing a threat to our national security. This should be the hard, practical test of any verfication system: Would the verification alert this country to any cheating on the part of the Soviet Union that would give the Soviets a significant nuclear advantage and would it alert us to the cheating in time to permit us to take those steps necessary to prevent the U.S.S.R. from achieving decisive nuclear superiority? This should not be difficult. Former CIA Director William Colby has testified that satellite reconnaissance can be counted upon to give us the kind of direct intelligence we need to determine whether the Soviet Union was in the process of producing or deploying sufficient nuclear weapons in violation of an arms control treaty to consitute a threat to our national security. And William Colby as a tough and competent former head of this Nation's Central Intelligence Agency is about as well qualified a witness to make this judgment as this country has. Also we have the technological capability to monitor far smaller tests than the 150 kiloton underground nuclear test now permitted by agreement. We could negotiate a lower limit and effectively verify compliance. But overall this Senator would also press hard for on-the-spot inspection without notice by international investigators with both United States and Soviet representatives included. Many argue that the Soviets will not agree to such verification. This Senator believes that for many reasons especially because an effective nuclear freeze would be to the great interest of both the U.S.S.R. and the United States—that they would agree.

Mr. President there is another reason why the superpowers should strive to achieve on the spot inspection as part of a nuclear arms control treaty. The most serious threat of nuclear war will come from nuclear proliferation. As more and more countries develop nuclear arsenals, the prospects of preventing a nuclear war somewhere, sometime initiated by some country sharply decrease. The one safeguard we have established to prevent the spread of nuclear arms is the International Atomic Energy Agency, its one tool, onsite inspection of nuclear facilities to determine whether or not there has been any diversion of peaceful nuclear material to weapons purposes. Unfortunately the three or four countries most suspect of such diversion have refused to sign the nonproliferation treaty and refuse to permit international onsite inspection. The single, most persuasive action the superpowers could take to persuade these countries to agree to the treaty and the necessary inspecton would be for the superpowers themselves to submit to on-the-spot investigation to determine if they are abiding by a nuclear freeze. Incidentally this may also constitute the most persuasive argument for the Soviets to agree to onsite inspection. The U.S.S.R. has consistently demonstrated a far stronger concern about the dangers of nuclear proliferation than the United States for the obvious reason that nuclear proliferation represents the biggest threat to Russia's superpower status.

Mr. President, I would agree with those who contend that there will never be a perfect, no-risk solution. We are going to have to live with the terrible reality and danger of nuclear weapons as long as mankind inhabits this planet. As Mr. Wit wisely observed: "There is no such thing in arms control as 100 percent perfect assurance. Doubts concerning Soviet compliance with arms control will persist as long as we pursue arms control."

Mr. President, I ask unanimous consent that the article in the Friday, January 27 New York Times to which I have referred by Joel Wit be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows.

### VERIFICATION MYOPIA

(By Joel S. Wit)

WASHINGTON.—A Reagan Administration report has charged the Russians with committing "violations or probable violations" of several arms control agreements. The report's conclusions are disturbing. But the Administration's tendency to use the issue for its own purposes—to mollify conservative critics at home, for example—is also disturbing. Why? Because verification is quickly becoming the single most important standard by which all arms control proposals should be judged. The day may be approaching when our obsession with verification overwhelms and defeats our desire for arms control.

Over the past two decades, the United States has often had doubts about Soviet adherence to arms control agreements, including the limited test ban treaty, the first strategic arms limitation agreement, the antiballistic missile treaty, the threshold test ban and the second strategic arms limitation agreement. Until recently, however, the question of Soviet compliance has not been black or white. In most cases, intelligence data has been ambiguous, and categorical accusations of cheating difficult. Nor

have the alleged violations been militarily dangerous enough to jeopardize the arms control process by outright public accusations.

The Reagan report thus marks a significant departure from past practice. Earlier administrations pursued compliance issues through normal diplomatic channels and a confidential commission set up by the anti-ballistic missile treaty. The success of these efforts has varied. The Kremlin has never been particularly forthcoming. When superpower relations have been good the Russians have been more responsive. When bad, they have not been responsive.

Increasingly, however, despite the uncertain nature of past Soviet "violations," verification has become a politically volatile issue. During the debate over the first strategic arms limitation treaty, verification was mentioned only in passing. Eight years (and numerous violations) later, verification became a major issue in the debate over the second strategic arms limitation treaty.

Why did the issue become so much more controversial? Most Americans were unprepared for what turned out to be standard Russian operating procedure—generally to abide by agreements while probing their ambiguities—and, when this practice became clear, many Americans were shocked. On top of all this, it has been alleged since that past administrations covered up Soviet violations in order to preserve the arms control process.

The net result is that most Americans have been disillusioned by the whole experience. Whereas verification was viewed, once upon a time, as merely one standard by which agreements were judged, it has now become the sine qua non of arms control efforts.

The next generation of small, more mobile nuclear weapons will complicate matters even further. In particular, the cruise missiles that we are about to deploy in Western Europe and small mobile weapons such as the American Midgetman and the Soviet SS-X-25 are difficult to monitor with satellites and other so-called national technical means.

How, then, can simplistic notions be dispelled and verification brought back into its proper perspective? First, we must remember that there are no clear-cut "good guys" and "bad guys" when it comes to following arms control agreements. The United States has also skirted the edge of treaty violations, although less often than the Soviet Union has. Between 1963 and 1974, for example, radioactivity from several American underground tests leaked into the atmosphere and crossed national boundaries, apparently in violation of the limited test ban treaty.

Even more important, the United States must ask itself what it wants out of arms control, how much risk it is willing to accept and how much uncertainty it can tolerate. Is it wise to strive for increasingly air-tight verification if that means foregoing important arms control provisions? Or should we learn to live with less verifiable agreements, whose violation could nevertheless be detected before posing a threat to our national security?

There is no such thing, in arms control, as 100 percent perfect assurance. Doubts concerning Soviet compliance will persist as long as we pursue arms control. Public and official charges of Soviet violations, except in those instances where the abuses constitute a direct threat to American security, are likely to make matters worse. They will only detract from America's ability to promote national security.

## SENATOR MATSUNAGA AWARDED HONORARY DOCTOR OF LAWS DEGREE BY UNIVERSITY OF HAWAII

Mr. INOUYE. Mr. President, our colleague and my dear friend, SPARK MATSUNAGA, was recently awarded an "Honorary Doctor of Laws" degree by the University of Hawaii. This distinction is especially significant because SPARK, as a University of Hawaii undergraduate in the late thirties, overcame obstacles of economic hardship and social injustice. He not only overcame these barriers; he removed them for countless others.

The struggle to succeed shaped SPARK MATSUNAGA as a man of character and a leader of courage. In honoring SPARK, we honor a scholar, war hero and dedicated public servant.

Hawaii is fortunate to have SPARK as a Senator; I am privileged to know Senator MATSUNAGA as a colleague and a friend. This occasion provides an excellent opportunity to reflect on the fascinating background of this esteemed individual. I ask unanimous consent that the following two articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Star-Bulletin, Dec. 16, 1983]

THOSE DAYS OF TOUGH LESSONS

(By Lois Taylor)

At 3:30 Sunday afternoon, another class will graduate from the University of Hawaii in a formal commencement ceremony at Blaisdell Center. The commencement address will be given by U.S. Senator Spark Matsunaga, who will also receive an honorary Doctor of Laws.

Matsunaga is a 1941 graduate of the university, having attended in those difficult last few years of peace and the easing of the Great Depression. One evening late last month in his Washington, D.C., office, Matsunaga discussed with two of his aides his four years as an undergraduate on the Manoa campus.

The recollections were taped and replayed this week in his Honolulu office, and they proved to be an insight on a time when university educations weren't taken for granted.

The background sound is a crackling noise, explained as the rattling of the wrappers on the take-out fried fish sandwiches everybody was eating. But otherwise, the tape is occupied by a steady monologue in the senator's sterling diction. This came not from his years at Harvard Law School, but from coaching from a University of Hawaii speech teacher when he was a 20-year-old freshman. Matsunaga explains:

"All freshman were required to take a speech course in those days. So I registered, and I happened to get into Lucinda Bukeley's class. (Widow of Honolulu businessman Rudolph Bukeley, she was a member of the UH speech department between 1936 and 1943, and was founding president of the Footlights Club, forerunner of Honolulu Community Theater.)

"There was, at that time, a visiting professor of speech at the university, a Dr. Larrie. She came forth with the theory that you could not teach Orientals in Hawaii good English. There was a difference in the voice mechanism, she said.

"Mrs. Bukeley was aghast. She would challenge this, and she picked me as her guinea pig. I spoke pidgin—I'm from Kauai. I couldn't sound 'th' or distinguish between the long 'i' and the short 'i' ("teek" for "thick").

She became my Pygmalion. She took me into her house on Diamond Head and had me listen to her collection of Shakespeare recordings by Maurice Evans and John and Lionel Barrymore. She let me sit there and listen to the recordings, and then asked me to repeat the sounds, reading from Shakespeare. She really worked with me.

"I was in a play at the UH Theater Guild in 1939. Every year there was a diction award, a gold medal for the actor or actress with the best diction. I won in my sophomore year. It was like getting an Academy Award. Nobody knew who won until they brought in the envelope. It was given at the school assembly at Farrington Hall.

"When it was announced that I was the winner, I went onstage to get my award. Mrs. Bukeley ran up on the stage, she hugged me and she said, 'We did it, Sparky, we did it.' She proved that an Oriental could be taught to speak English. After graduation I volunteered for the service, and when the Honolulu Battalion went overseas, she wrote me regularly at the battlefront."

Asked by an aide how he got to the university in the first place, Matsunaga paused, and then said, "I lived at the Okumura Home. Rev. Takie Okumura ran a dormitory where I stayed. I was from a poverty-stricken family. I could never have gone to the university if I hadn't won a contest that the Garden Island Publishing Co. ran every two or three years, a subscription contest.

"In 1937, I won $1,000. I gave my folks $600 and I kept $400, and I begged them to let me go to the University of Hawaii. The family was so in debt, but the $600 paid a substantial part of it. The minister and his family at the Hanapepe Christian Church were so impressed that they arranged for me to stay with Rev. Okumura.

"I had free room and board if I would supervise the boys' dorm. I had graduated from high school at 16 and been out of school for four years—and was now 20. I had worked as a stevedore and was strong as hell. I could command the respect of the boys. We had to chop wood every day for the community baths, one for the boys, one for the girls. We heated the water with firewood.

"I also had to teach Sunday school, so I studied the Bible, and I came from a family where my father was a Shinto priest."

Okumura was the first Christian missionary from Japan sent to Hawaii, arriving in the islands in 1894 on a three-year contract with the Hawaiian Board of Missions to work among the early Japanese immigrants to the Hawaiian kingdom. He served at the Nuuanu Congregational Church before founding the Makiki Christian Church in 1914.

When the present building was erected in 1931, it was his proposal to follow the example of Lord Hisahide Matsunaga, a Christian feudal lord who built a castle in Japan in 1560 for use as a church. The new church was also designed as a Japanese castle, and is a landmark on Pensacola Street across from McKinley High School.

"I got up at 6 every morning," Matsunaga continued. "I was in the ROTC program and had to be on campus by 7 a.m. Rev. Okumura really liked me. He owned a banana wagon—you know, a station wagon. He knew I was having a rough time and needed money.

"He told me, 'If you will pay for the gas and oil, you can charge the dorm students 5 cents each way for a ride to school.' That was cheaper than HRT (the bus) in those days, and then I'd have the use of the station wagon. So I drove two trips each morning and made $16 a month. (The dorm, Matsunaga explains later, was located on King Street across from the old Civic Auditorium.)

"When I was in advanced ROTC in my junior year, I earned $8 a month, and I had a job feeding white mice in a (nutrition) program on food. I became so conscious of what to eat. If the mice has starch only, they lost all their hair. I was paid $14 a month, so I was earning in excess of $35 a month. I has free room and board, so I sent home $25 of that to my mother.

"When I graduated, she presented me with a bank passbook with all those deposits in it. It added up to $2,000, my graduation gift. It was all the money I had sent home, plus the money from the eggs she sold from the stock of chickens I raised before I went to the university. She saved all of it. It hit me when she showed me the passbook."

Matsunaga, one of seven children, was the first in his family to attend the University of Hawaii. His brothers and sisters raised the funds to send their parents to the commencement ceremony.

"That was a big thing, to go to Oahu. You went on the Waialeale inter-island steamship," Matsunaga said. "I used to go by steerage. They put you up on the deck with the freight, and you paid $4 each way. First class was $8 or $10, big money in those days.

"I graduated with honors. We didn't have Phi Beta Kappa then—it was required that the university president must be a member of Phi Beta Kappa to have a chapter on the campus. When I applied for admission to Harvard Law School, Gregg Sinclair had become president of the university. He wrote a letter of recommendation and said that if we had had a chapter, I would have been elected to it.

"I majored in education and speech. I had already set my mind on politics. In my junior year at Kauai High School, Robert W. Clopton was a teacher and counselor, and he was later dean of education at the University of Hawaii. He was preaching about American democracy in school one day, the principles of equality.

"I asked him, 'Is it in the name of American democracy to pay a white man doing the same work as an Oriental three times the wages paid to the Oriental?' Much to his credit, he did his own investigation. One week later he called me in and said, 'Sparky, you were right. You know how to change this situation?

"'Change the laws. You become a lawmaker, a legislator. Get yourself elected to office.' This was in 1933. 'You know,' he said, 'Hawaii will become a state some day and I'll like to see you become a state senator.' By God, he put the bug in me.

"If you took a word to his class from your reading—if he could not define it and use it in a sentence, and you could, he gave you a nickel. That bought lunch. I used to win every time. I though I was a smart kid, but I learned subsequently—I used to bring musubi for lunch every day, a rice ball with ume in the center—he felt sorry for me. Clopton was subsidizing me. Afterwards, I thanked him."

Matsunaga was chief justice in the high school student government, but held no elective office at the university. "We had a very heated student-body election, but Walter Chuck beat me by six or seven votes. After the election, a friend said, 'Masayuki Matsunaga,' (the way he was listed on the ballot). 'Is that your brother?' The votes I missed were the people who didn't know that Masayuki was Sparky," he said.

"I was a member of the debate club. I was a cheerleader, I played inter-class football. (Chief Justice) Bill Richardson played on the same team. I was in the Theater Guild, and I kept up my scholarship." But Matsunaga wouldn't join the fraternity for Japanese students.

"I refused. I said, 'What we should be doing is doing away with racial clubs.' Hakuba Kai's constitution limited membership to boys of Japanese ancestry. Then I thought, 'While I'm on the outside, I can do nothing.' So I joined and set out to be president.

"In my junior year, I did. I talked to all of the members about changing the name to Sigma Lambda, which stood for 'white horse,' the translation of Hukuba Kai. I got 90 percent of the membership to go along with me, and we struck out the restrictive racial clause.

"I then took on the project for Sigma Lambda, to expatriate all Japanese in Hawaii. We set up tables in Hemenway Hall for all Americans of Japanese ancestry who were born before 1924. The law said they were of dual citizenship. I was a dual citizen. You had to be expatriated from Japan (deny Japanese citizenship) to gain full U.S. citizenship, and the federal service refused to employ dual citizens. We had a whole lot, more than 1,000, register with us."

The senator was slowing down—the crackling on the tape had ceased, suggesting that the sandwiches had been eaten, and one of the aides mentioned a committee meeting. The recorder was turned off, the reminiscences were over, but the memory somehow persists of a hungry kid from a loving family who worked hard and made it.

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[From the Honolulu Advertiser, Dec. 18, 1983]

SPARK: MAN OF PEACE

U.S. Senator Spark Matsunaga is a war hero with a long commitment to peace.

Today he returns to his alma mater, the University of Hawaii, where he will be awarded an honorary doctor of laws degree at graduation exercises. Peace will be among the topics of his address.

Indeed, that topic also represents a homecoming for the senator, who was graduated in the class of 1941.

Photos from that era show Cadet Major Spark Matsunaga, ROTC Battalion Commander. In World War II he went on to become a captain and was wounded twice in combat while serving with the 100th Infantry Battalion in Italy.

But before that, in January of 1938, Matsunaga wrote an English class essay that is especially interesting in light of his activities today. Titled "Let Us Teach Our People to Want Peace," it reads in part:

"What makes Americans so pugnacious? What in America makes it so easy for the recruiting officer and so hard for the pacifist? My answer is this: 'Because the feelings of the people are with the recruiting officer.' Why? Because the process by which we are educated, in the home, in the church, in the school and in the community at large, results in attitudes favorable to war . . .

"Other agencies in the community serve their share. War trophies in museums and parks, parades, over-emphasis of the sensational by newspapers and magazines, all tend to bring out the warlike feelings of the people.

"We are living in a society based too largely on a militaristic foundation. The peace-loving emotions of the people have not been cultivated.

"Wants are the drives of all human action. If we want peace we must educate people to want peace. We must replace attitudes favorable to war with attitudes opposed to war . . ."

Matsunaga later fought in World War II. He has since supported other wars when considered necessary. His views have evolved since 1938, to be sure.

Yet his concern for peace and educating public attitudes clearly remains. He is the chief sponsor of the bill that would have the Federal Government launch a Peace Academy.

It is fashionable in some circles to say that peace is like motherhood; everybody is for it, so there is no need to train people in its pursuit.

But peace is not simply the absence of war, or something that can be perched forever on concepts such as the balance of nuclear terror or Mutual Assured Destruction.

We need military people who think about defense, and obviously they are also interested in peace, even in courses at the War College.

But we also need people who approach peace from other angles, not in fuzzy-headed terms but as a demanding "major," so to speak. The State Department and other civilian agencies have some, but this country and world could clearly use more persons better trained to think hard and imaginatively about options beyond armed confrontation.

Presidents and other world leaders deserve to at least have better options available, and to have them advanced by respected advocates in and out of government

Hawaii, in fact, has not just one but two U.S. Senators who are highly decorated war heroes, who are not pacifists but strong realists who support defense, yet who, in their somewhat different ways, see the need for peaceful answers in a world that could drift into nuclear war. In that, we are fortunate.

This is Senator Matsunaga's day at the university, just as the Peace Academy is his special project. And he deserves to be honored as one who realizes that peace must be made more than a motherhood issue.

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## JAPAN'S EDUCATIONAL SYSTEM

Mr. INOUYE. Mr. President, recent interest in Japan as a model for productivity and economic growth has approached near religious proportions in the United States. Books and college courses purporting to explain the reasons behind the Japanese miracle are being generated at a rate far surpassing the Shogun and sushi boom. Consider the extraordinary popularity of a paperback entitled "The Book of Five Rings: The Real Art of Japanese Management." The subtitle, as it turns out, is very misleading—the book is actual-

ly a text on fighting by a Japanese samurai of the 17th century. A literal translation of a few of the sections includes such headings as "To Stab at the Face," "To Stab the Heart," "The Slapping Away Parry," and, "The Order of Opponents When Fighting Alone." At a conference on Japanese management in New York City, an esteemed professor from a prestigious business school read sections of this book to corporate managers. One passage he read was as follows: "When you want to see, see right at once. When you begin to think, you miss the point."

The rather sorry spectacle of a business school professor telling corporate managers not to think could well lend credence to the latent fear that Japan's ascendancy to awe-inspiring economic heights is evidence of an infectious "yellow peril" inching its way into the nervous system of corporate America. One is forced to wonder whether America's fascination with Japan will become yet another reason for the decline in our productivity.

Perhaps as a result of these excesses, a backlash has begun to set in, and people are focusing on the fact that there are certain disadvantages to the Japanese approach. Still there is no doubt that there is much to be learned from Japan about people and productivity. A good place to begin is the Japanese educational system, which, according to several experts in the field, is the major reason for Japan's success.

Japan has most distinguished itself in education by developing a system which is perfectly tuned to meet its national needs. It has become apparent that adjustments will have to be made to accommodate trends such as the entry of more women into the work force and less docile compliance with an inherently rigid system. There is no doubt, however, that Japan's post-war educational system has contributed greatly to their productivity.

Education, for the Japanese, is a national priority. With the possible exceptions of math and science, there are very few differences in curricula between secondary education in Japan and the United States, yet Japanese secondary school students score among the highest in the world on achievement and intelligence tests. Since there are no discernible differences in the quality of instructional resources available to American educators and their Japanese counterparts, what accounts for the superior performance of Japanese students? Dedication, respect for, and commitment to education. This commitment is carried through on a national scale according to guidelines set by the powerful Ministry of Education—Mombusho.

From an American viewpoint, there is something disturbingly Orwellian about the image of thousands of high school juniors throughout Japan reciting the contents of the same page, from the same textbook at nearly the same hour on any given day. This approach has its obvious drawbacks—it does not encourage the development of imagination or creativity. What it does do, however, is succeed in creating a uniformly high standard of achievement. And, as one Japanese educator phrased it so succinctly, "We don't need creativity in Japan." What they do need and have been so successful in producing, is a remarkably well-trained and well-diciplined work force—probably the best pool of human capital in the world.

By American standards the Japanese produce legions of passive, docile workers who are incapable of thinking for themselves. This may be accurate, but highly irrelevant since Japanese society neither encourages nor abides must "thinking for oneself." This is why, at least in the grossest general sense, that the Japanese have proven to be so adept at training workers in industries utilizing proven technology and less successful in turning out Nobel prizewinners.

The negative aspects of the Japanese educational system have, however, become cause for concern among the Japanese themselves. As an illustration, children are required to take exams to enter junior and senior high school, and the competition to get into the best publicly funded schools is intense. The odds against gaining admittance to the top universities are even more intimidating. As a result the psychological pressure is sometimes overwhelming, and violence and suicide among youth are problems.

The Japanese system is also not designed to incorporate women, who are viewed by industry as part of the temporary work force until marriage. Japanese women are gradually becoming a force to be reckoned with, however, and there will be increasing pressure on Japanese corporations to hire and advance more women.

Japanese corporations do have a good record of working closely with high schools and universities to recruit graduates. Unlike the United States where corporate ties to educational institutions are tenuous at best, in Japan the two have a cooperative relationship. This is in part attributable to the insular nature of Japan itself and the traditional intimacy which exists between the educational and corporate echelons.

In addition to recruitment, Japanese business also contributes substantially to formulating educational policy. For example, in the immediate post-war period, the business sector in the form of a national federation provided considerable input to the Government on how best to tie in educational policy with economic growth.

The pressing need to rebuild in the sorry aftermath of World War II reinforced the drive and direction which is so apparent in the Japanese system. Stark necessity gave rise to startlingly clear objectives, and, bolstered by a highly self-contained and homogeneous work force, the Japanese have reached the pinnacle of economic success.

I predict that with even a small percentage of such commitment and dedication we could work miracles, both on the educational front and beyond.

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## THE HOUSING OPPORTUNITY FINANCING ACT OF 1983

Mr. LEAHY. Mr. President, a year ago, I cosponsored S. 137, the Housing Opportunity Financing Opportunity Act of 1983, which would repeal the December 31, 1983, sunset date on single-family mortgage revenue bonds. Seventy-six of my fellow Senators joined me in supporting this essential housing assistance program. Yet for reasons totally unrelated to its merits, the program was allowed to expire.

I cannot overemphasize the importance of the single-family mortgage revenue bond program in meeting the housing needs of low- and moderate-income home buyers. Historically, mortgage bonds have served the lowest-income segment of home purchasers, with incomes well below the median, and well below incomes of home buyers who have obtained other types of financing, such as FHA-insured loans.

The median income of State mortgage bond beneficiaries was $18,467 per year in 1981 and $23,511 in 1982. In contrast, the median income of home buyers served by conventional loans was $39,196. The need for this program is especially great in light of the dramatic cuts in Federal housing assistance to low- and moderate-income people over the past several years.

The mortgage revenue bond program, like all Federal spending, must be examined for its budgetary impact. The Joint Committee on Taxation estimates that the program will result in a revenue loss of $59 million in fiscal year 1984. Based on the committee's economic assumptions, it can be estimated that the Federal Government will lose approximately $20 per year for every billion dollars of revenue bonds issued through fiscal year 1988.

However, this estimated revenue loss ignores the positive impact of revenue bonds. According to the National Association of Homebuilders (NAHB) $1 billion in revenue bonds provides financing for approximately 8,200 new homes; generates 8,670 jobs and $160 million in wages; and results in $73 million in Federal, State, and local taxes. The total positive economic

impact is estimated by the NAHB at $724 million. The program is definitely a good buy for the American taxpayer.

The mortgage bond program has been instrumental in making affordable home loans available in my home State of Vermont. Last year, the Vermont Housing Finance Agency (VHFA) provided $48 million in mortgage money from the sale of revenue bonds. This figure represents roughly 15 percent of the total mortgage business in the State. Since 1974, the VHFA has provided below-market rate loans to 6,901 home buyers for the purchase of single-family homes.

I have been contacted by housing officials, homebuilders, realtors, and potential home buyers throughout Vermont in support of the single-family mortgage revenue bond program. I hope the leadership in the Senate and my fellow Senators will join me in making the speedy passage of S. 137 one of our top legislative priorities.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ABDNOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TRIBUTE TO SENATOR PAULA HAWKINS—CHAIRMAN OF THE SENATE DRUG ENFORCEMENT CAUCUS

Mr. ABDNOR. Mr. President, as we enter into the new year, I want to pause to pay tribute to the historic efforts and accomplishments of Senator PAULA HAWKINS to address youth drug abuse and narcotics trafficking. As chairman of the 46-member Senate Drug Enforcement Caucus, Senator HAWKINS has become our Nation's leading force in the fight against illegal drugs.

Few threats are more dangerous to the future of America than illegal drugs. Its deadly impact is felt in failed education, violent crime, impaired national defense, reduced productivity, addiction, and death. No community is untouched by what has become a $100 billion illegal industry. Only last month, officials of the Aluminum Co. of America said in Vancouver, Wash., that they were amazed that a full half of the job applicants in the last 3 months failed urinalysis tests to detect drug use.

During 1983, the Senate Drug Enforcement Caucus under Senator HAWKINS' leadership was a lightning rod for legislative and administrative action against illegal drugs.

The work she has done is extremely important. Specifically, her accomplishments include the following:

Amending the Posse Comitatus Act to allow the military to assist in fighting drugs.

Restoring $20 million for drug abuse prevention, education, and rehabilitation.

Forming the South Florida Task Force.

Holding hearings on drug trafficking in New York, Mississippi, Arizona, Florida, Washington, and Alabama.

Removing the ban on the spraying of Paraquat abroad.

Because over 90 percent of the illegal drugs abused in the United States are produced in foreign countries, I recently joined Senator HAWKINS in a narcotics control mission to the major heroin-producing countries to demand action. For the first time in 5 years, there are now over 500,000 heroin users in the United States.

The most cost-effective means of addressing the problem of illegal drugs is to attack them at their source. Through hearings held in the Senate Drug Enforcement Caucus last year, we learned that nearly 100 percent of the illegal methaqualone abused in the United States was produced in the People's Republic of China. Eighty-five percent of the teenagers arrested for drunk driving in Broward County, Fla., last year tested positive for this dangerous drug. After Senator HAWKINS went to China in 1981 to demand that the country cease its production of methaqualone, Deng Xiaoping, vice-chairman of the Chinese Communist Party, immediately agreed to stop production and, subsequently, during the past year, emergency room mentions of this dangerous drug dropped 67 percent, and its illegal street price increased 400 percent. Another important step was the passage of the Hawkins amendment, which links U.S. foreign aid to drug eradication. Major drug producing countries are now required to destroy their illegal crops as a condition for U.S. foreign aid and multilateral development bank loans. We know we are already starting to see the result of this legislation.

It was in this context that Senator HAWKINS and I and our delegation went to Turkey, Pakistan, Thailand, Burma, and Hong Kong. Through our discussions with the foreign heads of state and U.S. Ambassadors, these important accomplishments were gained:

First, President Zia of Pakistan signed into law a new narcotics amendment that greatly aids financial investigation of herion trafficking and provides for tougher penalties.

Second, President Zia also indicated that he would take action against any herion refineries or money-laundering banks identified by the United States.

Third, new Turkish Prime Minister Ozal pledged Turkey's continued strong opium poppy control efforts and expressed interest in closer drug enforcement cooperation with the United States.

Fourth, Burmese officials indicated that they would consider using herbicidal sprays against opium poppy cultivation if the United States would supply environmental impact information.

Fifth, we obtained a commitment from Dr. Di Gennaro, Secretary General of the UNDAC, to take more aggressive action against South American coca cultivation.

Sixth, we also identified a highly effective drug education/prevention program being used by the Hong Kong Government that could serve as a model (the number of addicts has been reduced from 250,000 in 1959 to 30,000 today.)

Senator HAWKINS has made a courageous effort to halt the corrosive effect of drugs on such basic institutions of society as the family, the school, and the community. As chairman of the Senate Appropriations Subcommittee on Treasury, Postal Service, and General Government, as well as a member of the caucus, I call upon my colleagues to join Senator HAWKINS in her efforts to fight illegal narcotics through education, diplomacy, and law enforcement.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## A TRIBUTE TO ROBERT LAWRENCE APPLING

Mr. HEFLIN. Mr. President, today I rise in recognition of a great man who has rendered outstanding service to his community, the State of Alabama and our Nation.

Robert Lawrence Appling, of Irvington, Ala., a retired Mobile County sheriff's deputy and court baliff, was recognized on December 10, 1983, by the National Fraternal Order of Police as "Mr. Fraternal Order of Police for the United States." The award was made for his contributions to the association and the quality of law enforcement at ceremonies in Mobile, Ala., and was presented by national FOP president, Richard Boyd.

The Mobile Press Register recognized Mr. Appling with an editorial praising him for his outstanding career and presented him with its M. O. Beale Scroll of Merit for his latest honor.

Mr. Appling was also recently honored by Gov. George Wallace when he named him as a member of the stand-

by Alabama Selective Service Board No. 69.

Mr. Appling is a combat veteran of World War II who served in the U.S. Army from 1943 to 1948; he was wounded in the Battle of the Bulge and so gravely as necessitated his hospitalization for more than 5 years and the eventual amputation of a leg.

He is also an organizer and charter member of the 100 Club of Mobile; a member of the American Legion Post No. 3, in which he has held numerous offices; a life member of the Disabled American Veterans and Veterans of Foreign Wars and a member of the Alabama Peace Officers and Alabama Deputy's Association.

Mr. Appling is the recipient of numerous awards and honors including the 1973 Mobile Jaycee outstanding law enforcement award, 1973 Exchange Club deputy of the year, received the 1981 American Legion Governor's Alabama veteran of the year award.

Last year the State of Alabama house of representatives and the State senate passed resolutions honoring Mr. Appling for his outstanding contributions.

Mr. President, I conclude my remarks in recognition of Mr. Appling with congratulations to him on his latest award and for his outstanding service. He is truly a great American.

Mr. President, I ask unanimous consent that various newspaper articles relating to Mr. Appling and the resolutions from the senate and house of representatives of the State of Alabama to which I have referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Mobile Press]

APPLING NAMED MR. FOP

Retired Mobile County Sheriff's Deputy R. Lawrence Appling Tuesday was named "Mr. Fraternal Order of Police of the United States" at the national FOP convention in Phoenix, Ariz.

Appling, who has been active in civic and veteran affairs in the Mobile area for a number of years, was cited for his contributions to the community, the area and the state by the 1983 Alabama Legislature.

Wounded in World War II during the Battle of the Bulge, Appling has held offices in the Azalea City Lodge of the FOP, the American Legion, Disabled Veterans of America and the 100 Club of Mobile.

He will be honored at a testimonial dinner in Mobile later to be attended by national FOP officers and local dignitaries.

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RETIRED DEPUTY CONGRATULATED

Our heartiest congratulations go to Lawrence Appling, retired Mobile County sheriff's deputy, on being honored by the National Fraternal Order of Police.

The former deputy was named "Mr. Fraternal Order of Police for the United States" as a result of his contributions to the association and the quality of law enforcement.

Appling has long been active locally and statewide in civic and veteran affairs as well as law enforcement.

He has received numerous awards for his achievements.

We join the National Fraternal Order of Police in honoring this outstanding Mobilian.

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DECEMBER 23, 1983.

LAWRENCE APPLING,
*Irvington, Ala.*

Dear Sir: Let me congratulate you on your many honors and awards, including your appointment as a member of the standby Alabama Selective Service Board No. 69 and your recognition by the National Fraternal Order of Police as "Mr. Fraternal Order of Police for the United States."

I am aware that you are a retired deputy sheriff of Mobile County, a post commander of the American Legion, a former president of the Azalea City Lodge of the Fraternal Order of Police, and the 1981 recipient of the Governor's Alabama Veteran of the Year Award. You have played an outstanding role in the civic, law enforcement, and veteran affairs of this city and county.

Your list of achievements is long and most impressive. I take pleasure at this time in adding to your many honors with the M.O. Beale Scroll of Merit.

Civically yours,

M. O. BEALE.

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[From the Alabama Legionnaire, September 1983]

APPLING HONORED AS "MR. F.O.P." IN UNITED STATES

Hard work in his chosen profession paid dividends for a retired Mobile County Deputy Sheriff and active American Legion member when Lawrence R. Appling was honored at a national convention in Phoenix, Arizona who was named "Mr. Fraternal Order of Police of the United States."

With more than 1,800 delegates representing law enforcement officers on almost every level attending, Appling received his honor. He will be recognized at a testimonial dinner in Mobile later to be attended by national FOP officers as well as local dignitaries.

Appling, who is a past commander of his American Legion post, was cited in June by the Alabama Legislature for his work in civic, veterans and fraternal organizations in Mobile. A World War II veteran, he was wounded in the Battle of the Bulge and hospitalized for five years.

A past officer of the Azalea City FOP lodge in Mobile, Appling is a charter member of the 100 Club in Mobile.

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RESOLUTION 67

Whereas, Mr. Robert Lawrence Appling of Irvington, Alabama, is a distinguished Alabamian who has rendered outstanding service to the community, the State of Alabama and our Nation; and

Whereas, a retired deputy sheriff and court bailiff in Mobile County, Mr. Appling is a veteran of World War II, who served in the United States Army from 1943 to 1948; he was wounded in the Battle of the Bulge and so gravely as to necessitate his hospitalization for more than three years and the eventual amputation of a leg in 1954; and

Whereas, Mr. Appling, who is a member of the Fraternal Order of Police, served the organization as vice president, 1975-1976, and as president in 1977-1978, during which tenures the numerous accomplishments and advances of FOP Lodge #17 were directly related to Mr. Appling's dedicated leadership; and

Whereas, he also is an organizer and charter member of the 100 Club of Mobile; a member of the American Legion Lamar Y. McLeod Post #3, in which he has held numerous offices; a Life Member of both the Disabled American Veterans and Veterans of Foreign Wars organizations; and a member, as well, of the Alabama Peace Officers and the Alabama Deputy's Associations; and

Whereas, Mr. Appling is the recipient of numerous awards and honors including the 1974 Jaycee Outstanding Law Enforcement Award, 1973 Exchange Club Deputy of the Year, 1981 State Legionnaire of the Year, 1981 American Legion Veteran of the Year, 1981 Certificate of Merit from the Mobile County Commission and congratulations from M. O. Beale, also in 1981; he also is responsible for the establishment of the Alabama and National Mr. FOP Awards and, on December 10, 1983, was honored as FOP National Man of the Year: Now therefore,

*Be it resolved by the Senate of the Alabama Legislature,* That we most highly commend Mr. Robert Lawrence Appling of Irvington, Alabama, for outstanding service to the community, the State of Alabama and the Nation; we further direct that Mr. Appling receive a copy of this resolution in expression of our sincere warm praise, appreciation and esteem.

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RESOLUTION—H.R. 417

Whereas, Mr. Robert Lawrence Appling of Irvington, Alabama, is a distinguished Alabamian who has rendered outstanding service to the community, the State of Alabama and our nation; and

Whereas, a retired deputy sheriff and court bailiff in Mobile County, Mr. Appling is a combat veteran of World War II, who served in the United States Army from 1943 to 1948; he was wounded in the Battle of the Bulge and so gravely as to necessitate his hospitalization for more than three years and the eventual amputation of a leg in 1954; and

Whereas, Mr. Appling, who is a member of the Fraternal Order of Police, served the organization as vice president, 1975-1976, and as president in 1977-1978, during which tenures the numerous accomplishments and advancements of FOP Lodge #17 were directly related to Mr. Appling's dedicated leadership; and

Whereas, he also is an organizer and charter member of the 100 Club of Mobile; a member of the American Legion Lamar V. McLeod Post #3, in which he has held numerous offices; a life Member of both the Disabled American Veterans and Veterans of Foreign Wars organizations; and a member, as well, of the Alabama Peace Officers and the Alabama Deputy's Associations; and

Whereas, Mr. Appling is the recipient of numerous awards and honors including the 1973 Jaycee Outstanding Law Enforcement Award, 1973 Exchange Club Deputy of the Year, 1981 State Legionnaire of the Year, 1981 American Legion Veteran of the Year, 1981 Certificate of Merit from the Mobile County Commission and congratulations from M. O. Beale, also in 1981; he also is responsible for the establishment of the Alabama and National Mr. F.O.P. Awards: Now therefore,

*Be it resolved by the House of Representatives of the Legislature of Alabama,* That we most highly commend Mr. Robert Lawrence

Appling of Irvington, Alabama, for outstanding service to the community, the State of Alabama and the Nation; we further direct that Mr. Appling receive a copy of this resolution in expression of our sincere, warm praise, appreciation and esteem.

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## COMPREHENSIVE CRIME CONTROL ACT

The PRESIDING OFFICER. The Senate will resume consideration of the pending business, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1762) entitled the "Comprehensive Crime Control Act of 1983."

The Senate resumed consideration of the bill.

Mr. BAKER. Mr. President, as I indicated this morning, it is my hope that we can finish this bill today. That may or may not be possible, but I would like to do that. If not, we will, of course, continue until we do.

Mr. President, after we finish with this bill, we will go to the five ancillary bills that I described earlier in my remarks.

Mr. President, the distinguished chairman of the committee, the President pro tempore, is here to manage the bill and I now yield the floor.

● Mr. CHILES. Mr. President, today the Senate takes up one of the most pressing legislative items that we will consider this session of Congress. This bill is of critical importance to the American people and frankly its passage by the Congress is long, long overdue. S. 1762, the Comprehensive Crime Control Act is the culmination of years of effort by a number of Senators. After many hours of hearings and evaluation of the best thinking available, we have developed a program of action to combat the insidious problem of crime in America. Enactment of this legislation will mean a stronger hand for law enforcement officials in fighting criminal activity. It will mean increased penalties for illegal narcotics offenses which is the key to so much violent crime. It will result in an improved criminal justice system that will work to punish the guilty and protect the victims of crime.

Obviously, one piece of legislation is not going to solve our crime problem but it is an important step forward and a signal to the American people that Congress is serious in doing something about crime.

Mr. President, in recent years I have talked often of what I call "domestic defense." I view the fight against crime as part of our national security program. It is every bit as important to the security of our citizens as a strong national defense. Any public opinion survey in recent years reveals a deep concern and apprehension about crime on the part of most citizens. Other issues come and go but crime remains in the forefront of concern. In cities and in smaller communities, people feel unsafe in their neighborhoods. Parents are horrified at the escalating flood of illicit drugs that threatens their children and breeds violence and corruption. Many have lost faith in a criminal justice system that often appears to work to the advantage of the criminal element.

Crime statistics give credence to the concern of the public and provide a strong argument for a strengthened "domestic defense" program. In the first 6 months of 1983 there were almost 140 violent crimes per hour and over 50 murders per day. This represents an encouraging decrease from the previous year but it remains amply clear that we are a nation at risk in terms of the criminal threat.

The legislation now before us is a constructive effort to decrease that risk. It is a compromise measure. Frankly, it does not contain all the elements I feel are necessary to revitalize our law enforcement capability. I am particularly regretful that the package does not include provisions to reform the habeas corpus law in order to limit frivolous appeals which bog down the courts and unnecessarily delay justice. That measure has been reported by the Judiciary Committee as a separate bill. Habeas corpus reform and other significant provisions were left out of the bill in order that we not become embroiled in controversy and so that we will not face another Presidential veto as was the case with the omnibus crime bill of last Congress.

However, the bill which the Judiciary Committee has reported to the Senate is a significant and far-reaching measure. Among its key provisions:

For the first time ever, Federal courts could deny bail to a defendant on the basis that release would pose a threat to the community.

Parole and good-behavior credits would be limited. A new sentencing commission would be created to promote more uniform sentencing procedures.

The insanity defense would be limited to those unable to appreciate the nature or wrongfulness of their acts. The burden of proof of insanity would be on the defendant.

Federal penalties for narcotics offenses would be strengthened.

Seizure of the profits and proceeds of organized crime and drug trafficking operations—or substitute assets where crime-related assets are beyond the reach of Government—would be allowed.

To limit crime money laundering, existing laws prohibiting transportation of currency out of the country would be expanded and strengthened.

Murder-for-hire and crimes aiding racketeering would be made Federal offenses, thus involving the investigative capabilities of the FBI.

Federal laws regarding child pornography and fraud and bribery related to Federal programs would be beefed up.

Donations of surplus Federal property to State and local governments for urgently needed confinement facilities would be facilitated.

Mr. President, if we can get S. 1762 enacted into law in this Congress we will have accomplished a great deal for this country. The Senate should act promptly and we must do all we can to assure quick House passage and an expeditious conference. The people already waited too long for a meaningful crime bill.

I want to take this opportunity to congratulate the very able chairman, Senator THURMOND, and the distinguished ranking Democrat, Senator BIDEN for their leadership and tenacity in bringing this package to the floor of the Senate. I have worked with them now over a number of years to get action on a crime package and I very much admire the effort they have made and the bipartisan cooperation they have evidenced in moving this legislation. It has not been an easy fight.●

Mr. THURMOND. Mr. President, I call up two amendments by Senator LAXALT, amendments Nos. 2678 and 2679, and suggest they be considered en bloc.

The PRESIDING OFFICER. The Chair will remind the Senator that there are committee amendments pending. It would take unanimous consent to lay them aside.

Mr. THURMOND. Mr. President, these are the committee amendments.

The PRESIDING OFFICER. There are amendments that have been reported by the Committee on Foreign Relations. Those amendments would have to be disposed of or set aside.

Mr. THURMOND. Mr. President, I move to call them up at this time and move their adoption.

The PRESIDING OFFICER. Is there objection to agreeing to the amendments reported by the Committee on Foreign Relations en bloc?

Mr. THURMOND. Mr. President, I move the adoption of those amendments.

The PRESIDING OFFICER. Is there objection? Without objection, the amendments are agreed to.

The amendments of the Committee on Foreign Relations were agreed to, as follows:

On page 340, line 11, strike "rape" and insert "forcible sexual assault".

On page 344, line 12, strike "pursuaded" and insert "determines".

On page 344, line 24, after ". . . (3) is" insert "final and is".

On page 345, line 1, strike "review: Provided, however, That in" and insert "review. In".

AMENDMENTS NOS. 2678 AND 2679

The PRESIDING OFFICER. Is it the Chair's understanding that the Senator for South Carolina wishes to have his amendments considered en bloc as well?

Mr. THURMOND. Mr. President, I would like to have them considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments will be stated.

The bill clerk read as follows:

The Senator from South Carolina (Mr. THURMOND), for Mr. LAXALT, proposes amendments numbered 2678 and 2679.

Mr. THURMOND. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT No. 2678

AMENDMENTS TO TITLE I (BAIL) S. 1762

On page 19, lines 15 and 16, delete "the defendant" and insert in lieu thereof "he".

On page 21, line 1, after "section." insert the following:

To the extent practicable, a person charged with violating the condition of his release that he not commit a Federal, State, or local crime during the period of release shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated.

On page 28, delete lines 7 and 8, and inserting in lieu thereof the following: (1) in subdivision (a), by striking out "§ 3146, § 3148, or § 3149" and insert in lieu thereof "§§ 3142 and

On page 29, line 5, insert "under" before "18".

AMENDMENTS TO TITLE II (SENTENCING) S. 1762

On page 80, line 10, delete "3671" and insert in lieu thereof "3673".

On page 82, beginning with "or" on line 3, delete through line 19, and insert in lieu thereof the following:

"(3) was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is greater than—

"(A) the sentence specified in the applicable guideline to the extent that the sentence includes a greater fine or term of imprisonment or term of supervised release than the maximum established in the guideline, or includes a more limiting condition of probation or supervised release under section 3563 (b)(6) or (b)(11) than the maximum established in the guideline; and

"(B) the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or

"(4) was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is greater than the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure.

On page 83, beginning with "or" on line 3, delete through line 19, and insert in lieu thereof the following:

"(3) was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is less than—

"(A) the sentence specified in the applicable guideline to the extent that the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guideline, or includes a less limiting condition of probation or supervised release under section 3563 (b)(6) or (b)(11) than the minimum established in the guideline; and

"(B) the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or

"(4) was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is less than the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure;".

On page 84, line 23, delete "c" and insert in lieu thereof "e".

On page 93, delete line 9 through 12, and insert in lieu thereof the following: (9) by deleting "imposition of sentence is suspended, or disposition is had under 18

On page 96, after line 8 insert the following and reletter subsequent subsections accordingly:

(f) Rule 6(e)(3)(C) is amended by adding the following subdivision: "(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.".

On page 96, delete lines 11 and 12, and insert in lieu thereof the following:

(1) The item relating to Rule 35 is amended to read as follows:

"35. Correction of Sentence.

"(a) Correction of a sentence on remand.

"(b) Correction of a sentence for changed circumstances.".

On page 97, delete "12" from the beginning of the page and insert "9" in lieu thereof.

On page 97, insert a quotation mark at the beginning of line 4.

On page 121, after line 12, insert the following: Redesignate subsections in section 4082 accordingly.

On page 124, line 10, delete "3667" and insert in lieu thereof "3669".

On page 124, delete lines 13 through 19, and redesignate subsequent subsections accordingly through page 128.

On page 126, line 8, after "(g)" insert "and redesignating (h) to (g)".

On page 126, lines 13 and 14, delete "3666" and "3667" and insert in lieu thereof "3668" and "3669", respectively.

On page 127, line 14, delete "(4)" and insert in lieu thereof "(3)".

On page 127, line 15, delete "title."." and insert in lieu thereof "title."; and".

On page 127, after line 15, insert the following: (F) by redesignating paragraphs accordingly.

On page 130, line 24, after "(1)" insert "by adding "and" after paragraph (2) and,".

On page 131, line 15, delete "Board" and insert in lieu thereof "the Board".

On page 131, delete lines 21 through 24, and insert in lieu thereof the following: fense was committed, pursuant to sentencing guidelines and policy statements issued pursuant to 28 U.S.C. 994(a),";

On page 132, after line 22, insert the following:

SEC. 222A. Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472) is amended by inserting "notwithstanding the provisions of 18 U.S.C. 3559(b)," before the term "if" in paragraphs (i)(1)(B) and (n)(1)(B).

AMENDMENTS TO TITLE III (FORFEITURE)

On page 164, line 4, delete "remove" and insert in lieu thereof "and remove".

AMENDMENTS TO TITLE IV (MENTAL DISEASE OR DEFECT)

On page 178, delete line 8, and insert in lieu thereof the following: vincing evidence.".

(b) The sectional analysis of chapter 1 of title 18, United States Code, is amended to add the following new section 20:

"20. Insanity Defense.".

On page 189, lines 16, 20, 23, 24, and 25, delete "defendant" each time it appears and insert in lieu thereof "person".

On page 190, line 3, delete "release" and insert in lieu thereof "transfer".

On page 190, lines 3, 8, 15, 18, 19, 20, and 25, delete "defendant" each time it appears and insert in lieu thereof "person".

On page 190, line 22, delete "his" and insert in lieu thereof "the".

On page 191, lines 1, 6, 9, and 10, delete "defendant" each time it appears and insert in lieu thereof "person".

On page 201, delete lines 11 through 18, and reletter subsequent subsections accordingly through page 203.

AMENDMENTS TO TITLE V (DRUG ENFORCEMENT AMENDMENTS)

On page 211, lines 6 and 8, delete "I(b)" and insert in lieu thereof "I(c)".

On page 211, lines 7 and 10, delete "II(a)(5)" and insert in lieu thereof "II(a)(4)".

On page 212, after line 15, insert the following new section:

SEC. 505A. Section 202(c) schedule II(a)(4) of the Controlled Substances Act (21 U.S.C. 812(c) schedule II(a)(4)) is amended by adding the following sentence at the end thereof: "The substances described in this paragraph shall include cocaine, ecgonine, their salts, isomers, derivatives, and salts of isomers and derivatives.".

On page 215, line 3, delete "201(g)(1)" and insert in lieu thereof "201(g)".

On page 215, line 4, delete "811(g)(1)) is amended to read:" and insert in lieu thereof "811(g)) is amended to add the following new paragraph:".

On page 215, line 5, delete "(g)(1)" and insert in lieu thereof "(3)".

On page 215, delete lines 10 through 14, and redesignate subsequent paragraphs accordingly.

On page 218, delete line 17, and insert in lieu thereof the following:

On a ground specified in section 304(a). Article 7 of the Convention on Psychotropic

Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this subchapter.".

On page 218, line 19, after "by" insert the following:

On page 220, delete lines 3 and 4, delete "(f)" and insert in lieu thereof "(g)".

On page 220, delete after "by" on line 18 through line 19, and insert in lieu thereof the following: deleting "and" after paragraph (4), deleting the period and substituting "; and" after paragraph (5), and adding thereto a new paragraph (6) as follows:

On page 220, line 20, delete "(e) Enter" and insert in lieu thereof "(6) enter".

On page 221, line 9, after "by" insert the following: deleting "or" at the end of subpart (A), by

On page 221, line 11, delete "is".

On page 221, line 12, delete "exclusively." and insert in lieu thereof "exclusively,".

On page 221, delete line 20, and insert in lieu thereof the following:

May by regulation prescribe, except that if a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.".

On page 222, line 7, delete "and".

On page 222, line 12, delete "prescribe."." and insert in lieu thereof "prescribe; and".

On page 222, after line 12, insert the following new paragraph:

"(3) In any case when a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention, instead of any notification or declaration required by paragraph (2) of this subsection.".

On page 222, line 17, delete "V." and insert in lieu thereof "V,".

AMENDMENTS TO TITLE VI (JUSTICE ASSISTANCE)

On page 228, after line 10, delete "TITLE I" and insert in lieu thereof "TITLE I—JUSTICE ASSISTANCE".

On page 228, Part B of the Table of Contents, delete "Sec. 201. Bureau of Justice programs." and insert in lieu thereof "Sec. 201 Establishment of Bureau of Justice Programs.".

On page 228, Part B of the Table of Contents, delete "Establishment, duties and functions." and insert in lieu thereof "Duties and functions of Director.".

On page 229, delete everything in "Part G" of the Table of Contents and insert in lieu thereof the following new "Part G":

"PART G—CRIMINAL JUSTICE FACILITIES

"Sec. 701. Establishment of the Bureau of Criminal Justice Facilities.
"Sec. 702. Functions of the Bureau.
"Sec. 703. Grants authorized for the renovation and construction of criminal justice facilities.
"Sec. 704. Allotment.
"Sec. 705. State plans.
"Sec. 706. Basic criteria.
"Sec. 707. Clearinghouse on the construction and modernization of criminal justice facilities.
"Sec. 708. Interest subsidy for criminal justice facility construction bonds.
"Sec. 709. Definitions.

On page 229, Part H of the Table of Contents, delete "rules," in the first line and insert in lieu thereof "rules".

On page 229, delete "PART M—EMERGENCY ASSISTANCE" and insert in lieu thereof "PART M—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE".

On page 230, delete "PART N—TRANSITION—REPEALER" of the Table of Contents and insert in lieu thereof "PART N—TRANSITION".

On page 241, line 7 delete "and".

On page 245, line 6, delete "local" and insert in lieu thereof "and local".

On page 248, line 18, delete "STATE/LOCAL" and insert in lieu thereof "STATE and LOCAL".

On page 255, after line 9, insert (in small caps) the following:

"DISTRIBUTION OF FUNDS

On page 262, line 14, after "GRANTS" insert (in small caps) AUTHORIZED.

On page 262, delete line 16.

On page 264, line 21, delete "706" and insert in lieu thereof "705".

On page 267, line 23, delete "707" and insert in lieu thereof "706".

On page 268, line 16, delete "708" and insert in lieu thereof "707".

On page 269, line 5, delete "709" and insert in lieu thereof "708".

On page 270, line 10, delete "710" and insert in lieu thereof "709".

On page 282, after line 7, insert the following (in small caps):

"DEFINITIONS

On page 290, after line 13, insert the following (in small caps):

"AUTHORITY FOR FBI TO TRAIN STATE AND LOCAL CRIMINAL JUSTICE PERSONNEL

On page 300, line 20, after "surplus" insert "real and related personal".

On page 301, line 3, after the word "real" insert "and related personal".

On page 301, line 16, after the word "real" insert "and related personal".

On page 302, line 9, delete "or" and insert in lieu thereof "for".

On page 302, line 25, delete "personal or real" and insert in lieu thereof "real and related personal".

AMENDMENTS TO TITLE X (MISCELLANEOUS VIOLENT CRIME AMENDMENTS)

On page 317, delete line 12, and insert in lieu thereof the following: "the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, shall be fined not".

On page 317, line 19, after "section" insert "and section 1952B".

On page 318, line 2, delete "of" and insert in lieu thereof "of,".

On page 318, line 3, delete "pay" and insert in lieu thereof "pay,".

On page 318, line 13, delete "kidnaping" and insert in lieu thereof "kidnaping".

On page 319, line 2, delete "murder," and insert in lieu thereof "murder or kidnaping,".

On page 322, line 19, after "five" insert "nor more than ten".

On page 325, line 1, delete "as" and insert in lieu thereof "on".

On page 325, line 12, delete "title" and insert in lieu thereof "section".

On page 326, line 19, insert "INVOLUNTARY" before the word "SODOMY".

On page 327, after line 20, insert the following:

SEC. 1009A. Section 114 of title 18 is amended by deleting "Shall be fined not more than $1,000 or imprisoned not more than seven years, or both" and inserting in lieu thereof "Shall be fined not more than $25,000 and imprisoned not more than twenty years, or both".

On page 329, delete line 2, and insert in lieu thereof the following: Commission or interstate transmission facilities, as defined in 49 U.S.C. 1671.".

On page 331, after line 5, insert the following: (f) Tables of Chapters is amended to add:

"210. International Extradition..... 3191".

On page 331, line 6, delete "(f)" and insert in lieu thereof "(g)".

On page 334, line 7, delete "court." and insert in lieu thereof "court;".

On page 334, line 8, delete "The" at the beginning of the line and insert in lieu thereof "the", and indent lines 8 and 9 to align with lines 2 and 11.

On page 353, line 7, delete "Except" and insert in lieu thereof "(a) Except".

AMENDMENTS TO TITLE XI (SERIOUS NONVIOLENT OFFENSES)

On page 361, delete line 10, and insert in lieu thereof the following: Code is amended—

(a) by deleting in the first paragraph "shall be fined not more than $2,000 or imprisoned not more than one year, or both" and inserting in lieu thereof "shall be fined not more than $10,000 or imprisoned not more than five years, or both;

(b) by adding a new paragraph as follows: On page 368, after line 12, delete "entities."." and insert in lieu thereof "entities." then add the following new line:

"511. Forging endorsements or signatures on securities of the United States.".

On page 371, line 16, delete "repealed." and add the following: repealed, and the section analysis of Chapter 11 for section 216 be amended to read: "216. Repealed.".

On page 373, delete line 5 and all that follows through the item relating to possession of contraband articles after line 10 on page 374, and insert in lieu thereof the following:

SEC. 1109. (a) Section 1791 of title 18, United States Code is amended to read as follows: "1791. Providing or possessing contraband in prison

"(a) OFFENSE.—A person commits an offense if, in violation of a statute, or a regulation, rule, or order issued pursuant thereto—

"(1) he provides, or attempts to provide, to an inmate of a Federal penal or correctional facility—

"(A) a firearm or destructive device;

"(B) any other weapon or object that may be used as a weapon or as a means of facilitating escape;

"(C) a narcotic drug as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

"(D) a controlled substance, other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage;

"(E) United States currency; or

"(F) any other object; or

"(2) being an inmate of a Federal penal or correctional facility, he makes, possesses, procures, or otherwise provides himself with, or attempts to make, possess, procure, or otherwise provide himself with, anything described in paragraph (1).

"(b) GRADING.—An offense described in this section is punishable by—

"(1) imprisonment for not more than ten years, a fine of not more than $25,000, or both, if the object is anything set forth in paragraph (1)(A);

"(2) imprisonment for not more than five years, a fine of not more than $10,000, or both, if the object is anything set forth in paragraph (1)(B) or (1)(C);

"(3) imprisonment for not more than one year, a fine of not more than $5,000, or both, if the object is anything set forth in paragraph (1)(D) or (1)(E); and

"(4) imprisonment for not more than six months, a fine of not more than $1,000, or both, if the object is any other object.

"(C) DEFINITIONS.—As used in this section, 'firearm' and 'destructive device', have the meaning given those terms, respectively, in 18 U.S.C. 921(a)(3) and (4).".

(b) Section 1792 of title 18, United States Code, is amended to read as follows:

"1792. Mutiny and riot prohibited

"Whoever instigates, connives, willfully attempts to cause, assists, or conspires to cause any mutiny or riot, at any Federal penal or correctional facility, shall be imprisoned not more than ten years or fined not more than $25,000, or both.";

(C) The analysis at the beginning of chapter 87 of title 18, United States Code, is amended to read as follows:

"CHAPTER 87

"Sec.
"1791. Providing or possessing contraband in prison.
"1792. Mutiny and riot prohibited.";

(d) Chapter 301 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"4012. Summary seizure and forfeiture of prison contraband

"An officer or employee of the Bureau of Prisons may, pursuant to rules and regulations of the Director of the Bureau of Prisons, summarily seize any object introduced into a Federal penal or correctional facility or possessed by an inmate of such a facility in violation of a rule, regulation or order promulgated by the Director, and such object shall be forfeited to the United States."; and

(e) The analysis at the beginning of chapter 301 of title 18, United States Code, is amended by adding after the item relating to section 4011 the following: "4012. Summary seizure and forfeiture of prison contraband.".

On page 374, line 15, delete "after section 665 a new section 666" and insert in lieu thereof "a new section 667".

On page 374, line 17, delete "666" and insert in lieu thereof "667".

On page 374, line 22, delete "benefit to" and insert in lieu thereof "benefit of".

AMENDMENTS TO TITLE XII (PROCEDURAL AMENDMENTS)

On page 376, line 11, delete '925(a)" and insert in lieu thereof "952(a)".

On page 376, line 22, delete "fifteenth," and insert in lieu thereof "fifteenth".

On page 380, delete lines 3 through 6, and insert in lieu thereof the following:

(2) again in paragraph (c) by deleting "section 1503" and substituting "sections 1503, 1512, and 1513";

(3) by deleting the "or" at the end of paragraph (f), by redesignating present paragraph "(g)" as "(h)", and by inserting a new paragraph (g) as follows:

On page 380, line 9, insert "or" after the semicolon.

On page 380, delete line 25, and insert in lieu thereof "deleted, and amend section analysis accordingly.".

On page 382, after line 11 and before line 12, delete "'3523. Civil action to restrain witness or victim intimidation." and insert in lieu thereof "'3523. Penalty for wrongful disclosure.".

On page 382, line 15, delete the words "in a official proceeding" and insert in lieu thereof "in an official proceeding concerning an organized criminal activity or other serious offense".

On page 382, at the end of line 23, insert the following:

"The Attorney General shall issue guidelines defining the types of cases for which the exercise of authority of the Attorney General contained in this subsection would be appropriate. Before providing protection to any person under this chapter, the Attorney General shall—

"(1) to the extent practicable, obtain and consider information relating to the suitability of the person for inclusion in the program, including the criminal history, if any, and a psychological evaluation of, the person;

"(2) make a written assessment in each case of the seriousness of the investigation or care in which the person's information or testimony has been or will be provided, and the possible risk of danger to persons and property in the community where the person is to be relocated; and

"(3) determine that the need for such protection outweighs the risk of danger to the public.

Neither the United States nor the Attorney General shall be subject to civil liability on account of a decision to provide protection under this chapter.

On page 383, line 23, before "refuse" insert "disclose or".

On page 383, line 24, after "other" insert "matter".

On page 384, line 4, delete the period and insert ", except that the Attorney General shall, upon the request of State or local law enforcement officials, promptly disclose to such officials the identity and location, criminal records, fingerprints, and other relevant information relating to the person relocated or protected when it appears that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence. The Attorney General shall establish an accurate and effective system of records concerning the criminal history of persons provided protection under this chapter in order to provide the information described in this paragraph.".

On page 385, between lines 7 and 8, insert the following:

"(d) ENFORCEMENT OF JUDGMENT IN CIVIL ACTION BY SPECIAL MASTERS.—(1) Anytime 120 days after a decision by the Attorney General to deny disclosure of the current identity and location of a person provided protection under this chapter to any person who holds a judicial order or judgment for money or damages entered by a Federal or State court in his favor against the protected person, the person who holds the judicial order or judgment for money or damages shall have standing to petition the United States district court in the district where the petitioner resides for appointment of a special master. The United States district court in the district where the petitioner resides shall have jurisdiction over actions brought under this subsection.

"(2)(A) Upon a determination that—

"(i) the petitioner holds a Federal or State judicial order or judgment; and

"(ii) the Attorney General has declined to disclose to the petitioner the current identity and location of the protected person with respect to whom the order of judgment was entered,

the court shall appoint a special master to act on behalf of the petitioner to enforce the order or judgment.

"(B) The clerk of the court shall promptly furnish the master appointed pursuant to clause (A) with a copy of the order of appointment. The Attorney General shall disclose to the master the current identity and location of such protected person and any other information necessary to enable the master to carry out his duties under this subsection. It is the responsibility of the court to assure that the master proceeds with all reasonable diligence and dispatch to enforce the rights of the petitioner.

"(3) It is the duty of the master to—

"(A) proceed with all reasonable diligence and dispatch to enforce the rights of the petitioner; and

"(B) to carry out his enforcement duties in a manner that minimizes, to the extent practicable, the safety and security of the protected person.

The master may disclose to State or Federal court judges, to the extent necessary to effect the judgment, the new identity or location of the protected person. In no other cases shall the master disclose the new identity or location of the protected person without permission of the Attorney General. Any good faith disclosure made by the master in the performance of his duties under this subsection shall not create civil liability against the United States.

"(4) Upon appointment, the master shall have the power to take any action with respect to the judgment or order which the petitioner could take including the initiation of judicial enforcement actions in any Federal or State court or the assignment of such enforcement actions to a third party under applicable Federal or State law.

"(5) The costs of the action authorized by this subsection and the compensation to be allowed to a master shall be fixed by the court and shall be apportioned among the parties as follows:

"(A) the petitioner shall be assessed in the amount he would have paid to collect on his judgment in an action not arising under the provisions of this section; and

"(B) the protected person shall be assessed the costs which are normally charged to debtors in similar actions and any other costs which are incurred as a result of an action brought pursuant to this section.

In the event that the costs and compensation to the master are not met by the petitioner or protected person, the court may, in its discretion, enter judgment against the United States for costs and fees reasonably incurred as a result of an action brought pursuant to this section.

"(e) RESOLUTION OF COMPLAINTS OR GRIEVANCES.—The Attorney General shall establish guidelines and procedures for the resolution of complaints or grievances of persons provided protection under this chapter regarding the administration of the program.

On page 385, after line 13, insert the following:

"§ 3523. Penalty for Wrongful Disclosure

"Whoever, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under section 3521(b)(6) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

On page 387, after line 24, insert a new Part I as follows:

PART I—JURISDICTION OVER CRIMES BY UNITED STATES NATIONALS IN PLACES OUTSIDE THE JURISDICTION OF ANY NATION

SEC. 1210. Section 7 of title 18, United States Code, is amended by adding a new paragraph, as follows:

"(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.".

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AMENDMENT No. 2679

1. Amendment to Title II, S. 1762:

On page 132, lines 8 through 10, delete "454(b) of the Comprehensive Employment and Training Act of 1973, as added by section 2 of the Act of October 17, 1978, (29 U.S.C. 927(b))" and insert in lieu thereof "425(b) of the Job Training and Partnership Act".

2. Amendment to Title VI, S. 1762:

On page 287, line 12, after the word "this" and before the word "person's" insert "part if such".

3. Amendment to Title X, Part K, "Assaults Upon Federal Officers," to include United States Magistrates in 18 U.S.C. 1114, "Protection of Officers and Employees of the United States."

On page 329, line 14, insert "or any United States magistrate," after "ficer,".

4. Amendments to Labor Racketeering Amendments in Title VIII of S. 1762, to conform to analogous provisions of the Senate-passed labor racketeering bill, S. 336:

On page 306, line 22, delete "and" and substitute in lieu thereof "or".

On page 310, line 15, insert ", other than in his capacity as a member of such labor oganization," after "capacity".

On page 310, line 23, delete "and" and substitute in lieu thereof "or".

On page 312, line 7 and 8, delete "or employee benefit plan".

On page 313, line 1, delete "1102" and substitute in lieu thereof "802".

On page 313, line 2, delete "1103" and substitute in lieu thereof "803".

On page 313, line 11, delete "1103 and 1104" and substitute in lieu thereof "803 and 804".

5. Amendment adding to Title XII of S. 1762, a new part relating to Department of Justice Internal Operating Guidelines.

At the end of the bill, add the following:

PART J—DEPARTMENT OF JUSTICE INTERNAL OPERATIONS GUIDELINES

SEC. 1211. The Attorney General shall, not later than twelve months after the date of enactment of this act, provide a detailed report to the Congress concerning—

(1) the extent to which internal operating guidelines promulgated by the Attorney General for the direction of the investigative and prosecutorial activities of the Department of Justice have been relied upon by criminal defendants in courts of the United States as the basis for due process challenges to indictment and prosecution by law enforcement authorities of crimes prohibited by federal statute;

(2) the extent to which courts of the United States have sustained challenges based upon such guidelines in cases wherein it has been alleged that federal investigative agents or prosecutorial personnel have failed to comply with the requirements of such internal operating guidelines, and the extent and nature of such failures to comply as the courts of the United States have found to exist;

(3) the remedial measures taken by the Attorney General to ensure the minimization of such violations of internal operating guidelines by the investigative or prosecutorial personnel of the Department of Justice; and

(4) the advisability of the enactment of legislation that would prohibit criminal defendants in the courts of the United States from relying upon such violations as grounds for the dismissal of indictments, suppression of evidence, or the vacation of judgments of conviction.

6. Amendment to Title XII, Part F, S. 1762, "Witness Security Program Improvements" relating to United States Marshals Service.

On page 385, insert after line 21, the following:

(d) Section 568 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Appropriations"; and

(2) by adding at the end thereof a new subsection to read as follows:

"(b) Without regard to the provisions of sections 3302 and 9701 of title 31 of the United States Code, the United States Marshals Service is authorized, to the extent provided in the Appropriations Act, to credit to its appropriations account all fees, commissions, and expenses collected for—

"(1) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

"(2) seizures, levies, and sales associated with judicial orders of execution;

for the purposes of carrying out these activities. Such credited amounts may be carried over from year to year for these purposes.".

7. Amendments to Title III, "Forfeiture."

On page 150, line 19, delete "section 413" and insert in lieu thereof "sections 413 and 414".

On page 162, delete the quotation mark and second period on line 4, and insert after line 4 the following:

"'(p) The provisions of this section shall be liberally construed to effectuate its remedial purposes.' ".

On page 162, insert before line 5 the following:

" 'INVESTMENT OF ILLICIT DRUG PROFITS

'SEC. 414. (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this title or title III punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this title or title III after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

'(b) Whoever violates this section shall be fined not more than [$50,000] or imprisoned not more than [ten] years, or both.

'(c) As used in this section, the term 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

'(d) The provisions of this section shall be liberally construed to effectuate its remedial purposes.'.".

On page 164, delete th quotation mark and second period on line 16, and insert after line 16 the following:

" '(j) In addition to the venue provided for in section 1395 of title 28, United States Code, or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.'.".

On page 165, line 5, delete "item" and insert in lieu thereof "items".

On page 165, delete the item after line five and insert in lieu thereof the following:

" 'Sec. 413 Criminal forfeitures.

'Sec. 414 Investment of illicit drug profits.'.".

On page 165, line 22, delete "subsection (j) of this section" and insert in lieu thereof "section 524(c) of title 28, United States Code".

On page 166, delete line 1 and all that follows through line 6 on page 169, and insert in lieu thereof the following:

"SEC. 310. Section 524 of title 28, United States Code, is amended by adding at the end the following new subsection:

'(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in Appropriations Acts for the following purposes of the Department of Justice:

'(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property; such payments may include payments for contract services and payments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions;

'(B) the payment of awards for information or assistance leading to a civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.), at the discretion of the Attorney General;

'(C) the compromise and payment of valid liens and mortgages against property that

has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made; and

'(D) disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice.

'(2) Any award paid from the fund for information concerning a forfeiture, as provided in paragraph (1)(B), shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay an award of $10,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award for such information shall not exceed the lesser of $150,000 or one quarter of the amount realized by the United States from the property forfeited.

'(3) There shall be deposited in the fund all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice remaining after the payment of expenses for forfeiture and sale authorized by law.

'(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

'(5) The Attorney General shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this subsection.

'(6) The provisions of this subsection relating to deposits in the fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

'(7) For fiscal years 1984, 1985, 1986, and 1987, there are authorized to be appropriated such sums as may be necessary for the purposes described in paragraph (1). At the end of each fiscal year, any amount in the fund in excess of the amount appropriated shall be deposited in the General Fund of the Treasury of the United States, except that an amount not to exceed $5,000,000 may be carried forward and available for appropriation in the next fiscal year.

'(8) For the purposes of this subsection, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

'(A) any criminal forfeiture proceeding;

'(B) any civil judicial forfeiture proceeding; or

'(C) any civil administrative forfeiture proceeding conducted by the Department of Justice;

except to the extent that the seizure was effected by a Customs officer or that custody was maintained by the Customs Service in which case the provisions of Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) shall apply.'.".

8. Amendment to Title XII, Part A, "Prosecution of Certain Juveniles as Adults," relating to the use and confidentiality of juvenile records.

On page 378, delete line 12 through line 4 of page 379, and insert in lieu thereof the following:

SEC. 1202. Section 5038 of title 18 of the United States Code is amended to read as follows:

"§ 5038. Use of juvenile records

"(a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

"(1) inquiries received from another court of law;

"(2) inquiries from an agency preparing a presentence report for another court;

"(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

"(4) inquiries, in writing, from the director or a treatment agency or the director of a facility to which the juvenile has been committed by the court;

"(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

"(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

"(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to his juvenile record.

"(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the government, or others entitled under this section to receive juvenile records.

"(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 841, 952(a), or 955 or 959 of title 21, such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

"(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

"(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, the court shall transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications."

9. Amendment to title XI, S. 1762, relating to 18 U.S.C. 219.

On page 375, after line 15, insert a new Part J as follows:

PART J—18 U.S.C. 219 AMENDMENT

SEC. 1116. Section 219 of title 18, United States Code, is amended by:

(1) striking out "an officer or employee" and inserting in lieu thereof "a public official"; and

(2) adding at the end thereof the following new paragraph:

"For the purpose of this section: "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government, thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government or a juror.

10. Amendment to title VII, S. 1762, "Surplus Federal Property Amendments."

On page 301, at the end of line 2, insert "If the Attorney General determines that any surplus property transferred or conveyed pursuant to an agreement entered into between March 1, 1982, and the enactment of this subsection was suitable for transfer or conveyance under this subsection, the Administrator shall reimburse the transferee for any monetary consideration paid to the United States for such transfer or conveyance."

11. Amendments to title VI, S. 1762, "Justice Assistance."

On page 253, after line 15, add the following:

"(7) an assurance that the State will take into account the needs and requests of units of general local government in the State and encourage local initiative in the development of programs which meet the objectives of Section 501."

On page 257, after line 2, add the following:

"(5) In distributing funds received under this part the State shall make every effort to distribute to units of local government and combinations thereof, the maximum amount of such available funds."

AMENDMENTS TO TITLE VI, JUSTICE ASSISTANCE

12. On page 250, line 9, insert after "ers;" the following:

"(12) with respect to cases involving career criminals and violent crime, expedite the disposition of criminal cases, reform sentencing practices and procedures; and improve court system management.";

On page 250, line 10, strike "(12)" and insert "(13)".

On page 257, strike lines 16 through 17 and insert in lieu thereof "within such State giving priority to those jurisdictions with greatest need.".

13. Amendment to Title II, S. 1762, "Sentencing Reform," relating to the collection of criminal fines.

On page 40, between lines 19 and 20, insert the following:

The liability of a defendant for any unexecuted fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.

On page 42, between lines 9 and 10 insert the following: If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

On page 49, line 13, after "defendant" insert ", relative to the burden which alternative punishments would impose".

On page 50, strike out lines 16 through 20 and insert in lieu thereof the following:

"(d) TIME AND METHOD OF PAYMENT.—Payment of a fine is due immediately unless the court, at the time of sentencing—

"(1) requires payment by a date certain; or

"(2) establishes an installment schedule, the specific terms of which shall be fixed by the court.

On page 51, between lines 9 and 10, insert the following:

"(g) RESPONSIBILITY TO PROVIDE CURRENT ADDRESS.—At the time of imposition of the fine, the court shall order the person fined to provide the Attorney General with a current mailing address for the entire period that any part of the fine remains unpaid. Failure to provide the Attorney General with a current address or a change in address shall be punishable as a contempt of court.

"(h) STAY OF FINE PENDING APPEALS.—Unless exceptional circumstances exist, if a sentence to pay a fine is stayed pending appeal, the court granting the stay shall include in such stay—

"(1) a requirement that the defendant, pending appeal, to deposit the entire fine amount, or the amount due under an installment schedule, during the pendency of an appeal, in an escrow account in the registry of the district court, or to give bond for the payment thereof; or

"(2) an order restraining the defendant from transferring or dissipating assets found to be sufficient, if sold, to meet the defendant's fine obligation.

"(i) DELINQUENT FINE.—A fine is delinquent if any portion of such fine is not paid within 30 days of when it is due, including any fines to be paid pursuant to an installment schedule.

"(j) DEFAULT.—A fine is in default if any portion of such fine is more than 90 days delinquent. When a criminal fine is in default, the entire amount is due with 30 days of notification of the default, notwithstanding any installment schedule.

On page 51, strike out line 12 through line 9 on page 52 and insert in lieu thereof the following:

**"§ 3573. Modification or remission of fine**

"(a) PETITION FOR MODIFICATION OR REMISSION.—A defendant who has been sentenced to pay a fine, and who—

"(1) can show a good faith effort to comply with the terms of the sentence and concerning whom the circumstances no longer exist that warranted the imposition of the fine in the amount imposed or payment by the installment schedule, may at any time petition the court for—

"(A) an extension of the installment schedule, not to exceed two years except in case of incarceration or special circumstances; or

"(B) a remission of all or part of the unpaid portion including interest and penalties; or

"(2) has voluntarily made restitution or reparation to the victim of the offense, may at any time petition the court for a remission of the unpaid portion of the fine in an amount not exceeding the amount of such restitution or reparation.

Any petition filed pursuant to this subsection shall be filed in the court in which sentence was originally imposed, unless that court transfers jurisdiction to another court. The petitioner shall notify the Attorney General that the petition has been filed within ten working days after filing. For the purposes of clause (1), unless exceptional circumstances exist, a person may be considered to have made a good faith effort to comply with the terms of the sentence only after payment of a reasonable portion of the fine.

"(b) ORDER OF MODIFICATION OR REMISSION.—If, after the filing of a petition as provided in subsection (a), the court finds that the circumstances warrant relief, the court may enter an appropriate order, in which case it shall provide the Attorney General with a copy of such order.

On page 63, line 18, strike out "and".

On page 63, between lines 18 and 19, insert the following:

"(g) keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision and report thereon to the court placing such person on probation and report to the court any failure of a probationer under his supervision to pay a fine in default within 30 days after notification that it is in default so that the court may determine whether probation should be revoked; and

On page 63, line 19, strike out "(g)" and insert in lieu thereof "(h)".

On page 67, after line 12, strike the item relating to section 3613, and insert in lieu thereof the following:

"3613. Civil remedies for satisfaction of an unpaid fine.

"3614. Resentencing upon failure to pay a fine.

"3615. Criminal default.

On page 68, strike out lines 2 through 19 and insert in lieu thereof the following:

"(a) DISPOSITION OF PAYMENT.—The clerk shall forward each fine payment to the United States Treasury and shall notify the Attorney General of its receipt within 10 working days.

"(b) CERTIFICATION OF IMPOSITION.—If a fine exceeding $100 is imposed, modified, or remitted, the sentencing court shall incorporate in the order imposing, remitting, or modifying such fine, and promptly certify to the Attorney General—

"(1) the name of the person fined;

"(2) his current address;

"(3) the docket number of the case;

"(4) the amount of the fine imposed;

"(5) any installment schedule;

"(6) the nature of any modification or remission of the fine or installment schedule; and

"(7) the amount of the fine that is due and unpaid.

On page 68, line 20, strike out "(b)" and insert in lieu thereof "(c)".

On page 68, after line 26, add the following:

"(d) NOTIFICATION OF DELINQUENCY.—Within 10 working days after a fine is determined to be delinquent as provided in section 3572 (i), the Attorney General shall notify the person whose fine is delinquent, by certified mail, to inform him that the fine is delinquent.

"(e) NOTIFICATION OF DEFAULT.—Within 10 working days after a fine is determined to be in default as provided in section 3572 (j), the Attorney General shall notify the person defaulting, by certified mail, to inform him that the fine is in default and the entire unpaid balance, including interest and penalties, is due within 30 days.

"(f) INTEREST, MONETARY PENALTIES FOR DELINQUENCY, AND DEFAULT.—Upon a determination of willful nonpayment, the court may impose the following interest and monetary penalties:

"(1) INTEREST.—Notwithstanding any other provision of law, interest at the rate of 1 per centum per month, or 12 per centum per year, shall be charged, beginning the 31st day after sentencing on the first day of each month during which any fine balance remains unpaid, including sums to be paid pursuant to an installment schedule.

"(2) MONETARY PENALTIES FOR DELINQUENT FINES.—Notwithstanding any other provision of law, a penalty sum equal to 10 per centum shall be charged for any portion of a criminal fine which has become delinquent. The Attorney General may waive all or part of the penalty for good cause.

On page 69, strike out line 1 and insert in lieu thereof the following:

**"§ 3613. Civil remedies for satisfaction of an unpaid fine**

On page 71, after line 23 and before the subchapter heading insert the following:

**"§ 3614. Resentencing upon failure to pay a fine**

"(a) RESENTENCING.—Subject to the provisions of subsection (b), if a defendant knowingly fails to pay a delinquent fine the court may resentence the defendant to any sentence which might originally have been imposed.

"(b) IMPRISONMENT.—The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

"(1) the defendant willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

"(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

**"§ 3615. Criminal default**

"Whoever, having been sentenced to pay a fine, willfully fails to pay the fine, shall be fined not more than twice the amount of the unpaid balance of the fine or $10,000, whichever is greater, imprisoned not more than one year, or both.

On page 79, line 2, after the period insert the following: "No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule, not to exceed two years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner.".

On page 133, line 10, strike "and".

On page 134, line 12, strike the period, and insert in lieu thereof "and".

On page 134, after line 12, insert the following:

"(d) the provisions of sections 227 and 228 shall take effect on the date of enactment.".

On page 138, between lines 15 and 16, insert the following:

SEC. 227. (a)(1) Except as provided in paragraph (2), for each criminal fine for which the unpaid balance exceeds $100 as of the effective date of this Act, the Attorney General shall, within 120 days, notify the person by certified mail of his obligation, within 30 days after notification, to—

(A) pay the fine in full;

(B) specify, and demonstrate compliance with, an installment schedule established by a court before enactment of the amendments made by this Act, specifying the dates on which designated partial payments will be made; or

(C) establish with the concurrence of the Attorney General, a new installment schedule of a duration not exceeding two years, except in special circumstances, and specifying the dates on which designated partial payments will be made.

(2) This subsection shall not apply in cases in which—

(A) the Attorney General believes the likelihood of collection is remote; or

(B) criminal fines have been stayed pending appeal.

(b) The Attorney General shall, within 180 days after the effective date of this Act, declare all fines for which this obligation is unfulfilled to be in criminal default, subject to the civil and criminal remedies established by amendments made by this Act. No interest or monetary penalties shall be charged on any fines subject to this section.

(c) Not later than one year following the effective date of this Act, the Attorney General shall include in the annual crime report steps taken to implement this Act and the progress achieved in criminal fine collection, including collection data for each judicial district.

SEC. 228. (a) Title 18 of the United States Code is amended by adding the following new chapter after chapter 227:

"CHAPTER 228—IMPOSITION, PAYMENT, AND COLLECTION OF FINES

"Sec.
"3591. Imposition of a fine.
"3592. Payment of a fine, delinquency and default.
"3593. Modification or remission of fine.
"3594. Certification and notification.
"3595. Interest, monetary penalties for delinquency, and default.
"3596. Civil remedies for satisfaction of an unpaid fine.
"3597. Resentencing upon failure to pay a fine.
"3598. Statute of limitations.
"3599. Criminal default.

**"§ 3591. Imposition of a fine**

"(a) FACTORS TO BE CONSIDERED IN IMPOSING A FINE.—The court, in determining whether to impose a fine, the amount of any fine, the time for payment, and the method of payment, shall consider—

"(1) the ability of the defendant to pay the fine in view of the income of the defendant, earning capacity and financial resources, and, if the defendant is an organization, the size of the organization;

"(2) the nature of the burden that payment of the fine will impose on the defendant, and on any person who is financially dependent on the defendant, relative to the burden which alternative punishments would impose;

"(3) any restitution or reparation made by the defendant in connection with the offense and any obligation imposed upon the defendant to make such restitution or reparation;

"(4) if the defendant is an organizaiton, any measure taken by the organization to discipline its employees or agents responsible for the offense or to insure against a recurrence of such an offense; and

"(5) any other pertinent consideration.

"(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

"(1) modified or remitted pursuant to the provisions of section 3592;

"(2) corrected pursuant to the provisions of rule 35; or

"(3) appealed;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

**"§ 3592. Payment of a fine, delinquency and default**

"(a) TIME AND METHOD OF PAYMENT.—Payment of a fine is due immediately unless the court, at the time of sentencing—

"(1) requires payment by a date certain; or

"(2) establishes an installment schedule, the specific terms of which shall be fixed by the court.

"(b) INDIVIDUAL RESPONSIBILITIES FOR PAYMENT.—If a fine is imposed on an organization, it is the duty of each individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization. If a fine is imposed on an agent or shareholder of an organization, the fine shall not be paid, directly or indirectly, out of the assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

"(c) RESPONSIBILITY TO PROVIDE CURRENT ADDRESS.—At the time of imposition of the fine, the court shall order the person fined to provide the Attorney General with a current mailing address for the entire period that any part of the fine remains unpaid. Failure to provide the Attorney General with a current address or a change in address shall be punishable as a contempt of court.

"(d) STAY OF FINE PENDING APPEAL.—Unless exceptional circumstances exist, if a sentence to pay a fine is stayed pending appeal, the court granting the stay shall include in such stay—

"(1) a requirement that the defendant, pending appeal, to deposit the entire fine amount, or the amount due under an installment schedule, during the pendency of an appeal, in an escrow account in the registry of the district court, or to give bond for the payment thereof; or

"(2) an order restraining the defendant from transferring or dissipating assets found to be sufficient, if sold, to meet the defendant's fine obligation.

"(e) DELINQUENT FINE.—A fine is delinquent if any portion of such fine is not paid within 30 days of when it is due, including any fines to be paid pursuant to an installment schedule.

"(f) DEFAULT.—A fine is in default if any portion of such fine is more than 90 days delinquent. When a criminal fine is in default, the entire amount is due with 30 days of notification of the default, notwithstanding any installment schedule.

**"§ 3593. Modification or remission of fine**

"(a) PETITION FOR MODIFICATION OR REMISSION.—A person who has been sentenced to pay a fine, and who—

"(1) can show a good faith effort to comply with the terms of the sentence and concerning whom the circumstances no longer exist that warranted the imposition of the fine in the amount imposed or payment by the installment schedule, may at any time petition the court for—

"(A) an extension of the installment schedule, not to exceed two years except in case of incarceration or special circumstances; or

"(B) a remission of all or part of the unpaid portion including interest and penalties; or

"(2) has voluntarily made restitution or reparation to the victim of the offense, may at any time petition the court for a remission of the unpaid portion of the fine in an amount not exceeding the amount of such restitution or reparation.

Any petition filed pursuant to this subsection shall be filed in the court in which sentence was originally imposed, unless that court transfers jurisdiction to another court. The petitioner shall notify the Attorney General that the petition has been filed within ten working days after filing. For the purposes of clause (1), unless exceptional circumstances exist, a person may be considered to have made a good faith effort to comply with the terms of the sentence only after payment of a reasonable portion of the fine.

"(b) ORDER OF MODIFICATION OR REMISSION.—If, after the filing of a petition as provided in subsection (a), the court finds that the circumstances warrant relief, the court may enter an appropriate order, in which case it shall provide the Attorney General with a copy of such order.

**"§ 3594. Certification and notification**

"(a) DISPOSITION OF PAYMENT.—The clerk shall forward each fine payment to the United States Treasury and shall notify the Attorney General of its receipt within 10 working days.

"(b) CERTIFICATION OF IMPOSITION.—If a fine exceeding $100 is imposed, modified, or remitted, the sentencing court shall incorporate in the order imposing, remitting, and modifying such fine, and promptly certify to the Attorney General—

"(1) the name of the person fined;

"(2) his current address;

"(3) the docket number of the case;

"(4) the amount of the fine imposed;

"(5) any installment schedule;

"(6) the nature of any modification or remission of the fine or installment schedule; and

"(7) the amount of the fine that is due and unpaid.

"(c) RESPONSIBILITY FOR COLLECTION.—The Attorney General shall be responsible for collection of an unpaid fine concerning which a certification has been issued as provided in subsection (a).

"(d) NOTIFICATION OF DELINQUENCY.—Within 10 working days after a fine is determined to be delinquent as provided in section 3592(e), the Attorney General shall notify the person whose fine is delinquent, by certified mail, to inform him that the fine is delinquent.

"(e) NOTIFICATION OF DEFAULT.—Within 13 working days after a fine is determined to be in default as provided in section 3592(f), the Attorney General shall notify the person defaulting, by certified mail, to inform him that the fine is in default and the entire unpaid balance, including interest and penalties, is due within 30 days.

**"§ 3595. Interest, monetary penalties for delinquency, and default**

"Upon a determination of willful nonpayment, the court may impose the following interest and monetary penalties:

"(1) INTEREST.—Notwithstanding any other provision of law, interest at the rate of 1 per centum per month, or 12 per centum per year, shall be charged, beginning the 31st day after sentencing on the first day of each month during which any fine balance remains unpaid, including sums to be paid pursuant to an installment schedule.

"(2) MONETARY PENALTIES FOR DELINQUENT FINES.—Notwithstanding any other provision of law, a penalty sum equal to 10 per centum shall be charged for any portion of a criminal fine which has become delinquent. The Attorney General may waive all or part of the penalty for good cause.

**"§ 3596. Civil remedies for satisfaction of an unpaid fine**

"(a) LIEN.—A fine imposed as a sentence is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted, or set aside, or until it becomes unenforceable pursuant to the provisions of subsection (b). On application of the person fined, the Attorney General shall—

"(1) issue a certificate of release, as described in section 6325 of the Internal Revenue Code, of any lien imposed pursuant to this section, upon his acceptance of a bond described in section 6325(a)(2) of the Internal Revenue Code; or

"(2) issue a certificate of discharge, as described in section 6325 of the Internal Revenue Code, of any part of the person's property subject to a lien imposed pursuant to this section, upon his determination that the fair market value of that part of such property remaining subject to and available to satisfy the lien is at least three times the amount of the fine.

"(b) EXPIRATION OF LIEN.—A lien becomes unenforceable at the time liability to pay a fine expires as provided in section 3598.

"(c) APPLICATION OF OTHER LIEN PROVISIONS.—The provisions of sections 6323, 6331, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331, 6332, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805) and of section 513 of the Act of October 17, 1940 (54 Stat. 1190), apply to a fine and to the lien imposed by subsection (a) as if the liability of the person fined were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this subsection, references in the preceding sections of the Internal Revenue Code of 1954 to 'the Secretary' shall be construed to mean 'the Attorney General,' and references in those sections to 'tax' shall be construed to mean 'fine'.

"(d) EFFECT ON NOTICE OF LIEN.—A notice of the lien imposed by subsection (a) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with 28 U.S.C. 1962, of the judgment under which a fine is imposed shall be considered for all purposes as the filing prescribed by section 6323 (f)(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 6323 (f)(1)(A)) and by subsection (c).

"(e) ALTERNATIVE ENFORCEMENT.—Notwithstanding any other provision of this section, a judgment imposing a fine may be enforced by execution against the property of the person fined in like manner as judgments in civil cases.

"(f) DISCHARGE OF DEBTS INAPPLICABLE.—No discharge of debts pursuant to a bankruptcy proceeding shall render a lien under this section unenforceable or discharge liability to pay a fine.

**"§ 3597. Resentencing upon failure to pay a fine**

"(a) RESENTENCING.—Subject to the provisions of subsection (b), if a person knowingly fails to pay a delinquent fine the court may resentence the person to any sentence which might originally have been imposed.

"(B) IMPRISONMENT.—The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

"(1) the person willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

"(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

**"§ 3598. Statute of limitations**

"(a) Liability to pay a fine expires.—

"(1) 20 years after the entry of the judgment;

"(2) upon the death of the person fined.

"(b) The period set forth in subsection (a) may be extended, prior to its expiration, by a written agreement between the person fined and the Attorney General. The running of the period set forth in subsection (a) is suspended during any interval for which the running of the period of limitations for collection of a tax would be suspended pursuant to section 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I) of the Internal Revenue Code of 1954 (26 U.S.C. 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I)), or section 513 of the Act of October 17, 1940 (54 Stat. 1190).

**"§ 3599. Criminal default**

"Whoever, having been sentenced to pay a fine, willfully fails to pay the fine, shall be fined not more than twice the amount of the unpaid balance of the fine or $10,000, whichever is greater, imprisoned not more than one year, or both.".

(b) Section 3651 of title 18, United States Code, is amended by inserting after "May be required to provide for the support of any persons, for whose support he is legally responsible." the following new paragraph:

"If the court has imposed an ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.".

(c) Section 3651 of title 18, United States Code, is amended by striking out the last paragraph and inserting in lieu thereof the following:

"The defendant's liability for any unexecuted fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation.".

(d) The second paragraph of section 3655 of title 18, United States Code, is amended to read as follows:

"He shall keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision, and shall report thereon to the court placing such person on probation. He shall report to the court any failure of a probationer under his supervision to pay a fine in default within 30 days after notification that it is in default so that the court may determine whether probation should be revoked.".

(e) Section 4209 of title 18, United States Code, is amended in subsection (a) by striking out the period at the end of the first sentence and inserting in lieu thereof "and, in a case involving a criminal fine that has not already been paid, that the parolee pay or agree to adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense.".

(f) Subsection (b)(1) of section 4214 of title 18, United States Code, is amended by adding after "parole" the following: "or a failure to pay a fine in default within 30 days after notification that it is in default".

(g)(1) Section 3565 of title 18, United States Code, is repealed.

(2) The table of sections for chapter 227 of title 18, United States Code, is amended by striking out the item for section 3565 and inserting in lieu thereof the following:

**"3565. Repealed.".**

(h) Section 3569 of title 18, United States Code, is amended by—

(1) striking out "(a)"; and

(2) striking out subsection (b).

(i) This section shall be repealed on the first day of the first calendar month beginning 24 months after the date of enactment of this Act.

14. Amendment to Title X, Part B, S. 1762, "Solicitation to Commit a Crime of Violence."

On page 320, line 3, delete "crime of violence" and insert in lieu thereof "felony that has as an element the use, attempted use, or threatened use of physical force against the person or property of another".

15. Amendment to Title VI, S. 1762, "Justice Assistance," relating to rural crime.

On page 236, line 23, delete "successful." and insert in lieu thereof "successful;".

On page 236, after line 23, insert the following:

"(6) developing improved strategies for rural areas to better utilize their dispersed resources in combatting crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention."

On page 245, line 13, delete "rural crime," after "quents,".

On page 250, line 9, insert the following:

"(12) provide training, technical assistance, and programs to assist State and local law enforcement authorities in rural areas in combatting crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention;".

On page 250, line 10, delete "(12)" and insert in lieu thereof "(13)".

On page 291, line 3, after "criminals." insert "In rural areas such training shall emphasize effective use of regional resources and improving coordination among criminal justice personnel in different areas and in different levels of government.".

16. Amendment relating to the status of Puerto Rico in the Justice Assistance part of S. 1762 (Title VI).

On page 262, line 24, delete "3" and insert in lieu thereof "one and one-half".

On page 262, line 25, delete "the Commonwealth of Puerto Rico,".

On page 263, line 4, delete "97" and insert in lieu thereof "ninety-eight and one-half".

On page 264, line 17, delete "the Commonwealth of Puerto Rico,".

17. Amendment to Title VI, S. 1762, "Justice Assistance."

On page 300, between lines 7 and 8, insert the following:

SEC. 605. (a) Section 1028 of title 18, United States Code, is amended by adding at the end thereof the following:

"(f) To the maximum extent feasible, personal descriptors or identifiers utilized in identification documents, as defined in this section, shall utilize common descriptive terms and formats designed to:

"(1) reduce the redundancy and duplication of identification systems by providing information which can be utilized by the maximum number of authorities; and

"(2) facilitate positive identification of bona fide holders of identification documents.".

(b) The President shall, no later than three years after the date of enactment of this Act, and after consultation with Federal, State, local, and international issuing authorities, and concerned groups, make recommendations to the Congress for the enactment of comprehensive legislation on Federal identification systems. Such legislation shall—

(1) give due consideration to protecting the privacy of persons who are the subject of any identification system;

(2) recommend appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information; and

(3) make recommendations providing for the exchange of personal identification information as authorized by Federal or State law or Executive order of the President or the chief executive officer of any of the several States.

Mr. THURMOND. Mr. President, these two groups of amendments appeared in the CONGRESSIONAL RECORD on January 26. Explanations of the amendments also appeared in that issue of the RECORD. With two exceptions, each of these groups is identical to amendments No. 2436 and No. 2481 which appeared with explanations in the RECORD on October 26 and November 2 of last year.

In amendment No. 2346, the October 26 RECORD had inadvertently deleted the proposal for a comprehensive prison contraband statute that is intended to replace the provisions at pages 373 and 374 of S. 1762. Amendment No. 2678 corrects this error by setting forth the comprehensive proposal.

Second, amendment No. 2679 includes a further refinement of the proposed Department of Justice forfeiture fund and includes also a set of amendments to forfeiture by Senator D'AMATO. Apart from these two changes, the amendments are the same as those printed and explained in the RECORD last year.

These two groups of amendments consist of corrections and clarifications suggested by those who have studied S. 1762 and also of substantive proposals by more than 10 Senators. All of the amendments have been accepted by the managers of the bill.

The first package includes mostly technical amendments. It also contains substantive amendments regarding prison contraband, the witness security program, and the establishment of extraterritorial criminal jurisdiction in cases where no other nation has jurisdiction.

The second package contains two technical amendments. The remaining 15 parts are amendments proposed by Senators COCHRAN, D'AMATO, DENTON, GLENN, DOLE, LEAHY, PERCY, and SPECTER. These amendments are considered noncontroversial by the managers of the bill, and I urge their approval.

● Mr. D'AMATO. Mr. President, I urge that these amendments to the Comprehensive Crime Control Act be passed by unanimous consent. Over the recess, I worked with the Department of Justice and the Judiciary Committee to fashion three provisions relating to civil and criminal forfeiture now contained in this amendment to the crime package. I thank the very distinguished chairmen of the Judiciary Committee and the Criminal Law Subcommittee for their support and acknowledgment of my efforts. I also wish to express my appreciation to the distinguished ranking minority member of the Judiciary Committee for his acceptance of these amendments.

I refer my colleagues to the CONGRESSIONAL RECORD of January 26, 1984, for a full discussion of these provisions, which go to the heart of today's crime and drug abuse epidemics. By denying drug kinpins of the profits and proceeds of their drug transactions, we will deprive them of their enormous profits and, in turn, increase the funds available to wage a meaningful and effective war on crime.

Following the lead of the Supreme Court in Russello against United States, my provisions amend the drug laws to empower the Justice Department to seize the broadest possible range of profits and property controlled by drug traffickers. It is my hope that these amendments will enable the Justice Department to pierce the veil that drug dealers now raise to avoid forfeiture. Under current law, a drug dealer who places property he acquires through illicit drug trafficking in the name of friends or relatives can easily avoid forfeiture. The time has come for us to destroy this particular defense of the drug czars. My amendment will assist in this effort.

I have also reviewed with the Justice Department the need for a reform of our civil forfeiture venue rules. My amendment replaces the current requirement of a separate action in each judicial district where forfeitable property is found. The current rule has led to a mutiplicity of lawsuits that has, in turn, caused an unmanageable backlog of civil forfeiture cases and reduced dramatically the effectiveness of civil forfeiture as a weapon against drug traffickers. I propose, therefore, to permit a single civil forfeiture action in the district where the defendant is found or is being prosecuted.

Finally, my legislation creates a new Federal offense of reinvesting the proceeds of even a single felony drug violation. This new offense is punishable by imprisonment of up to 10 years or fine of up to $50,000, or both. This will enable law enforcement agencies to secure longer prison terms for all drug law violators, not just those convicted under RICO.

By depriving drug kingpins of their vast estates, planes, boats, cars, and bank accounts, we can deprive them of everything they truly value. In doing so, we can cripple their ability to run their empires. We also can reduce their ability to corrupt public officials and infiltrate legitimate businesses. An effective forfeiture system will provide law enforcement agencies with sizable transfusions of money and equipment to wage war on crime. Boats and planes used to smuggle heroin can instead be used to pursue and arrest the drug smugglers. The enormous profits from the $80-billion-a-year illegal drug industry can be used to hire the agents needed to break the drug rings.

Mr. President, these amendments are an important first step in building such a system. By passing them today, the Senate will be signaling that, at long last, it is ready to substitute action for rhetoric in waging war on crime. I urge my colleagues to adopt these amendments by unanimous consent.●

Mr. BIDEN. Mr. President, the chairman has set this out very clearly. These amendments are not controversial. They do enhance the bill and I urge their adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendments.

The amendments (No. 2678 and No. 2679) were agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. BIDEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, we are off to a pretty good start here. This piece of legislation is not only fairly comprehensive and broad but it has been, up to now, very controversial. I would like to once again, as I did on Friday, compliment the chairman of the committee, Senator THURMOND, for the way in which he has pursued this Comprehensive Crime Control Act of 1983. We had the Comprehensive Crime Control Act of 1982 which we had passed. We had one of a similar nature in 1981. We have been attempting to do a number of these things in a bipartisan fashion for a number of years.

In 1980 when Senator THURMOND became chairman of the full commit-

tee and I became the ranking member of the committee, I approached Senator THURMOND about the prospect of us maybe being able to do this in a little different way than it has been done in the past. That is for us to basically agree on what we agreed on and agree on what we disagreed on and move forward with the parts on which we agreed.

That sounds like a simple, very commonsense approach. But in light of the way the body has acted in the past, it turned out to be fairly novel. It has taken a couple of years for the rest of our colleagues to be of a state of mind to be willing to go along with this approach. I hope this fast start we are off to is a consequence of the leaders, the majority leader, and the minority leader, putting this matter high on the agenda, considering all the things we must deal with in this Congress. I hope this fast start is an indication that we will have a quick finish. I hope we will move forward on all aspects of this bill including sentence reform, forfeiture, insanity, drug enforcement amendments, drug assistance acts, labor racketeering amendments, foreign currency transaction, violent crime amendments, serious nonviolent crime amendments, and various procedural amendments, some of which are controversial and we have already moved on them.

Some of the people know of my deep interest from the time this bill was originally drafted and know of my deep interest now in establishing the Cabinet-level drug officer. They will observe that is not part of this package. That in no way indicates that I have lost my feeling that that is one of the most important things we can do. But in the interest of comity and in the interest of legislative activity and action on a very important piece of legislation, I, like Senator THURMOND, put aside some of the things which were very controversial, this being one of them. The President does not like the idea very much of a drug coordinator of the nature that I propose, and we dropped it from this bill.

I want to be fair to my colleagues and anyone who bothers to read the RECORD. It is my intention to pursue this matter in a separate piece of legislation just as we, myself and other of my colleagues, have agreed to pursue their interests, whether it be the death penalty or the exclusionary rule, or whatever it may be. In the interest of moving against what is one of the most pernicious elements of our society, the criminal element, I believe it is urgent that we provide our judicial system and our police officers with a greater capability to deal with what is a real life problem in our society. The Comprehensive Crime Act of 1983 goes a long way in doing that.

We are not going to eradicate crime with this bill. We are not going to see to it that all Americans are now safe in their homes and on the streets with the passage of the bill. But what we do, assuming this bill will be passed, and I have every hope it will be, and that the House will act on it, will pass it, and the President will sign it, assuming it becomes law of the land I can assure my colleagues that it will, in fact, aid in diminishing the incidences of violent crime, drug abuse and abuse of the criminal justice system.

Merely because it does not eradicate crime does not mean that it is not very important. It is very important. We at the Federal level and at all levels of Government, I would argue, in the last 15 years have had the great tendency to overpromise. The public is somewhat skeptical about major pieces of anticrime legislation passed by the Congress or by their State legislatures or proposed by their Governors or Presidents because they have heard it before. They hear about waging wars on crime, eradicating crime in our lifetime, and all those kinds of things, which they are smart enough to know is not realistic unless you can figure out a way to change human nature.

I am not sure we can do that. If we can, I am not sure we want to change human nature too fundamentally.

So, Mr. President, without overstating the importance of it, it is not incorrect to say that this, if passed, will be the single most significant piece of anticrime legislation that has passed in the 11 years I have been a U.S. Senator. It will be the most significant piece of anticrime legislation passed since the late sixties, in my view.

Although it passed in even slightly stronger form in the last Congress, that was vetoed, for reasons I shall not go into now. I am hopeful that, with some of the changes that have been made and the willingness of some like myself to delete from this package certain provisions—in my case, the establishment of a cabinet-level drug officer—that will encourage the President when this is passed to sign this bill into law assuming we can get it through the House of Representatives. I am not inclined to put the cart too much before the horse here. We have a long way to go. I hope my colleagues will reflect upon several points. Then I shall yield the floor.

The first is that the vast majority, if not everything that is in this bill, was overwhelmingly passed by the U.S. Senate in the last Congress in the so-called Thurmond-Biden crime bill; almost every piece of this legislation has had the imprimatur of the Senate in an overwhelming manner. It was not even close.

Do not be confused or diverted by staff members who may want to impress you with the fact that they have read it all and write you new memos. Just go back and get the old memos. You have already voted for this. I hope we are not going to spend a lot of time debating what we have already debated and voting on what we have already overwhelmingly voted for. That is not in any way to attempt to inhibit the debate. People will speak on this. It is to try to put this into perspective.

I see the distinguished senior Senator from West Virginia on his feet. I am always anxious to hear what he has to say about matters. I shall yield the floor in just a moment.

Let me conclude by saying that the more rapidly we can dispose of this measure in the U.S. Senate, the more rapidly we can send it to the House of Representatives. The one thing the chairman of this committee and I do not want to see happen is to have the clock beat us. We do not mind being beaten on the merits on occasion, though we do not like that. We do not mind, although we understand political realities, that when it goes to the other body, they may, for some reason exceeding the four corners of the document, decide they do not like the legislation. We can cope with that. The one thing we would like to have happen and the reason we are so glad the leadership has followed through with Senator THURMOND's request that this be right up on the front of the agenda when we got back, is that we get this bill over there as rapidly as we can so we can have the debate begin to take place over there and put as much pressure and enlightenment, if you will, on House Members as we can to consider this legislation.

With that, Mr. President, while we are waiting for other Senators who may wish to speak on this bill, I yield the floor.

(Mr. COHEN assumed the chair.)

Mr. THURMOND. Mr. President, I just want to say that the distinguished ranking member of the committee (Mr. BIDEN) and I have worked on this package a great deal. We have eliminated what we think are controversial provisions of the package as it came from the Justice Department. We have those in separate bills which will follow this package. He and I may not agree on all of those but on this package we are agreed, the committee has agreed—I do not know of anyone who is opposed to this package except, I understand, the distinguished Senator from Maryland (Mr. MATHIAS), who has some amendments he wants to offer to the package. We hope we can get through this package and pass this bill today, if possible.

Mr. President, the distinguished Senator from West Virginia desires to make a few remarks on the birthday of Franklin Roosevelt, which is today. I yield to him at this time.

Mr. RANDOLPH. Mr. President, I am grateful for the opportunity to

speak at this time while we are considering the Comprehensive Crime Control Act of 1983.

In speeches and articles, I have often used the phrase "there should be no closed season on criminals." In other words, if you are hunting birds in South Carolina or Delaware, or deer, perhaps, in West Virginia, there is an open season when you hunt. There is the closed season when you do not hunt. The words, "no closed season on criminals," is meant to indicate what the two Senators now in charge of this measure would, I am sure, want to indicate. That is that criminals must be hunted down at all seasons of the year. I believe that is the intent, at least in the overall, of the strengthening of our Criminal Code in connection with the pending measure. I commend the Senator from South Carolina (Mr. THURMOND) and the Senator from Delaware (Mr. BIDEN) for their diligent work in bringing this vital bill to the Senate.

## IN MEMORY OF FRANKLIN D. ROOSEVELT

Mr. RANDOLPH. Mr. President, 102 years ago today, Franklin Delano Roosevelt was born in Hyde Park, in the State of New York. Think with me of Franklin Roosevelt, as our leader who shaped and shared a period of American history underscored by the Great Depression and World War II.

I was on this Hill, with Mary, my wife, on the 4th of March, 1933 when he urged faith and the abandment of fear.

In that time, as my colleagues, Senator THURMOND and Senator BIDEN, know, that Representatives took their oath of office on March 9.

On that date we passed without a dissenting vote in the House, the emergency banking bill. In the Senate the vote was 73 for and 7 against. We were a Congress of units.

I was a participant in those dark first 100 days of the initial administration of Franklin Roosevelt. I continue to recall the day when he went away from us by his death in Warm Springs, Ga. I was in Lima, Ohio, having flown from Washington to Dayton and had then been driven to that city for a speech at the annual chamber of commerce dinner. I went to the hotel, had a shower and laid down for a rest before the dinner. In 10 or 15 minutes, the telephone rang, and Miss Marie Lantz, my secretary, was calling me from Washington. She had difficulty in speaking. I could understand that she was crying. She said:

Our President has died, and I'm crying.

I replied:

Marie, the people of this country, I am sure, are crying too.

Our President had died. He left his imprint for better humanity in this Republic as a legacy. He was a Chief Executive who had a rapport with, and the understanding of, people, even those who opposed the policies and issues which he and the Congress brought into being.

Yes, this peerless leader, was born on January 30, 1882. This is 1984, more than a century later. F.D.R. was the 32d President of the United States. Between and including the Presidencies of George Washington and Ronald Reagan we have had 40 Chief Executives in the White House. He served three complete terms. He was elected in 1932. He was reelected in 1936. He was again reelected in 1940. And then he was chosen in 1944.

My colleagues, Franklin Roosevelt was a leader who believed in the mission that he championed during 11 years, 3 months, and 12 days as the Chief Executive of the United States of America. He was an achiever. He was a humanitarian. He was a man of bold ideas.

He demonstrated in the position he held in the Federal Government before he came here as President and in his governorship of New York the quality of brilliance, that character of leadership which was to benefit, long after he had died, humankind not only of this Republic but throughout the world. His substance, vision, and compassion for the common people will continue to benefit Americans for generations yet to be.

## COMPREHENSIVE CRIME CONTROL ACT

(The Senate continued with the consideration of the bill.)

AMENDMENT NO. 2680

(Purpose: To Establish the Crime Victim's Assistance Fund)

Mr. HEINZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an amendment numbered 2680.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 387, after line 24, add the following:

PART I—CRIME VICTIM'S ASSISTANCE FUND

SEC. 1210. (a) Part II of title 18, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 239—CRIME VICTIM'S ASSISTANCE FUND

"Sec.
"3801. Establishment of the Crime Victim's Assistance Fund.
"3802. Distribution of fund to State programs.
"3803. Distribution of fund to victim and witness assistance programs.
"3804. Return of funds to Treasury; report to Congress.

"§ 3801. Establishment of Crime Victim's Assistance Fund

"(a) There is established in the Treasury of the United States a revolving fund, to be administered by the Attorney General and to be known as the Crime Victim's Assistance Fund. The fund shall be the depository of—

"(1) fines paid by all individuals convicted of Federal offenses in the amount of—

"(A) $10 to $100 for each misdemeanor and $25 to $500 for each felony; and

"(B)(i) an additional surcharge of up to 100 per centum on all Federal fines paid in the courts of the United States; or

"(ii) double any gain by the defendant or loss by the victim in any case where the fine authorized by clause (i) is less than the gain realized by the defendant or the harm suffered by the victim; and

"(2) all forfeitures with the exception of those required by Federal law enforcement agencies.

In imposing a fine under clause (1)(B)(ii) the court shall consider the ability of the defendant to pay. In any case where a fine is not imposed under this section or any other provision of law the court shall state for the record the reasons a fine was not imposed.

"(b)(1) If a fine is imposed under this section or any other provision of law, the sentencing court shall promptly certify to the Attorney General—

"(A) the name of the person fined;

"(B) his last known address;

"(C) the docket number of the case;

"(D) the amount of the fine imposed;

"(E) the time and method of payment specified by the court;

"(F) the nature of any modification or remission of the fine; and

"(G) the amount of the fine that is due and unpaid.

The court shall thereafter promptly certify to the Attorney General the amount of any subsequent payment that the court may receive with respect to, and the nature of any subsequent remission or modification of, a fine concerning which certification has previously been issued.

(2) The Attorney General shall be responsible for collection of an unpaid fine concerning which a certification has been issued as provided in paragraph (1).

"(c)(1) A fine imposed pursuant to the provisions of this section or any other provision of law is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted, or set aside, or until it becomes unenforceable pursuant to the provisions of paragraph (2).

"(2) A lien becomes unenforceable and liability to pay a fine expires—

"(A) twenty years after the entry of the judgment; or

"(B) upon the death of the individual fined.

The period set forth in clause (A) may be extended, prior to its expiration, by a written agreement between the person fined and the Attorney General. The running of the period set forth in clause (A) is suspended during any interval for which the running of the period of limitations for collection of a tax would be suspended pursuant

to section 6503(b), 6503(c), 6503(f), or 7508(a)(1)(I) of the Internal Revenue Code of 1954 (26 U.S.C. 6503(b), 6503(c), 6503(g), or 7508(a)(1)(I)), or section 513 of the Act of October 17, 1940, 54 Stat. 1190.

"(3) The provisions of sections 6323, other than subsection (f)(4), 6331 through 6343, 6901, 7402, 7403, 7405, 7423 through 7426, 7505(a), 7506, 7508, 7602 through 7605, 7622, 7701, 7805, and 7810 of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331 through 6343, 6901, 7402, 7403, 7405, 7423 through 7426, 7505(a), 7506, 7508, 7602 through 7605, 7609, 7610, 7622, 7701, 7805, and 7810), and of section 513 of the Act of October 17, 1940, 54 Stat. 1190, apply to a fine and to the lien imposed by paragraph (1) as if the liability of the person fined were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this subsection, references in the preceding sections of the Internal Revenue Code of 1954 to 'the Secretary' shall be construed to mean 'the Attorney General,' and references in those sections to 'tax' shall be construed to mean 'fine.'

"(4) A notice of the lien imposed by paragraph (1) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with 28 U.S.C. 1962, of the judgment under which a fine is imposed shall be considered for all purposes as the filing prescribed by section 6323(f)(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 6323(f)(1)(A)) and by paragraph (3).

**"§ 3802. Distribution of fund to State programs**

"(a) Fifty per centum of the funds in the fund established by section 3801 shall be distributed to qualifying State crime victim's assistance funds by the Attorney General.

"(b)(1) In order to qualify for funds under this section, a State shall establish a crime victim's assistance fund to distribute such funds. Such State fund shall provide—

"(A) compensation to all victims of crime within such State; and

"(B) psychological counseling to any crime victim who needs such counseling.

"(2) No State shall receive funds under this section until the crime victim's assistance fund of such State has been operational for a year.

"(c)(1) A State shall receive funds under this section on an annual basis based on the percentage of total compensation awards made by the crime victim's assistance fund of such State during the previous year. No State shall receive more than 10 per centum of total amounts awarded in the previous year from the Crime Victim's Assistance Fund.

"(2) The victim of a crime of exclusive Federal jurisdiction may apply to the convenient State for compensation. States shall be reimbursed dollar for dollar plus actual administrative costs not to exceed 25 per centum of the award for any award made to the victim of a crime of exclusive Federal jurisdiction. Awards made under this paragraph shall be excluded from the 10 per centum cap provided in paragraph (1).

**"§ 3803. Distribution of fund to victim and witness assistance programs**

"Fifty per centum of the funds collected by the Crime Victim's Assistance Fund shall be used to support victims and witness assistance programs. Fifty per centum of such funds shall be distributed at the discretion of the Attorney General to support Federal activities including—

"(1) training of law enforcement officials;

"(2) technical assistance to States for purpose of this chapter;

"(3) supporting ongoing or established new Federal witness and victims assistance programs;

"(4) improving facilities for victims and witnesses;

"(5) establishing a victim's advocate in the Department of Justice; and

"(6) administration of Crime Victim's Assistance Fund.

**§ 3804. Return of funds to Treasury; report to Congress**

"(a) Any funds deposited into the Crime Victim's Assistance Fund during a fiscal year not paid out during such fiscal year shall be returned to the general fund of the Treasury of the United States.

"(b) The Attorney General shall report to the Congress three years after the date of enactment of this chapter concerning the effectiveness of this chapter and any necessary modifications or other legislative action.".

(b) The table of chapters for part II of title 18, United States Code, is amended by adding the following new item:

"239. Crime Victim's Assistance Fund ..... 3801".

Mr. HEINZ. Mr. President, the Special Committee on Aging, which I am privileged to chair, has over the past several years conducted numerous hearings on how older Americans are victimized by crime and how this criminal victimization of the elderly is often more devastating to them emotionally and financially than younger crime victims. One result of the interest in this issue generated by our committee was the establishment of the Attorney General's task force on violent crime in 1981. That task force reported later in that year, and its report included recommendations on how we should improve our treatment of the victims and witnesses of crime. After all, the victim of crime is usually the principal witness whose willing and informed testimony is absolutely essential to the successful conclusion of any criminal case.

One result of the task force's recommendations was that Senator PAUL LAXALT and I introduced the Heinz-Laxalt Omnibus Victim Protection Act of 1982 which was passed by the Congress and signed into law by President Reagan on October 13, 1982. That bill subsequently became Public Law 92-271. It represents the first Federal legislation to address the problems of victims and witnesses.

Subsequently, the President's task force on victims of crime, created in 1982, concluded that the treatment of victims by our criminal justice system has been careless and shameful. In the words of the task force:

Innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds—personal, emotional, and financial—have gone unattended.

This task force recommended that Congress enact legislation to provide Federal funding to assist State crime victim compensation programs and victim witness assistance agencies.

In order to implement these task force recommendations, I, along with my distinguished colleague from Iowa, Senator GRASSLEY, introduced on March 8, 1983, legislation, S. 704, the Federal Crime Victim Compensation Act. I think it is worth noting that 39 States and the District of Columbia currently have crime victim compensation programs, virtually all of which are experiencing financial problems.

The Comprehensive Crime Control Act of 1983, the legislation that is before us, does not address the victim compensation issue. Therefore, the amendment that I have sent to the desk is an amendment that is, for all intents and purposes, the same as the bill that Senator GRASSLEY and I introduced earlier, namely S. 704.

What the legislation does, in short, for those of our colleagues who are not familiar with it, would be to provide Federal funds to State victim compensation programs and support State and Federal victims-witness assistance programs. It does so, however, without any increase in the Federal budget deficit because it would not require any appropriation of Federal funds. In fact, the funding elements would generate funds sufficient to accomplish the purposes of the act and a potentially significant surplus.

As observers of this legislation probably already know, the changes called for by this legislation are thoroughly consistent with the recommendations of the President's Task Force on Victims of Crime.

Since most people like to know how much this means in dollars, let me take a moment to review the economics of the bill.

Based on the experience of 36 States with existing compensation programs and the 1981 crime statistics, our estimate is that a total of $30 million—not billion—will be required for victim compensation during 1984. That is an extraordinarily modest amount.

However, the fact is that we are talking about State awards that currently range anywhere from $500 in emergency funds to perhaps $50,000 in maximum benefits. State programs received 34,586 claims in fiscal 1981. More than 17,000 awards were made totaling about $49 million.

The average award was about $2,900.

The funding elements I have referred to above would generate a minimum of $45 million to support and extend these efforts and for victims and witnesses assistance programs. They have the potential of generating

more than $125 million for these purposes.

Mr. President, for those who have followed the mathematics, I think it should be clear that we are not talking about the Federal Government paying all the costs of these programs. What we are talking about is the Federal Government supplementing the revenues that already exist to fund existing programs. That requirement, to the best of our ability to estimate it, would come to about $30 million a year.

Funding would be through several mechanisms inducting a specific one-time compensation fee authorized for all Federal crimes. What would happen is that the courts would be authorized to levy fees from $10 to $100 for misdemeanors and $25 to $100 for felonies.

Based on our review of 1981 statistics, that would generate up to $10 million in new revenue. There would also be an authorization for courts to order up to a 100-percent surcharge on all Federal fines depending on the criminal's ability to pay, over and above the 93 million that was ordered last year.

This surcharge would be directed to the crime victims assistance fund. We also anticipate that the provisions of the legislation designed to improve collection of fines and direct forfeiture successes, to the fund would result in substantial revenues.

That is a brief description of how the money would be obtained. But I would be remiss if, in reviewing this legislation, I did not share with my colleagues one of the many real-life case histories which underlines our belief in the critical nature of this legislation.

In September 1981, the Senate Committee on Aging held a hearing on older Americans and their fear of crime. One of the witnesses at that hearing was Mrs. Harriet Cunningham of Chester, Pa., one of my constituents.

Mrs. Cunningham was 77 years old at that time. She was a victim of a robber who snatched her shoulder bag and threw her to the ground. As a result of her fall, her shoulder blade and upper arm were shattered. Mrs. Cunningham's assailant was caught and convicted. He received a sentence of 2 to 4 years of incarceration, did his time, and was released.

One might say he paid his debt to society and was allowed thereafter to get on with his life. But what about Mrs. Cunningham? What about his debt to her?

Well, in December 1982, Mrs. Cunningham died. Pat Johnstone, the director of the senior safety project of Delaware County, Pa., informed me that the robbery and its repercussions were substantial contributing factors to Mrs. Cunningham's death.

Mrs. Cunningham never knew a day free from pain after her assault. She had extensive surgery on her shoulder. She was hospitalized for 49 days and had outpatient therapy twice a week for more than 11 months. She was treated by several doctors but never regained the use of her hand. Because of the cost of these medical procedures, she had to give up her house and relocate.

Mrs. Cunningham had an enormous number of medical bills. She is 1 of the more than 40 million Americans who are victimized each year. She is one of the many whose lives are shattered and fundamentally altered by random acts of violence and other crimes.

Do you know how much restitution went to Mrs. Cunningham? The attacker was ordered to pay restitution in the grand total of $126. Mr. President, that is the right number—$126.

Perhaps the court was correct in judging this to be reasonable, based on the criminal's ability to pay. I do not know all of the facts. But this sum does not begin to reflect the financial impact of this crime on this Mrs. Cunningham or the other millions of Mrs. Cunninghams in this country each year. Her medical bills alone were 100 times greater than the restitution ordered. They were more than $12,000.

Mr. President, I wish I could say that Mrs. Cunningham's story was an isolated instance, but this was not an isolated instance. There are thousands upon thousands of Americans who are running up huge medical bills and whose lives are being ruined by virtue of their status as victims. They do not chose that status. For reasons that are best understood by those most familiar with the intricacies of our criminal justice system, we are making a totally insufficient attempt to address these problems. We are not asking the Federal Government to compensate these victims for pain and suffering, but just to compensate them to the extent of their real and out-of-pocket losses.

There is a lot more I could relate about the Cunningham case. There are more wrinkles to it. It is an even uglier story under the surface than on the surface. For those who are interested, I refer them to my remarks in the CONGRESSIONAL RECORD at pages S. 2293 and S. 2295 on March 8, 1983.

Suffice it to say, Mr. President, I was delighted when the President, in his state of the Union message, said that we have done plenty for defendants' rights; now it is time we did something about victims' rights. Amen, I say to that, Mr. President; right on.

I believe that our President, Ronald Reagan, needs our support on this issue; and I think it is time for the Senate to go on record as addressing this national concern.

Mr. BIDEN addressed the Chair.

Mr. HEINZ. May I be among the first to congratuate the Senator from Delaware on his new-found allegiance to this side of the aisle.

Mr. BIDEN. Mr. President, I am going to be proud. I am going to oppose the Senator's amendment, and I am only kidding.

Mr. HEINZ. Would the Senator please return to the other side of the aisle.

Mr. BIDEN. I am only kidding.

Actually, I am speaking on behalf of Senator THURMOND who just walked into the Chamber. I yield the floor to Senator THURMOND.

Mr. THURMOND. Mr. President, in response to the able Senator from Pennsylvania, I understand he has introduced a bill on victim compensation that has been referred to the Subcommittee on Criminal Law. I am also informed that the administration is now considering this matter and may have a proposal shortly.

The distinguished chairman of the Criminal Law Subcommittee of the Judiciary Committee has indicated he will hold hearings on victim compensation. I think consideration of this matter in an independent bill would be the best way to approach it. We have tried to limit this package to noncontroversial questions, and victim compensation is a controversial matter; therefore, I feel it should be retained in a separate bill.

If that is agreeable to the distinguished Senator from Pennsylvania, we will handle it that way.

Mr. HEINZ. Mr. President, may I respond to my good friend from South Carolina. I support the notion that this legislation should contain only matters on which there is general agreement. We do not want to attract a filibuster because there is an amendment that might slow down the legislative process.

So I am amenable to the Senator's suggestion, but I inquire of my good friend from South Carolina, the distinguished chairman of the Judiciary Committee, what he anticipates might be his schedule for bringing Senator GRASSLEY's and my bill to the Senate floor or acting on some similar piece of legislation. Although there are four relatively controversial individual bills following this crime bill, a victim compensation bill is not one of them. Does the Senator from South Carolina have a timeframe in mind?

Mr. THURMOND. Mr. President, after the subcommittee acts, I will be pleased to bring whatever bill they have acted on favorably to the Senate.

Mr. HEINZ. If the chairman will yield further, does he have any idea at this point whether the subcommittee has scheduled hearings?

Mr. THURMOND. The session has just begun, of course, and I have not talked to the chairman of the subcom-

mittee on this particular matter, but I know he is aggressively going after these bills that are before his subcommittee and I wanted him to do that. So within a reasonable time I am sure that he will do so.

Mr. HEINZ. The chairman of the subcommittee is Senator LAXALT, is that correct?

Mr. THURMOND. Senator LAXALT.

Mr. HEINZ. I had the distinct pleasure and great privilege of working with Senator LAXALT on a related piece of legislation, as the Senator will recall, 2 years ago. He is a total gentleman and I would anticipate that he would move ahead on this. I hope to the extent that there is a busy schedule in the Judiciary Committee, and listening to our majority leader the other day I got the impression that the Judiciary Committee was going to be carrying a lot of water this spring, some of it up and some of it downhill, the chairman can facilitate any effort by Senator LAXALT to hold hearings or generally move ahead with this legislation.

With that understanding, I would not persist in offering my amendment, and I will withdraw it.

Mr. THURMOND. Mr. President, I wish to commend the Senator from Pennsylvania. I think really that is the proper way to proceed on this particular matter.

I wish to inquire of the Senator one question about this legislation. Does the Senator have in mind Federal compensation for crimes against Federal law or did he have in mind Federal compensation for all crimes committed under State jurisdiction or local jurisdiction.

Mr. HEINZ. The answer is that the principal benefit of the legislation would be to help fund a portion of the costs of existing State victim assistance programs. Those programs, for reasons that are very difficult for most of us to understand, are woefully underfunded. It is this Senator's intention not to replace them with a Federal program, but to supplement them and to do so for only as long as it takes for the States to emulate the funding mechanisms that we would use in order to assist them. That is, we would levy, in effect, a series of fines or charges on convicted defendants.

The purpose would be to encourage the States to do more in that regard and to pursue restitution a good deal more aggressively than they now do so that they can take over the funding by assuming the same funding streams that we would create by fines and levies on convicted criminals for this purpose.

Mr. THURMOND. Mr. President, a good many States now have legislation of this nature to compensate victims, and it is generally considered that if it is a crime within the State jurisdiction the State should assume that responsibility, and there might be serious constitutional questions arise if the Federal Government attempted to take over that field.

If the Senator would confine his legislation, and I just suggest this for his consideration, to Federal jurisdiction for Federal crimes, I think it would stand a much better chance to go through and encourage the States to do likewise. If we once pass a Federal law on a subject, frequently the Federal law is a model for the States or encourages the States to act.

But I can foresee that if he pursues it otherwise, to make the Federal Government responsible for victims of all crimes committed in all the States and all the local jurisdictions, that would be a tremendous burden on the Federal Government and would take tremendous amounts of money from the Federal Treasury and then, further, I think the matter of the constitutional jurisdiction would arise which would be a serious question, also.

So, I just thought I would suggest to the Senator that he may want to consider that approach.

Mr. HEINZ. Mr. President, will the Senator yield further?

Mr. THURMOND. I yield.

Mr. HEINZ. I listened with care to the excellent suggestions of my friend, the chairman of the Judiciary Committee, whose wisdom is quite considerable, indeed perhaps unsurpassed in these matters.

Let me just state, so that the record is clear on this point, that this legislation does not set up any program at the State level. It would permit States to seek funding in addition to the funding that they have or that they will create for a victim compensation program. It does not mandate that any State do anything, and on those grounds I think the Senator from South Carolina would find it constitutional.

He might have some objection. I do not know and I do not say he does. But he might have some objection to there being any additional Federal role in this beyond the one he suggests, which is that the Federal Government undertake a victim compensation program solely for Federal crimes. That certainly is a valuable and worthwhile action that we could take.

But I would only add that there are relatively few Federal crimes of violence that would really involve any substantial need for victim compensation. Most of our Federal crimes, other than possibly interstate bank robberies, involve white-collar crimes, such as antitrust, where there is no identifiable individual victim.

I have listened carefully, indeed, to what the Senator from South Carolina, the distinguished chairman of the Judiciary Committee, has said. I would like to take the opportunity, at the appropriate time, if he will so permit me, to work with him, Senator LAXALT, and members of his committee, to draft and develop committeewide support for legislation that goes beyond the notion of solely a Federal victims compensation program for the victims of Federal crimes.

Mr. THURMOND. I thank the Senator from Pennsylvania very much.

Mr. HEINZ. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The Senator's amendment is withdrawn.

Mr. THURMOND. Mr. President, I wish to thank the distinguished Senator from Pennsylvania.

Mr. President, the bill is open to further amendment. If any Senator has any amendment, I suggest he come forward right away, as we expect to proceed with this bill.

The PRESIDING OFFICER. Does the Senator suggest the absence of a quorum?

Mr. THURMOND. I was just waiting a minute to see if anybody had any amendment.

Mr. President, we will ask for a quorum for a few minutes and then we expect to go forward. I hope that the word would get out to Senators that, if any of them have any amendment, now is the time to come forward. The majority leader does not want a delay on this bill, and we expect to go forward with it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, in this last year, we have all been heartened by reports that the violent crime rate has diminished slightly. This slight drop in the violent crime rate must be read, however, in a larger context. In 1971, Americans could expect a murder to occur somewhere in the United States every 30 minutes, according to FBI statistics. The same figures showed a rape occurring every 13 minutes and a violent crime every 29 seconds; 10 years later the same FBI survey showed a murder occurring every 23 minutes, a rape every 6 minutes, and a violent crime every 24 seconds. The slight declines in violent crime rates witnessed this last year can hardly be compared to the enormous increases in violent crimes that occurred in the prior decade. S. 1762 will be a welcome tool to combat this tragic American epidemic.

A 1981 Justice Department study revealed that 25 million American households—30 percent of the total—were victims of crime in the prior year.

U.S. families are more apt to have a member fall victim to a serious crime like rape or aggravated assault than to have a member injured in a car accident, and are more apt to have a member robbed than stricken by cancer or heart disease, the Nation's leading health problems. Needless to say, any amount of crime would be a tragedy for the victims, but a tragedy of this proportion cries out for the remedies provided by this legislation.

Mr. President, in that regard, I really want to compliment the members of the Judiciary Committee, and particularly Senators THURMOND and LAXALT, for the work they have done on this particular piece of legislation.

Mr. President, I am extremely pleased to be able to cosponsor the Violent Crime and Drug Enforcement Improvements Act of 1982. It has been a privilege to have worked with Senator THURMOND, Senator BIDEN, and Senator LAXALT in developing this legislation. In addition, there are a large number of Senators on both sides of the aisle who have been instrumental in the development of individual provisions of this measure. The provisions in this omnibus legislation are taken from several primary sources: From provisions of the Criminal Code Reform Act of prior Congresses, from provisions of other legislative proposals that have been considered by the committee during this Congress or in recent Congresses, and from the recommendations of the Violent Crime Commission.

With this measure being placed directly on the Senate Calendar, I am looking forward to considering it in the near future. There is no legislation that I can recall that promises to do as much to curb the growth of violent crime in this country as the proposed measure. While I recognize the inherent limitations upon Federal criminal jurisdiction I am confident that the Violent Crime and Drug Enforcement Improvements Act will serve not only to improve Federal law enforcement efforts, but to provide encouragement to State and local authorities in the development of similar efforts.

While this measure standing on its own represents a major step toward enhancing Federal law enforcement efforts, there are a number of additional criminal law provisions that may be considered shortly, and which I would enthusiastically support—including the restoration of capital punishment, abolition or reform of the exclusionary rule, and reform of habeas corpus procedures.

Mr. President, there is no more important legislative effort than the immediate one in attempting to restore the respect of the American people for the Nation's criminal justice system. The time is long overdue that this body undertake the kinds of substantial reforms proposed in this legislation. I congratulate every Member of this body who has contributed to this measure, and those who have chosen to cosponsor it.

While S. 1762 does not represent a panacea for the problems that beset our criminal justice system, I do believe that it represents a significant first step toward restoring a proper balance between solicitude for the criminal elements in this country and solicitude for those who are preyed upon by these elements. It represents a significant first step toward restoring as the primary function of the criminal justice system the pursuit of truth rather than the present search for the perfect procedural trial. It represents a significant first step toward restoring the integrity and respect of the Federal criminal justice system, a system badly in need of such renewed integrity and respect.

Mr. President, I do not want to comment at length upon the specific provisions of S. 1762 now, with two exceptions. Suffice it to say that I have supported virtually every provision of this measure in the context of individual legislation that has been before the Judiciary Committee at one time or another in recent years. Virtually every provision in this measure has been the subject of careful and thorough scrutiny during this period.

BAIL REFORM

The problem of crime committed by individuals free on bail is a problem created by the current state of the law. When judges are only permitted to consider conditions of release to assure appearance at trial, a dangerous defendant, one likely to commit other crimes, is required to be released if he can demonstrate an excellent past record of responding to court summons.

Unfortunately the law permits this to happen all too often. For instance, a defendant was recently apprehended after two plainclothes policemen watched the suspect beat and rob an unsuspecting victim. At the time of his arrest, this defendant had four pending cases in the judicial system for charges of armed robbery—for which he had been arrested only 4 days prior to this last arrest—second degree burglary, grand larceny, receiving stolen property, and attempted unwarranted use of a vehicle. In another case, a 17-year-old was apprehended for the fatal shooting of a 68-year-old in the course of a robbery. This defendant had two armed robbery cases pending at the time of the killing. Finally, a defendant stabbed a man at a bar who refused to buy him a drink. This victim is still only barely clinging to life in a hospital intensive care unit. At the time of the crime, the defendant was on pretrial release for another charge of assault with intent to kill for another incident in the same bar under identical circumstances. In addition, he was under grand jury investigation for at least one other unprovoked stabbing.

I mention these actual cases so that we do not make the mistake of concentrating on statistics that fail to account for the human suffering involved in crime. These types of stories become even more alarming, however, when we realize that a study compiled last year in 12 jurisdictions around the country found that 16 percent of all defendants released pending trial were later arrested for other charges while on bail. Thirty percent of these were arrested more than once while on bail and the average number of arrests before trial was 1.4.

Title I of S. 1762 is a rewrite of the Bail Reform Act of 1966. The Subcommittee on the Constitution, provoked by some of the considerations mentioned above, held hearings and approved this language last Congress and again last year. During its consideration of this question, the subcommittee particularly explored the meaning of the eighth amendment in order to recommend to the Senate language which would address the national problem of crimes committed by persons free on bail without the slightest conflict with the letter or spirit of the Constitution. As chairman of the Constitution Subcommittee, I can confidently announce that title I of S. 1762 implements constitutional authority to resolve this crime problem. My remarks today are designed to assure the Senate that the Constitution fully authorizes these changes in our bail policy.

The primary change in current bail policy made by this title would allow Federal courts to consider community safety in setting pretrial conditions of release. This language expands the list of conditions which the court may impose upon a defendant to assure his appearance for trial. In the event that a judicial officer does not ascertain that these release conditions will assure the safety of the community or of other persons or that conditions will assure the defendant's appearance at trial, he may opt to detain the suspect pending trial. This title also permits temporary detention of individuals who are arrested while subject to some form of conditional release stemming from an earlier arrest. This will allow the authorities to notify the jurisdiction from which the arrestee has fled.

The current policy of the Bail Reform Act presents Federal judicial officers with a genuine dilemma. Without legal authority to deny bail on grounds of dangerousness, courts are in a dilemma. Many judges apparently resolve this difficulty by setting a financial condition of release that exceeds the defendant's ability to pay.

The Attorney General's Task Force on Violent Crime recognized this subrosa form of pretrial detention with the terse observation that "there is a widespread practice of detaining particularly dangerous defendants by the setting of high money bonds to assure appearance." In testimony before the Senate Judiciary Committee a few years after the enactment of the 1966 act, former Judge Tim Murphy of the District of Columbia Court of General Sessions explained the reasons judges may resort to high money bail:

An unreasonable law has the ultimate effect of forcing those who administer it to ignore it, calloused of the consequences, or else to make extreme rationalization in circumventing it; this applies to judges. You cannot expect judges to follow the letter of a law that requires them to turn many dangerous criminals loose day after day.

The ultimate irony of this situation is that the Bail Reform Act of 1966, enacted to protect individuals against detention "because of their financial inability to post bail," placed courts in the posture of regularly setting bail beyond a defendant's financial ability. By forbidding any weighing of the suspect's dangerousness, the statute, in continuing to rely on the category of "capital" offenses to describe the gravest crimes, despite the limitation over time of that category to virtually the sole offense of first degree murder, and in conjunction with the demographical factors undermining the classical surety system, had the unintended effect of making the detention of defendants on high money bail a "widespread practice."

To remedy this situation, the Chief Justice had stressed the need to provide for greater flexibility in our bail laws to permit judges to give adequate consideration to the issue of threats to community safety. His recommendation is joined by the American Bar Association Standards Relating to the Administration of Justice, the National Conference of Commissions on Uniform State Laws, and the National Association of District Attorneys.

Statutory provisions granting courts the discretion to weigh risk to community safety as a factor in pretrial release decisions, however, have been vaguely criticized as requiring judges to predict future behavior. Although this approach to the problem would involve the courts in weighing as a factor the potential for future behavior based on the defendant's past record, this is not an unusual burden for the courts. The Bail Reform Act itself allows a judge to examine the suspect's proclivity for future violence when determining bail in a capital case. Moreover, the same bail law requires the courts to predict the potential for flight by the defendant in all instances of pretrial release. When balancing protection of the public against the first amendment right to hold a mass demonstration, the courts also must weigh the potential for violence. Thus, projecting potentialities and tendencies in the interest of public safety is not beyond the capability of the courts.

When the court makes a determination about the likelihood of dangerous conduct between arrest and trial, it is not idly gazing into a nonexistent crystal ball, but instead examining a reliable record of past conduct. The current bail act, in effect, blacks out that aspect of the record most relevant to public safety, dangerousness of the defendant, and leaves the court to make its projection based solely on the risk that the suspect will not appear for trial. The current law does not prevent courts from predicting but only withdraws that part of the record that would make the forecast reliable.

SENTENCING REFORM

Of equal importance to the provisions of title I reforming our bail laws are the provisions of title II reforming our arbitrary sentencing laws. Mr. Edwin Meese, soon to be appointed to serve as the Attorney General of the United States, captured the problem with our current confusing sentencing structures in a few sentences:

Similar conduct is often treated with such gross disparity that the principle of equality before the law is entirely lost. The current discredited and unpredictable parole system should be replaced with a streamlined system that classifies offenses and sets a fixed sentence according to their severity. This would replace the current uncertainties with an assurance to both the public and the criminal that the penalty pronounced by the judge is actually going to be carried out. Meese, "Combatting the American Epidemic," Criminal Justice Reform (McGuigan and Rader, ed.) Regnery, 1983.

Under our current Federal Criminal Code, there are no standards or guidelines to inform a judge's sentencing discretion. There is no appellate review of sentences. For obvious reasons, judges often sentence convicted individuals to widely divergent penalties for the same offense. A repeat offender may avoid serving any time behind bars, while a first-time offender may serve a lengthy prison term for the same crime. Needless to say, this undermines public confidence in the penal system and encourages criminals to try to "beat the system."

For too long, sentencing laws have been structured around an outdated and discredited rehabilitation model. Thus, some are sentenced too leniently and others too harshly based on a judge's arbitrary decision that one criminal or another may be curable. Moreover, the parole board has been endowed with authority to release a prisoner ahead of schedule on the judgment that he has been cured.

Attorney General William French Smith concisely stated the objective of title I:

These provisions introduce a totally new and comprehensive sentencing system that is based on a coherent philosophy. They rely upon detailed guidelines for sentencing similarly situated offenders in order to provide for a greater certainty and uniformity in sentencing.

In short, the Attorney General and this legislation recognize that curability is totally unpredictable. Criminologists have been unable to find any standards that predict with certainty that a prisoner has been rehabilitated. This has been the cause of the disparities.

Under this legislation, certain guidelines for sentencing will be established. The kinds and lengths of sentences will be set by these guidelines. This will allow the public and the offender to know the severity or leniency of the sentence and the reasons for that particular sentence. A judge may depart from the determinate sentence only by specifically justifying his departure, a justification that can be reviewed on appeal. Since sentencing will take place in accord with stated and reviewable standards, there is no need for a parole commission to second-guess the judicial sentence.

This certainty in the law has long been lacking. This provision is one I have worked long and hard to see enacted alongside my colleagues Senator KENNEDY and Chairman THURMOND. This could well do more to restore public confidence in the criminal justice system than any other reform we might consider.

Mr. President, I yield the floor.

Mr. THURMOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, the distinguished Senator from Iowa has a statement to present.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank our distinguished chairman for yielding to me.

Mr. President, I share the belief of many of my colleagues that our Nation's crime problem is a matter of prime importance. Our society is increasingly plagued by a small group of career criminals who use our Nation's criminal laws and the Bill of Rights as another weapon in their arsenal against innocent Americans.

Because of this concern, I cannot express how pleased I am that the Senate is now taking up consideration

of the Comprehensive Crime Control Act, S. 1762. This bill is the result of a serious effort on the part of the Judiciary Committee to make measured changes in our Federal Criminal Code that will protect the rights of victims as well as criminals. In order to prevent this bill from being jeopardized by highly controversial provisions, those provisions, including one which I am the principal sponsor of, were taken out of the core bill.

I am aware that the time agreement also bars certain other issues from being brought as amendments to this bill which could jeopardize the bill's eventual passage and engender a Presidential veto. In this respect, we owe a great deal of gratitude to Chairman THURMOND, Senators BIDEN, LAXALT, and KENNEDY.

But if the past is prolog, this bill faces rough sledding, or no consideration at all, in the House. I want to stress to this body and any members of the House Judiciary Committee who hear or read these remarks that it is imperative that a crime control measure that the President can sign reach his desk in this Congress. The safety of our citizens is too important a matter to fall victim to election-year politics and our own pet bills.

Members of the Judiciary Committee have dropped some of their proposed amendments in order that a bill might be passed in this Congress. I know that Senator BIDEN is deeply concerned about the need to control the import of illegal drugs into this country, but he has agreed not to seek inclusion of a drug-czar provision in the crime package in this session. Senator MOYNIHAN has agreed not to include a teflon-bullets provision for this same reason.

But all of our efforts will be for nought if the House does not act in a responsible manner. Mr. President, I am honored to have authored several of the provisions of S. 1762, and am grateful for this opportunity to share with the Senate my concerns.

AMENDMENT NO. 2681

(Purpose: To amend title 18 to limit the insanity defense and to establish a verdict of not guilty only by reason of insanity)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an amendment numbered 2681.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 177, strike out line 18 through line 24 on page 204 and insert in lieu thereof the following:

SEC. 401. (a) Chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 20. Insanity defense

"(a) STATE OF MIND.—It shall be a defense to a prosecution under any Federal statute, that the defendant, as a result of mental disease or defect, lacked the state of mind required as an element of the offense charged. Mental disease or defect does not otherwise constitute a defense.

"(b) APPLICATION OF THIS SECTION.—This section applies to prosecutions under any Act of Congress other than—

"(1) an Act of Congress applicable exclusively in the District of Columbia;

"(2) the Canal Zone Code; or

"(3) the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

"§ 21. Determination of the existence of insanity at the time of the offense

"(a) MOTION FOR PRETRIAL PSYCHIATRIC EXAMINATION.—Upon the filing of a notice, as provided in rule 12.2 of the Federal Rules of Criminal Procedure, the court, upon motion of the attorney for the Government, may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court pursuant to the provisions of section 24 (b) and (c).

"(b) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in rule 12.2 of the Federal Rules of Criminal Procedure on a motion by the defendant or by the attorney for the Government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a nonjury trial, the court shall find, the defendant—

"(1) guilty;

"(2) not guilty; or

"(3) not guilty only by reason of insanity.

"§ 22. Hospitalization of a person acquitted by reason of insanity

"(2) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED PERSON.—If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (d) of this section. The court shall order a hearing to determine whether the person is currently suffering from a mental disease or defect and that his release would create a significant risk of bodily injury to another person or serious damage to property of another.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court shall order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 24 (b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 24(d), and shall be conducted not later than forty days after the date of the finding of guilty only by reason of insanity.

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the acquitted person is currently suffering from a mental disease or defect and that his release would create a significant risk of bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

"(1) such a state will assume such responsibility; or

"(2) the person's mental condition is such that his release would not create a significant risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of a facility determines that an acquitted person, hospitalized pursuant to subsection (d), has recovered from his mental disease or defect to such an extent that his release would no longer create a significant risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to such person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 24(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of evidence that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a significant risk of bodily injury to another person or serious damage to property of another, the court shall order his immediate discharge.

"§ 23. Hospitalization of a convicted person suffering from mental disease or defect

"(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CONVICTED DEFENDANT.—A defendant found guilty of an offense, or the attorney for the government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant. Such motion must be supported by substantial information indicating that the defendant may currently be suffering from a mental disease or defect and that he is in need of custody for care or treatment in a suitable facility for such disease or defect. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order a hearing on its own motion if the court deems that there is reasonable cause to believe that the defendant may currently be suffering from a mental disease or defect and that he is in need of custody for care or treatment in a suitable facility.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 24 (b) and (c). In addition to the information required to be included in the psychiatric report pursuant to the provisions of section 24(c), if the report includes an opinion by the examiners that the defendant is

currently suffering from a mental disease or defect but that such disease or defect does not require his custody for care or treatment, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best provide the defendant with the kind of treatment needed.

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 24(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to probation or imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence to the maximum term authorized by law for the offense of which the defendant was found guilty.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility determines that the defendant, hospitalized pursuant to subsection (d), has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing, and may modify the provisional sentence.

"§ 24. General provisions

"(a) DEFINITIONS.—As used in this title—

"(1) 'insanity' means a mental disease or defect of a nature constituting a defense to a Federal criminal prosecution; and

"(2) 'suitable facility' means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant.

"(b) PSYCHIATRIC EXAMINATION.—A psychiatric examination ordered pursuant to this title shall be conducted by a licensed or certified psychiatrist, or a clinical psychologist and a medical doctor, or, if the court finds it appropriate, by additional examiners. Each examiner shall be designed by the court if the examination is ordered under section 21, 22, or 23. For the purposes of an examination pursuant to an order under section 23, the court may commit the person for a reasonable period not exceeding thirty days, in order to conduct such examination, or pursuant to section 21 or 22, the court may commit such person to the custody of the Attorney General for placement in a suitable facility for a reasonable period, but not to exceed forty days. Unless impracticable, the psychiatric examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension not exceeding fifteen days under section 23, or not exceeding twenty days under section 21 or 22, upon a showing of good cause that additional time is necessary to observe and evaluate the defendant.

"(c) PSYCHIATRIC REPORTS.—A psychiatric report ordered pursuant to this title shall be prepared by the examiner designated to conduct the psychiatric examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include—

"(1) the person's history and present symptoms;

"(2) a description of the psychological and medical tests employed and their results;

"(3) the examiner's findings; and

"(4) the examiner's opinions as to diagnosis, prognosis, and—

"(A) if the examination is ordered under section 21, whether the person was insane at the time of the offense charged;

"(B) if the examination is ordered under section 22, whether the person is currently suffering or in the reasonable future is likely to suffer from a mental disease or defect which would create a significant risk of bodily injury to another person or serious damage to property of another; or

"(C) if the examination is ordered under section 23, whether the person is currently suffering or in the reasonable future is likely to suffer from a mental disease or defect for which he is in need of custody in a suitable facility for care or treatment.

"(d) HEARING.—At a hearing ordered pursuant to this title the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to law. The person shall be afforded an opportunity to testify, to present evidence, to subpena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

"(e) PERIODIC REPORT AND INFORMATION REQUIREMENTS FOR SUITABLE FACILITIES.—(1) The director of the facility in which a person is hospitalized pursuant to section 22 or 23, shall prepare annual reports concerning the mental condition of such person, and shall make recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility, and copies of the reports shall be submitted to such other persons as the court may direct.

"(2) The director of the facility in which a person is hospitalized pursuant to section 22, 23, or 24, shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

"(f) ADMISSIBILITY OF A DEFENDANT'S STATEMENT AT TRIAL.—A statement made by the defendant during the course of a psychiatric examination pursuant to section 21 is not admissible as evidence against the accused on the issue of guilt in any criminal proceeding, but is admissible on the issue of whether or not the defendant suffers from a mental disease or defect.

"(g) HABEAS CORPUS UNIMPAIRED.—Nothing contained in section 22 precludes a person who is committed under such section from establishing by writ of habeas corpus the illegality of his detention.

"(h) DISCHARGE FROM SUITABLE FACILITY.—Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsection (e) of either section 22 or 23, counsel for the person or his legal guardian may, during such person's hospitalization, file a motion with the court ordering such commitment for a hearing to determine whether the person should be discharged from such facility. Such motion may be filed at any time except that no such motion may be filed within one hundred and eighty days after a court determines that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

"(i) Authority and Responsibility of the Attorney General.—(1) Before a person is placed in a suitable facility pursuant to section 22 or 23, the Attorney General shall request the director of each facility under consideration to furnish information describing rehabilitation programs that would be available to such person, and, in making a decision as to the placement of such person, shall consider the extent to which the available programs would meet the needs of such person.

"(2) The Attorney General may contract with a State, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this title.".

(b) The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following:

"20. Insanity defense.
"21. Determination of the existence of insanity at the time of the offense.
"22. Hospitalization of a person acquitted by reason of insanity.
"23. Hospitalization of a convicted person suffering from mental disease or defect.
"24. General provisions.".

INSANITY DEFENSE AMENDMENT

Mr. HATCH. Mr. President, the amendment I am proposing to the Senate today is designed to return sanity to the insanity defense. It is identical to S. 283, which is identical to legislation I introduced last Congress many months before Hinckley attempted to assassinate President Reagan. The Senate Judiciary Committee has considered this amendment in several hearings. This amendment has been endorsed by the current Attorney General in those hearings. This amendment has also been supported by the American Medical Association's house of delegates. At this point in the RECORD, I ask unanimous consent that the report of the board of trustees of the American Medical Association be included in full. As I mentioned, this report was adopted by the house of delegates.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

REPORT OF THE BOARD OF TRUSTEES

Subject: The Insanity Defense in Criminal Trials and Limitation of Psychiatric Testimony (Resolutions 15 and 21, I-82).

Presented by: John J. Coury, Jr., M.D., Chairman.

Referred to: Reference Committee G (Mylie E. Durham, M.D., Chairman).

At the 1982 Interim Meeting, the House referred to the Board of Trustees Resolution 15, which asked the Board to draft a policy statement on insanity as a full or partial defense for or circumstance in mitigation of criminal acts, and Resolution 21, which recommended that the AMA support the concept that mental capacity be separated from the determination of guilt or in-

nocence, and that psychiatric testimony be limited to the penalty phase of the trial.

The Board of Trustees submitted Report G (A-83) to the House of Delegates at the 1983 Annual Meeting, informing the House of progress made by the Board's Committee on Medicolegal Problems in studying the issues raised by Resolutions 15 and 21. Report G noted that while a strict limitation on psychiatric testimony of the kind suggested by Resolution 21 would violate defendants' Constitutional rights, less restrictive limitations under study by the Committee would be incorporated into its final report as appropriate.

The Committee on Medicolegal Problems has completed its Report of Conclusion and Recommendations Regarding The Insanity Defense. The Board of Trustees agrees with the report and recommends that the following policy positions be adopted by the House of Delegates:

(1) That the American Medical Association support, in principal, the abolition of the special defense of insanity in criminal trials, and its replacement by statutes providing for acquittal when the defendant, as a result of mental disease or defect, lacked the state of mind (*mens rea*) required as an element of the offense charged.

(2) That the American Medical Association support the concept that legal standards of civil commitment should apply to commitment of defendants acquitted by reason of insanity under statutory *mens rea* provisions, with the due allowance being made for a presumption of continuing dangerousness with respect to those acquitted of offenses involving violence.

(3) That the American Medical Association support the concept that absolute or conditional release of defendants acquitted under statutory *mens rea* provisions be based on concurring medical certification and judicial determination that release poses no substantial public risk; and that revocation of conditional release status should be permitted if the defendant fails to comply with release conditions, including those relating to continued psychiatric treatment.

(4) That the American Medical Association support the concept that mental illness of a defendant who fails to satisfy the criteria of acquittal under statutory *mens rea* provisions should be considered as a factor in mitigation of sentence, permitting hospitalization for treatment in lieu of imprisonment up to the maximum term prescribed by law for the offense of which he was convicted.

The full report of the Board of Trustees' Committee on Medicolegal Problems follows for information of the House of Delegates.

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AMERICAN MEDICAL ASSOCIATION COMMITTEE ON MEDICOLEGAL PROBLEMS

REPORT OF CONCLUSIONS AND RECOMMENDATIONS REGARDING THE INSANITY DEFENSE

*I. History of the insanity defense*

Prior to development of a formal system of criminal justice in England, the blood feud was the method by which individuals were punished for their injurious acts against others. Under the Anglo-Saxon practice of payment of reparation, or *bot*, to the kinsmen of the deceased victim to preempt their vengeance, insane killers were treated differently than others, however. While insanity did not serve to absolve the accused of liability, it was recognized as grounds to shift to his kinsmen the burden of paying compensation. Furthermore, the kinsmen of the insane were charged with the responsibility to keep and secure him from further mischief.

In pre-Norman England, the law was based upon strict liability; *i.e.*, liability without fault or evil intent. No distinction was drawn between crime and tort. Accidental or unintended killings by "misadventure," as well as killings in self-defense, were punishable by death as ordinary felonies.

By the twelfth century, powerful intellectual and religious currents had begun to move the law from a concept of absolute liability to one based on fault. Two factors provided the impetus for this movement: the increasing interest in the Roman law, which was spreading throughout Europe after being revived in the universities during the eleventh and twelfth centuries, and the increasingly significant influence of the clergy in law and government. Both sources emphasized concepts of subjective blameworthiness as the proper foundation of legal guilt, rather than guilt based on injurious acts alone.

The Roman law, heavily influenced by the moral philosophy of Plato and Aristotle, accentuated the concepts of *culpa* (fault or negligence) and *dolus* (fraud or deceit). Application of these concepts required close attention to the mental elements in crimes and torts. The ecclesiastical jurisprudence of canon law similarly insisted upon moral guilt, for in the determination of sin, the mental element must be scrutinized as closely as the physical act itself. The mutual influences and reactions of the old Anglo-Saxon laws with the ascendant Roman and canon law emphasis on moral fault, led gradually to the development of the concept of intent, or *mens rea*, as a prerequisite to criminal responsibility.

During the twelfth century, the judges in the English royal courts, who primarily were clergymen, were responsible for the administration of justice. Under their control, the common law became increasingly marked with the canonists' influence. The most notable instance of ecclesiastical dominance was the jurist Bracton, whose major work, *De Legibus et Consuetudinibus Angliae* (c. 1250) borrowed liberally from Roman and canon law concepts and powerfully influenced the subsequent development of English common law.

A. Evolution of Mens Rea

In keeping with the moral imperative of the Roman tradition, Bracton argued that punishment should depend upon the moral guilt. Accordingly, he argued, a requirement of *mens rea*, or criminal intent, must be recognized as an essential element of a crime, for the very essence of moral guilt is a mental element. Those incapable of forming criminal intent, including the infant and the insane, should not be held responsible for their acts, because it is only the culpable intent that gives meaning to the act.

Bracton's work represents a watershed in the development of the criminal law of England. His emphasis on the mental element in criminality took root and became established law with the increasingly frequent insistence upon moral blameworthiness, expressed as a requirement of *mens rea*, in the definitions of criminal offenses. This new concept of criminal responsibility led not only to progressive refinement of the types and graduations of intent by which crimes are classified according to their nature and degree, but also to the genesis of a body of defenses based specifically upon absence of intent.

With respect to the former, for example, the law came to recognize that a different type of criminal intent characterized the felonies of larceny and burglary. Furthermore, the felony of burglary was distinguishable from the tort or "misdemeanor" of trespass by virtue of the actor's state of mind at the time of the offense. The general offense of homicide as it existed at the beginning of the fourteenth century underwent gradual evolution over the next four hundred years, with eventual transformation into a scheme of distinguishable crimes, each defined by a specific *mens rea* component. By 1550, for example, the capital offense of murder had become differentiated from the lesser degree of homicide, which later came to be called manslaughter, by the *mens rea* element of malice aforethought.

With respect to general defenses, Bracton's influence provided a major impetus to the recognition of exculpatory doctrines based on lack of mental capacity to harbor evil intent. Defenses of insanity, infancy, and compulsion were acknowledged as logical applications of the principle of moral fault that underlay criminal law; there could be no criminality in the sense of moral fault if there were no free will capable of voluntary choice between evil and good.

B. Development of Formal Procedures to Deal With Insane Offenders

Refinement of the fault-based system of criminal jurisprudence that began to take root in the twelfth and thirteenth centuries, however, was accomplished very slowly and often by indirection. Early judges found themselves in the predicament of having to condemn to death, under the the Anglo-Saxon law of homicide, those who killed in self-defense or caused another's death through pure misadventure. Their quandry became all the more acute as the canonist ideas of moral guilt gained ascendancy.

Early on, this problem was avoided, not by a change in the substantive law, but by resort to a procedural device made possible by the growing power of the king. The offender was convicted of felony and imprisoned, but the king could grant him a charter of pardon to save this life. This had become established custom by the thirteenth century, and such pardons came to be granted liberally. By 1278, the procedure had been formalized by the Statute of Gloucester.

Gradually, insanity, like self-defense or misadventure, became not a bar to criminal conviction, but a recognized ground for the granting of a royal pardon. As was true in cases of self-defense and misadventure, however, the pardon did not relieve the offender against the forfeiture of land and chattels. When a statute was passed in 1310 restricting the Crow's use of pardons, "madness" was included with self-defense and misadventure as a circumstance justifying pardon in homicide cases.

It is impossible to identify the precise point in time at which it became an accepted practice to acquit insane offenders rather than rely upon charters of pardon from the Crown. It appears, however, that the first recorded instance of a jury rendering a verdict of unsound mind occurred in 1505 in a murder case. By the seventeenth century insanity had become well established as a defense rooted in the criminal law's *mens rea* foundation and deterrence objective. Thus, relying heavily on Bracton's formulation, Lord Coke stated in *Beverley's* case, 76 Eng. Rep. 1118, 1121 (K.B. 1603): "The punishment of a man who is deprived of reason and understanding cannot be an example to

others. No felony or murder can be committed without a felonious intent and purpose. . . ."

The test of insanity that prevailed in the English courts through the eighteenth century, known as the "wilde beast" test, also was derived from the thirteenth century writings of Bracton. Only total insanity of the grossest form—impairment of cognitive capacity so severe that the accused could not distinguish good from evil—sufficed to relieve one of criminal responsibility. The use of the insanity defense increased during this period, however, due to the growing number of capital offenses prescribed by the law. As a consequence, more formalized procedures were developed for seeking acquittals by juries, and the concept of legal insanity began to expand.

In 1800 the judge in *Hadfields'* case, 27 How. St. Tr. 1281 (K.B. 1800) directed that the defendant be acquitted (with the understanding that would be committed) on a charge of capital treason growing out of the attempted assassination of King George III. Hadfield acted with intent to kill, but did so out of an insane delusion that his "martyrdom" by the state in retribution for the act was necessary to fulfill his destiny as the saviour of all mankind. His acquittal resulted in passage by Parliament of the Criminal Lunatics Act of 1800 which first codified the verdict of not guilty by reason of insanity. The Act abolished general verdicts of not guilty in cases involving insanity, and provided for automatic commitment of those adjudged not guilty by reason of insanity.

C. Modern Legal Tests of Insanity

The case of Daniel M'Naughten in 1843 led to a substantial transformation of the legal rule used to determine insanity. In the wake of a public outcry following M'Naughten's acquittal on insanity grounds, the House of Lords was asked to render an opinion on five questions designed to clarify the legal definition of unsound mind and determine the circumstances under which the insanity defense would apply in future cases. In response, Lord Chief Justice Tindal announced what have come to be known as the M'Naughten rules:

"[T]o establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defeat of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."

Thus passed the eighteenth century "good and evil" standard into the "right and wrong" test of the nineteenth century. Moreover, *M'Naughten's* case marks the advent of the psychiatric expert witness as the key figure in defenses based on insanity. Henceforth, psychiatrists would be accorded special latitude in offering retrospective opinions as to whether the accused suffered from a disabling mental disease at the time of the offense, whether his action was the product of that disease or delusion, and whether he was conscious of the wrongfulness of his action.

The M'Naughten rule became the basic test of insanity in the English and American courts for nearly a century. It remains in effect with little modification in over a dozen states today. Notwithstanding its expansive language, however, the M'Naughten formula came to be narrowly interpreted as an inquiry into the defendant's cognitive capacity to differentiate right from wrong. Furthermore, its scope of application was influenced heavily by the view of many psychiatrists that the concept "disease of the mind" encompassed only psychosis, to the exclusion of less serious infirmities.

As new psychiatric theories developed, the M'Naughten rule increasingly was criticized as obsolete. The basis of this criticism was the contention that some forms of equally serious mental illness effect volition without impairing the victim's cognitive functions; *i.e.*, although many victims of mental illness can distinguish between right and wrong, they cannot control their wrongful actions. To rectify this perceived deficiency, a number of states broadened their M'Naughten-based tests of insanity to embrace the "irresistible impulse" standard. That standard exculpates a defendant whose mental illness compels him to action that he recognizes is legally or morally wrongful.

Even this hybrid test was perceived as too narrow to comport with advances in psychiatry, however. In *Durham* v. *United States*, 214 F.2d 862, 874 (D.C. Cir. 1954), the United States Court of Appeals for the District of Columbia Circuit found the irresistible impulse test ". . . inadequate in that it gives no recognition to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the inadequate right-wrong test." Accordingly, the court articulated a broader standard that provided that ". . . an accused is not criminally responsible if his unlawful act was the product of a mental disease or defect." *Id.*, at 874–75.

The "*Durham* rule," as this standard became known, proved so vague and laden with semantic distinctions of dubious import as to be unworkable in practice. In the early 1960's the American Law Institute proposed a standard designed to offer a reasonable accommodation between the narrow M'Naughten rule and the overly broad *Durham* approach. The ALI rule, incorporated into the Model Penal Code, states:

"A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."

Since its promulgation, a majority of the states has adopted the ALI test. In one form or another, its application is required by judicial decision in all federal criminal proceedings. Accordingly, the ALI test recently was used as the governing test of insanity in the trial of John Hinckley, Jr.

The ALI test differs from the strict M'Naughten rule in at least two crucial respects. Most importantly, like the "irresistible impulse" standard, it recognizes volitional impairment due to mental illness as an exculpatory factor apart from cognitive deficiencies. Mentally ill offenders who understand the wrongfulness of their actions, but are driven to criminal behavior by delusions or compulsions, are absolved from criminal liability. Second, the ALI test substitutes "substantial capacity" to "appreciate" the wrongfulness of conduct for M'Naughten's focus on actual lack of cognitive understanding of the nature of quality of the act. Thus, the ALI formula is much broader in its approach to mental illness that affects a defendant's congnitive functions. Finally, the ALI test arguably permits exoneration on the basis of a broader range of psychiatric disorders by recognizing defenses based on mental "defects" in addition to disease.

*II. Criticisms of the insanity defense and proposals of reform*

For a variety of reasons, public disenchantment with the insanity defense has increased dramatically in recent years. Since 1975 several states have enacted legislation to modify or abolish it, largely as a result of perceived abuses in cases of local notoriety. The June 1982 jury verdict of acquittal in the John Hinckley case served to focus national attention on the insanity defense, and revived the long-standing controversy over its proper role in the American criminal justice system.

Widespread public outrage at the verdict has prompted an ongoing debate in which the defense has been subjected to severe criticism, not only in the particulars of its application, but in principle as well. Some critics have focused their attention on deficiencies highlighted by the Hinckley case as a rationale for limited reforms of the existing ALI formulation. Others have advanced various procedural reforms to remedy perceived inconsistencies and inequities in its application and administration—again concentrating on the Hinckley trial as an illustration of the way in which existing procedures encourage capricious results. A third group, however, has expressed more compelling criticisms of the defense—criticisms that challenge persuasively the asserted legal and moral foundations of the concept of a special defense based on insanity. This group has advanced the abolition of the defense to the extent permitted by the Constitution and consistent with moral imperatives. Each of the foregoing viewpoints is reflected in recent legislative initiatives in Congress and state legislatures.

A. Limited Reform Proposals

Experience in the Hinckley case underscores five major issues that lie at the core of the insanity problem under current practice: the legal definition of insanity; the form of verdict to be employed; the burden of proof; the permissible limits of expert testimony; and procedures for disposition of the mentally ill offender. The various reform measures advanced by interested commentators and organizations, as well as competing legislative approaches, differ significantly in the importance they attach to each of these issues.

(1) The legal definition of insanity

John Hinckley's acquittal was attributable to the second prong of the ALI definition of insanity—the "volitional" part of that test which exculpates an offender who "lacks substantial capacity . . . to conform his conduct to the requirements of the law." Consequently, legal scholars and other critics have begun to re-examine the "irresistible impulse" rational for exoneration. In February, 1983 the American Bar Association's Standing Committee on Association Standards For Criminal Justice and Commission On the Mentally Disabled issued its Report to the ABA House of Delegates recommending modifications in the insanity defense. Its chief recommendation, adopted as ABA policy, was that the "volitional" element of the ALI test be abandoned in favor of a definition that rests exclusively on the issue of "whether the defendant, as a result of mental disease or defect, was unable to appreciate the wrongfulness of his or her conduct at the time of the offense charged."

This proposed standard, derived from the writings of Professor Richard J. Bonnie of the University of Virginia Law School, also is viewed as an acceptable alternative to cur-

rent tests by the American Psychiatric Association. In its 1982 Statement on the Insanity Defense, the APA recommended that the defense be retained in some form, perhaps with modifications in the definition of insanity and the scope of expert testimony; the APA suggested, however, that the definition may be of little practical significance because the exact wording of the defense has never been shown to be the major determinant of whether a defendant is acquitted by reason of insanity. Moreover, the APA Statement viewed the volitional test as "superfluous" in practice asserting that most persons who would fail such a test would qualify for exculpation under a purely cognitive test in any event.

The ABA Report stated flatly that ". . . it is just this volitional or behavioral part of the ALI test that has brought the insanity defense under increasing attack." The Report attributed incorporation of a volitional test into the ALI standard to a "wave of clinical optimism" during the 1950's regarding the potential contribution of psychiatry to understanding of behavioral control. The Report rejected such optimism as illusory, however:

"Yet, experience confirms that there still is no accurate scientific basis for measuring one's capacity for self-control or for calibrating the impairment of such capacity. There is, in short, no objective basis for distinguishing between offenders who were undeterrable and those who were merely undeterred, between the impulse that was irresistible and the impulse not resisted, or between substantial impairment of capacity and some lesser impairment."

Unlike the ABA Report, the APA Statement conditioned its endorsement of a purely cognitive test of insanity on the further adoption of the second element of Professor Bonnie's proposed reform. That provision would define "mental disease" to include ". . . only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable primarily to the voluntary ingestion of alcohol or other psychoactive substances." Bonnie, R.J., "The Moral Basis of the Insanity Defense," American Bar Association Journal 69:194-97, p. 197 (February, 1983). In its Statement, the APA emphasized that any mental disorders considered potentially exculpatory under a cognitive standard "should usually be of the severity (if not always of the quality) of conditions that psychiatrists diagnose as psychoses."

(2) The burden of proof and limitations on the scope of expert testimony

The ABA proposals also focused on the burden of proof and expert testimony issues highlighted by the hinckley case. A major portion of that trial was devoted to receipt of expert testimony by psychiatrists called by the prosecution and the defense. As often occurs where insanity is raised as a defense, the jury was confronted with massive amounts of conflicting, confusing, and irreconcilable evidence based on imprecise and speculative theories, and retrospective diagnoses of the defendant's state of mind. Although the trial lasted 56 days, the prosecution required only two days to present its case on chief. Hinckley's counsel then placed his sanity in issue with an exhaustive presentation of lay and expert testimony; direct and cross examination of the experts alone consumed more than eleven days. Expert witnesses were permitted to usurp the jury's function by offering opinions regarding the ultimate factual question in the case—whether Hinckley was "insane" under the controlling ALI definition.

Under the federal law applied in the Hinckley case, and the laws of about half the states, the prosecution bears the ultimate burden of persuasion on the issue of insanity. Once the defendant introduces some evidence of insanity, the burden of producing evidence shifts to the government. Thus, Hinckley's presentation of psychiatric testimony required the prosecution to present its own experts as well as other evidence to establish the defendant's sanity. Moreover, the prosecution was required to prove the defendant's sanity beyond a reasonable doubt. At the close of all the evidence the jury was instructed that the formal verdicts available to it were guilty, not guilty, and not guilty by reason of insanity. Furthermore, it was instructed that it could not consider a verdict of not guilty by reason by insanity unless it concluded, beyond a reasonable doubt, that all elements of the offense charged, including Hinckley's intent or *mens rea* had been proved. Accordingly, the jury's verdict confirms that Hinckley was acquitted solely because the jury was left with a reasonable doubt of his sanity.

The ABA Report suggested that allocation of the burden of proof to the prosecution produces risks of mistaken results primarily when the volitional prong of the current ALI formulation is the test employed. Accordingly, it recommended that in jurisdictions continuing to utilize the ALI test, the burden be shifted to the defendant to prove his claim of insanity by a preponderance of the evidence. Conversely, in jurisdictions adopting the ABA's proposed cognitive test, the burden should remain with the prosecution to prove the defendant's sanity beyond a reasonable doubt.

Neither the ABA nor the APA recommendations incorporated explicit restrictions on the use of psychiatric testimony, but both recognized limitations implicit in suggested modifications of the legal definition of insanity. The ABA Report, in particular, argued that jury confusion engendered by the experts' conflicting theories and diagnoses is a problem rooted in the vague and expansive terminology of the volitional aspect of the ALI standard. Since considerable disagreement exists among psychiatrists regarding the "normal" capacity for self-control, and given that no objective scientific basis can be devised for measuring the degree of impairment of such capacity, expert testimony in this area must inevitably consist of unstructured subjective speculation regarding the psychological causes of criminal behavior. Abandonment of the volitional test, of course, would render such testimony irrelevant, and thus circumvent the major source of jury confusion.

The APA Statement noted that psychiatric evidence relating to a defendant's capacity to control his behavior generally is less reliable, and less scientifically supportable, than evidence relating to cognitive capacity. In the APA's view, the problem of jury confusion stems primarily from the relevancy of such volitional evidence, and from the allowance of conclusory psychiatric testimony on ultimate issues. With respect to the latter, the APA maintains that the seemingly contradictory and irreconcilable psychiatric testimony that emerges in criminal trials is less the product of differences in clinical diagnoses of the nature and extent of the defendant's mental disorder, than of conflicting judgments regarding the moral and legal significance of that disorder. Accordingly, the APA is not opposed to the concept of legislative restrictions on psychiatric testimony concerning ultimate issues under the insanity defense.

(3) Modifications in the form of verdict

In recent years, several states have attempted to reform use of the insanity defense by modifying the form of the verdict available to juries in these cases. Michigan pioneered this approach when, in 1975, it enacted a statute providing for a verdict of "guilty but mentally ill" in addition to the traditional "not guilty by reason of insanity" verdict. Since 1975 at least eight other states have adopted such optional verdicts. Reform legislation pending in a number of other states would adopt "guilty but mentally ill," or "guilty but insane" verdicts, either as optional forms, or as replacements for "not guilty by reason of insanity" verdicts. Legal scholars and insanity defense study groups uniformly have rejected these proposals.

The ABA Report correctly maintained that some forms of legislation purporting to supplant the traditional insanity verdict of acquittal with a "guilty but insane," or "guilty but mentally ill verdict" are unconstitutional. Measures that would permit the government to obtain a conviction by proving all the elements of crime except intent or *mens rea*, as well as those that would preclude exculpation on grounds of insanity even where the defendant's mental condition would negate a finding of the necessary *mens rea*, violate the defendant's rights to equal protection and due process.

Statutes establishing an optional verdict of "guilty but mentally ill" typically provide that the jury may return such a verdict upon finding that the defendant is guilty of an offense and that he was mentally ill, but not legally insane, at the time of commission of the offense. Many of these statutes are modeled after the Michigan law, which retains the ALI definition of "insanity," and defines "mental illness" as "a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." Mich. Comp. Laws Ann. § 768.36(1) (1982).

A defendant found "guilty but mentally ill" is sentenced in the same manner as one found guilty of the offense, and is remanded to the custody of the Department of Corrections. Upon evaluation the Corrections Department may itself provide necessary psychiatric treatment, or it may transfer the defendant to the state Department of Mental Health for such treatment. If the latter course is followed, the defendant is returned to the Department of Corrections to serve out the balance of his sentence after discharge from a mental facility. Thus, the "guilty but mentally ill" verdict is legally a conviction, the purpose of which is to ensure that the defendant be sentenced as a prisoner but provided with psychiatric treatment because the jury found him mentally ill.

The optional "guilty but mentally ill" approach offers no solutions to the major problems posed by the insanity defense; the legal (ALI) definition of insanity is retained intact, and the abuses associated with its application are not addressed. Moreover, the optional verdict introduces a host of new problems and logical inconsistencies. The distinction between "insanity" and "mental illness" is a difficult one to draw, especially by jurors who are instructed that they must

be convinced "beyond a reasonable doubt" of the defendant's sanity before they may find him "mentally ill." Confronted with these nebulous concepts, the jury is encouraged to view the "guilty but mentally ill" option as a convenient compromise verdict that permits it the retributive satisfaction of a conviction while gratifying its urge to express sympathy for the defendant's condition.

Logically, no purpose is served by interjecting the issue of "mental illness" into the trial, since the law itself declares mental impairments short of insanity irrelevant to the essential determination of moral and legal responsibility. A finding of mental illness ostensibly serves the purpose of identifying those offenders who presently are in need of psychiatric treatment, but in this regard the verdict is both inconsistent and unnecessary. It makes little sense to condition commitment procedures on a jury verdict based on evidence of the defendant's mental condition at the time of the offense rather than the disposition phase of the trial. Moreover, the "guilty but mentally ill" verdict is not necessary to ensure that persons unsuccessfully claiming the insanity defense receive mental health screening. Such defendants may present evidence of present mental impairment at the sentencing stage of the trial.

Ensuing that appropriate treatment actually is delivered to insanity acquittees and mentally disordered prisoners is a serious problem dealt with more fully in the section that follows. Obviously its solution is not dependent on the form of verdict. Statutes in many states establish detailed, albeit inadequately funded programs of mental health care for prisoners. A recent Michigan study of defendants found "guilty but mentally ill" concludes that such prisoners are not more likely to receive treatment than those sentenced pursuant to conventional guilty verdicts. G. A. Smith and J. A. Hall, "Evaluating Michigan's Guilty But Mentally Ill Verdict: An Empirical Study," 16 U. Mich. J.L. Reform 77,104-05 (Fall 1982). Statutes establishing an optional verdict of "guilty but mentally ill" thus fail to accomplish meaningful reform, either in the use of the insanity defense, or in the disposition of mentally ill offenders.

The later criticism applies equally to statutes that would supplant the insanity acquittal with a verdict of "guilty but mentally ill" or "guilty but insane." Such statutes would abolish insanity as a special exculpatory criterion, thus resolving many of the problems endemic to present application of the defense. This they would accomplish, however, at the unacceptable risk of invalidation on constitutional grounds. Furthermore these statutes are intellectually objectionable in that they abolish the insanity defense under the pretense of preserving the moral values upon which it supposedly is based. Abolition should be accomplished openly and forthrightly, not by subterfuge.

(4) Disposition of mentally ill offenders

John Hinckley, Jr. was tried in the United States District Court for the District of Columbia rather than a local court pursuant to a recently enacted federal anti-assassination law. He was accused of violating both federal and District of Columbia statutes. Three formal verdicts were available to the jury: guilty, not guilty, and not guilty by reason of insanity. In all other federal courts, the only formal verdicts available to the jury in cases raising a defense of insanity are guilty and not guilty. Since no formal verdict of not guilty by reason of insanity exists in the federal system, there is no procedure for commitment of insanity acquittees. Accordingly, had John Hinckley been tried in any other federal court in the country, and raised a reasonable doubt regarding his sanity, he would have been entitled to release at the conclusion of the trial. He was committed to Saint Elizabeth's Hospital only becasue his case was governed procedurally by the insanity acquittees provisions of the District of Columbia Code.

State laws in this area vary considerably in the treatment options available to insane offenders, and the degree of protection from potentially violent individuals afforded society. In the past, the states provided for detainment and treatment of defendants found not guilty by reason of insanity ("NGRI") through statutes mandating immediate commitment of such persons to state mental hospitals. Often these persons were confined permanently, or for periods substantially in excess of the prison sentences they otherwise would have served if found guilty of the offenses charged.

With respect to persons committed civilly there has been a shift in emphasis from institutional treatment to outpatient management of mental illness in recent years, and legal pressures have been applied to obtain equivalent treatment for NGRI acquittees. The degree to which equal protection and due process principles require that committed NGRI acquittees be treated on a par with those confined under civil commitment procedures largely is unresolved.

The insanity defense is premised on the notion that the mentally ill offender bears no criminal responsibility for his acts; he lacks moral blameworthiness and is not an appropriate subject for criminal sanctions. Since the NGRI acquittee is analogous to the person committed civilly in this regard, many courts and commentators have suggested that both should be subject to substantially identical commitment and release provisions. Clearly they are not. State statutes generally subject NGRI acquittees to more lenient commitment standards and more stringent release standards than those applied to the civilly committed patient.

In the last twenty years, courts and legislatures have implemented extensive reforms in mental health laws, resulting in the recognition of the basic constitutional rights of civilly committed persons to a hearing in which the state bears the burden of establishing a present mental condition warranting commitment; to appropriate treatment during hospitalization; and to access to release procedures that comport with due process requirements. Civil commitment requires, as a constitutional minimum, "clear and convincing" evidence of mental illness. *Addington* v. *Texas*, 441 U.S. 418 (1979). Increasingly, state statutes emphasize the police power rationale for civil commitment by requiring proof of dangerousness to self or others in addition to present mental illness. Indeed, it is questionable whether the states may involuntarily confine mentally ill individuals who present no danger to themselves or others. *See* generally, *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975). Several jurisdictions exceed the constitutionally mandated minimum standard, and condition civil commitment upon proof of mental illness and dangerousness "beyond a reasonable doubt."

Current state "criminal commitment" laws applicable to defendants found NGRI vary considerably in form and content from one jurisdiction to another. While major disparities between civil and criminal commitment standards still exist, there has been movement toward more equal treatment of NGRI acquittees and those committed in civil proceedings.

Less than a dozen states continue to mandate automatic indefinite commitment of defendants acquitted by reason of insanity without regard to their present mental state. Although no hearing is required to determine present mental illness under these statutes, the courts generally have upheld them against due process and equal protection attacks on a variety of theories. The most common of these is the questionable proposition that the defendant's insanity, supposedly proven at trial, may be presumed to continue thereafter.

Another common justification for upholding disparate treatment of NGRIs is that they, unlike civil committees, have demonstrated dangerous propensities by committing the physical elements of violent crime. State statutes, however, rarely distinguish between acquittals in felony and misdemeanor cases, or even between violent and non-violent felonies; an irrebuttable presumption of dangerousness applies to all acquittees equally. The logic and necessity of such a broad presumption are questionable. Moveover, the relevancy of dangerousness as a basis for maintaining an entirely different scheme of commitment and release applicable to NGRIs continues to diminish as states increasingly require proof of dangerousness as a condition to involuntary civil commitment.

Some courts have declared statutes requiring indefinite mandatory commitment of NGRIs unconstitutional for failure to provide a hearing on the issues of mental condition and dangerousness at the time of disposition, *see e.g.*, *Benham* v *Edwards*, 678 F.2d 511 (5th Cir. 1982), while others have upheld their validity by construing them to require some form of hearing. *See eg.*, *People* v *McQuillan*, 221 N.W. 2d 569 (Mich. 1974). The attitude favoring parity of treatment for NGRI acquittees expressed in these decisions has been reflected in recent legislative enactments as well. These vary widely in the degree to which civil commitment safeguards and standards are incorporated into the criminal commitment process.

Several jurisdictions have enacted reform measures that expressly abolish the distinction between civil and criminal commitment altogether by directing that disposition of NGRIs be governed by the general civil commitment laws of the state. Others incorporate certain features of the civil commitment process into the criminal trial itself. Many of these states make commitment of an NGRI defendent either mandatory, or discretionary with the trial judge, upon finding that the accused is dangerous and suffers from a continuing mental illness. A few states require commitment upon a separate finding of present insanity by the criminal trial jury or a second jury selected to determine that issue alone.

Many jurisdictions provide for temporary mandatory commitment of NGRIs, followed by a full hearing on present mental state similar to that afforded civil committees. Statutes of this type commonly permit the NGRI acquittee to be confined for a stated maximum period (usually thirty to ninety days) during which psychiatric evaluation must be completed. Civil commitment standards may or may not govern the subsequent hearing.

Many unresolved legal issues remain with respect to differences in the commitment and release standards applicable to NGRIs

and civilly committed persons under such statutes. The Supreme Court recently held by a 5-4 vote that where an individual acquitted by reason of insanity has proven mental illness at trial by a "preponderance of evidence," he may be committed on a lesser standard than "clear and convincing evidence" required in civil commitment proceedings. *Jones* v. *United States*, 103 S.Ct. 3043 (1983). In that case the Court upheld the constitutionality of provisions of the District of Columbia Code which require indefinite commitment of NGRIs, followed by a judicial hearing within fifty days to determine eligibility for release, at which the acquittee bears the burden of proving by a preponderance of the evidence that he no longer is mentally ill or dangerous.

In *Jones*, the defendant was found not guilty by reason of insanity to a charge of attempted petit larceny—a misdemeanor punishable by a maximum one year prison sentence—later he and the government stipulated to his insanity under the controlling ALI test. Jones failed to prove his fitness for release at the fifty day hearing required by statute; after being confined for more than one year he demanded that he be released unconditionally or recommitted pursuant to civil standards. A lower court refused this demand and ordered that Jones' commitment be continued. An appellate court rejected his claim that his continued confinement beyond the maximum one year he would have served had he been convicted, without clear and convincing proof by the government of his present mental illness and dangerousness, violated his rights to due process and equal protection.

In affirming, the Supreme Court held that the statutes' presumption of continuing mental illness and dangerousness was not unreasonable given the legal definition of insanity under the District of Columbia's law, and the procedure by which the insanity defense may be asserted successfully. The Court repeatedly emphasized that automatic commitment follows only if the acquittee himself advances insanity as a defense and "proves that his criminal act was the product of his mental illness." 103 S.Ct., at 3051. Thus, the court reasoned that it ". . . comports with common sense to conclude that someone whose mental illness was sufficient to lead him to commit a criminal act is likely to remain ill and in need of treatment." *Id.*, at 3050. It also concluded that "[t]he fact that a person has been found, beyond a reasonable doubt, to have committed a criminal act certainly indicated dangerousness"—regardless of whether the criminal act was violent or nonviolent, or directed at property rather than person. *Id.*, at 3049.

The *Jones* decision thus leaves open the question of whether due process and equal protection require application of civil standards for commitment of defendants who, like John Hinckley, Jr., merely raise a reasonable doubt regarding their sanity and the causal relationship between their mental condition and their crimes. *See, Bolton*, v. *Harris*, 395 F.2d 642, 649 (D.C. Cir. 1968). Neither does it apply to the many states in which the prosecution bears the burden of proving the defendant's sanity by some lesser standard than "beyond a reasonable doubt." Accordingly, *Jones* would not apply were the ABA's proposed cognitive test of insanity adopted.

More importantly, the Courts' reliance on the finding of insanity under the ALI definition to justify departure from civil commitment standards, and inferences of continuing mental illness and dangerousness, casts serious doubt on the utility of its reasoning in other contexts. Such inferences may be wholly proper where a defendant's violent criminal behavior is found to be the "product of" irresistible impulses, or other serious volitional impairments resulting from mental disease. The risk of an erroneous commitment decision in such a case appears sufficiently remote to justify relieving the state of is burden of demonstrating the necessity for confinement by clear and convincing evidence. Such inferences are less compelling, however, and the propriety of a diminished burden of proof is less obvious, where a defendant is excused because he "lacks substantial capacity" to appreciate the criminality of his non-violent acts. This is especially so where the source of the individual's cognitive impairment is a mental "defect" (*i.e.*, retardation) rather than "disease."

The Court in *Jones* did not state whether the basis of the defendant's insanity stipulation was the volitional or the cognitive element of the ALI test, nor did it suggest that such a distinction was central to its analysis. Its emphasis on the proven causal connection between mental illness and commission of the criminal act may be significant however. For example, it is questionable whether the *Jones* rationale would apply to commitment of a defendant acquitted under the substitute definition of insanity endorsed by the ABA and the APA, even if the defendant were allocated the burden of proof on the issue of insanity. That test is directed to the causal connection between the defendant's mental condition and his ability to "appreciate the wrongfulness" of his conduct, rather than his commission of the criminal act itself. Like the cognitive element of the ALI test, the ABA formulation excuses a person who "knows" in an intellectual sense that his conduct is wrongful or criminal, but who lacks a deeper comprehension of the fact. Only in the broadest sense can it be said that an acquittal under such a test establishes that the defendant "committed the act because of mental illness." *Jones, supra*, 103 S.Ct., at 3049. These ambiguities regarding the scope of the *Jones* decision suggest that disparities between civil and criminal commitment standards will continue to be challenged in the courts.

Differences in release provisions applicable to civilly and criminally committed persons may be subjected to judicial scrutiny as well. In nearly all states, the power of discharging or conditionally discharging a civilly committed patient is vested in the superintendent of the mental hospital where he is confined. More than half of the states, however, require a court order for discharge of an NGRI acquittee. Conditional and temporary releases also are controlled by the court rather than the hospital director, and courts commonly place restrictive conditions on NGRI release orders similar to those contained in criminal paroles. Such disparities in the D.C. Code were never addressed by the court in *Jones* because their constitutionality was never raised as an issue.

Individuals who have been committed civilly often are entitled to automatic periodic review of their commitment, while NGRI committees generally are not. The formal release applications that NGRIs must file to secure court review are strictly limited in number and frequency by statute. Moreover, many jurisdictions subject NGRIs to a heavier burden of justification in release hearings than that imposed on patients confined under the civil commitment statute.

Few reform proposals have considered, much less emphasized questions of the appropriate disposition of NGRI acquittees. The most thorough treatment of these issues to date is found in the APA Statement, which urged that valid distinctions between civil committees and defendants acquitted of violent crimes by reason of insanity justify more restrictive confinement and release provisions applicable to the later group.

The APA Statement suggested that future dangerousness of these defendants may be assumed "at least for a reasonable period of time." It criticized states that have, through application of civil commitment standards and procedures to NGRIs, required periodic redeterminations of dangerousness and need for confinement.

The APA cautioned, moreover, that inhospital treatment of NGRIs cannot be viewed as a guarantee of "cure"; inpatient treatment offers effective means of management of the overt symptons of mental illness, but in most cases long term psychiatric care will be required following release. Accordingly, the APA concluded that the public interest in safety, as well as the acquittee's interest in receiving appropriate therapy, will be served by programs of conditional release based on the recognized needs for careful supervision and continuing outpatient treatment.

Furthermore, the APA Statement endorsed the view that confinement and release decisions should not be left to psychiatrists alone, nor should they be based solely on opinions of mental health professionals regarding present mental condition and future dangerousness. Rather, it supported procedures such as those adopted in Oregon permitting a "quasi-criminal" approach to NGRI confinement—release decisions that are controlled by a multidisciplinary body analogous to a parole board.

Where available resources are insufficient to ensure effective close supervision of NGRI acquittees, or where contingent release presents an unacceptable degree of risk to society, the APA favors continued confinement. If hospital confinement cannot be justified on therapeutic grounds, transfer to a "non-treatment facility that can provide the necessary security" is viewed as an appropriate alternative.

The thrust of the APA Statement was that insanity acquittees who have committed violent acts should be governed by commitment and release provisions that are more restrictive than those applied to civilly committed persons. While many of the APA proposals are cogently formulated and persuasively presented, some appear fundamentally inconsistent with the often-asserted moral basis of the insanity defense. Constitutional guarantees of due process and equal protection, moreover, pose insurmountable obstacles to preserving substantial disparities between civil and criminal commitment schemes—at least so long as insanity is recognized as a special exculpatory criterion.

Protection of the public safety is a legitimate legislative concern increasingly recognized as the primary, if not the sole constitutionally permissible rationale for detainment of the mentally ill under civil and criminal commitment schemes alike. The position embraced by the Court in *Jones*—that acquittal of *any* crime on grounds of insanity is an accurate and permanent predictor of dangerousness, hence a constitutionally adequate basis for indefinite commitment—is unpersuasive, extreme, and un-

necessarily harsh as a means of accommodating the state's interests. It disregards the liberty interests of non-violent offenders, and will, in practice, seriously impede efforts to provide needed psychiatric treatment to a large class of mentally ill persons. Carried to its logical conclusions, it invites curtailment or reversal of enlightened reforms in the civil commitment area as well.

As explained more fully in the following sections, reforms of the kind envisioned by the APA Statement can be accomplished consistently with sound policy, and without sacrificing constitutional interests of the mentally ill. To do so, the law must first discard the notion that insanity short of that which negates *mens rea* absolves a defendant of moral and legal responsibility for his acts. This basic shift of legal policy will facilitate the incorporation into sentencing and parole mechanisms of meaningful reforms in the procedures governing confinement and release of mentally ill offenders.

B. Abolition of the Special Defense of Insanity—The Mens Rea Approach

At least two states have enacted laws that abolish the special defense of insanity. In 1979 Montana amended its Code of Criminal Procedure to delete that section recognizing an insanity defense substantially identical to the ALI test. A new section was added that limits the relevancy of mental disease to the determination of *mens rea*. Mont. Code Ann. § 46-14-102 (1979). That section provides:

"Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense."

Idaho enacted a law in 1982 that explicitly abolishes insanity as a separate defense to charges of criminal conduct. Idaho Code § 18-207(a). Like Montana, however, the Idaho statute recognizes that mental condition may be relevant to the issue of criminal intent: "[n]othing herein is intended to prevent the admission of expert evidence on the issues of *mens rea* or any state of mind which is an element of the offense, subject to the rules of evidence." *Ibid*, § 18-207(c).

Both the Montana and the Idaho statutes permit consideraton of mental disease or defect as a factor in mitigation of punishment at the sentencing stage of the trial. Moreover, these statutes authorize the court to order treatment during the period of confinement or probation specified in the sentence if it concludes by clear and convincing evidence that the defendant suffers from a mental disease or defect that renders him unable "to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law," and that treatment is available and needed. Finally, they provide that mentally ill prisoners may be transferred to noncorrectional facilities for such treatment.

In 1982 the Reagan administration endorsed a similar *mens rea* approach to govern insanity in federal criminal trials. The proposed Criminal Justice Reform Act of 1982 contained provisions that would have introduced a special verdict to "not guilty only by reason of insanity" to be returned upon a finding that ". . . the defendant, as a result of mental disease or defect, lacked the state of mind required as an element of the offense charged." Otherwise, mental disease or defect would not constitute a defense. This 1982 proposal provides an exemplary model of comprehensive reform legislation based on the *mens rea* concept; it is referred to in the following discussion to illustrate the manner in which a *mens rea* framework could be structured to replace the insanity defense in practice.

Under a statute like the 1982 proposal, mental illness would, in the vast majority of cases, be considered only at the sentencing stage as a mitigating factor. The bill contained detailed provisions for commitment of NGRI acquittees as well as hospitalization of mentally disordered persons convicted of crime. These will be considered in some depth in the following sections; for the present it suffices to note that the dispositional aspects of the proposals appear to strike a reasonable balance between the public's concern for safety and the offender's constitutional rights.

The *mens rea* approach to the problem of crime and mental illness, appropriately implemented by statutes providing flexibility in sentencing and a range of treatment options, is the one avenue of reform that permits society to address, effectively and comprehensively, the major administrative, constitutional, and policy issues associated with the insanity defense. By narrowing the relevancy of defendant's mental condition, it resolves or avoids many problems of administration that complicate the current use of the defense. It facilitates the maintenance of adequate mechanisms to prevent the premature release of dangerous offenders, while harmonizing the deepening social and legal tensions between civil and criminal commitment schemes. In so doing it promotes public confidence in the legal system's fairness and capacity to protect law-abiding citizens from harm. It restores a consistent philosophy of criminal responsibility, thus enhancing the credibility and acceptance of the criminal justice system. The *mens rea* approach, moreover, may accomplish these objectives without resort to artifice or subterfuge.

Most significantly perhaps, abandonment of the moral pretense of the insanity defense in favor of *mens rea* concept may lead to a more realistic appreciation of the relationship between mental impairment and criminal behavior. Some observers of the criminal justice system maintain that this relationship extends far beyond its manifestation in the cases of those few offenders acquitted on claims of insanity; recognition of a special defense applicable to these few detracts attention from the legitimate treatment needs of the many. *Mens rea* proposals seek to correct this myopic focus of the insanity defense by emphasizing considerations of mercy and appropriate treatment for all mentally disordered offenders.

(1) Administration of the defense

The two primary problems associated with administration of the insanity defense in its present form—allocation of the burden of proof and demarcation of the permissible limits of expert testimony—would be ameliorated substantially, if not avoided altogether by adoption of the *mens rea* approach. No issue regarding allocation of the burden of proof would arise since insanity *per se* would no longer be recognized as a distinct exculpatory criterion. Evidence of mental illness would be relevant to the extent that it tends to negate the intent necessary for conviction; it would thus be given the same exculpatory effect as other adversities that bear upon state of mind.

In its Report the ABA suggested that explicit limitations on the use of psychiatric testimony may well be unnecessary if the legal test of insanity is limited to mental conditions affecting cognition. Adoption of a strict *mens rea* approach would accomplish precisely this result by rendering evidence of volitional defects irrelevant. Mental illness that impairs a defendant's cognitive functions would be probative of whether he formulated the intent required for the offense, but a disease or defect that impairs only his ability to control his actions would not be. As a consequence, the chief source of much of the contradictory and irreconcilable psychiatric testimony that plagues insanity defense trials will be eliminated. As a practical matter, moreover, only those mental disorders that grossly and demonstrably impair perception or understanding of reality—those equivalent in severity to pyschoses as the APA statement suggested—would be exculpatory under the *mens rea* approach.

The *mens rea* proposal also would diminish the scope and importance of psychiatric testimony relating to cognitive impairment in the vast majority of cases. Often the defendant's intention is clear and readily may be established by examining his actual course of conduct and other objective evidence. A showing of mental disorder in such cases will not negate a finding of *mens rea*. Nor will a diminished capacity approach to *mens rea* be countenanced to authorize admission of psychiatric testimony suggesting that the defendant's mental capacity to entertain the requisite intent was impaired by mental illness. The controlling issue will be whether the defendant's mental abnormality in fact prevented him from harboring the necessary conscious intent; mental illness, standing alone, will not suffice to negate the existence of mental processes manifested by conduct or other evidence.

The issue of *mens rea* in such cases would be one that lies within the common experience and knowledge of the community. Accordingly, the jury should be able to resolve the issue without the assistance of expert opinion evidence; psychiatric testimony, therefore, may be subject to exclusion or limitation under the ordinary rules of evidence relating to the use of expert witnesses. Even if deemed admissible, such testimony may be viewed as sufficiently lacking in logical weight or credibility as to preclude its use in cases where the defendant's contemporaneous declarations and actions provide strong evidence of planning and premeditation.

When such objective evidence of *mens rea* is lacking, as in cases involving bizarre or seemingly inexplicable criminal behavior, expert testimony introduced by the prosecution and defense alike would be relevant to elucidate intent. Such testimony would be admissible if it described some consciously entertained thought or perception, the presence of which directly negated or confirmed the requisite state of mind.

Since the *mens rea* elements of crime are defined in terms of the cognitive functions of the conscious mind, expert testimony regarding the defendant's mental impairment also would be relevant to the extent that it negates the minimal functional capacity required to form the requisite intent. Psychiatric testimony describing the defendant's impaired capacity to appreciate the gravity of the act, or to control his behavior, would merely explain rather than negate the existence of his conscious intent, and thus would not constitute admissible evidence. Nor would expert evidence be admissible to show that an actor's consciously entertained *mens rea* was the product of an unconscious disease process. For example, psychiatric testimony would not be permitted to establish that a defendant's conscious premeditation

or deliberation was the consequence of a mental disorder, or that his intent to kill was motivated by unconscious aberrational influences.

Some critics of the *mens rea* approach, confusing the issue of incapacity to harbor the requisite *mens rea* with the doctrine of "diminished responsibility" recognized in a line of California court decisions, contend that its adoption would result in a significant expansion of the scope of psychiatric testimony. Actually, the California doctrine bears little if any resemblance to the issue of capacity to form criminal intent that may be relevant under the *mens rea* approach.

Under California law, the crime of murder is distinguished from that of manslaughter by the existence of "malice aforethought." Judicial opinions construing "malice" as an additional mental element, distinct from premeditation or deliberation, have resulted in an expanded notion of *mens rea* in that state. The California Supreme Court has defined malice to mean the mental state of an actor who is capable of comprehending the duty society places on all persons to act within the law. That court has permitted psychiatric testimony to reduce homicide convictions from murder to manslaughter by showing that, even though the actor premeditated or intended to kill, he lacked substantial capacity to harbor legal malice due to mental illness. Furthermore, where a defendant's mental disease leaves him with some capacity to comprehend his duty to obey the law, it may so diminish his ability to "maturely and meaningfully reflect upon the gravity of his contemplated act" as to reduce his culpability. Thus, evidence that a defendant suffered from an unconscious disease process that impaired his volitional controls has been deemed relevant and admissible on the question of malice.

Through this doctrine of diminished responsibility the California court has shifted the focus of the *mens rea* inquiry from assessing whether the defendant in fact entertained a specific intent to evaluating the subjective quality of his intent, and how and why he entertained it. Nearly any psychiatric evidence that tends to establish a substantial defect of the defendant's mental processes is admissible under the California doctrine for purposes of this qualitative evaluation. The strict *mens rea* approach, however, would reject this evidence as irrelevant to the factual issue of conscious intent.

Approximately 25 states or federal courts have adopted a narrow *mens rea* concept in cases of mental disease falling short of legal insanity. Many of these have expressly rejected the broader California doctrine of diminished responsibility, recognizing the substantial legal and logical differences between the two defenses.

Moreover, at least 21 states, as well as the District of Columbia and the federal judicial system, have adopted definitions of *mens rea* based upon the scheme formulated by the American Law Institute's Model Penal Code. This scheme abolishes the common-law definitions of *mens rea* that incorporate the "malice aforethought" concept from which the California doctrine is derived. As the states increasingly embrace the Model Penal Code approach, California's diminished responsibility doctrine, together with the expansive psychiatric theories it encourages, will become less and less germane to the task of defining the relationship between mental illness and *mens rea*. Instead, that relationship may be defined by narrowly circumscribed psychiatric testimony relating to severe mental disability that interferes substantially with the defendant's reality-testing functions.

By stripping away the psychiatric overtones implicit in the use of "insanity" as the determinant of criminal responsibility, the *mens rea* limitation will avoid another major source of jury confusion. As expert witnesses psychiatrists will be called upon to offer only medical information and opinions regarding the defendant's mental state; they will have no occasion to make, in the words of the APA Statement, "Impermissible leaps in logic" from medical concepts to ultimate legal conclusions.

(2) The moral basis of the special defense of insanity

Many critics of the *mens rea* proposals, while conceding or not seriously questioning their potential to circumvent the difficulties of administering the present insanity defense, urge their rejection on principle. The insanity defense, they contend, must be retained because it is "essential to the moral integrity of the law," and is deeply ingrained in our legal tradition.

In fact, the insanity defense is not as deeply anchored in history as some might imagine. As set forth in the Part I of this Report, insanity did not come to be recognized as an independent ground for exculpation until the nineteenth century. Prior to that time, insanity was considered relevant to the issue of guilt, or moral blameworthiness only insofar as it bore upon *mens rea*. Creation of the special defense was a departure from the traditional moral basis of the criminal law—embodied in the concept of *mens rea*—that had prevailed for centuries before.

Proponents of the insanity defense overemphasize the degree to which modern criminal law rests upon traditional moral imperatives. While criminal administration can never be divorced entirely from the concept of moral fault, the policy of the law tends more and more in the direction of promoting social and public interests rather than punishing moral wrongdoing. The evolution of the concept of *mens rea* reflects this trend quite clearly.

Under the dominating influence of the canon law *mens rea* was conceived of as a mind bent on evil-doing in the sense of moral wrong. As the law evolved, the requisite mental elements of the various felonies developed along divergent lines to meet exigencies and social needs that varied with each felony. The original requirement of an underlying evil motive derived from the canonists' conception of moral guilt was supplanted by the requirement of specific forms of intent developed separately for each felony. Thus, *mens rea* came to acquire a technical significance—it is less indicative of a mind bent on evil-doing than an intent to do that which unduly endangers social or public interests. An insanity defense justified solely or primarily on moral grounds is an anachronism in the modern scheme of criminal administration.

Central to the moral argument favoring retention of the defense is the notion of fundamental fairness it purports to further. Tests of criminal responsibility are rooted in a presumption of free will; individuals normally possess the capacity to choose voluntarily to abide by the rules of law, and failure to do so implies moral culpability or blameworthiness. However, where individuals lack the minimal capacity for voluntary and rational choice from which this legal expectation of personal accountability is derived, it would be unjust to assign blame and impose punishment for their actions. Thus the insanity defense, it is argued, affirms and reinforces the law's expectation of accountability. In reality, the insanity defense does not promote this fundamental purpose of the criminal law, nor can it be reformed, in piecemeal fashion, to do so.

A defense premised on psychiatric models represents a singularly unsatisfactory, and inherently contradictory approach to the issue of accountability. By necessity, psychiatrists tend to view all human behavior as a product of deterministic influences. This deterministic orientation cannot be reconciled with the concept of free will; indeed, to a very great extent psychiatry denies the fundamental notion of individual responsibility that lies at the heart of the criminal law.

The essential goal of an exculpatory test for insanity is to identify the point at which a defendant's mental condition has become so impaired that society may confidently conclude that he has lost his free will. Psychiatric concepts of mental illness are ill-suited to this task, even assuming the reliability of the highly subjective diagnostic criteria of mental illness. Because free will is an article of faith, rather than a concept that can be explained in medical terms, it is impossible for psychiatrists to determine whether a mental impairment has affected the defendants' capacity for voluntary choice, or caused him to commit the particular act in question. Accordingly, since models of mental illness are indeterminant in this respect, they can provide no reliable measure of moral responsibility.

Furthermore, psychiatric concepts of mental disease are so vague and elastic that they readily may be expanded to accommodate virtually every offender who has committed a violent act without justification or excuse. Some view homicide without apparent justification as evidence *per se* of mental abnormality. Public perception that many, if not most criminal defendants could satisfy psychiatric criteria of mental illness undermines the law's expectation of accountability. Insanity acquittals in publicized cases, such as that of John Hinckley, Jr., further pervert the concept of moral responsibility in the eyes of the public; they heavily influence the citizen's perception and acceptance of the rationality, fairness, and efficiency of the entire criminal justice process.

These problems cannot be solved by limited reform proposals addressed to administration of the defense. They will continue to exist as long as insanity is considered an exculpatory factor—one that negates responsibility altogether—rather than a circumstance germane to the degree of responsibility, the appropriateness of mercy, and the form and severity of punishment to be imposed. To retain the moral paradigm of exculpation is to ensure that criminal trials will continue to degenerate into misdirected and fruitless efforts to resolve the unresolvable issue of free will.

Even under a truncated test of insanity limited to cognitive impairments, the inscrutable cause and effect relationship between mental illness and free will remains the central question. Shifting the burden of proof does nothing to legitimize the nature of the inquiry. Reforms providing for express limitations on the scope of psychiatric testimony are inadequate because juries are no more capable than psychiatrists of divining a lack of free will from diagnoses of mental disease or defect. Meaningful reform can be achieved only if the focus of the inquiry into responsibility is shifted away from the

elusive notion of free will, and its relationship to mental disease, and back to the relatively objective standards of *mens rea* where it fell traditionally.

The moral argument fails for other reasons as well. Resting on the premise that substantial impairment of the capacity for voluntary choice should negate responsibility, the fairness rationale proves far too much to be taken seriously. Alcoholism and drug addiction, for example, are widely regarded as diseases that palpably impair the affected individual's capacity for voluntary choice. However, the law does not excuse crimes of theft or violence committed by a alcoholics or addicts as a consequence of the powerful physicial and psychological dependence associated with their conditions. Rather, drug or alcohol intoxication is considered relevant to the extent that it negates the requisite state of mind made an element of the offense.

Norval Morris, Professor of Law and Criminology at the University of Chicago argues persuasively that a number of social deprivations are more deserving of exculpatory status under the moral fairness principle than is mental illness. Social adversities such as poverty, unemployment, and lack of a stable familial environment surely are more criminogenic than psychosis; yet, these demonstrably potent predisposing circumstances are not credited to exonerate violent criminal behavior, nor should they be. Rather, social adversities and psychological adversities alike should be taken into account in sentencing. To ignore the former while elevating the latter to the status of a special defense creates a morally false classification.

Professor Morris also maintains that the insanity defense fails even to serve its stated purpose of shielding the mentally impaired offender from punishment. In practices it applies only to a few mentally ill criminals, excluding many others with equally serious mental impairments requiring treatment. Insanity acquittals do not even remotely approximate the relationship between mental retardation or disease and criminal behavior. Given the widespread conviction and punishment of the mentally ill, Professor Morris condemns the insanity defense as "an ornate rarity, a tribute to our capacity to pretend to a moral position while pursuing profoundly different practices." It is, he contends, a testament to our hypocrisy rather than our morality.

Critics of the *mens rea* concept often illustrate their moral objections by reference to cases in which obviously psychotic individuals deliberately kill under the influence of insane delusions. The assassin acting under "instructions" from God, and the individual who kills in the irrational belief that the victim is demonically possessed and represents a threat to his life are frequently cited as examples.

Such cases, admittedly rare, hardly justify a general rule of non-responsibility. Ordinarily, a defendent's motivation for a criminal act is considered irrelevant to the insance of guilt or innocence of the offense charged, although it may be taken into account by the judge at the time of sentencing if deemed to involve mitigating circumstances. Cases of "mercy killing" are so treated, for example. An assassin's genuine belief that his act is morally necessary to promote a superior social order or to end injustice, however, is properly viewed as irrelevant and provides no basis for exculpation.

In some exceptional instances involving self-defense, duress, and necessity the law does allow consideration of the actor's motivation in adjudicating liability. This forebearance is rooted in the recognition that under some circumstances, conduct that would otherwise be considered criminal must be condoned or even encouraged to further values that society wishes to preserve, or to avoid a greater harm it seeks to prevent. No clear countervailing benefit accrues to society as a consequence of the exoneration of one who intentionally kills another as a result of an insane delusion, and alternatives far less drastic than a general doctrine of non-responsibility are available to avoid societal condemnation of such persons as murderers.

To the extent that prosecutorial discretion and plea negotiation are considered inadequate, special legislative provisions could be enacted to reduce the offense from murder to manslaughter, for example. Following the Model Penal Code, a few states provide for such mitigation where a homicide is committed under the influence of extreme mental disturbance for which there is reasonable explanation or excuse, as determined from the viewpoint of a person in the defendant's situation, under the circumstance as he believes them to be. *See eg.* Model Penal Code § 210.3(1)(b) (Proposed Official Draft 1962). If moral concerns require exceptional treatment in this small class of isolated cases, such a rule of formal mitigation, rather than a general doctrine of exculpation, is the reasonable response.

(3) The balance of public and private interests in disposition

Covertly at least, continued recognition of the insanity defense is justified on grounds of expediency rather than morality. Traditionally, it has been used less as a defense than as a device to accomplish indeterminant custodial restraint of those who were mentally ill at the time of the crime but presently are not civilly committable. The *Jones* decision cryptically supports this punitive rationale for the defense. Even accepting the dubious proposition that involuntary confinement in a mental institution does not constitute "incarceration" or "punishment" in a technical legal sense, its consequences are no less serious. In many respects hospitalization is even more intrusive than incarceration in a prison. Under *Jones*, moreover, an acquittee may suffer permanent deprivation of liberty and autonomy for commission of a crime no more serious than attempted shoplifting. Apologists of the defense, in fact, often point out that insanity acquittees have usually suffered longer periods of confinement as a result of its successful use than they would have if sentenced conventionally. These are curious benevolences of a policy ostensibly aimed at protection of the mentally ill from punishment.

Furthermore, as civil commitment and release standards are liberalized; and civil and criminal dispositional schemes continue to converge as a result of legislative and judicial pressures, it will become progressively more difficult to accommodate the conflicting interests of defendants and society within the exculpatory framework of the insanity defense. More potentially dangerous individuals may be released upon acquittal if civil commitment standards and procedures govern disposition. Others may secure release after short periods of confinement by virtue of civil release provisions guaranteeing periodic review of the continuing necessity of confinement—especially if the state is allocated the burden of proof.

These early releases undermine legitimate concerns for public safety. Even if the *Jones* decision is construed liberally to govern commitment of defendants acquitted under purely cognitive tests of insanity, public insecurity will persist. In that case, the Court was not called upon to resolve the constitutional issues raised by disparate release provisions applicable to NGRIs and persons committed civilly. If equal protection is held to require parity between the two groups, NGRIs will be eligible for unconditional release upon certification of recovery by attending psychiatrists and hospital superintendants, without court involvement or approval. Contrary to the recommendation of the APA, release decisions will be vested in psychiatrists exclusively or primarily. Given the generally acknowledged inaccuracy of predictions of future dangerousness by mental health professionals, the likely result is further erosion of confidence in the law's ability to protect the public from harm.

Apart from the question of release, the *Jones* decision is unlikely to restore public confidence in the adequacy of criminal commitment procedures, or to promote the goal of providing suitable treatment to mentally disordered offenders. If applied broadly, its practical effect will be to abolish use of the insanity defense with respect to a wide range of violent and non-violent crimes carrying maximum sentences of short and intermediate duration. The *Jones* Court was careful to admonish that the D.C. Code permitted automatic indefinite commitment only of those NGRIs who pleaded and proved insanity as a defense. Accordingly, many mentally ill defendants will be encouraged to forego use of the insanity defense and plea bargain for reduction of charges or recommendation of diminished sentence by the prosecution. With credit for time served awaiting trial and good behavior while incarcerated, many of these individuals will be eligible for parole after short periods of confinement. Defendants faced with capital or life sentences will continue to avail themselves of the insanity plea of course, and, if acquitted, will be entitled to early release upon recovery "no matter how serious the act committed." *Jones* v. *United States*, 103 S.Ct., at 3052.

Conviction of one of who has elected not to assert the insanity defense would not authorize the state to classify the offender as mentally ill and subject him to involuntary psychiatric treatment without affording due process protection. *Vitek* v. *Jones*, 445 U.S. 407, 493–94 (1978). Since neither mental illness nor a causal connection between the defendant's mental condition and the crime would have been established at the criminal trial, the *Jones* decision implies that the government would have to justify transfer from a penal to a mental institution under civil commitment standards. Similarly, upon expiration of the defendant's prison sentence he could be committed only as would any other candidate for civil commitment. In the federal system, no mechanism for civil committment currently exists. Even if one were established, however, it is reasonable to expect that many mentally ill prisoners in need of institutional care will go untreated while incarcerated and following release.

The APA Statement raised yet another consideration to be borne in mind. It emphasized that institutional care of the mentally disordered offender depends heavily on psychopharmacological management, and this form of treatment usually must be con-

tinued following release. The courts have recognized generally, however, that involuntarily committed mental patients have a constitutional right to refuse treatment with antipsychotic drugs. Whether a guardian must be appointed to make non-emergency treatment decisions on behalf of the incompetent patient is an unresolved issue. The circumstances under which state interests might overcome the liberty interests of the patient also are undefined at present.

Developments in this area raise the distinct possibility that the state's latitude in treating insanity acquittees will be curtailed. Conceivably, the courts could require that the state seek a judicial determination that there exists an overwhelming state interest justifying compelled treatment. Although the need to prevent violent behavior may be held sufficient in this regard, it cannot be predicted whether the offender's general "dangerousness" will be considered sufficiently indicative of an imminent risk of violence to justify forcible medication.

Statutory *mens rea* provisions deal with these issues of treatment and premature release directly while maintaining a balanced respect for the constitutional rights of mentally disordered offenders. Under a statute such as the 1982 Reagan proposal, for example, a defendant acquitted by reason of insanity would be temporarily confined but entitled to receive, within 45 days of the verdict, a hearing to determine whether he should be committed for involuntary treatment. The burden would rest with the government to establish, by clear and convincing evidence, that the acquittee suffers from a mental disease or defect that creates a substantial risk of harm to the public. Clear and convincing evidence of such risk would be presumed, subject to rebuttal by the acquittee, in cases involving an insanity acquittal on charges involving bodily injury or serious damage to property of another, or a substantial risk of such injury or damage. Thus, civil commitment standards would apply to require proof of present mental illness and dangerousness; however, a rebuttable presumption of continuing dangerousness would be allowed with respect to those acquitted of offenses involving violence.

Absolute or conditional release (under a prescribed regimen of treatment) would be available based on concurring medical certification and judicial determination that release no longer poses a substantial public risk. A preponderance of the evidence standard would apply to the courts' deliberation on release. Revocation of conditional release status would be permitted if such risk is renewed by a failure to comply with release conditions.

The *mens rea* proposals also emphasize treatment of the mentally ill offender who fails to satisfy the criteria of acquittal. They authorize the court to determine whether the guilty defendant is so mentally disabled, or was at the time of the offense, that in carrying out the sentence the policy of retribution should be subordinated to the goals of providing treatment to the offender and protection to the public.

Under the 1982 Reagan proposals, either the prosecution or the convicted defendant may file a motion for a hearing on the questions of current mental condition, and the court may order a psychiatric examination and report in response thereto, or upon its own initiative. Psychiatrists could testify free of the constraints imposed by formal rules of evidence, and could inform the judge directly of the kind of treatment the defendant requires. Hospitalization may be ordered if the court finds, by a preponderence of the evidence, that the defendant presently suffers from a mental disease or defect and should, in lieu of imprisonment, be committed for treatment. Such commitment constitutes a provisional sentence of imprisonment to the maximum term prescribed for the offense for which the defendant was convicted. Medical certification that the defendant has recovered to the point that custody for care or treatment is no longer necessary allows the court to proceed finally to sentencing if the provisional sentence has not expired. The court may modify the provisional sentence, however, to permit parole on appropriate conditions, including continued psychiatric treatment.

The Reagan Administration's proposal also contained detailed procedures for hospitalization of mentally ill persons currently serving sentences in prisons, and for extension of treatment opportunities to mentally disabled prisoners due for release. These provisions sought to extend necessary care to such individuals through incorporation of appropriate civil commitment standards, and to ensure that society is protected from potentially violent individuals beyond the control of the criminal justice system.

The *mens rea* statutes in force in states such as Idaho and Montana reflect the same philosophy as the Reagan proposals but differ some what in form. The court is required to pronounce sentence as required by law, but current and past mental illness are factors to be considered in mitigation of sentence. Treatment is to be authorized if the court finds, by clear and convincing evidence, that the defendant suffers from a mental illness affecting either cognitive or volitional capacities. Once committed the defendant may be confined for treatment in facilities operated by the state department of health and welfare rather than the department of corrections. If the course of treatment is concluded prior to expiration of the sentence imposed, the offender remains liable to serve the balance of the sentence, having received credit for the time confined for treatment.

These statutes also seek to address the emerging issue of the right to refuse treatment. Idaho's law, for example, amends its prior provisions relating to suspension or revocation of civil rights during imprisonment to state expressly that those sentenced under its *mens rea* statute forfeit their right to refuse treatment authorized by the sentencing court during any period of confinement, probation, or parole.

The *mens rea* statutes currently in force or proposed contain provisions that expressly implement most of the dispositional guidelines recommended by the APA in its Statement on the Insanity Defense. The 1982 Reagan proposal is particularly noteworthy in this respect. Special procedures applicable to acquittees charged with violent offenses are set forth. As the APA Statement suggests, a presumption of continuing dangerousness is permitted with respect to such individuals, and the burden of proof on suitability for absolute or conditional release is allocated to the proponent of such release. Repetitive adjudication of the acquittees' dangerousness, therefore, is not required to justify continuing confinement.

Release decisions are not committed solely to mental health professionals under the 1982 proposal, nor are they to be made solely on the basis of psychiatric testimony concerning present mental condition and future dangerousness. Although the legislation does not attempt to create a special Psychiatric Security Release Board similar to that in use in Oregon, it delegates ultimate decisionmaking authority to the courts. The input of psychiatrists is guaranteed, but psychiatrists would not have primary responsibliity for confinement determinations. The views and recommendations of other experienced professionals may be presented in hearings on discharge or modification of release conditions.

A statute such as the Reagan proposal also would satisfy the APA recommendation that release be conditioned on having a treatment supervision plan in place. The court's discharge order would contain express conditions of compliance with a regimen of medical, psychiatric or psychological treatment approved both by the court and by the director of the facility in which the individual is confined. Furthermore, the court having initial jurisdiction would retain clear authority to reconfine through revocation of conditional discharge.

*III. Conclusions and recommendations*

The conventional insanity defense has long been subjected to intense and well-deserved crticism. It has outlived its principal utility, it invites continuing expansion and corresponding abuse, it requires juries to decide cases on the basis of criteria that defy intelligent resolution in the adversary forum of the courtroom, and it impedes efforts to provide needed treatment to mentally ill offenders. As a result, it inspires public cynicism and contributes to erosion of confidence in the law's rationality, fairness, and efficiency. The defense is conceptually flawed because it attempts to resolve issues of moral responsibility premised on the intuitive concept of free will through application of psychiatric models grounded in the contradicatory philosophy of determinism. Accordingly, repeated efforts to rationalize its administration through limited substantive and procedural modifications have failed to accomplish meaningful reform.

Based upon the foregoing, the following recommendations should be considered:

RECOMMENDATION ONE

The special defense of insanity should be abolished and replaced by statutes providing for acquittal when a criminal defendant, as a result of mental disease or defect, lacked the state of mind (*mens rea*) required as an element of the offense charged.

RECOMMENDATION TWO

Legal standards of civil commitment should apply to commitment of defendants acquitted by reason of insanity under statutory *mens rea* provisions, with the due allowance being made for a presumption of continuing dangerousness with respect to those acquitted of offenses involving violence.

RECOMMENDATION THREE

Absolute or conditional release of defendants acquitted under statutory *mens rea* provisions should be based on concurring medical certification and judicial determination that release poses no substantial public risk; revocation of conditional release status should be permitted if the defendant fails to comply with release conditions, including those relating to continued psychiatric treatment.

RECOMMENDATION FOUR

Mental illness of a defendant who fails to satisfy the criteria of acquittal under statutory *mens rea* provisions should be consid-

ered as a factor in mitigation of sentence, permitting hospitalization for treatment in lieu of imprisonment up to the maximum term prescribed by law for the offense of which he was convicted.

Mr. HATCH. I have consistently supported S. 1762 and commend each of the sponsors who have worked diligently to bring this vital legislation to the floor of the Senate. As an ardent supporter of any legislation to address our crime crisis, I am enthusiastic about the prospects of enacting these important reforms, Nonetheless I feel that the improvements this bill makes in the insanity defense do not sufficiently reform this area of the law.

In the wake of the extensive media coverage of the Hinckley assassination attempt and trial, the public outcry for changes in the insanity defense has been clear and sustained. Unfortunately I fear that the reformed standard for the insanity defense in S. 1762 may have also acuitted Mr. Hinckley. Under the standard currently in S. 1762, Hinckley would have to be acquitted if he "was unable to appreciate the nature and quality or the wrongfulness of his acts."

Mr. Hinckley alleged in trail and supplied psychiatric testimony to bolster his contention that his delusional relationship with an actress prevented him from appreciating the nature and quality of his act. The breath and ambiguity of the term "appreciate," still a part of the current S. 1762 provision, allowed Mr. Hinckley to escape culpability for deliberately attempting to kill the President. The jury was persuaded that his behavior was sufficiently aberrational to prevent him from appreciating the nature and quality of his murder attempt. The former president of the American Academy of Psyciatry, Dr. Abraham Halpern, analyzing the Hinckley case in light of the "appreciation" test, also concluded that the test in S. 1762 would be likely to acquit Hinckley if he were retried under its standards.

It is important for the Congress to know that under the insanity rules proposed in S. 1762, the trial of John Hinckley would have taken the same course and ended with the same verdict as it did under the American Law Institute rule employed in the court in which he was tried. The same members of the faculty of Harvard Medical School would have testified that he was "severely mentally ill and that "brain scans show that his brain is slightly shrunken and has more folds and ventricles than is usual in people his age." The same University of Maryland professor of psychiatry would have told the jury that Hinckley suffers from "process schizophrenia, a disease marked by a very severe and very grave course." The same Yale University psychiatrist would have testified that Hinckley has a major "depressive disorder, borderline schizophrenia and paranoid personality disorder" The same District of Columbia psychiatrist would have informed the jury that the defendant had a "Schizotypal personality disorder with regression under stress to psychosis." Thus all the defense experts would have testified as they did in the actual trial, that Hinckley had a severely abnormal mental condition that grossly impaired his understanding of reality rendering him unable to appreciate the wrongfulness of his conduct. It is evident that the rule proposed in S. 1762 to "narrow the insanity defense" would do nothing to lessen the tarnishing of the public sense of justice engendered by the typical insanity trial in federal courts.

Dr. Halpern's conclusion is bolstered by the experience of New York State which has had a test remarkably similar to that found in S. 1762 for the past 20 years. Under that test, approximately 100 defendants—primarily accused of violent offenses—have been acquitted by the insanity defense each year. Nationwide, over 1,000 yearly escape conviction by pleading insanity.

Under my amendment, however, Mr. Hinckley could not be acquitted. My amendment would not allow Mr. Hinckley to argue that his appreciation was impaired. With regard to insanity, Hinckley could only argue that he lacked the state of mind requirement, the mens rea, necessary for offense of attempted murder. Since Hinckley actually intended to kill the President, an act he referred to as "historic" in one of the letters he wrote prior to the attempt, he would have been guilty of the offense. Hinckley admitted in his trial that he intended to kill the President, but contended that he "lacked substantial capacity to appreciate" the wrongfulness of his acts.

Under my amendment, the exhaustive pyschiatric testimony presented by Hinckley would have been irrelevant to the question of guilt. It would have been, however, relevant to the question of sentencing. This alternative to insanity reform would have allowed a separate hearing entirely on the subject of Hinckley's mental condition prior to sentencing. The judge could then have modified Hinckley's sentence to insure that he received proper treatment. This alternative is not harsh. It insures that someone alleging mental impairment gets both a chance to assert that the mental illness prevented him from committing the crime and the chance to receive hospitalization and appropriate sentencing for the nature of the impairment in the event the illness did not impair his intent to commit a crime.

John Hinckley deliberately chose the only six exploding (devastator) bullets he had from among 37 other bullets when he loaded his pistol. With the specific intention of killing the President, he went to where he knew the President would be and, in full view of the American public, almost succeeded in accomplishing his purpose. He did severely wound the President and three other persons, some of whom are not likely to ever return to the same quality of life. This event is primarily responsible for our effort to reform the insanity defense. Under the current bill, Hinckley would, in all likelihood, still be acquitted. Under my amendment, Hinckley would most certainly be convicted. At the very least, we should insure that our effort today is sufficiently effective to change the result in the Hinckley case.

Generations of Federal judges have struggled to define the circumstances under which mentally abnormal offenders should be held responsible for their conduct, without notable success. As Dr. Abraham Halpern, the distinguished psychiatrist, has noted, "insanity has come to mean anything anybody wants it to mean."

The traditional insanity defense is both a legal anachronism and a concept ill-suited to modern psychological theory. It presents issues—important issues—that are not susceptible of intelligent resolution in the courtroom environment. Trials in which the insanity defense has been raised have often degenerated into swearing contests between opposing teams of expert witnesses, all of whom are forced to translate the language of the psychiatric profession into the quite alien language of the legal profession. It is this attempt to marry these two incompatible disciplines that has created the current confusion.

The insanity defense evolved principally as a means by which English jurists could avoid—in a legally rational manner—the discomfiture of condemning to death a felon who was so mentally deranged that his execution would affront ordinary moral sensibilities. As Lord Erskine stated in the earliest years of the 19th century, "delusion . . . is the true character of insanity." Individuals suffering in this manner could not truly be considered "responsible" in the legal sense.

Although the criminal law over the years substituted imprisonment and lesser penalties for capital punishment and substituted judicial discretion for mandatory penalties, the insanity defense, as an exception to the ordinary consequences of criminal conduct, survived the former strict legal requirements which it has been designed to avoid.

Even within the psychological community, the insane asylum, which once served as a warehouse for the criminally insane, has become just a brief steppingstone back to the street.

In the United States, the Congress has never enacted legislation on the insanity defense. Its development has largely been left to the courts, particularly the courts of appeals. The foundation of the present defense was laid down in M'Naghten's case (8 Eng. Rep. 718 (House of Lords, 1843)) in which it was stated—

To establish a defense on the ground of insanity, it must be clearly proved that at

the time of the committing of the act, the party accused was laboring under such defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, he did not know he was doing what was wrong.

The so-called "right-wrong" test of insanity posited in M'Naghten has gradually, but steadily, been broadened over the years.

Most importantly, the M'Naghten test, a purely cognitive test, was supplemented by a volitional test stating that an individual who could discern right from wrong, yet who, for reasons of mental disease, could not control his actions, could avail himself of the insanity defense. As it came to be known, the "irresistible impulse" rider to M'Naghten inquired into whether an offender was able to restrain his actions once having been shown to appreciate the wrongness of such actions, see *Davis* v. *United States*, 165 U.S. 373 (1897). In that case the court held—

An accused is not criminally responsible if his unlawful act was the product of mental disease or defect.

After nearly two decades of interpreting the provisions of this rule, provisions whose meanings were by no means widely agreed upon, the District of Columbia Court in 1972 adopted a formulation that had previously been adopted by other circuits.

The American Law Institute's model panel code (section 4.01 proposed official draft 1962) stated that—

First, A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the criminality of his conduct or to conform to the requirements of the law.

Second, The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

It is this language that serves today as direction for the insanity defense in the Federal courts.

With widely divergent psychological theories on the origin of behavior, it is no wonder that standards like the ALI test become completely unmanageable when interpreted by different psychiatric experts representing opposing sides of a legal dispute. Even in the absence of the adversarial context of the courtroom, psychiatrists wage academic wars over questions like what conduct is the result of mental disease or how individuals learn to appreciate the criminality of their conduct. Adding the courtroom atmosphere to the internecine conflicts of the field of psychology only complicates the jury's task of making fine legal distinctions. The unfortunate result of this confusion is that some individuals are able to avoid responsibility for committing heinous crimes by exploiting disagreements in the field of psychology. Perhaps this explains to some degree the reason that acquittals on the grounds of insanity have risen to more than 50 per year in New York State—seven times the number in the late 1960's.

The current insanity defense has also become a "rich man's defense." Only the wealthy are able to pay a battery of expensive expert psychiatric witnesses from the best universities around the country to provide testimony likely to help exculpate the defendant. The hundreds of thousands of dollars spent on Hinckley's defense is an excellent case in point. Less well-to-do defendants, on the other hand, often lack the resources to hire experts to provide favorable testimony and must instead rely on court-appointed experts whose reports are available to both sides in litigation. This disparity of judicial treatment and results also argues strongly for change in the defense.

This brief introduction about the history of the special insanity defense sets the scene for our legislative task—finding a legislative solution for the unjust consequences of the lack of definition in current legal policy. Today I am introducing this amendment to provide a foundation for our consideration of this vital topic. My amendment would add a new section to title 18 of the United States Code that would read as follows:

It shall be a defense to a prosecution under any Federal statute, that the defendant, as a result of mental disease or defect, lack the state of mind required as an element of the offense charged. Mental disease or defect does not otherwise constitute a defense.

This language has the effect of eliminating insanity as a special defense, but leaving in place the argument that a defendant could not be held criminally responsible because he lacked the capacity to form a wrongful intent, which itself is an element of serious criminal offenses. This demands a little more explanation.

Except for a few minor offenses—such as parking violations—there is no such thing as a crime per se. An act is not in and of itself criminal. For instance, any killing is not murder. A killing only becomes murder when each element of the carefully defined criminal offense is established in a court of law. These elements of a crime have developed over centuries of Anglo-American common law to define which individual acts endanger the safety and survival of the community and require society's intervention to protect itself. One of these elements is, in nearly every instance, the mens rea, or state-of-mind requirement. The current Federal code states that, "Murder is the unlawful killing of a human being with malice aforethought"—section 1111 of title 18 of the United States Code. The mens rea in this crime requires the prosecution to show that the defendant planned the killing in advance of executing it and did so with a wrongful motivation. Until a killer is found by a court to have demonstrated this mens rea, he is not a murderer subject to punishment for first degree murder.

The amendment allows the introduction of evidence by a defendant to show that he did not posses the proper mens rea because of a mental disease or defect. In other words, a claim of insanity is only valid in a criminal proceeding to the degree that the defendant can show that his mental condition at the time of the purported crime negated the requisite state of mind requirement. In the case of first degree murder, the defendant might defeat the prosecution's case by showing that he did not possess adequate mental control of capacity to maliciously plan to kill. The jury's deliberations would be limited to the same deliberations undertaken in any criminal trial: Did the prosecution prove each element of the offense beyond a reasonable doubt?

The court would not become involved in a juridical circus with "Experts" trying to convince the jury that the defendant would appreciate right and wrong—the M'Naghten rule—or that the defendant was subject to an "irresistible impulse"—Davis case addition to M'Naghten—or that the defendant's act was the product of mental disease and that the defendant was unable to conform his actions to the requirements of the law—the ALI test. Instead, the jury would make the same strictly legal judgment that juries have been making for centuries: Did the prosecution prove each element of the offense beyond a reasonable doubt?

Under this amendment, the "Insanity Defense"—I put that in quotes because, strictly speaking, there would be no "insanity defense" but only an argument by the defendant that the crime was not committed because one of its elements; namely, mens rea, was absent—would be confined to legal issues. The complexity of modern psychological theory with its unknowns would be irrelevant, except to the degree that these theories might shed some light on whether the defendant demonstrated a mens rea. In the words of Chief Justice Burger, who commented while still a circuit judge: "No rule of law can possibly be sound or workable which is dependent on the terms of another disciple whose members are in profound disagreement about what those terms mean."—*Campbell* v. *United States* (307 F. 2d 597, 612 (1962)). This bill makes contentions about the mental state of the defendant a question to be addressed within the legal terms of the state of mind requirements of any criminal offense.

Perhaps I should specifically address what this means about burdens. Cen-

turies of criminal procedure would continue to dictate this course as well. The prosecution, of course, has the initial burden to demonstrate that each legal element is present in the act that is purported to be a crime. If it fails to show that each element is present, the defense could move for a directed verdict before it even presents its arguments and the court would be compelled by the law to dismiss the case.

Once the prosecution has established that the elements are present, the defense makes its argument that one or more of the elements are not present based on the facts of the case. Each side gets one more chance to rehabilitate its contentions and undermine the other's arguments before the jury takes over. The jury must decide if the prosecution has established each element of the offense beyond any reasonable doubt.

Let us take the Hinckley case for an example. The prosecution presented probative evidence that Hinckley intended to kill the President—which Hinckley referred to as a "historic act" in a letter recovered after his arrest—and that he planned the killing in advance—Hinckley even went to the trouble to purchase special exploding bullets. Unless the defense could have shown that Hinckley's mental condition made it impossible for him to plan or to form an intent—facts which the defense did not contest—Hinckley would have been found guilty if this bill had been law in time for his trial. Instead Hinckley was allowed to contend that he "lacked substantial capacity to appreciate criminality • • • or to conform to the requirements of the law." The jury in Hinckley's trial was so baffled by the hours of psychiatric testimony that they acquitted him on this standard.

Current criminal procedure handles perfectly well the question of burdens of proof in criminal adjudications. We have no need to alter centuries of precedents on that subject. We need only confine the scope of the insanity defense to the mens rea requirements of any criminal offense. As I mentioned earlier, this means, in effect, that there will be no affirmative insanity defense. Instead the defendant will be able to argue that the crime was not committed because its state of mind element was not proven beyond a reasonable doubt. Since this bill, in effect, abolishes the insanity defense, neither the defendant nor the prosecution has the burden of proof.

Upon proof beyond a reasonable doubt that an individual committed the prohibited conduct with the required state of mind, the individual would be found guilty of the offense. At the time of sentencing, however, the court would hear whatever further psychiatric testimony was available to assist it in determining the conditions under which the defendant would be committed to a prison, mental hospital, or some other facility.

These points in favor of this amendment are covered very concisely by a letter from the Attorney General endorsing this title of the Crime Control Act:

> This proposed reform of the present insanity defense would strictly limit sanity issues which may be raised at trial to those bearing upon the one truly relevant mental element involved in every criminal prosecution: whether the defendant had the mens rea or legal state of mind necessary for the offense. . . . Under the mens rea approach, psychiatric testimony to the effect that the defendant did not know right from wrong or was acting in response to an irresistible impulse would be irrelevant and inadmissible during the guilt determination phase of a criminal trial. Of course such evidence could be admitted during the sentencing stage if the defendant is found guilty.
>
> By limiting the insanity defense to the one truly legal issue, we would avoid the miscarriages of justice and the gross deviations from basic rules of semantics which occur when a defendant is found "not guilty by reason of insanity" even where it is clear that he committed the offense and had the requisite legal state of mind. This, we believe, is the cause of the recent public outrage over the verdict in the Hinckley case.
>
> Adoption of the mens rea approach would also avoid the unseemly "battle of psychiatric experts," the waste of judicial, prosecutorial, and medical resources and the unfairness arising from the present insanity procedure. On this last point, present law favors well-to-do over economically disadvantaged defendants. Furthermore, limitation of the insanity defense to the one legal issue—mens rea—avoids the necessity of further complicating the law by shifting burden of proof or by reducing the standard of proof; in fact, the government must always, under our constitution, bear the burden of proof beyond a reasonable doubt as to the state of mind element of every criminal offense. (Letter of Attorney General William F. Smith, July 1, 1982, 128 Cong. Rec. S. 7869.)

This insightful letter from our Attorney General restates with precision the reasons that this approach is the most reasonable way to solve the dilemmas created by the current insanity defense procedure.

Finally, permit me to recount a number of arguments that weigh in favor of the changes in this amendment:

First, those individuals suffering the most serious forms of mental disabilities are unlikely to be criminally convicted under any circumstance. Such individuals will either be found incompetent to stand trial in the first place or continue to be acquitted under the proposed amendment's mens rea test. It is in the case of borderline sociopaths or antisocial personalities that this test differs from the American Law Institute and other tests.

Second, it has become very difficult to separate mental illness from environmental and economic conditioning, due to the determinist ideology of the 20th century. The objective of this proposal is to keep the insanity defense an exception, not a rule.

Third, the present insanity defense is an imprecise way for determining whether individuals ought to be institutionalized and, if so, to what type of institution. My proposed change would allow this question to be faced directly and explicitly by the court, rather than focusing only upon some elusive and fluctuating concept of responsibility at the time of the offense, the focus would be upon insuring proper means of treatment of the underlying mental problem. Under the amendment, it is likely that the number of truly abnormal individuals assigned to traditional prisons would be reduced since the sentencing options of the sentencing judge would be increased. This would keep the jurisdiction of the case in the hands of the criminal court and not pass it on to the second-hand knowledge of civil authorities.

Fourth, the amendment would encourage more effective use of professional psychiatric resources, as well as legal resources. Highly trained psychiatrist and psychologists could devote more of their time as clinicians and advisers, not tying up their valuable talents in courtroom battles.

Fifth, the present insanity defense, it has been suggested, encourages juries to overlook the fundamental question of whether or not defendants may simply not be guilty by virtue of lacking in mens rea.

Finally, and in some respects the most important, the insanity tests, as they have become increasingly broad in application, have undermined significantly public respect for and confidence in the criminal justice system as they have resulted in the release of individuals clearly dangerous to society.

Proponents of the insanity defense argue that there is no need to change the existing insanity defense laws, because criminal defendants plead insanity in only a small fraction of the cases around the country, but the number of such cases has been growing rapidly. In addition, the insanity defense, once invoked almost exclusively in cases where the defendant was charged with murder, is now being used in trials for less serious offenses with increasing frequency. The most tragic example of this extension is surely the use of the insanity defense in cases of rape and child abuse, where repeated acquittal may be gained on grounds of insanity, for offenses which are generally held as crimes having high rates of recidivism and low rates of success in the ability to treat and cure those known to have a tendency to commit these offenses.

Mr. President, there are, in my opinion, few legislative acts in the area of criminal justice that this body can take that will do more to restore public confidence in our system than

by reforming the present antiquated insanity defense.

The proposed amendment would concentrate trial exploration of the defendant's mental state in the sole area in which it is legally meaningful—the evaluation of the necessary mens rea—while enabling the post-trial process to concentrate upon the question of disposition of the defendant, free from the artificial fetters of evidentiary rules.

This amendment would end the insanity charade that has demeaned the Federal courts too long. It would establish an effective means by which offenders could appropriately be channeled into either the punitive-correctional system or the medical-legal system. Most importantly, it would insure that this determination took place in an environment that is suited for making it, rather than, as is presently the case, in an environment in which legal and psychiatric questions are confusingly and inappropriately interwined.

There is among psychiatrists simply nothing that even remotely approaches a consensus on what constitutes insanity or on how such a condition is to be medically determined, much less legally determined.

To emphasize once more, the proposed reform of the insanity defense would promote better than any present insanity defense two objectives that are critical to a sound system of criminal justice: First, it would promote the integrity of the system, and promote protection of the community, by insuring that individuals who are found guilty of an offense with the requisite mens rea are treated as blameworthy criminals. Second, it would promote genuine promise of rehabilitation by allowing the court to focus upon their legal guilt. Nebulous and extraneous issues would be removed from the consideration of each of these questions. For these very important reasons, I strongly recommend that my colleagues support this most crucial proposal.

Mr. President, the present bill is a carefully crafted bill, it is a compromise bill where people on both sides have tried to work together to resolve the differences. Although I do not like the application and approach toward the insanity defense, on this particular occasion, I really believe that it is important to get this bill passed and get it through.

I believe that, sooner or later, we do have to address this issue. We do have to resolve these problems. We do have to face the problems that we have here. I hope we do that sooner rather than later.

I understand with regard to this bill that this carefully crafted compromise, in which I have played a part, is extremely important in the overall hope that we can do a better job with regard to criminal activities in this country, especially those regarding violent crimes.

Mr. BIDEN. Mr. President, will the Senator yield for a moment?

Mr. HATCH. I am happy to yield. I notice Senator MATHIAS is here.

Mr. BIDEN. I am not going to take any time on it other than to suggest that I concur with the Senator from Utah. I agree with his standard. I supported that standard in committee.

I compliment him on what I think he is about to do; that is, not upset the compromise. I hope he and I and others who share the view he has expressed today will be able to add that later and make changes along these lines in the insanity defense. What we have in the bill is clearly better than what exists. I think ours is even better, but I shall not press it.

Mr. HATCH. I thank my colleague. I agree with him that the amendment in the bill is better than present law. It is not sufficient to solve instances like the Hinckley matter. My amendment would solve those problems and I think still be compassionate and humane with regard to those who do suffer from mental illness and get them the treatment they need without some of the bizarre approaches to the law that we have had to face in the past.

Mr. THURMOND. Will the Senator yield?

Mr. HATCH. Mr. President, I yield to the distinguished chairman.

Mr. THURMOND. Mr. President, I commend the able Senator from Utah for the great work he has done on this crime package and on the particular matter before us now. He has given a great deal of attention to it. Originally, the Justice Department, I believe, took that position. The Justice Department now feels, after study—as others of us do—that the provision we have now as a compromise position may be preferable. I do commend the Senator for the fine work he has done on this bill.

Mr. HATCH. I thank the distinguished chairman of the committee. As I have said before, he and Senator LAXALT, Senator BIDEN and I, and a lot of others have worked hard on this bill. I do not want to upset the compromise we have because I think it is a major step forward in this matter.

THE INSANITY DEFENSE

Mr. LAXALT. Mr. President, as the Hinckley matter and other recent cases have so forcefully demonstrated, Federal law concerning the insanity defense is in desperate need of reform. The spectacle provided by the more highly publicized of these cases hardly engenders widespread respect for court procedures; indeed, the confusion that presently surrounds the Federal insanity plea demeans our entire criminal justice system. Despite the great significance of this issue, Congress has never before enacted legislation concerning the insanity defense, thus leaving development of the doctrine to the Federal courts. We in the legislative branch can delay action no longer: changes are necessary.

Title IV of this bill significantly narrows the Federal insanity defense; moreover, it places the burden of proving insanity where the burden belongs—on the defendant who asserts the plea. Also importantly, this title, for the first time in the Federal system outside the District of Columbia, insures that a defendant found not guilty by reason of insanity remains in custody for so long as he or she presents a danger to the community. Further, title IV sets out procedures for determining a defendant's competency to stand trial, and precludes opinion testimony on the ultimate issue of whether a defendant is legally insane. All of these changes are the result of very extensive hearings on the subject conducted up through the 97th Congress.

Title IV limits the insanity defense to those cases in which the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense. Thus, the highly indeterminate irresistible impulse test is eliminated, as are claims of diminished capacity; the focus of the defense is returned to the fundamental question of whether or not the defendant had an understanding of his actions. Title IV requires defendants to prove their insanity by clear and convincing evidence, so that society may be fairly confident that those who are exonerated have clearly satisfied the elements of the defense. For those who do satisfy the defense, the title does, at long last, establish a Federal civil commitment procedure.

The reforms embodied in title IV help move the Federal insanity defense into accord with commonsense, and constitute a major and necessary part of this anticrime package.

HATCH INSANITY AMENDMENT

I absolutely agree with Senator HATCH that current Federal law on the insanity defense seriously weakens public confidence in our criminal justice system, and has to be remedied. While Senator HATCH's proposal makes much sense, I am also convinced that the Judiciary Committee reforms as already embodied in title IV constitute a tremendous improvement over present law. Title IV is the product of many hours of hearings on the insanity defense at which the views of the most eminent legal and psychiatric experts in the area were fully aired. In significantly narrowing the Federal insanity defense, title IV incorporates some of the best thinking

on the subject and responds to recent case law.

S. 1762 as reported limits the insanity defense to those cases in which the defendant can prove by clear and convincing evidence that he was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense. Thus, for example, the "irresistible impulse" test, which has provided so much confusion over the last several years, will be eliminated. Under S. 1762, the focus of the insanity defense is returned to the specific and fundamental question of whether or not the defendant had an understanding of his actions. Moreover, the burden of proof is placed where it belongs—with the defendant who chooses to assert the plea.

Title IV also takes a huge step forward by insuring, for the first time in the Federal system outside the District of Columbia, that a defendant found not guilty by reason of insanity remains in custody for so long as he or she poses a threat to the community at large. The title also seeks to reduce the battle of the expert psychiatrists by prohibiting opinion testimony on the ultimate issue of whether a defendant is legally insane. All of these changes are desperately needed.

In summary, I concur with Senator HATCH's assessment of the abysmal state of current Federal law on the insanity defense, and I am extremely glad that title IV contains the far-reaching reforms I have outlined. Thoughout its history, Congress has never enacted legislation concerning the insanity defense; in my opinion, title IV of this bill is long overdue and will help to restore public respect for criminal court procedures.

Mr. HATCH. Mr. President, with that statement, I ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The amendment (No. 2681) was withdrawn.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER (Mr. ABDNOR). The Senator from Maryland is recognized.

Mr. MATHIAS. Mr. President, I have heretofore proposed four amendments to title II of Senate bill 1762. For the information of Senators, these amendments were printed in the CONGRESSIONAL RECORD on November 18, 1983, so the Senate should be thoroughly familiar with the text of these amendments. I am sure they are engraved on the heart of every Member. They deal with the sentencing system which is proposed by S. 1762 and with the clarification of the legislative intent of the bill.

AMENDMENT NO. 2648

(Purpose: To modify sentencing procedure)

Mr. MATHIAS. I am not sure, Mr. President, just how far we can get today in considering these amendments. I shall certainly try. For that purpose, I first call up amendment No. 2648.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS), for himself and Mr. CRANSTON, proposes an amendment numbered 2648.

On page 34, strike out lines 13 through 18 on page 36, and insert in lieu thereof the following:

"(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court, in determining the particular sentence to be imposed, shall consider—

"(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

"(2) the need for the sentence imposed—

"(A) to reflect the seriousness of the offense, and the culpability of the offender, to promote respect for the law, and to provide just punishment for the offense;

"(B) to afford adequate deterrence to criminal conduct;

"(C) to protect the public from further crimes of the defendant;

"(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and

"(E) to provide restitution to victims of offenses;

"(3) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

"(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—The court, in determining the particular sentence to be imposed, shall consider—

"(1) the kinds of sentences available under section 3551; and

"(2) the kinds of sentences and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2), that are in effect on the date the defendant is sentenced.

If such guidelines or policy statements differ from those in effect on the date of commission of the offense, the court shall consider only the less severe of the two. The court shall impose a sentence that accords with the applicable sentencing guidelines and policy statements, unless the court finds that departure from the guidelines is warranted on the basis of the circumstances of the offense or on the basis of information about the defendant. In the absence of an applicable sentencing guideline, the court shall impose a reasonable sentence, having due regard for its relationship to sentences prescribed in guidelines applicable to similar offenses and offenders.

"(c) CONSIDERATION OF SENTENCING OPTIONS; STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—

"(1) The court, at the time of sentencing, shall consider the following sentencing options or a combination of such options when applicable:

"(A) Probation under subchapter B of this chapter without supervision and with only such conditions as are required by that subchapter.

"(B) Probation under subchapter B of this chapter, with supervision by a probation officer and with only such conditions as are required by that subchapter.

"(C) Probation under subchapter B of this chapter with any condition or combination of conditions authorized under that chapter other than confinement in the custody of the Bureau of Prisons.

"(D) Probation under subchapter B of this chapter, with any condition or combination of conditions authorized under that chapter, including confinement in the custody of the Bureau of Prisons.

"(E) Imprisonment under subchapter D of this chapter.

The court shall not impose a sentence of imprisonment unless the court has considered all other authorized sentences and rejected such sentences as inadequate to achieve the purposes of sentencing set forth in section 3553.

"(2) When imposing sentence, the court shall—

"(A) make such findings as are necessary to resolve any material fact in controversy that may affect sentencing, parole, or in-prison treatment of the defendant;

"(B) impose the least severe appropriate measure or measures necessary to achieve the purposes of sentencing, as set forth in section 3553(a) of this title; and

"(C) state on the record the reasons for the imposition of the particular sentence and the reasons why such sentence is the least severe appropriate measure or measures.

If the sentence does not include an order of restitution, the court shall include in the statement the reason therefor. The clerk of the court shall provide a transcription of the court's statement of reasons to the Probation System, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.".

Mr. MATHIAS. Mr. President, the amendment has as its goal two principal provisions. One is greater flexibility in applying the guidelines in cases of specific individual defendants. The second is to receive the punishment of incarceration for those who most deserve it, for those who merit it, by requiring the imposition of the least severe appropriate sanction in each case.

Now, on the first question of greater flexibility, the bill before us requires—it does not authorize—it orders judges to sentence within the sentencing guidelines to be established by the new Sentencing Commission, with a very narrow exception. That exception is:

Unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence different from that described.

Now, this is a rather tenuous kind of proposition, "that there was an aggravating or mitigating circumstance that

was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." That is going to be a very difficult proposition for judges, and for the courts in general, to apply. This seems to require that the sentencing judge read the minds of the "Sentencing Commission." At the very least, every judge presiding in a criminal case which results in a conviction and a sentence will have to delve very deeply into the working papers of the "Sentencing Commission" in order to determine whether a factor which is present in the case that is before the judge and which will justify departure from the guideline, either more strict or less strict, was adequately taken into consideration. Of course, when you say adequately taken into consideration, that becomes subjective because what is adequate to one may not be adequate to another. If the judge simply decided to depart from the guideline because the facts in the case before him would make it unjust to adhere to the guideline, then he would be committing under the law, under this bill, reversible error.

Now, I have to ask Senators this question: If that is the result, would not that distort the purpose of the sentencing guidelines? Because unless the purpose is to impose the kind of spurious uniformity which I mentioned in my opening statement last week, in which different defendants and different crimes are treated identically for the sake of eliminating disparity, now this provision exalts obedience to a guideline over all other values, values that perhaps should be more important in the imposition of a sentence. And this provision is one reason that I refer to this bill as creating a sentencing machine.

This is an area in which we ought to listen very carefully to the judges, to the people who have a daily experience in this most difficult of human activities, the sentencing of other humans.

The judges are men and women who have today the awesome responsibility of passing sentence on those defendants who are convicted in their courts, and I think many of them have misgivings about a scheme as rigid as that which is proposed in the bill. One perceptive commentator from the bench is Judge Lois Forer, of the Court of Common Pleas of Philadelphia. She has written a book entitled "Criminals and Victims: A Trial Judge Reflects on Crime and Punishment."

I think it is worth taking just a minute to quote briefly from that book. She says:

> In the complicated relationships among the criminal and the victim and society no scheme, regardless of how sophisticated the design or how rigorously and undeviatingly it is applied, can provide fairness or justice. There must be a human mind and spirit that can weigh and assess needs, frailties, and differences among individuals and situations, as well as similarities. The judge who hears the evidence, sees the defendant, the victim, and all the witnesses and has the benefit of pre-sentence and psychiatric reports has the best information about the crime and all the parties involved. It is for that obvious reason that sentencing has been a judicial function under the common law for more than a thousand years.
>
> A judge operates in a public arena, subject to direct criticism from the parties and the press. This may often be uncomfortable for the judge. It is not pleasant to be assailed as a fool, a dupe, a well-meaning bleeding heart, a hanging judge, a chauvinist, or any of the other epithets that are hurled at judges whose sentences diplease some members of the press or the community. But it is far better to have the responsibility—credit or blame—placed on a public official who makes the sentencing decision than to have these decisions made by a nameless, faceless bureaucracy which has never seen the criminal or the victim and who is not responsible to the public. Nor should offenders be denied individualized consideration.

Now, that states the concern. It is stated by a judge, but the concern is not limited to judges. There are many experts in the field of criminology who share it. For example, Prof. Alfred Blumstein of Carnegie-Mellon University has written in an essay entitled "Crime Control: The Search for Predators" that:

> As the research on selective incapacitation begins to identify the patterns associated with high rate offenders, there may be a tendency to move to the creation of a sentencing decision machine. Such a prospect should be viewed with alarm. The factors that do and should enter into the sentencing decision are far more numerous and complex than can be captured by any simple formula. Rather than trying to create a sentencing machine, research should gain insights into the patterns of behavior that are associated with the most serious offenders and in turn these should be communicated to judges and prosecutors. If officials insist that the information is reliably and completely gathered, they will then be in a good position to use these variables. Most importantly, the newly validated variables will hopefully serve to displace some of the less valid indicators that prosecutors and judges currently use in their private sentencing calculations.

Professor Blumstein envisions a system of guidelines that will help judges to do their jobs, but that is not what we are presented with in this bill. In this bill we have a guideline system that will strip judges of the discretion that they have exercised for centuries. That will force judges to hand down sentences that are less individualized, less sensitive to the myriad factors that ought to be taken into account when one human being orders another to be incarcerated or to be fined or to suffer some other punishment.

I believe that the amendment I offer will allow the guidelines to become a help to the judges rather than a hindrance. It will promote the performance by the bench of this particular duty. The amendment would direct the judges to sentence within a guideline, unless departure is warranted on the basis of the circumstances of the offense or on the basis of information about the defendant. If it is a heinous offense, if it goes beyond the normal crime, the judge can take that into account. That would permit the guidelines to do what they ought to do, which, by definition, is to guide, while reserving sufficient flexibility to the judges for rational sentencing.

Moving on to the second goal of the amendment, let me refer to the committee report on S. 1762, which professes to be neutral on the question of reserving incarceration for the most serious cases.

Mr. President, it is, of course, lofty and desirable to be above the fray when that is possible. It is also sometimes safer to be above the fray. But in this case, I am not sure that the Committee on the Judiciary or the Senate can long maintain the posture of being above the fray, because the Federal prisons are in the midst of a population explosion, and to be silent on the question of incarceration is simply to invite further overcrowding, to invite unnecessary friction and, I think you have to say, to invite the possibility of a prison disaster.

This is not a matter of opinion. This is a matter of fact with which we have to deal. Statistics tell the tale.

According to the Bureau of Justice Statistics, the number of State and Federal prisoners rose by 13,288 during the first quarter of 1983. I did not say it rose by 13,288 in 1983. I said it rose by 13,288 in the first quarter of 1983. The total is 425,678 inmates.

In some previous years, the State prisons expanded faster than the Federal prisons, but this is no longer the case. According to the Bureau of Justice Statistics, the number of Federal prisoners grew at more than twice the rate of the State prisoner increase during the first quarter of 1983. As of March 30, 1983, there were 31,537 prisoners in Federal institutions, which is the highest number since the Bureau of Justice Statistics began to keep records, and which is 11-percent higher than the previous year. I do not have the current statistics—so far as I know, they are not yet available—but according to the Bureau of Justice Statistics' midyear 1983 figure, there were 32,142 prisoners in Federal institutions. So the growth rate is apparently continuing. It seems to me that this is particularly troubling in view of the reported decreases in crime rates in recent years.

In fact, the Washington Post reported on this on the 24th of October 1983 in a story headline "U.S. Crime Rate Down Sharply in 1983," 1983 was the second year in a row that the FBI has reported decreases in the number of reported crimes. I am happy to say that there is a similar trend in the vic-

timization surveys conducted by the Bureau of Justice Statistics.

However, it is paradoxical, as the Post notes, that the Bureau of Justice Statistics reported that the State and Federal prison population grew by 4.2 percent during the same period. So we have the phenomenon that the rate of crime seems to be going down and the number of prisoners seems to be going up.

We know that Federal institutions are now overcrowded by a factor of 25 percent, and that overcrowding affects the efficiency and ability of penal institutions to perform the function of rehabilitation. I do not know if crime rates will continue to decline, but we do know that there is evidence of overreliance on incarceration as a criminal sanction. Obviously, there are times when imprisonment is the only appropriate punishment, but not in every case. In some cases, it may be inappropriate, and in all cases it is expensive.

It is very easy for an outraged citizen to say, "Lock him up for 20 years." I think all of us have been tempted to say, "Lock him up for 20 years," upon hearing of one crime or another. But how many citizens contemplate that locking him up for 20 years is imposing on the taxpayers a burden of about a quarter of a million dollars, computed on the basis of about $12,000 per year "tuition"? That, I believe, is a modest sum, by the current standards of prison maintenance.

There are a number of Senators who have shown a very sophisticated understanding of this very important issue.

I note that the distinguished Senator from Georgia (Mr. NUNN) and the distinguished Senator from Colorado (Mr. ARMSTRONG) introduced a bill which is known as Senate bill 1644, which would attempt to limit incarceration to those cases in which it is most appropriate.

What I am attempting to do by this amendment is to do the same thing, to instruct the courts to impose the least severe appropriate sanction and to incarcerate when no less severe sanction is appropriate.

This is the rule that has long been advocated by the American Bar Association. The American Bar Association has debated it, has considered it, and has adopted it.

It seems to me that it not only has the virtue of that expert opinion but the virtue of commonsense.

So I urge Senators, particularly those who have supported the Nunn-Armstrong bill, to join with me to incorporate this commonsense provision into sentencing reform rather than simply to say that we are going to be neutral on one of the most important questions that confronts us as we consider this bill.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, this amendment is objectionable because it would permit the sentencing judge to depart from sentencing guidelines any time he feels some circumstance of the offense or information about the defendant warrant such departure. It is also deficient because it clearly imposes upon the judge the duty to consider sentencing in a lockstep fashion so as to impose the least onerous forms of probation or, as a last resort, a sentence to imprisonment. The judge may not impose a sentence of imprisonment until he has considered all other sanctions, namely, a fine or restitution, as well as probation, and affirmatively rejected such other sentences as inadequate to achieve the purposes of sentencing.

By contrast, the bill provides the appropriate statutory guidance for sentencing policy to the Sentencing Commission. Hopefully, this system will result in the issuance of reasoned sentencing guidelines to be applied within relatively narrow ranges so as to insure fairness and eliminate unwarranted disparity. Admittedly, general discretionary guidelines for the judiciary might have some improving effect. However, the sponsors of this bill have long felt that effective sentencing must incorporate generally binding guidelines unless the judge finds "that an aggravating or mitigating circumstance exists that was not adequately taken into account by the Sentencing Commission in formulating the guidelines and that should result in a sentence different from that described." (See 18 U.S.C. 3553(b).) Otherwise, the guidelines are likely to become merely advisory information for the judiciary to accept or reject based on each individual judge's view of the appropriateness of the guideline sentence. If we are ever to reach a reasonably consistent sentencing process, I believe we must at least try—and, if necessary, fine tune later—sentencing principles in the form of guidelines and policy statement that have teeth in them. The bill as drafted best enhances that objective.

In addition, Mr. President, I am disturbed by the point of view that each offense and offender should necessarily be approached from the lenient perspective. Obviously, many offenses and offenders naturally impell a decisionmaker toward minimum sanctions and a hope for rehabilitation. For example, a youthful first-time offender convicted of a nonviolent crime. There are situations, however, that are so heinous and outrageous that society must demand that departure from the maximum imposable sentence be affirmatively justified. Mr. President, only recently two Federal prison guards were murdered by repeat killers serving consecutive life terms. I do not know what else can be done with them—we do not seem able to enact a death penalty statute—but I find it totally objectionable to apply presumptions of leniency to these cases as this amendment would philosophically accomplish. Our diligent search in each case should be for the "appropriate" sentence based on the circumstances of the case and the characteristics of the offender.

This amendment should be rejected.

I might say that the Judiciary Committee considered this bill, considered this sentencing provision, and has fine combed this matter. It has gone over it very carefully.

The Justice Department is in accord with the position taken in this provision of the crime package and we hope that the Senate will adopt the provision of the Judiciary Committee.

I now yield to the able Senator from Delaware.

Mr. BIDEN. Mr. President, as usual the Senator from Maryland raises some legitimate points and makes his case well.

What we are about here after, I might add, a decade of arguing about sentencing procedures that exist in this country today, is in fact a fundamental change in the way in which we approach the sentencing process, and to the extent that the Senator from Maryland implies that he is absolutely correct, and to the extent that he argues that this could under certain circumstances increase the prison population, he is correct about that.

But let me tell you why I believe, after having worked on this particular portion of this bill since I got here in the Senate, there are chances we have to take and acknowledge that points raised by the Senator from Maryland are legitimate at least to the degree that some of them could come to fruition, namely, increased prison population. But I would argue that the opposite is just as likely to occur and that is to decrease prison population.

Let me explain just very briefly how we got to where we are in this bill. Senator KENNEDY and myself years ago concluded that one of the most serious failures of our sentencing system was that it was based upon the notion that someone would be incarcerated for as long as it took to rehabilitate them and put them back out into society, and that is a noble notion and idea that I would like to subscribe to, if we were able to determine what constituted rehabilitation, when it occurred, and, if it occurred, why it occurred.

But as we found out over a long experience, we do not know how to rehabilitate. I would argue that we do not make enough effort to do that. But even beyond not knowing how to rehabilitate, we are not even sure when rehabilitation occurred and, when it occurred, we did not know why it occurred. We do not know if it is—not to be facetious—whether they saw God,

whether their mother passed away and that so affected them that it altered their psyche and that, in turn, altered their behavior, or whether it is because of the skills they learned in prison, learning how to read or write or fix that 1948 Buick they keep putting back and forth together in most prisons. We just do not know why it occurs.

We have a tremendous amount of testimony over the years in the Judiciary Committee on the question of rehabilitation and what it means.

So there is a fundamental shift here. We found that what we had under the present sentencing system, and it is just kind of coincidental, most of the people who wind up in jail are people who are poor and people who are black and people who are from a minority, and some racists among us will say that is because that is how those folks are. In fact, you could say all right, let me accept that for sake of argument. Let us look at the next step, that the comparative studies, many of which have been done and I will not bore the body with them, because I made this argument time and again on the floor, the comparative studies that say all right take a white middle-class guy that commits the same crime as the black economically deprived guy and get him before the same judge, and it turns out, by and large, the studies show the white middle-class guy gets a more lenient sentence than the black guy, and you know that is kind of disturbing.

So what we try to put into this sentencing bill, and Senator KENNEDY and I compromised out an awful lot of things that I quite frankly would like to be tougher about in the sentencing process, we compromised out so that we allowed some discretion which I was not inclined to give any increase so that there would be some discretion but nonetheless uniformity.

Very bluntly, I say to the Senator from Maryland, he quoted two very noble judges, and one, I believe, psychiatrist or psychologist. He is correct. If we believe what the judges said, we would not be here on the floor. If I had confidence in the judges being able to do this thing, there is no need for us to be here. But the reason we are here with sentencing is we do not like the way the judges are doing it.

Now some judges are good at it; some judges are bad at it. But if we are happy with the way the judges are imposing the sentences, that is the best way to do it, I agree. If every judge was a Solomon and stood before us, I have no problem with that.

I agree that that judge not only sees the person, as the Senator from Maryland says, and we do not see the person as we pass a broad law here and then the sentencing commission further refines it—neither the sentencing commission nor JOE BIDEN nor STROM THURMOND see that victim and/or defendant, in this case the criminally convicted defendant.

But one of the problems we found out is the judge sitting there does see him. We find out judges are not color blind and judges do not leave their baggage at home. Judges do not leave their prejudices at home. And we found there is significant disparity in how the judges apply the sentences when they see the defendant.

So this notion that if you see the defendant you are in a better position to be able to know what is right or wrong for the defendant and right or wrong for society sound very reasonable, except the past several decades of history—and I would suggest longer than that—indicate that it does not work all that well.

I will speak to a second point the Senator raised. He said somewhere along the line a judge may come up and say, "Look, I have got to deviate from these guidelines." I understand they are only guidelines. He can already deviate from them.

The committee did not accept the Biden proposal which says: "Same time for the same crime, Jack. Bam, you go to jail if, in fact, it is a crime that warrants incarceration."

They did not like that, so they said: "Okay, let's have some flexibility here."

Well, flexibility was a guideline and then we have within the guidelines which are broader, we have a further flexibility. A judge can deviate from the guideline.

Now, the Senator from Maryland is disturbed that the court would be required, in his deviation from the guideline, to find that "An aggravating or mitigating circumstance extends beyond that which was not adequately taken into consideration."

I assume that worries him that it puts an extra burden on the judge to know what in fact was or was not taken into consideration. Well, that is a problem with judges, among others. They do not know the law sometimes. I do not consider it any burden at all when this law passes and the guidelines are issued by the Commission for every judge to have required homework to memorize the guidelines, to know them, to know the details of them. If it is a two-page report, read it. If it is a 5,000-page report, read it. I like judges doing homework. Why should they not know?

So if the Senator is implying it is a burden for a judge to have to know whether or not that factor was taken into consideration, I do not consider that a burden at all. It is a burden for a judge in a complicated antitrust case—and the Senator from Maryland and I tend to agree on that issue—to know the details and complexity of antitrust law. We understand the judge should have that burden. I think it is no burden for the judge to understand the guidelines.

Next, Mr. President, I point out that if, in fact, the guidelines were adhered to and, further, the guidelines come down with all of what we expect—incarceration only for violent crime or primarily for violent crime—then we will maybe reduce the prison population because judges in Philadelphia, an area I know well, in Baltimore, which I know less well but the Senator from Maryland knows very well, in Wilmington, Del., which I know very well, judges will not now under the guidelines hopefully, be able to put people in jail for nonviolent offenses when there is an alternative suggested by the commission, which a lot of judges do now.

So the Senator worries that what is going to happen, with the guidelines putting emphasis on imprisonment for violent offenders, what is going to happen is that is going to increase the prison population. I would argue it is just as likely the guidelines will reduce prison population because the guidelines, hopefully, will be such that they say, for nonviolent offenses, maybe it is not such a good idea to put someone in jail. So if now a judge wants to put someone in jail for a nonviolent offense, and it is not within the guidelines, the judge is taking a chance that he could have reversible error. I would argue that this is an equalizer, a positive equalizer.

The last point I would like to make—and obviously there is much more to say because the points the Senator from Maryland raises are important and they are significant—the last point, though, I would like to speak to, and I will only do it for a moment, is this notion of additional prisons. He is absolutely right the $12,000 college tuition for a Federal prisoner is not cheap—probably it is closer to $30,000 a year depending on how you add it up. It is a big ticket item.

But I would argue that life is a matter of alternatives. One of the alternatives we are faced with here is whether or not we are going to pay the price to keep violent people off the street. Now if a society's judgment is that the price is not worth it, then I would argue, fine, do not do it, vote those of us out of office who think we must pay to keep the violent person off the street. But I want to conclude that point by saying I am not at all sure this will increase prison populations, because the guidelines will inhibit judges from putting nonviolent offenders in jail as opposed to encouraging that, but it will encourage them to put the violent offender in jail.

I yield the floor.

Mr. LAXALT. Mr. President, the first amendment offered by Senator MATHIAS has two purposes: First, to provide the sentencing judge with a

large number of options from which he can select an appropriate penalty for the defendant before him, and, second, to make sure that the least severe appropriate sentence is in fact imposed. Both of these are proper goals for sentencing reform. I must oppose the amendment, however, because title II already incorporates these purposes to the maximum practicable extent consistent with the overriding purpose of eliminating unwarranted disparity and uncertainly in sentencing.

The Senator agrues that the proposed bill will bind Federal judges to the sentences prescribed by the Sentencing Commission guidelines and that occasionally the guidelines will not provide a sentence appropriate to a particular case. The amendment is intended to provide the judge with authority to depart from the guidelines in such cases.

However, title II presently provides just this authority. Section 3553(b) permits the court to depart from the guidelines in cases where an aggravating or mitigating factor exists that was not adequately considered by the Sentencing Commission in the promulgation of the sentencing guidelines. The court is required by section 3553(c) to state the rationale for its selection of penalties and, where the sentence is outside of the guidelines, to set forth the specific reason for imposing that particular sentence.

On review, the court of appeals is required to accept the trial court's findings unless it finds them to be clearly erroneous. And further, in cases where the sentence is outside of the guidelines, the appellate court must find the sentence to be unreasonable in light of all the factors to be considered by the trial court in imposing a sentence and in light of the reasons given by the trial court in support of its decision (section 3472(d)).

These provisions of title II clearly indicate that the trial judges are not locked into the guidelines in cases where the prescribed sentences are not appropriate. The appellate courts are required to give due regard to the decision and the justification of the trial court to go outside the guidelines.

I must add that to give any greater deference to the trial judges in the area of sentencing would defeat one of the primary purposes of this legislation—namely, the elimination of the unwarranted disparity in sentencing due to the present failure of Federal judges to sentence similarly situated defendants with any semblance of consistency. Title II provides a framework for sentencing decisions and also permits judges to impose appropriate penalties in those cases where the guidelines will, as any guidelines sometimes must, fail to give a pertinent factor adequate weight.

But the present sentencing mess makes it quite clear that what is desperately needed in sentencing reform at the present time is a statutory scheme that encourages—and that will actually result in—greater uniformity in sentencing. When a judge departs from the recommended sentences, the burden should be on him to justify his decision. This is what title II will accomplish.

The second part of the proposed amendment requires the judge to proceed in lockstep fashion through all of the sentencing alternatives, from unsupervised probation up to a term of imprisonment, in order to make certain that a term of imprisonment is imposed only when all other alternatives have been rejected as inappropriate. Again, I agree with the general thrust of this amendment, but again I say that the proposed bill already accomplishes this purpose without sacrificing the guidelines system that is necessary to eliminate the gross disparity in sentencing under existing law. Section 3553 requires the judge to consider the kinds of available sentences in general and the specific sentences recommended in the guidelines and to state the reasons for each sentence imposed. In turn, section 994, which sets forth the duties of the new Sentencing Commission, contains a series of directives to the Commission concerning the formulation of the sentencing guidelines. Section 994(j), for example, directs the Commission to "insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment where the defendant is a first offender and the crime is not a crime of violence or an otherwise serious offense." Section 994(i) directs the Commission to insure that the guidelines do not prescribe prison terms where rehabilitation is the appropriate purpose of sentencing.

However, we all recognize that imprisonment is very appropriate for many repeat offenders, for professional criminals, and for those convicted of major drug offenses and violent or serious crimes. It would be an empty gesture in cases involving these crimes to require the courts to consider formally each sentencing alternative from the most lenient to the most severe. In fact, title II directs the Sentencing Commission to recommend stiff prison terms for such offenders. See for examples section 994 (h), (i), (j), and (l).

Finally, I believe that underlying this amendment there is an assumption that imprisonment is by definition "severe" and that any penalty other than imprisonment is something less than severe. This assumption overlooks the wide range of sentencing alternatives authorized by title II. Thus, in a given case, the Sentencing Commission may recommend a penalty of probation with conditions that the defendant pay a fine and serve evenings and weekends in prison. For certain offenders, this may be far more punitive than a light prison sentence. Title II does away with the idea that "probation" means the absence of punishment. Under this bill, probation may be subject to conditions and fines in order to permit the courts to fashion sentences that are appropriate to each convicted offender.

The Senator's amendment also adds language requiring the sentencing judge to consider restitution as an option in each case. This language is not necessary because section 3553 (c) and (d) and section 3556 of title II already provide the authority for imposing a restitution requirement on the defendant. In fact, if the court does not order restitution, the court is required by these sections to include a statement explaining why restitution was not ordered. Clearly, this encourages the courts to give serious consideration to restitution in each criminal case. Because this amendment regarding restitution adds no more than what title II already includes, the amendment is unnecessary.

In sum, the substance of the Senator's amendment is already reflected in title II. Insofar as the proposed amendment goes further than title II in freeing Federal judges from the framework of the sentencing guidelines, however, the amendment seriously detracts from the main purpose of title II and the guidelines system—that is, to eliminate the present unwarranted disparity in the sentences imposed by the Federal courts. The amendment should be rejected.

Mr. THURMOND. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a letter from the Justice Department opposing this Mathias amendment and the other two, which I understand he will offer.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
*Washington, D.C., October 27, 1983.*

HON. STROM THURMOND,
*Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is to express the strenuous objection of the Department of Justice to a package of amendments that we have been advised Senator Mathias intends to offer to the comprehensive sentencing reform title of S. 1762. Title II of S. 1762 represents a consensus regarding sentencing reform that is the product of more than a decade's effort. These amendments either strike or drastically alter certain core concepts of this consensus sentencing package.

The proposals incorporated in these amendments are ones to which the Judiciary Committee has given full consideration and has rejected not only in the context of

S. 1762, but in similar sentencing reform legislation in past Congresses. These include retention of parole, and thus of the concept of indeterminate sentencing; placing the function of promulgation of sentencing guidelines in the Judicial Conference rather than in an independent Sentencing Commission; a wholesale revision of the provisions of the bill which govern the scope and content of sentencing guidelines, including an instruction to the Commission to, in effect, recommend imprisonment only as a last resort; and establishment of further legal barriers to imposition by judges of sentences of imprisonment even for violent offense and irrespective of whether such sentences are deemed appropriate under sentencing guidelines.

The strong bipartisan support for the comprehensive sentencing reform package of Title II of S. 1762 is well deserved. We strongly urge that these amendments be defeated so that S. 1762's much needed consensus sentencing reform package remains intact.

Sincerely,

ROBERT A. MCCONNELL.

Mr. THURMOND. The view of the Justice Department is in line with the committee view.

I might say on this particular Mathias amendment in the committee, I just looked up the report, the committee voted 15 to 2 against this amendment in the committee.

Mr. MATHIAS. Mr. President, the Honorable James K. Stewart, Director of the National Institute of Justice, made an interesting speech at the Conference of State Chief Justices and the Conference of State Court Administrators in which he praised the voluntary guidelines which have been so criticized by the majority of the committee. I believe that if the majority of the committee would read Mr. Stewart's remarks, it would be illuminating.

I offer that for the RECORD, as well as remarks by the Attorney General of the United States, Mr. William French Smith, on alternatives to incarceration, which I think are pertinent to this debate.

I ask unanimous consent that they be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS BY HONORABLE JAMES K. STEWART, DIRECTOR, NATIONAL INSTITUTE OF JUSTICE, U.S. DEPARTMENT OF JUSTICE

I am especially pleased to be participating in the 1983 Annual Meeting of the Conference of Chief Justices. It is an honor to be the first Director of the National Institute of Justice to address your distinguished group.

As a career police official who rose to chief of detectives in Oakland, I bring to the job of institute director a firsthand knowledge of the consequences of crime control policy. I've seen what happens when policy collides with reality on the streets.

As justices you view the parade of cases that pass before you from a different vantage point. Judges are not one more valve in the pipeline of criminal justice. Rather you stand apart, with a different purpose and thus a different perspective. The Framers of our Constitution recognized the judicial branch as separate so as to give reality to the guiding principle that we are a government of laws, not of men.

While judges fulfill a separate and unique function, you and I also recognize that all parts of the criminal justice system are highly interdependent. The effects of changes in one area ripple throughout the system. And the scarce resources available must be shared throughout the separate units of our justice system.

The pressures of change and constrained resources make communication within the justice system more important than ever before. That is why I particularly welcome the opportunity to meet with you today to begin what I hope will be continuing dialog between the National Institute of Justice and the Chief Justices.

Since its inception in the early 1970's, the Conference of Chief Justices has taken an increasingly active role in influencing national policy affecting State Courts. Today your insights are particularly powerful and necessary.

The Reagan administration is committed to revitalizing state and local leadership in fighting crime and improving our nation's delivery of justice. We look to the great laboratories of the individual state, as Justice Brandeis referred to them 50 years ago, to foster progress and to help guide our search for policies and practices that can better serve the American people.

The President also recognizes your special role and the insights you have into the complexities of crime and justice. That is why he appointed Justice Cameron of Arizona, a member of your Conference, and Justice Richardson of California, to serve on the Advisory Board to the National Institute of Justice. These distinguished justices provide the valuable judicial perspective and advice that is helping us create a more policy-relevant research policy.

In addition to the counsel of our Advisory Board, the Institute has actively sought the direct input of state and local practitioners in other ways. For the first time ever, the Institute has conducted hearings at conferences of major criminal justice associations, including the American Bar Association, to help identify areas of research inquiry.

We have learned of the problems you face in dealing with the realities of crime. The testimony, much of the best of it from judges, has helped us to understand the questions policy makers faced and design research that will focus on helping to answer those concerns.

Certainly a major concern expressed by Judges is public perception of the courts. Our justice system requires public support. But public opinion polls show that support has been eroding.

Citizens see their lives increasingly restricted and regulated by crime. What can be done? According to recent polls, the public answer is to punish criminals to the full extent of the law. Yet only three percent of those polled viewed the courts' performance as very good in this area, and nearly a third considered court performance to be poor.

A number of reasons contribute to the low rating. One is confusion over the way courts operate. Citizens don't understand, for example, why there is so much delay. The media cite cases that take years to be resolved. Victims and witnesses complain that delays exact a second penalty on lives already marred by crime.

Judges have a special place in the minds of citizens. You stand as guarantors of fairness in our society. And so you often bear the blame for the cumbersome and costly procedures of the justice system.

Disparate sentences also undermine public confidence. Widely different sentences are given front-page coverage by the media. A husband, convicted of brutally murdering his wife, is sentenced to two years in a work release program. An autoworker and his stepson receive fines and probation for viciously beating to death a young Chinese-America. Sentences such as these are impossible for the public to reconcile in their personal context of justice. Lacking an understanding of the complexities of sentencing and the issues involved in exceptional cases, public frustration increases.

Public criticism has had a severe impact. Our State legislatures have stepped in, revising sentencing laws to include mandatory minimum terms. Citizens are taking responsibility for reviving justice by forming court watching groups.

And so our greatest institution for justice, the courts, have come under increasing pressure to change. As the symbols of deliberative fairness, judges ought to take the lead in implementing positive changes. Change is inevitable, but it must be enlightened and informed. We need to understand the consequences of particular policies—both intended and unintended.

And that is where the National Institute of Justice comes in. It supports research that can help give you empirical information on current practices and on new options for improving the administration of justice in America.

The power of research is recognized in many fields. Medicine, for example, has a long tradition of looking to research to find new ways of solving old problems. In criminal justice, too, we are at a new threshold of recognition of the power of the experiment.

Perhaps nowhere is this more apparent than in my field, policing. Long considered the part of the system most traditional and resistant to change, police have led the way in opening up their operations to the rigors of the experiment. Today, many of the time-honored assumptions that guided my performance 15 years ago in Oakland, have been challenged by research findings.

Through research, the National Institute of Justice has given police empirical information to change the way police patrol, respond to calls for service and manage criminal investigations. This is the power of the experiment: It provides the hard knowledge needed to pierce through accepted wisdom and examine issues of fundamental concern.

The power of research can also be harnessed to benefit the courts. The National Institute of Justice expends millions of dollars each year on research. We want to make sure that these funds are wisely spent. And that is why we have reached out to the judges to help guide the investment of Federal funds in research that will reflect judicial policy concerns and information needs.

The National Institute of Justice has already made significant advances. You and your court administrators have opened your courts to researchers to analyze traditional practices and to test and advise on changes for your improvement. The results have been fresh and successful approaches to reducing court delay, creation of workable sentencing guidelines and cost-saving jury management techniques.

Through our research at the Institute we now know that delay stems from many sources; not just from judges granting continuances as the public perceives. By implementing relatively straight-forward procedures case processing time can drop dramatically.

Working closely with the Institute, judges aided in the initial implementation of voluntary sentencing guidelines. From this pioneering effort, guidelines have gained acceptance and are now used by over half of the states. These guidelines increase equality of treatment of similar offenders yet include a mechanism for individual treatment in exceptional cases. Thus, the guidelines preserve our system of individualized justice while making sentencing policy more explicit and accessible to the public.

Research in jury management lead to the development of the "one-day or one-trial" system now used in over 60 courts. Among the key concepts identified and refined under the program are use of drivers license lists rather than voter registration records to obtain more complete and accurate listings of potential jurors, and jury call-in systems for last minute verification on need to report.

These practical results illustrate the promise of research. But much remains to be done. With your leadership, you can influence other judges to look to research for ways to improve the courts effectiveness. At these annual meetings you can discuss and debate research on the issues and practices of the courtroom, and feed those valuable insights back to us.

We at the National Institute of Justice stand ready to aid you with new and pragmatic research. Courts are a high priority for the Institute and we have a number of new projects on our agenda. We are studying the use of sentencing enhancement laws and evaluating the multidoor courthouse concept developed by the American Bar Association to increase court accessibility and reduce cost and delay. In November we will co-sponsor the first national victim training conference for judges. This is a project initiated by concerned judges to bring together at least two judges from each state to make recommendations on how the victim can appropriately participate in the justice process. This project shows how the judges are taking the lead in innovation rather than reacting to legislative modifications.

As the chief judicial officers of the states, you have the ultimate responsibility for maintaining the integrity of the truth-finding process. The courtroom is the focal point of the system and you are the personification of justice. Working with the National Institute of Justice, you can collaborate in the development of policy-relevant research that will benefit the criminal justice system and the public we serve.

The Institute is eager to join with you in a working partnership to direct research inquiries that can help you with the critical and esteemed task of rendering justice in our complex society.

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COOPERATION NEEDED TO EASE CROWDING, IMPROVE THE NATION'S PRISON SYSTEM

But while we move forward in our efforts to improve our nation's prisons, we must recognize that we cannot continue to rely exclusively on incarceration and dismiss other forms of punishment. Prisons serve important functions—they deter criminal behavior, they incapacitate and punish known offenders, and they avert private vengeance. In many cases, an expenditure of well over $10,000 a year to keep a criminal in jail and off the streets is worth it. In other cases, it is too high a price. It is important that we examine alternatives to imprisonment that exact a punishment from the less serious offender without the exorbitant costs of incarceration.

We are studying alternative forms of punishment for nonviolent offenders that will deter criminal behavior and reduce the chance that an inmate will return to criminal activity, without placing an unnecessary burden on the taxpayer. Alternative forms of punishment include ordering an offender to repay the victim for property and personal damage suffered through a supervised program of restitution. Another approach would be to compel the offender to perform community service. Again, I emphasize, such punishment options should be available only in limited cases for nonviolent criminals where the sanction is sufficient to punish the offender.

The Adminstration has supported legislation to provide funding for projects that will help states devise alternatives to incarceration as part of their criminal justice programs. We simply cannot afford to ignore alternative forms of punishment.]

We are committed to improving this country's prison system. Some will undoubtedly object to these efforts. They will claim that working to improve prison conditions and spending money on prison programs makes life too easy for or "coddles" the criminal. To spend money to improve our correctional efforts is not "coddling" prisoners, but a wise investment in the safety and welfare of every citizen.

We have already taken important steps to create better prisons. Federal, State, and local law enforcement and corrections officials have been working together to expand prison capacity, train personnel, and share resources and knowledge. The combined dedication of federal, state, and local officials will enable us to find creative solutions to the problems presently facing our prison systems.

Improving the effectiveness and efficiency of the our nation's prisons is an important challenge. It is a challenge this Administration intends to meet by working toward a model system, by continuing federal, state, and local cooperation, by encouraging innovative state and local ideas, and by fostering public concern and government action.

Mr. MATHIAS. Mr. President, the Senator from Delaware said very truly that prison populations may go up or they may go down. It is the nature of human events that it is impossible to predict with total accuracy what will happen. I do not pretend to predict what will happen. But there is a straw in the wind that I think may be helpful to the Senator from Delaware in determining what will happen. That is that private corporations, organized for profit, organized to make money, see an opportunity here. They are so sure that the prison population is going to increase that they have blueprints drawn and are ready to go to put up prisons for rent, cells for hire.

Mr. BIDEN. Would that be for their employees?

Mr. MATHIAS. They are proposing to lease them to the Government.

These entrepreneurs who have done very well in building the hotel system in the United States know what they are doing. They see the prison population is probably within the limits of human tolerance and probably will increase. They see an opportunity to make a profit. There is certainly nothing wrong with that. So they are going to have prisons for rent.

So that is a straw in the wind which I think may be illuminating to the Senator from Delaware.

I would agree with the Senator from South Carolina, the distinguished chairman of the Judiciary Committee, that an assault on a prison guard is a heinous event, one that shocks the conscience of the country. But I would say to the distinguished chairman of the Judiciary Committee that the more prisons are overcrowded the more we are risking a repetition of that kind of event. Unless this bill contemplates the necessity for relieving that overcrowding of prisons, which may be aggravated by the bill, the more we are risking that danger.

The Senator from Delaware in his very rational and thoughtful remarks drew attention to the experience of various jurisdictions. I am sure that before this debate goes on much longer we will hear about Minnesota, so we might as well bring Minnesota up right now because there are some lessons to be learned from the Minnesota sentencing guideline system.

The Minnesota system has been relatively successful in reducing the disparity of sentences and in reducing indeterminacy without, I note for the benefit of the Senator from Delaware, drastically increasing prison populations.

I know the Senator from Delaware is going resist the temptation to say that Senate bill 1762 is similar to the Minnesota statute because he is too good a lawyer to fall into such a misconception. Senate bill 1762 is not similar.

We do have a lot to learn from Minnesota. I think that in Minnesota they have achieved many successes which we would like to emulate. They have avoided many of the pitfalls that threaten any reform of the Federal system of the administration of justice. But I think we have to take a very careful look at those successes and at the many shortcomings of the Minnesota system before we conclude what the lessons are that we should observe.

It seems to me that the successes in Minnesota derive from several factors. One that is cited time and again is a principle that the proponents of this bill have consistently and resolutely refused to adopt.

The Minnesota Legislature ordered the State commission to consider the State's correctional resources in developing sentencing guidelines. The Minnesota commission made a deliberate decision to interpret this as a mandate

not to increase prison population beyond 95 percent of the State's prison capacity. This interpretation of the law as imposing an absolute limit on the prison population has been a key to the Minnesota system's success; whereas, Senate bill 1762 is, of course, open ended. It imposes no limit on prison population.

The National Center for State Courts recently published a detailed study of several State sentencing guideline systems. Incidentally, it is interesting to note that the study was entitled "Sentencing by Mathematics." Here is how the Deputy Director of the Center characterized the Minnesota experience.

In creating its Sentencing Guidelines Commission, the Minnesota legislature required that the capacity of the state's penal institutions be used as a factor in deciding what sentences to specify in the guidelines. Using a simple computer program, the Commission staff was able to project the consequences for state penitentiary populations of different severity levels of guidelines sentences for major crimes. The Commission decided to set the sentences at a level that would result in inmate populations of no more than 95 percent of the capacity that the prisons were expected to have when the guidelines went into effect. This criterion forced the Guidelines Commission to make choices among crimes.

While we are on that subject, I would note that another researcher, Susan E. Martin, in an article entitled "The Politics of Sentencing Reform," published by the National Research Council, concluded:

The interpretation of the legislative mandate to "consider . . . correctional resources" as an absolute limit was central to the commission's work for several reasons. First, it facilitated the development of a viable research methodology which, once adopted, reinforced the need to consider the population constraint.

So it seems to me that any Senator who is truly interested in following the Minnesota example should be willing to follow that example to its logical conclusion; that is, to write into the Federal legislation the principle that has made possible the success of the Minnesota commission's work. That principle is that the sentencing guidelines should be designed to avoid overcrowding of prisons. Since we are already 25 percent over rated capacity, the logical step would be to provide guidelines which would reduce prison population. I do not advocate that. I think it would be futile to do it. But I think the very minimum we should do is to indicate that the guidelines should not increase the Federal prison population.

As the Senator from South Carolina has pointed out, that proposition was overwhelmingly defeated in the Judiciary Committee. But I still think that anyone who is going to cite Minnesota as an example ought to be willing to support this amendment which is now before the Senate.

Mr. BIDEN. If the Senator will yield, in light of his last statement I must say that I still will be able to oppose the amendment because I have not mentioned Minnesota. Maybe I will respond later to the Senator's arguments.

All kidding aside, let me read from the statute again.

Again, this relates to the Senator's concern about the impact upon the facilities.

The statute says, reading from page 106, section (g):

"(g) The Commission, in promulgating guidelines pursuant to subsection (a)(1) to meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code, shall take into account the nature and capacity of the penal, correctional, and other facilities and services available, and shall make recommendations concerning any change of expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter.

Although that does not answer the question whether or not there will in fact be an increase or decrease in prison population, we are cognizant of the fact that the Commission, in setting the guidelines, could and should make recommendations. If, in fact, they conclude that, with the guidelines they will promulgate, they are convinced they will increase the required number of spaces in the prison system, they will come forward and say, "By the way, Congress, we are going to need X number of beds," or whatever.

The second point I would like to make relates to the fact that the private corporations are considering getting into the business of building or leasing prison facility space. I respectfully suggest that that does not necessarily mean that they are counting on an increase in population. They would be doing that even if there were going to be a decrease in prison population because they have concluded a trend that is under way, and I compliment the President of the United States for instituting this trend; that is, that what can be done cheaper by the private sector, there is no reason for the public sector to do as well. With all due respect to civil rights and civil liberties, that should in fact not be something that there would be a need for. So I argue that the motivation for being involved in the prison leasing business relates as much or more to their ability to make a buck by performing the same services for less money as it is as a consequence of a State or Federal facility being so overcrowded that they are going to need additional space.

I know that in my State of Delware, if in fact a private contractor could convince my State legislature that they could provide incarceration facilities for the State at a cheaper per capita investment than that which is there, I do not believe it would take long for my State to scrap its whole prison system if they could.

It does not mean they need extra beds necessarily. I must admit I do not know a lot about which corporations are providing or contemplating going into this business. Again, I argue that it does not necessarily mean we shall need additional space.

Also, on page 137, reading from line 21:

(2) Within one month of the start of the study required under subsection (a), the United States Sentencing Commission shall submit a report to the General Accounting Office, all appropriate courts, the Department of Justice, and the Congress detailing the operation of the sentencing guideline system and discussing any problems with the system or reforms needed. The report shall include an evaluation of the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration, and shall be issued by affirmative vote of a majority of the voting members of the Commission.

In short, what we are going to know fairly quickly is whether or not the Senator from Maryland is correct about the impact on the prison system. Let us assume for the sake of argument that he is correct about the impact on the system. Then we either go back and pass a law altering Commission guidelines, No. 1; or, No. 2, we go ahead and build the additional prisons that they say they need or think they are going to need; or, No. 3, we adhere to a report that says we are not going to need any additional prisons. In short, I think the most appropriate way to deal with this is to wait rather than to move now.

I yield to the Senator from Maryland.

Mr. MATHIAS. Mr. President, I do not intend at this moment to answer the substance of the statement of the Senator from Delaware. I merely say that a lot of the ultimate outcome of this conundrum that he and I have been discussing depends on the interpretation that would be placed on that language which he read which appears at page 106 of the bill. The question is whether or not it would be interpreted to require that there would be no increase in prison population. I propose that we resolve that question once and for all in a way which properly discharges congressional responsibility.

Mr. President, at my back I see the Senator from North Carolina. I understand the Senator from North Carolina has an amendment he would like to propose. I therefore ask unanimous consent that we may lay aside the pending amendment.

The PRESIDING OFFICER (Mr. HECHT). Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 2682

(Purpose: To include crimes involving obscene matter under the provisions of RICO)

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Chair. I am deeply grateful to my good friend from the great State of Maryland. I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2682.

On page 353, after line 24, add the following:

PART P—RACKETEERING IN OBSCENE MATTER

SEC. 1031. Section 1961 (1) of title 18, United States Code, is amended—

(1) in clause (A) by inserting after "extortion," the following: "dealing in obscene matter,"; and

(2) in clause (B) by inserting after "section 1343 (relating to wire fraud)," the following: "sections 1461-1465 (relating to obscene matter),".

Mr. HELMS. Mr. President, anyone living in the United States in 1984, who has his or her eyes open, knows that we are experiencing an explosion in the volume and availability of pornography in our society. Today it is almost impossible to open mail, turn on the television, or walk in the downtown areas of our cities, or even in some suburban areas, without being accosted by pornographic materials. The sheer volume and pervasiveness of pornography in our society tends to make adults less sensitive to the traditional value of chaste conduct and leads children to abandon the moral values their parents have tried so hard to instill in them.

It is not easy to raise children these days, given the corrupting influences all around. Drug and alcohol abuse as well as irresponsible sexual behavior abound, even among our young people. But parents, being parents, still quite naturally want nothing less than the best for their children. This certainly includes passing on to them the moral values which they themselves have received and which make for a happy and humane life. The scourge of widespread pornography complicates in no small degree the already difficult task of raising children in 1984.

Mr. President, while it is difficult to measure precisely the adverse effects of pornography in society, commonsense tells us that the consequences are enormous. Surely it is not just coincidential that, as a time in our history when pornography and obscene materials are rampant, we are also experiencing record levels of promiscuity, veneral disease, herpes, acquired immune deficiency syndrome (AIDS), abortion, divorce, family breakdown, and related problems. At a minimum, pornography lowers the general moral tone of society and contributes to social problems that were minimal or nonexistent in earlier periods of our history.

In essence, pornography degrades the dignity and worth of human beings by presenting a false picture of human sexuality. It holds sexuality out as an end in itself, totally removed from its proper and normal place as a means in marriage for conjugal love and the procreation of children. Pornography demeans because it rejects the true meaning of sexuality.

And, Mr. President, the true meaning is the one that is reflected in our most ancient cultural tradition. It is the one that binds human sexuality inseparably to marriage and sees its fruit in the family. This is the proper context for sexuality, and when it is removed from such context, injury is invariably done both to the individuals involved and to society at large.

Mr. President, in recent times pornography has been condemned as a particular offense against women. It has been said that pornography is nothing less than the rank exploitation of women and femininity for the illegitimate pleasure of men. I totally agree.

But, Mr. President, this is only part of the truth. The whole truth is that pornography not only offends against women, but it also constitutes an offense against men and children and human dignity and common decency as well. In short, it is a scourge to all of society, and Congress should act promptly and effectively to help eliminate it.

Mr. President, in the last decade the pornography industry has grown to mammoth proportions. Currently profit from this material is estimated to be the third largest source of income for organized crime after drugs and gambling.

The amendment I propose is very simple. It merely adds "dealing in obscene matter" to the list of offenses in the racketeer influenced and corrupt organizations (RICO) statute. The RICO statute, as is well known, was enacted in 1970 as a means of dealing with organized crime. According to its preamble, the purpose of the act is "to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." While the RICO statute is not perfect and probably needs some reform, it has proved useful in curbing organized criminal activity and in combating the specific crimes usually associated with such activity.

Within the term "racketeering activity" the RICO statute includes murder, kidnaping, gambling, arson, robbery, bribery, extortion, and dealing in narcotics. It does not, however, include "dealing in obscene matter."

In 1984, with the heavy involvement of organized crime in the pornography trade, it seems only appropriate that RICO include the crimes of "dealing in obscene matter" already in State and Federal law. Such crimes would then not only be State or Federal crimes in themselves, but they would also be RICO crimes, thereby opening the door to Federal investigation of an area of substantial interest to the criminal community.

The additions to RICO contemplated by my amendment would have a threefold effect: One, they will enable Federal prosecutors to expand their investigations into the involvement of organized crime in the illicit sex industry; two, they will make prosecutions possible along the chain from adult theater, peepshow, or bookstore employee to the owner, distributor, financier, and producer of obscene materials; and three, they will send a strong warning to organized crime and obscenity profiteers that the exploitation of women, children, and others through pornography will not be tolerated by the American people.

Mr. President, in order to show further the need for this legislation, I would like to include certain materials in the RECORD to document that fact that organized crime is heavily involved in the pornography business. I therefore ask unanimous consent that the following materials be printed in full in the RECORD at the end of my remarks:

First, an excerpt from a report of July 1982 by Morality in Media, 475 Riverside Drive, New York, N.Y. 10115, on the multibillion dollar traffic in pornography.

Second, a series of articles from the June 1982 issues of Calendar magazine, the Sunday supplement of the Los Angeles Times, on so-called pornbrokers.

Third, an article from the August 19, 1979, issue of Parade magazine on organized crime and the pornography trade.

Fourth, an article from the September 18, 1978, issue of Forbes magazine on the so-called X-rated economy.

Fifth, an excerpt from a report of December 1976 by the Task Force on Organized Crime, published by the Law Enforcement Assistance Administration, on organized crime and pornography.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

THE BUSINESS OF PORNOGRAPHY

Pornography is big business. The estimated $6 billion gross for 1981 amount to almost as much as the gross of the conventinal movie and record industries combined.

In Los Angeles alone, a police official estimates pornography out-grosses the Sears, Roebuck operation.

There are thought to be between 15,000 and 20,000 "adult" bookstores in the United States (several times more than McDonald's restaurants). Most of these contain "peep Shows," booths with coin-operated machine in which patrons can see two minutes of a 15-minute hardcore 8mm film for 25 cents. Many feature live peep shows, in which a nude girl behind a glass partition undulates, touches herself and speaks erotically to the patron via a telephone hook-up. "Skin" or "porno" magazines on the market are estimated at 400, running the gamut from Playboy and Penthouse to bestiality and bondage.

"The Adult Film Association of America" places the number of affiliated pornographic movie houses at 780. This does not include those movie houses which show pornographic homosexual movies exclusively.

Pornographic video cassettes have moved from the lobbies of pornographic movie houses into legitimate electronics stores and even boutiques.

There are some 12 "adult" programming services operating on cable television; and over-the-air subscription television services with "adult tiers" (late-night porn films) are available in 11 cities.

In two cities in the country hard-core films are offered on cable TV on a pay-per-view basis. On a lease access cable TV channel in Manhattan in New York City, the publisher of a pornographic tabloid produces a sex program that falls just short of hard-core pornography. It is syndicated and segments of it are cablecast by at least one of the "adult" programming services. Mail order businesses make up a large part of the pornography traffic, as do sales of sex paraphernalia.

EXORBITANT PROFITS

Profits are exorbitant in the pornography business because the product is generally cheaply produced, and then is retailed at a phenomenally high markup. And with federal prosecutions at an all-time low, there is no great expenditure for legal fees.

For example, some film laboratories can produce literally thousands of prints of 15-minute 8mm films daily. Prints will wholesale for $3 to $4 and retail for $20 and up depending on the subject matter. These are also used in peep-show machines for 25¢ per two minutes. Peep show machines can bring in anywhere from $1,000 to $10,000 weekly depending on the number of machines and the area of the country in which they are operating—all in cash. A mid-seventies raid on a wholesale-distribution operation in the Mid-West yielded records indicating the peep-show operation of the firm grossed $6,000 a day.

The performers in the films (the only persons in pornography who don't make a lot of money) draw $80 to $100 a day for 8 to 10 hours work. In that time, three to five films can be shot. During the filming, 35mm stills are being shot for magazines, so one or the other becomes a clear profit item. Magazines cost $1.75 to $2.00 to produce. The bookstores charge $8 to $15 for them.

Full-length 35mm pornographic motion pictures now cost on an average of $200,000 to produce and disseminate. According to "The Adult Film Association," its 780 movie houses are patronized by 3 million customers per week, bringing in $10 million per week, or half a billion dollars annually from theater showings alone. "Video rights" for each film can bring in from $40,000 to $100,000 from video cassette operators and cable TV programming services. Today, so-called "adult" video cassettes are estimated to be a two billion dollar annual business.

ORGANIZED CRIME INVOLVEMENT

It is a known fact that organized crime is deeply involved in the hard-core pornography traffic in the country. Law enforcement officials in Dade County (Miami), Florida began seeing evidence of mob involvement in the hard-core video cassette business as early as November of 1975, just a few weeks after the first home video cassette recorders went on the market. Its involvement in other areas of the hard-core business goes back a long way farther.

Two grand juries in the last decade (1972 and 1973) found that organized crime controls 90% of the hard-core pornography traffic in the country (New York and Bexar County, Texas). In 1977 an Orange County (Orlando), Florida grand jury, investigating pornographic films and their links to organized crime, issued a report that said, "a large percentage of the pornographic film business throughout the nation" is controlled by organized crime. It further reported that organized crime "has controlled and still directly influences pornographic film distribution in Florida."

Involved in the production in Florida of the hard-core film "Deep Throat" in the early 1970s were the Peraino family: Anthony, his sons Louis (Butchie) and Joseph C., and Anthony's brother Joseph S. (Joe the Whale). Anthony and Joseph S. are allegedly members of the Brooklyn Colombo crime family; and in the 1960s Anthony and Michael Zaffarano, reputed member of the Bonnano crime family, ran a Brooklyn plant which processed 8mm films. It was known as All-State Film Labs. Anthony was sentenced in February of 1982 to 9½ months in prison and $15,000 in fines for a 1976 "Deep Throat" conviction in Memphis and for a subsequent bail-jumping charge. Zaffarano, who rose to be the reputed "czar" of the underworld's pornographic empire, died of a heart attack in 1980 as law enforcement officers were on their way to arrest him. He was considered the nation's major distributor of 8mm and 35mm pornographic films. He owned or had financial interests in "adult" movie houses in Washington, D.C., New York, Boston and San Francisco, and exported porn movies to Japan. He had allegedly been involved in numerous shakedowns and extortions of West Coast pornography dealers, and was reputedly an arbiter in territorial and other disputes involving the mob's porn interests.

Some law enforcement officials believe he may have been succeeded by Robert (Debe) DiBernardo, chief officer of Star Distributors, which is a pornography conglomerate with outlets all over the world. Jospeh S. Peraino and his son Joseph, Jr. were felled by a barrage of shotgun blasts on a Brooklyn street last January. Joseph, Jr. was killed, and Joseph S. was wounded and is believed to be in hiding in upstate New York. Police attributed the shooting to an intramural dispute over Peraino's pornography operations.

According to the Los Angeles Times, some law enforcement officials estimate that organized crime's take (of the $6 billion traffic) is roughly half, making pornography the mob's third biggest moneymaker, behind narcotics and gambling.

Robert K. Aberle, an Investigator with the Solicitor General's Office in Fulton County (Atlanta), Georgia, said in a report at a seminar on obscenity conducted by the National College of District Attorneys in November of 1981:

"The tremendous profits that are made (by organized crime) in the pornography business are used in several ways.

"1. A large portion of the profits are taken by the top people within the organizations in the form of salaries and fringe benefits.

"2. Much of the money made stays within the organization because of constant expansion and the large overhead costs of maintaining warehouses, stores, inventories . . .

"3. Money is invested in legitimate businesses such as real estate, record companies, night clubs, restaurants and others.

"4. A percentage of the profits is funnelled into other illegal ventures including drugs, gambling and loan sharking."

Hard-core pornography is illegal, but openly available in every state of the Union, in cities and towns, and it is invading rural areas. It is openly available in the Nation's Capital. Where its outlets proliferate, it attracts and breeds violent crime, devalues property, deteriorates entire sections of cities. Shocking examples are New York City's Times Square and Boston's Combat Zone.

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[From the Calendar, June 13, 1982]

FAMILY BUSINESS—EPISODE 1: "THE PORNBROKERS"

(By Ellen Farley and William K. Knoedelseder Jr.)

On the evening of Jan. 4 this year, a Brooklyn neighborhood suddenly exploded with gangland violence.

A car chase broke the quiet of the residential section of Gravesend shortly after 8 o'clock. The pursued car stopped and its two male occupants leaped out and ran up the stairs onto the front porch of a modest brick duplex at 431 Lake St.

One of the fleeing men was a reputed mobster named Joseph S. Peraino, 55; the other was his son, Joseph Jr., 31. They were pounding on the front door of the home, apparently seeking refuge, when a barrage of shotgun blasts fired from the pursuing car cut them down. The father was seriously wounded in the buttocks and legs; the son was hit six times in the head and killed.

Inside the house, Veronica Zuraw, 52, was hanging up her husband's shirt in the front-hall closet when high-powered magnum loads of buckshot ripped through the solid-wood front foor and struck her in the head. She died instantly.

New York Police Department investigators say that Mrs. Zuraw, a social worker who had just moved into the house two weeks earlier, was the innocent victim of a bungled Mob "hit." It was the second attempt on the elder Peraino's life in recent months. Last November, he reportedly was wounded outside his Brooklyn home by men armed with 9-millimeter handguns.

Joseph S. Peraino is a reputed member of the Brooklyn-based Joseph Colombo crime family—one of the infamous "Five Families" of La Cosa Nostra, or Mafia, centered in New York City.

He's also a kingpin pornographer whose operations reportedly produce an estimated annual income of $20 million. He's one of the principals behind "Deep Throat," the most successful porno movie ever, estimated to have earned anywhere from $30 million to $100 million since its first release in 1972. It is considered to be the best-selling adult video-cassette—more than 300,000 copies sold at approximately $60 each, as of last year.

"Deep Throat" began as a kind of Peraino family business. It was financed for $22,000 by Joseph S. Peraino's brother, Anthony Peraino, now 67, and Anthony's son Louis 42.

Like his brother, Anthony is reputed to be a "made" (officially initiated) member of the Colombo family. Louis Peraino, who produced "Deep Throat" under the alias Lou Perry, generally is regarded in law enforcement circles as a Colombo family associate, primarily because of his many business dealings with his father and uncle.

All three men were involved with the distribution of "Deep Throat" and consequently, all three became millionaires.

With the huge profits from "Deep Throat," the Perainos built a financial empire in the mid-1970s. For a time, they either owned or controlled a score of diverse businesses—garment companies in New York and Miami, investment companies (and a 65-foot yacht) in the Bahamas, a string of porno-movie theaters in Los Angeles and record and music publishing companies on both coasts.

From 1973 to 1976, the Peraino corporate network also included what was then "the most highly touted independent movie company in the motion-picture industry, called Bryanston Distributors Inc.

"Bryanston Boffo," proclaimed the entertainment industry paper Variety in a 1974 article declaring that the company had earned $20 million in its rookie year in the movie business.

During its three years of operation in Hollywood, Bryanston either financed, produced or distributed more than two dozen legitimate (meaning non-porno) motion pictures, including the following:

"The Devil's Rain," a horror movie starring Ernest Borgnine, Eddie Albert, William Shatner, Ida Lupino, Keenan Wynn and a then teen-age actor making his screen debut, John Travolta.

"Echoes of Summer," a family drama starring Richard Harris, Lois Nettleton, Geraldine Fitzgerald and a 12-year-old newcomer named Jodie Foster. Both "Devil's Rain" and "Echoes" were produced by Sandy Howard, whose credits include "A Man Called Horse" and, more recently, "Vice Squad."

"Return of the Dragon," the last film made by the late kung-fu king Bruce Lee. It co-starred Chuck Norris.

"Dark Star," a science-fiction fantasy that was the first effort of director John Carpenter ("Halloween," "Escape From New York," "The Thing") and screenwriter Dan O'Bannon ("Alien").

"Coonskin," an animated feature directed by Ralph Bakshi of "Fritz the Cat" fame and produced by Al Ruddy, who produced "The Godfather."

"The Texas Chain Saw Massacre," one of the most successful and influential exploitation movies ever, with worldwide box-office earnings that have been estimated as high as $50 million.

A 1975 article in the Christian Science Monitor described Bryanston president Louis Peraino as a "new kind of movie tycoon" who was intent on making "family-oriented" pictures. Peraino was "one of the successful new breed of independent distributors," said the Hollywood Reporter.

However, law-enforcement officials had a different view. In a 1976 confidential intelligence report, the California Department of Justice put Bryanston at the top of a list of "key corporations" believed to be "controlled" by the Mob.

"It appears that Bryanston coordinates the nationwide distribution of full-length films for organized crime," the intelligence report states.

Still, Louis Peraino's public recognition as the president of Bryanston in the mid-1970s symbolized the Peraino family's peak of prominence and power. (The Hollywood years will be explored in subsequent articles.)

"SOMEBODY WANTED HIM OUT OF WHATEVER HE WAS INTO"

But by December of 1981, it was a different story. The personal fortunes of the Perainos were crumbling.

In poor health with a heart condition, Anthony Peraino was awaiting trial in Memphis on federal bail-jumping charges stemming from his 1976 conviction for transporting obscene materials ("Deep Throat"; article on the trial on Page 7) across state lines. He would be sentenced to a total of 9½ months in prison and fined $15,000.

At the same time, Anthony's son Louis was set to begin six months in prison for his conviction in the same Memphis obscenity case. In addition, Louis and his brother, Joseph C. Peraino, 49, just had been convicted in Miami on another federal obscenity charge, for which they would receive prison sentences totaling six and three years, respectively.

As the Perainos' legal problems increased, the management of the family's business affairs increasingly fell to Joseph S. Peraino and his (now dead) son Joseph Jr.

Veteran NYPD investigators believe that the January 4 shotgun slayings in Brooklyn were the result of an intramural power struggle—some rival Mob faction attempting to take over the Perainos' seemingly vulnerable pornography operations.

"That's what I'd say it was," said detective Edward (Frenchy) Croissant, the man in charge of the police investigation of the shooting.

"If I was to take an educated guess," Croissant said, "somebody wanted him (Joseph S. Peraino) out of whatever he was into."

"For whatever reason—whether they wanted to take it over (the porno business) or he was making too much money and somebody else wanted it or he wasn't operating it properly—they just wanted him out of it," said the detective, adding, "But we don't have any idea what family it (the hit order) came from."

As Joseph S. Peraino lay bleeding outside the Zuraw home that evening, his first-born son horribly murdered at his side, he refused to tell police who had fired the shots, what kind of car they were driving or which way they went.

FROM BROOKLYN MOB TO HOLLYWOOD MOGUL—AN AMERICAN DREAM

But there is much to tell, for the powerful forces that brought the Perainos to Veronica Zuraw's doorstep had been building for years. The Brooklyn housewife was a tragic footnote in a human drama that spans half a century, with chapters played out in the underworld of pornography and the glamorous Hollywood movie business.

In a gray metal desk somewhere in New York police headquarters, there is a fat intelligence file on the Perainos of Brooklyn.

Complete with genealogical chart, rap sheets and sullen-looking mug shots, the dossier's dog-earred pages trace the criminal events of a real-life Italian-American family saga—one not unlike that of the fictional Corleone clan immortalized in Mario Puzo's Mafia novel, "The Godfather."

The NYPD intelligence file follows three generations of Peraino men as they rose from petty street crime and pennyante pornography to become the multimillionaire owners of the most successful sex film in the history of cinema. One of them even became a Hollywood movie mogul—an American dream realized, if only for a time. (Family tree, Page 5.)

The Perainos' story—their remarkable climb up the American socio-economic ladder, their glory days in Hollywood and their fall—never has been fully told. It has remained buried in bits and pieces in hundreds of pages of confidential intelligence reports compiled over the years by federal, state and municipal law enforcement investigators. Some of the story is public record—scattered through volumes of trial testimony and court documents stored in dusty cartons at courthouses in Brooklyn, New York City, Memphis, Miami, Los Angeles, Austin, Tex., and federal archives in Bayonne, N.J.

As told by law-enforcement documents, the Peraino family saga begins violently in 1931 during the bloody Brooklyn gang conflict known as the Castellammarese War.

Named for one of the warring factions—immigrants from the town of Castellammare del Golfo in Sicily—it was the first great Mafia power struggle in this country. It brought to power such legendary mobsters as Lucky Luciano and Vito Genovese and it left scores of *mafiozi* dead on the streets of New York.

One of them was Giuseppe Peraino, allegedly a member of the Profaci crime family, a forerunner to the Colombo family. Giuseppe's brother-in-law, Peter Leone, an alleged Genovese family member, also was murdered during the Castellammarese War. But the intelligence files don't say how or by whom the two men were killed.

Giuseppe Peraino left a wife, Grazia (Leone), and two sons, Anthony, 16, and Joseph, 5. Anthony Peraino's first arrest came the same year that his father was killed. According to his New York police "yellow sheet" (official record of arrests), the teen-ager was charged with homicide by auto. The charges later were dismissed.

Anthony's yellow sheet shows six more arrests between 1945 and 1960—for tax evasion, receiving stolen property, and gambling ("dice")—with no convictions.

Nonetheless, New York law-enforcement officers long have considered Anthony and brother Joseph S. as "made" members of the Colombo crime family. In law-enforcement circles, the brothers often are referred to as "Big Tony" and "Joe the Whale." Weighing an estimated 300 pounds, Joseph S. invariably is described as "about as big as that door there."

Anthony first was linked publicly to the Mafia in 1969 when Newsday published a lengthy article about the Colombo's criminal activities on Long Island.

Written by Pulitzer Prize-winning investigative reporter Tom Renner, the article identified Anthony Peraino as a "family soldier" who was "allied with garment racketeer and Luchese (family) soldier Andimo Pappadio and (late) crime boss Joseph Colombo."

(In the Mafia hierarchy, soldiers rank lowest among "made" men. Also called "button men," they take orders from family "capos," who in turn take orders from the family heads, or "dons.")

According to a NYPD intelligence memo, Anthonly Peraino once had a "violent argument" with mob chieftian Albert Anastasia and subsequently "was told to get out of

New York City and relinquish all his holdings," which included a company called Fine Grade Oil and Fuel Co. in Brooklyn.

Anthony complied with the banishment order, the document says, and he moved to Erie, Pa., with his wife and two sons, Louis (called "Butchie") and Joseph.

Peraino returned home to Brooklyn from exile in 1957, shortly after Anastasia was shot to death in the barber shop of New York's Park Sheraton Hotel. (Anastasia' murder is one of the most notorious hits in the annals of organized crime—carried out as he reclined in a barber chair, his face wrapped in a hot towel, waiting for a shave.)

ALL-STATE LABS: 50,000 REELS OF HARD-CORE FILMS A MONTH

In the late 1960s, Anthony Peraino became involved in the burgeoning pornography business. He got in on the ground floor of what turned out to be organized crime's most profitable new business venture since it got into narcotics, in the 1950s. Today, pornography is a $5 billion to $6 billion-a-year business. Some law enforcement officials estimate that organized crime's take is roughly half, making porn the Mob's third-biggest moneymaker, behind gambling and narcotics.

The Colombo family pioneered the Mafia's move into porno movies. According to law enforcement officials, it started when alleged Colombo member John (Sonny) Franzese saw the potential profit in supplying the 8-millimeter hard-core "stag" movies for the coin-operated peep show machines in adult bookstores around New York's Times Square.

The Colombo family soon controlled its own plant for processing the 8-millimeter movies, according to law enforcement intelligence reports. Located in Brooklyn, it was called All-State Film Labs.

But All-State was owned by Louis (Butchie) Peraino, then 26 years old, with a high-school education and previous business experience as an insurance broker.

Brooklyn criminal court records show that Louis Peraino was arrested at All-State in September, 1966, and charged with possession of obscene movies. It was his first arrest.

Police raided the plant on a tip that approximately 2 million feet of pornographic movie film had been delivered to All-State.

But they found only 14 reels of pornographic film on the premises, valued at less than $10,000. The charges against Louis Peraino later were dismissed when a Brooklyn judge ruled that there had been "insufficient evidence to warrant search and arrest."

"All-State wasn't set up solely for the purpose of processing porno films," said one of the arresting officers in the case. "He (Louis Peraino) was doing legitimate work there, too."

"Sure, they were legit from 9 to 5 and they ran the garbage at night," explained a former FBI agent who specialized for years in porno investigations. According to the now retired agent," All-State was turning out 50,000 reels of 8-millimeter hard-core films a month, easily."

Both FBI and California Department of Justice intelligence reports say that the porno operations at All-State were run by Michael Zaffarano, also known as "Mickey Z" and reputed to be a *capo* in the Bonnano crime family.

The activities of Anthony Peraino would seem to offer some explanation as to how his son Louis, with no apparent related professional experience, came to own an expensively equipped film lab allegedly run by Michael Zaffarano.

At the time, Anthony Peraino and Michael Zaffarano were the major purveyors of porno films to Mob-controlled outlets in New York City, according to a sworn affidavit by an FBI agent who monitored their operations for five years. Their films were sold clandestinely out of automobile trunks, coffee catering trucks, unmarked warehouses, several restaurants, a chain of meat markets and a Brooklyn candy store, according to FBI information.

Peraino's and Zaffarano's primary porno sales representative was a Brooklyn man named Cosmo Cangiano, a convicted pornographer with a record of arrests for larceny, forgery, mail theft and interstate shipment of stolen securities.

According to the FBI affidavit, Cangiano became "a millionaire at least four times over" from a variety of illegal activities. Besides conducting a booming porno movie business (with customers in Pittsburgh, Baltimore and South Carolina), Cangiano dealt in "counterfeit Chanel perfume, Omega wristwatches and Department of Motor Vehicle documents."

Cangiano also furnished "false identification (licenses, registrations, birth certificates and Social Security cards) for the underworld in the New York area and other places in the United States." The FBI document paints a colorful picture of the Peraino-Zaffarano-Cangiano commerce, which was carried on by street characters with names like "Fat Dave" and "Cueball Kelly."

In 1971, Cangiano was questioned by a U.S. Senate subcommittee investigating organized crime involvement in stolen securities traffic. An uncooperative witness, he was introduced at the hearings by a subcommittee investigator who reported that "information received from law-enforcement intelligence agencies states that Cosmo Cangiano works for one Anthony Peraino, who has been identified as a member of the Joseph Colombo family in Brooklyn, New York."

Anthony Peraino was further identified by the subcommittee investigator as one of a number of organized crime figures "who have been involved in stolen securities traffic."

THE "GODFATHER" THEME: "YOU DON'T GET OUT"

As it turned out, All-State Film Labs was Louis Peraino's foot-in-the-door of the legitimate movie business. Later, when he was president of Bryanston Distributors in its Hollywood heyday, a company promotional brochure would explain how it all began back in 1965 when "Mr. Peraino combined a hobby and a deep interest in cinema techniques by forming his own motion-picture processing laboratory known as All-State Film Labs, specializing in processing and editing facilities and high-speed animation techniques. . . ."

Even so, the suspected involvement in the company of Anthony Peraino and Michael Zaffarano forever branded Louis as "Mob-connected" in the eyes of law enforcement investigators. Along with his older brother, Joseph C. Peraino, he generally is considered to be a Colombo family "associate," not a "made" man.

One veteran organized-crime investigator seemed to echo a consensus among his colleagues when he said of Louis Peraino, "His grandfather was in organized crime, his father is in it, his uncle is in it, his brother is in it, so he's in it. That's the way it is. You don't get out."

You don't get out—it's a theme that is at the very heart of "The Godfather" saga, the book and movie that defines the Mafia in the minds of millions of Americans.

Widely regarded as an accurate depiction of traditional New York Mafia lifestyle, "The Godfather" has had a tremendous impact on the public consciousness—about 10 million books sold, two hit movies and a third on the drawing boards.

It's perhaps a reflection of the impact that "The Godfather" cropped up constantly in interviews with individuals acquainted with the Peraino family.

"A scene right out of 'The Godfather'" was a common refrain. One person interviewed characterized a longtime family attorney (now deceased) as "a sleazy version of Robert Duvall," the actor who portrays the Corleone family's counselor, *or consigliere*, in "The Godfather" movies.

What's more, a number of people who claim to know Louis Peraino described him as a kind of real-life Michael Corleone figure: the brightest of the Peraino men, gruffly charming, contagiously energetic, generous to a fault. Above all, the individuals said, Butchie was driven by a desire to be respected as a legitimate businessman, to disassociate himself, at least publicly, from his father's alleged ties to the Mafia.

In director Francis Coppola's movies, actor Al Pacino portrays Michael Corleone, the college-educated favored son of Mafia boss Vito Corleone (Marlon Brando). Michael wants no part of the family business. Which is just fine with "Don" Corleone, who hopes that one day his son will carry the family name to the height of American respectability.

As he tells Michael in one scene, he wanted sons and grandchildren "who could be, who knows, a governor, a president even. Nothing's impossible here in America."

But Michael is sucked into the family business, nonetheless, first avenging the near-fatal shooting of his father and ultimately inheriting the old man's responsibilities as head of the family—becoming the godfather himself.

"There is nothing, nothing in all the years I've known him that could remotely be considered ominous regarding Mr. Butchie Peraino," avowed movie producer Frank Avianca in an interview. "He's a big teddy bear. I bite him on the cheek when I see him, OK?"

Avianca's 1975 movie, "The Human Factor" (starring George Kennedy and John Mills) was financed and distributed by Bryanston.

"Lou wanted in the worst way to be a film maker," Avianca said. "He didn't want to stay in that business (pornography). He wanted to get out. He wanted something he could be proud of, something he could put his name on."

As for Louis Peraino's alleged connection to organized crime, Avianca philosophized that in America "you can start out your life as a garbage collector and that doesn't mean you can't one day end up owning the trucks."

Movie producer Sandy Howard came to know Peraino well during the course of Howard's two Byranston-financed films, "The Devil's Rain" and "Echoes of Summer."

"Lou really did want to make an image for himself as a decent man and a decent motion picture producer," Howard said. "He tried his best to build a viable legitimate business."

LOUIS (BUTCHIE) PERAINO: "HE WAS THE BEST, THE NICEST GUY. . . ."

Dallas-based movie distributor Fred Biersdorf sputtered for superlatives on the subject of Louis Peraino: "He was just the best, I mean, the nicest guy. You'd think that you had known him for years when you first met him."

Biersdorf is the president of Dal-Art, the company that sub-distributed all of Bryanston's legitimate movies in the Southwest U.S. "It was the best business relationship I've ever had," Biersdorf said.

Not everyone gives Butchie rave reviews. "Deep Throat" star Linda Lovelace paints a particularly unflattering portrait of the man in her 1980 best-selling book, "Ordeal," which relates the psychological duress that she endured during her porno career.

She recalls Louis Peraino as "heavy and sloppy." She writes, "What I remember most about him was his loud mouth. He was always yelling at somebody about something. And he never went anywhere without his bodyguard, Vinnie."

Lovelace was 22-year-old Linda Traynor when she first met Louis Peraino in 1971. At the time, Peraino was partnered in a porno film production company with a former Brooklyn hairdresser turned porno film director named Gerard Damiano. The company was called Gerard Damiano Film Productions Inc., but Peraino was the two-thirds owner. As Lovelace says in her book, Peraino "was putting up the money and Damiano was doing the (production) work."

Newcomer Traynor made her hardcore film debut in an 8-millimeter cheapie titled "Sex U.S.A.," the first movie produced by the Peraino-Damiano partnership. The film also featured an experienced porno actor named Harry Reems.

Impressed by Traynor's particular sexual talent, director Damiano dreamed up the title "Deep Throat" and concocted a ludicrous storyline to go with it, about a sexually frustrated young woman whose clitoris is located in her esophagus. Damiano also came up with an alliterative new name for his star, Linda Lovelace. Her co-star (the doctor) was Reems.

As the director envisioned it, "Deep Throat" would be a feature-length 35-millimeter motion picture, with a musical sound tract even.

It was an ambitious proposal, practically unheard of at the time in the porno film business, where state-of-the-art still was short, plotless, 8-millimeter stag-type movies.

But Louis Peraino apparently liked the idea. He agreed to furnish $22,000 for production costs in return for two-thirds' ownership of "Deep Throat" and its profits.

Law-enforcement officials believe that the $22,000 actually was provided by Anthony Peraino. And in their view, Big Tony's involvement in "Deep Throat" meant Mob involvement. As a reputed "made" member of the Colombo family, Anthony is not an entirely free agent, the reasoning goes. He takes orders from the family and must cut them in on any outside business venture. Historically, that's how the Mafia works. It's tradition.

There is considerable evidence to suggest that Anthony Peraino had more than a perternal interest in his son's first big porno movie production. For example, when the cast and crew went to Miami to film "Deep Throat" in January 1972, Anthony Peraino went along with them and even stayed in the same hotel. Claiming that "Old Tony" actually drove her to Miami in his car. Linda Lovelace writes in her book that the elder Peraino, "came with his own small army, all wearing dark suits and trenchcoats, looking like they were trying out for an Edward G. Robinson movie."

Later, in a personal net worth statement submitted to a New York bank, Anthony Peraino listed his occupation as an "executive" of Damiano Film Productions at a salary of $50,000 a year. His title was secretary-treasurer.

According to evidence presented at the "Deep Throat" trial, Anthony Peraino received at least 5 percent of the profits from "Deep Throat," as well as at least $500,000 in loans from Damiano Films for a New York garment company that he owned.

"DEEP THROAT"—A GROSS OF $100 MILLION IN CASH

"Deep Throat" made its New York debut in June, 1972, at the New World Theater on 49th Street. What happened was previously unimaginable and still is unparalleled.

It was reviewed by major New York film critics, an unprecedented public recognition for a porno movie. It may have been a dirty movie, but such mainstream media attention conferred a measure of legitimacy. An important dirty movie.

Soon there were lines of eager patrons around the theater—not the usual skinflick crowd, but a whole new audience of seemingly regular folks who were willing to pay $5 each to see oral sex performed on a 40-foot screen.

For acts once considered unspeakable, Linda Lovelace became a national celebrity—deemed suitable for the talkshow circuit and slavered after by some Hollywood deal makers.

"Porno chic" was the phrase coined by one New York newspaper writer to describe the "Deep Throat" phenomenon. In 1973, the title became part of the American language—and U.S. political history as well—when Washington Post reporters Bob Woodward and Carl Bernstein dubbed their confidential Watergate source "Deep Throat."

All of which helped to make "Deep Throat" (the movie) preposterously profitable, as least for a porno movie produced for a piddling $22,000.

The movie reportedly grossed $1.25 million in its first nine months at the New World Theatre alone, and $25 million in its first two years nationwide.

The Perainos were totally unprepared for the volume of profits according to a prominent attorney who represented them on several occasions and who asked not to be identified.

"Here were a couple of guys from Brooklyn who never had much money before and all of a sudden they're millionaires," the lawyer said. "The amount of money coming in was frightening. Nobody could have handled it.

"Whatever you've heard about how much 'Deep Throat' earned, it's underestimated. I'd say that $100 million in gross income would be underestimated," said the attorney, adding "and most of it was in cash." (Article on "Deep Throat" trial, Page 7.)

Dallas movie distributor Fred Biersdorf recalled the heady atmosphere in Louis Peraino's New York office (at 630 9th Ave.) in the wake of "Deep Throat":

"You just wouldn't believe the calls that Lou was getting from people who wanted a print of the movie to watch. You know, prominent people like government officials. And I remember that whenever somebody's secretary would call for them, Lou would get on the phone and say, 'Hey, if he wants a print then he can damn well call me himself.'"

Linda Lovelace recounts in her book that she was in Peraino's office one day when Sammy Davis Jr. called asking for a "Deep Throat" print to screen at his home.

"Sure, Sammy, we can take care of that. . . . Sammy, would I kid you," she quotes Peraino as saying.

In Peraino's office, "There were dozens of phones on the table," recalled Fred Biersdorf, "And at 9 o'clock in the morning there was all this food—sandwiches and cole-slaw and bottles of wine. And Nicky and Dicky were coming in an whispering in his ear and, God, it was just unbelievable, strictly out of 'The Godfather.'

"I was like a kid in Disneyland," Biersdorf continued. "Everything was strictly cash. I mean, if somebody wanted a mink coat they'd just walk into Bonwit Teller and plop down $18,000 or $20,000 in cash."

Biersdorf remembers that he once put the big question to Joseph Peraino Sr.: "In a meeting one day I asked Uncle Joe (as he's affectionately called among family and friends). 'How much money has "Deep Throat" brought in?'

"He didn't say a word, and damn, 10 minutes later they asked me to come out of the room and they said, 'Hey, what do you want to know for?' I said I was sorry I brought it up.

"Later Uncle Joe took me to lunch and ordered me a whole lobster," Biersdorf said. "I was so nervous there was no way I could eat it. You know that Uncle Joe is about as big as the door over there. And he put his arm around me and said, 'Fred, you asked that question this morning. Well, Lou's got eight kids and Joe (Lou's brother) has kids, and their kids and their grandkids have nothing to worry about the rest of their lives. Does that tell you how much the movie brought in?'"

THE MOB BEGINS TO MIGRATE TO LOS ANGELES

However much the movie earned, it was seen as bad news by law enforcement officials. The way they saw it, not only was all that loot going into the pockets of organized crime, but it also was bound to step up the Mob's already heavy infiltration of the porno movie business.

Which is exactly what happened, according to West Coast law enforcement reports. A report by the Administrative Vice Division of the Los Angeles Police Department estimated that by 1976 organized crime controlled 80% of the Los Angeles-based porno movie production and distribution business.

One LAPD intelligence memo written at the time claimed that the success of "Deep Throat" was helping to promote a large migration of major New York Mob figures to Los Angeles. The report warns that, once established in porno movies, the mobsters' next logical move would be into the legitimate Hollywood movie business.

It appears that the report predicted accurately. In September, 1973, the Hollywood show business papers announced that "two New York businessmen" named Louis and Joseph Peraino had established "a major new film production and distribution company" called Bryanston, with big plans for making "at least 10 feature motion pictures within the next year."

Actually, Bryanston was established in New York in July, 1971, shortly after the creation of Damiano Film Productions Inc. The two were "twin companies engaged in the financing, acquisition, production and

distribution of motion picture film products of every kind, nature and gauge," according to a joint company prospectus that Louis Peraino prepared for a New York bank.

They were not identical twins, however. As the prospectus explains, "Damiano will operate within the ambit of sex or 'adult and mature' markets, while Bryanston will be limiting its activities to the general audience or so-called 'commercial' area."

Put more simply, Damiano would handle the porn while Bryanston went legitimate.

As Louis Peraino took his share of "Deep Throat" profits and turned his attention to the legitimate movie business in 1973, the distribution of "Deep Throat" was taken over for the most part by his father and uncle Joseph. At the same time, the base of the distribution operations shifted from the Bryanston-Damiano offices in New York to a network of companies in Miami.

THE WEST COAST OPERATION: A TRUNK-BUSTER FOR "DIRECTOR OF FINANCE"

But Louis Peraino continued to oversee personally the Los Angeles area distribution of "Deep Throat." And even as he pursued respectability in the legitimate Hollywood movie business, he was dealing with sleazy characters in the West Coast porno world.

For example, one of Peraino's key "Deep Throat" representatives in Los Angeles was a former Brooklynite named Joseph (Junior) Torchio. Described by one LAPD investigator as "the best-known trunk-buster (auto break-in artist) in New York," Torchio was employed in Los Angeles in 1973 as "director of finance" for Bryanston.

The California Department of Justice included a short profile and a photo of Torchio in a 1976 report titled "Organized Crime Involvement in California Pornography Operations."

According to that report, "Torchio first came to the attention of police officials 17 years ago when an associate, Alfred Adorno, was found shot in Brooklyn on March 14, 1969. Torchio was considered a prime suspect in setting up Adorno for the killing."

Following his migration to Los Angeles in 1969, Torchio formed a porno movie production and distribution company with Jacob (Jack) Molinas, described in the report as a "con man, swindler, disbarred attorney and former pro basketball player."

An all-American at Columbia University in the 1950s Molinas was convicted in 1963 as the "master fixer" in a point shaving scandal that rocked the world of college basketball in 1961, involving nearly 50 players from 27 colleges.

After his release from prison in 1968, Molinas moved to Los Angeles and into the porno movie business, associating himself with a number of known organized-crime figures including Michael Zaffarano.

Between 1973 and 1974, both Torchio and Molinas received loans of $250,000 from Louis Peraino, according to several sources, and both men defaulted on the loans.

The Molinas loan, in June, 1973, was to establish a fur importing company called Berjac, run by Molinas and his partner, Bernard Gussoff.

Byanston filed a lawsuit against Molinas for non-payment of the loan in September, 1974. Two months later, Gussoff was beaten to death in his Los Angeles apartment. The murder was never solved.

Less than a year later, in August, 1975, Molinas was shot and killed as he stood with a woman companion in the backyard of his Hollywood Hills home.

Three weeks after that, Torchio was struck by a car and killed on the Las Vegas strip.

Originally, law enforcement officials outside Las Vegas (the LAPD, the FBI and the U.S. Department of Justice) suspected the deaths of Molinas and Torchio were related to their involvement with Mob figures in the Los Angeles porno movie business.

However, a man named Eugene F. Connor eventually was convicted of the Molinas murder, which police investigators said resulted from Molinas' refusal to pay off a gambling debt to a Mafia loan shark. Torchio's death was ruled an accident by Las Vegas police. No charges were filed against the driver of the car.

"YOU WANT ME TO GET BOTH MY LEGS BROKEN?"

Beginning in 1969, the Perainos' porn operations were under almost constant investigation by a small army of federal, state and local law enforcement agencies—New York and Los Angeles police, the FBI, the U.S. Justice Department and the Internal Revenue Service, among others.

In August, 1974, armed with information gathered from the various investigations, a federal grand jury in Memphis indicted Louis Peraino, along with his father and uncle Joseph, on charges of transporting obscene materials ("Deep Throat") across state lines.

Damiano Film Productions also was indicted by the grand jury—but not Damiano himself. By that time, the director no longer held an interest in "Deep Throat" or the production company.

Damiano testified at the Memphis trial that he sold his interest in the movie to Louis Peraino in July, 1972. The price was $25,000.

It is a widely held belief in the movie business that Damiano sold his one-third interest in "Deep Throat" under duress, or, as one porno film distributor put it, "with a gun at his head."

The notion no doubt was fueled by an article that appeared on the front page of the New York Times in October, 1975. Written by reporter Nicholas Gage, the article reported on organized crime's infiltration of the U.S. pornography industry, and it described brothers Anthony and Joseph S. Peraino as the "most successful of all Mafia figures involved in the production and distribution of hardcore films."

According to the article, "When a reporter remarked to Mr. Damiano that he seemed to have received unfavorable terms in the ("Deep Throat") deal, Damiano replied, 'I can't talk about it.'

"When the reporter persisted, Mr. Damiano said, 'You want me to get both my legs broken?' "

THE MEMPHIS COMMUNITY STANDARDS VS. "DEEP THROAT"

The celebrated "Deep Throat" trial began in Memphis on March 1, 1976, a year and a half after the first grand jury indictments.

Among the 13 defendants were brothers Anthony and Joseph S. Peraino, Louis Peraino and three Peraino-owned companies—Damiano Film Productions, Bryanston Distributors and Plymouth Distributors. "Deep Throat" star Harry Reems (who played Linda Lovelace's "doctor") also was a defendant.

Anthony Peraino, who was described by the prosecution as "the driving force behind the conspiracy" to distribute obscenity interstate, didn't show up at the trial.

The prosecution claimed that he had fled the country to avoid prosecution. Along with his Florida business partner and co-defendant, Robert DeSalvo, Anthony was living in luxury on a yacht in the Bahamas, from whence the pair continued to direct the "Deep Throat" distribution operation, according to assistant U.S. attorney Larry Parrish, who presented the government's case.

Both Anthony Peraino and Robert DeSalvo were declared fugitives and tried in *absentia*.

The nine-week trial attracted national media attention as a major test of the U.S. Supreme Court's controversial 1973 "community standard" ruling on pornography. The Court ruled that the moral standards of individual communities, not a broad national standard, should determine what constitutes obscenity.

Before the Memphis trial, there had been numerous "Deep Throat" obscenity prosecutions in communities around the country. Most have resulted in acquittals, or, at most, light fines and jail sentences for theater owners, managers or projectionist.

(For example, in October 1975, a municipal court jury in Newport Beach, Calif., acquitted the owner and manager of a theater that had shown "Deep Throat." The jury foreman in that case read a statement to the court saying that they found the penal code section that the defendants were accused of violating to be "not definitive enough" and "not an effective, workable section of law.")

But in Memphis, the government was after the proverbial big fish—the owners, producers and distributors of the most successful porno movie of all. Prosecutor Parris had put together his case with the help of the FBI, the IRS and the U.S. Justice Department organized-crime strike forces in Brooklyn and Miami.

In the end, the government would spend nearly a million dollars protecting the moral standards of the citizens of Memphis.

Or so it seemed. But Bruce Kramer, the Memphis attorney who represented actor Reems in the case, claims that "it wasn't an obscenity trial at all—it was a racketeering and tax evasion trial."

Prosecutor Parrish was 33 years old at the time. A governing member of Memphis' First Evangelical Church, he was an avowed opponent of all forms of pornography and he became a sought-after dinner speaker and anit-smut campaigner in the trial's media wake.

Now in private practice in Memphis, Parrish doesn't precisely deny Kramer's claim that the government's Memphis prosecution was aimed more at organized crime than pornography.

"I've always assiduously avoided saying that was true," the attorney said recently. "But I will tell you this: I took over the investigation of the Brooklyn Strike Force, and the strike force investigates only organized crime."

Prosecutor Parrish introduced only a handful of "expert" witnesses whose opinion was that "Deep Throat" constituted obscenity.

Apparently the movie spoke for itself. The jury viewed "Deep Throat" late in the trial and judged it to be obscene.

On April 30, 1976, the Perainos et al were found guilty of conspiring to distribute obscenity across state lines. Louis and (his uncle) Joseph S. Peraino were given one-year prison sentences and fined $10,000. The three Peraino-owned companies—Bryanston, Damiano and Plymouth—also were fined $10,000 each. The sentencing of fugi-

tives Anthony Peraino and Robert DeSavo was put aside pending their capture or surrender.

BRYANSTON: "THEY JUST PADLOCKED THE DOORS ONE DAY"

Barely a month after the trial, Bryanston closed up its West Coast office and disappeared from the movie business as quickly as it had come, leaving behind a score of puzzled employees and a trail of debt. In addition to nearly $750,000 in taxes, the company owed undetermined millions throughout the international movie marketplace.

Exactly why Bryanston bailed out of the business so abruptly has remained a mystery. "I never could understand it," said one former executive. "We were doing so well. They just padlocked the doors one day."

Following the dissolution of Bryanston, the distribution of "Deep Throat" was carried on through Joseph S. Peraino's company, Plymouth Distributors, which had offices in Old Bridge, N.J., and at 1800 Highland Ave. in Hollywood.

And "Deep Throat" continued to make large sums of money. Playing 13 times a day for 10 years at the Pussycat Theater in Hollywood, it earned $6.4 million at that one location, according to the theater owner.

In the wake of the no doubt unwanted publicity brought on by the Memphis trial, the Peraino family dropped out of public view—for a time.

THE SECOND VALENTINE'S DAY MASSACRE—48 ARRESTS IN MIPORN

Feb. 14, 1980. At noon (EDT), a synchronized force of 400 FBI agents and police swept into porno movie theaters, warehouses, retail stores and businesses offices in 13 major U.S. cities, arresting some of the Mob's biggest names in porn on federal obsenity and racketeering charges.

It's been called the second most famous Valentine's Day in history of organized crime.

(The first is the so-called St. Valentine's Day massacre of 1929 in Chicago—easily the most brutal display of Mob violence ever. On that day, five gunmen dispatched by Al Capone and disguised as policemen entered the bootleg warehouse of Bugs Moran's rival North Siders gang, lined up seven Moran henchmen against a wall and riddled them with machine gun fire, killing them all.)

Among the more than 40 individuals rounded up in the Valentine's Day raids of 1980 were brothers Louis and Joseph Peraino. The pair was arrested in the New York office of their company Arrow Film and Video. They were charged with interstate shipment of obscenity in the form of hardcore videocassettes titled "Liquid Lips," "Candy Stripers." "His Master's Touch" and "Hollywood Cowboy."

The Valentine's Day raids were the culmination of a three-year FBI pornography "sting" operation code-named "Miporn" (from Miami pornography). It was the most extensive, sophisticated and well-financed investigation ever of organized crime involvement in the porno industry. And it may have been the most effective.

Operating out of a Miami warehouse, undercover FBI agents posed as a pair of sleazy porno film-buyers for a company they had set up called Gold Coast Specialities Inc.

For 30 weeks, the agents wore open-necked shirts, sported gold neckchains and diamond pinky rings and tooled around town in rented Cadillacs, sometimes with a pair of flashy-looking women hanging on their arms.

In the course of the investigation the agents claim to have discovered that the sale of hard-core videocassettes and pirated videocassettes of major Hollywood motion pictures in this country was dominated by a nationwide ring of organized-crime figures.

Law enforcement investigators in Dade County, Florida, began seeing evidence of Mob involvement in the hard-core videocassette business as early as November, 1975—just a few weeks after Sony put the first home videocassette recorder on the market.

Today, adult videocassettes are a $2-billion annual business in this country, accounting for half of all film cassette sales, according to LAPD experts. They estimate that a third of that $2 billion, or around $600 to $650 million yearly, winds up in the coffers of organized crime. What's more, the policemen say, the business has "probably doubled" in the last year.

The best-selling sex videocassette of all is "Deep Throat," according to David Friedman, who is considered to be one of the world's foremost experts on the porno film business. Five times the president of the Adult Film Assn. of America, Friedman estimates that more than 300,000 "Deep Throat" videocassettes had been sold as of last year. At the going retail price of about $60 apiece, that adds up to $18 million in gross revenue for the Peraino family business.

Louis and Joseph Peraino were not charged with film piracy in the Miporn case, even though the New York arrest report shows that videocassettes of more than 50 major Hollywood movies, as well as equipment capable of reproducing them in quantity, were discovered during the search of the Arrow offices. The list of films confiscated includes most of the box-office blockbusters of the last decade—"Animal House," "Kramer vs. Kramer," "The Sting," "Star Wars" and ironically, "The Godfather," Parts I and II.

THE DEATH OF MICKEY Z LEFT A POWER VACUUM

There was only one casualty on Valentine's Day 1980—Michael Zaffarano, one of the main targets of the Miporn investigation. In the years since he sold stag films out of coffee catering trucks and allegedly oversaw the porno film processing operation at Louis Peraino's All-State Film Labs, Zaffarano had come to be regarded as the Mob's top man in porn and a multimillionaire.

But when law enforcement officers came to arrest him at his New York office that Valentine's Day, 58-year-old "Mickey Z" suffered a heart attack and died on the spot, clutching a reel of pornographic film that the officers presume he was attempting to destroy.

"Yeah, we killed him for sure," said one case-hardened police officer who witnessed the Zaffarano death scene, "and we saved the taxpayers a bunch of money."

But the death of Zaffarano did more than that. It created a power vaccum in organized crime's now international pornography operations that annually accounted for hundreds of millions of dollars in largely untaxed revenue. Added to the Miporn arrests and convictions of other major Mob figures in porn, the elimination of Zaffarano was bound to touch off maneuvering among the various organized-crime families for dominance in the lucrative porno trade, police believe.

Such were the forces at work, NYPD investigators say, on the evening of Jan. 4, when the barrage of buckshot claimed the lives of Veronica Zuraw and Joseph Carmine Peraino Jr.

OBSCENITY CONVICTIONS—THE COLLAPSE OF THE EMPIRE

In the weeks following the Brooklyn killings, a final chapter may have been written in the Peraino family saga.

In February, brothers Louis and Joseph Peraino were sentenced in Miami to prison terms totaling six and three years, respectively, for their convictions in the Miporn case. (They're appealing the sentences.)

Looking tired and short of breath, their father Anthony was sentenced that same month in Memphis to a total of 9½ months in prison and $15,000 in fines for his original 1976 "Deep Throat" conviction and subsequent bail-jumping charge. After five years as a fugitive, the ailing Peraino family head turned himself in to authorities last year.

Due to his heart condition, Anthony is serving the first 75 days of his term in Gateways Community Treatment Center, a private hospital and halfway house in the Echo Park neighborhood of Los Angeles. He still faces six months prison on the bail violation.

On March 22, 1982, Louis (Butchie) Peraino entered the Allenwood Federal Prison Camp in Montgomery, Pa., to begin serving a six-month sentence for his Memphis "Deep Throat" conviction. (He had appealed the case all the way to the U.S. Supreme Court, which last October refused to overturn his conviction.)

There's a striking irony in the fact that Louis Peraino was sent to Allenwood. The minimum security facility—no walls or fences—once housed convicted Watergate conspirators Jeb Magruder, Egil Krogh Jr., G. Gorden Liddy and E. Howard Hunt.

And now Louis Peraino, institution number 06675-076, formerly the head of his own Hollywood movie company. He too, fell from a position of prominence and power, undone by "Deep Throat."

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[From the Calendar, June 13, 1982]

THE "DEEP THROAT" PAYOFF: SUITCASES FULL OF CASH

(By Ellen Farley and William K. Knoedelseder, Jr.)

MEMPHIS.—The story of how "Deep Throat" was booked into the movie theaters of America and how its booty of untold millions was divied up is the stuff of detective novels—a tale replete with stakeouts, stool pigeons, double dealings and death threats.

Between 1973 and 1976, the distribution of the most famous and successful of porno movies was basically a covert operation. It was carried out by a small army of hirelings known as "checkers" and "sweepers." They traveled the country—constantly changing aliases and meeting clandestinely in hotel rooms and public restrooms to exchange information and large sums of cash.

All the while, they were shadowed by federal agents, photographed by hidden cameras and ratted on by informants in their own ranks.

During the 1976 "Deep Throat" obscenity trial in Memphis, U.S. prosecutor Larry Parrish spent most of his time trying to make the jury understand how the movie's distribution system worked. He called more than 50 witnesses who had been involved in some phase of the distribution. The prosecutor supplemented the witness testimony with copious charts and graphs of the operation, laboriously leading the jury through the maze step by step.

Defense attorneys offered little in the way of evidence or cross-examination to dispute the government's description of the distribution system.

Instead, the primary strategy of the defense attorneys was to focus on the issue of whether "Deep Throat" constituted obscenity. That was the heart of the trial, after all. If the jury ruled that the movie wasn't obscene, then it didn't matter who distributed it or how.

As detailed in the more than 15,000-page transcript of the nine-week trial, this is what happened.

After its New York debut in June, 1972, "Deep Throat" was distributed for a time in a fairly straightforward fashion. Prints were shipped to theaters by common carriers (the U.S. mail, parcel post, etc.), through film storage warehouses and sub-distributors. Records were kept and payments were made by check to Damiano Film Productions Inc., which was administered by Louis Peraino from the New York office of Bryanston Distributors Inc.

Even though at the time it was a federal crime to transport an obscene movie across state lines, the risk of prosecution seemed slight—because the law contained no precise definition of obscenity. Thus law enforcement agencies were reluctant to pursue such investigations.

But the situation changed dramatically in June, 1973, when the U.S. Supreme Court handed down its landmark "community standards" decision on pornography.

In an unexpected move, the high court declined to establish a precise definition of obscenity, ruling instead that the moral standards of individual communities should decide what was obscene and what was not.

That was bad news for the distributors of "Deep Throat." It meant in effect that now they were vulnerable to federal prosecution based on the blue-nosed views of any Bible Belt township. And the Supreme Court ruling came just as the "Deep Throat" phenomenon was spreading throughout the country, Bible Belt included.

So a new distribution system was designed to confound law enforcement attempts to trace a print of the film to its source.

"Deep Throat" no longer was shipped openly. It was transported across state lines by "checkers." They delivered the prints to the theaters, then stayed on to count the customers. At the end of the day's showings they collected from the theater owners the distributor's share of the box-office receipts—usually half.

The checkers' instructions were "to get at least half cash in payment (from the theaters), but normally it would be all cash," according to the trial testimony of the man who had been employed to supervise the operation.

Sweepers then went from checker to checker, collecting the money daily and either mailing it or hand-carrying it on plane flights back to company offices in New Jersey and Florida.

One former sweeper testified that he once was told by the manager of the Florida office, "If I don't have the money there that evening, I'm playing with his life."

Another former checker testified that on two occasions he had collected so much cash that he barely managed to fit it into a suitcase. Both times he had to "stomp on" the suitcases to close them.

Checkers and sweepers generally were not recruited from the ranks of movie business professionals. Their number (nearly 50 at one point) included a retired security guard, an unemployed candy salesman, two Philadelphia stockbrokers and an ex-convict whose professional background included burglary and counterfeiting.

The supervisor of the checker-sweeper operation said that employees often were paid partly in cash. His salary was $500 a week, he said, $300 by check and $200 "in green."

The system was effective because it left few traces. If a theater was busted on obscenity charges, investigators would have a difficult time following the distribution trail back to the Perainos.

But the system had at least one flaw—it entrusted the handling of huge sums of cash to a cadre of part-time or moonlighting employees, many of questionable character and some with criminal records. In addition, these employees also handled the prints of the film, which easily could be duplicated and sold on the side.

The prosecution presented evidence indicating that employee piracy was common. Former employees testified that checkers and sweepers routinely were accused by their supervisors of either bootlegging the movie or skimming from the cash receipts.

Piracy was a major problem. According to movie producer-distributor Dave Friedman, considered an expert in the porno field, "Deep Throat" was "pirated to death, probably more than any other movie." Bootleg 16-millimeter prints of "Deep Throat" have been exhibited "in bars all over the country," he said.

In some cases, however, piracy proved a boon to the distribution of "Deep Throat." According to the trial testimony of several "Deep Throat" employees and theater operators, it worked like this:

Theater operators suspected of exhibiting bootleg prints of "Deep Throat" received a phone call or a personal visit from representatives of the distributor. The accused pirate was commanded to make retroactive payment for prior unauthorized showings, then ordered to pay another fee for the right to continue playing the movie.

If the theater operator agreed to the conditions, he was allowed to continue using the bootleg print for as long as he wanted, so long as the distributor collected an agreed-on share of the box-office receipts, usually 50 percent. In fact, provided that payments continued, the theater operator even was allowed to purchase additional bootleg prints from his pirate source when the original bootlegs wore out.

Thus, the distributor was spared shipping costs as well as the expense of making the print. In effect, the movie was distributing itself.

However, theater owners occasionally balked at the idea of paying retroactive royalties—thousands of dollars in some cases. In such instances, the theater owners would be threatened by "Deep Throat" employees who promised to "break their legs," or worse, witnesses testified.

One of the star prosecution witnesses was a man who'd been employed as supervisor of the checker-sweeper operations. The witness, Robert Bernstein, said he was present on one occasion when such threats turned into action. He testified:

"We went to the Flick Theater (in Florida). There was a young boy at the box office who weighed about 75 or 80 pounds soaking wet. We went in and said, 'We want that print,' that it was a green (bootleg) print, to get it off the screen and we wanted to know who the manager was and so forth.

"The kid started yelling at Tony Novello and myself. Tony got angry and grabbed him by the throat and started choking him. I grabbed Tony's arm and said, 'Let's get the devil out of here' and pulled his arm off."

The alleged assailant, Anthony Novello, one of the defendants in the trial, was described by prosecutor Larry Parrish as Anthony Peraino's bodyguard, chauffeur and "strong-arm man, an enforcer."

It was the position of the prosecution (the U.S. government) that "Anthony Peraino, not Louis Peraino, was the driving force behind the conspiracy" (to transport "Deep Throat" across state lines).

As the U.S. prosecutor explained it. When Louis Peraino began turning his attention toward the legitimate Hollywood movie business in mid-1973, the distribution of "Deep Throat" and other porno movies increasingly was taken over by Anthony Peraino. At the same time, the hub of the operation shifted from New York to South Florida, the Fort Lauderdale area. It was then that the checker-sweeper system commenced and "strong-arm" tactics became intrinsic to the operation.

In August, 1973, Anthony Peraino formed a Florida company called AMMA in partnership with a Florida porno movie distributor and theater owner named Robert DeSalvo.

DeSalvo was an ex-convict from New Jersey who settled in Fort Lauderdale in the early 1970s—following his release from prison where he had served time for his part in a multimillion-dollar counterfeiting ring.

With offices in Wilton Manors, Fla., and Spring Lake, N.J., the operation soon was directing the distribution of "Deep Throat" all over the country, including the states of Alaska and Hawaii. The Los Angeles-area distribution remained under the direction of Louis Peraino in New York.

As money from the checker-sweeper network began flowing into the Florida office of AMMA, partners Anthony Peraino and DeSalvo funneled the funds through a succession of companies that came and went in the span of a fruit fly.

One Albuquerque theater owner testified that he had paid "Deep Throat" royalties to seven different compaines over an 18-month period. The prosecution characterized the Florida companies as "corporate facades" set up to further obfuscate the "Deep Throat" distribution trail. The companies differed in name and bank account, but they operated from the same address, with the same employees reporting to the same bosses—Anthony Peraino and DeSalvo.

In addition, the prosecution traced the flow of "Deep Throat" money through another maze of companies. These included:

Regal Fashions, a garment company in Miami owned by Anthony Peraino.

Another garment company in New York called Sal-Lee, owned by Anthony Peraino and funded by at least $500,000 in "loans" from Damiano Films.

Two Bahamian companies owned by Anthony Peraino—Jordan Financial Investments and Caribbean Licensing Ltd.

A New York-based movie company called Haunted House Productions, set up by brothers Louis and Joseph Peraino (Anthony's sons) to produce horror movies.

Bahamian companies called Taurus Investments, owned by Robert DeSalvo, and Gemini Investments, co-owned by DeSalvo and Anthony Peraino.

Another star prosecution witness at the trial was a woman named Barbara Stamp, who had been employed as general secretary to Anthony Peraino and Robert DeSalvo in Florida. She also became an informant for the Internal Revenue Service.

Stamp testified that one of her job responsibilities was to transfer money from the Florida companies' bank accounts to the bank accounts of the Bahamian companies. This was to be done by casher's checks when the Florida balances reached $40,000 or $50,000.

DeSalvo told her the money was being used to buy "bars and liquor licenses" in the Bahamas, Stamp testified.

Ironically, Stamp said that Robert DeSalvo initially got involved with the distribution of "Deep Throat" by bootleging the movie. DeSalvo was exhibiting a pirated print of the film at a theater he owned in Lake Worth, Fla. when he was paid a visit by Louis and Anthony Peraino, she said.

DeSalvo told her that "the old man and his son came down to crack my head," Stamp related. But instead, DeSalvo convinced the pair to take him on as a partner. He would distribute the movie for them using his already established distribution network. What's more, he could ensure that piracy was controlled.

Bernstein, who also was employed at the Florida office, testified that DeSalvo had told him that he'd paid a Bahamian corporation between $1.2 million and $2 million to acquire the distribution rights to "Deep Throat."

Not suprisingly, the testimony of star witnesses Stamp and Bernstein provided some of the most provocative passages in the trial transcripts.

For example, prosecutor Parrish claimed that Stamp was present on one occasion when Anthony Peraino threatend to "personally blow DeSalvo's brains out" if DeSalvo's hiring of Bernstein led to any legal problems with "Deep Throat."

The prosecutor also alleged that Anthony Peraino had threatened to kill Bernstein if Bernstein mentioned Peraino's name before the Memphis grand jury that ultimately ordered the "Deep Throat" indictments.

None of the defendants at the 1976 trials was charged with any threats or acts of violence in connection with the distribution of "Deep Throat." Nonetheless, prosecutor Parrish seemed unflagging in his efforts to introduce testimony that such attempts to intimidate theater owners, employees and potential witnesses had occurred routinely and as recently as "last evening," he said.

The prosecutor's efforts invariably brought forth a barrage of objections from defense attorneys.

At such times, the jury was removed from the courtroom while the opposing sides argued the point in "bench conferences" before the judge. More often than not, the judge agreed with defense arguments that testimony about alleged threats of violence was irrelevant (to the issue of obscenity) and therefore unfairly prejudicial to the defendants.

The prosecutor informed the judge one time that there were "current threats" against witness Bernstein, specifically that "his throat would be cut, that he would be skinned alive" if he cooperated with the prosecution's case. Parrish also told the judge in the jury's absence that defendant Mario DeSalvo (Robert DeSalvo's brother) had "directly threatened Mr. Bernstein's 2-year-old child."

The prosecutor wasn't entirely unsuccessful in his attempts to introduce testimony of threats of violence. For example, Bernstein related that, prior to testimony, Janice DeSalvo had delivered to him a "message" from her husband Robert in the form of an "Italian kiss." (In Mafia mythology, a ritualistic kiss signifies that the recipient has been marked for execution—as in "kiss of death" or "Judas kiss.")

In addition, Bernstein told the court that he and his family had been under constant protective surveillance by law enforcement authorities ever since his first "cooperative" interview with the FBI in January, 1975. The security precautions were enacted, he said, "specifically for my 2-year-old daughter."

On another occasion, when a checker testified that he had physically assaulted a theater owner, one defense attorney promptly pointed out that such an assault and battery "is, under Tennessee law, a misdemeanor."

Although both men were indicted, neither Anthony Peraino nor Robert DeSalvo appeared at the trial. According to several prosecution witnesses, the pair had fled to the Bahamas, where they continued to direct the "Deep Throat" operations while luxuriating on Peraino's 65-foot yacht, the Eldorado.

After the two men fled to avoid prosecution Mario DeSalvo took over managing the Florida office, but not for long. Former Florida employees testified that the operation quickly was taken over by Anthony Peraino's brother, Joseph S. (Joe the Whale) Peraino. The new boss promptly fired both DeSalvo brothers, witnesses said. Shortly thereafter, Joseph Peraino closed down the Florida office and moved the whole operation to the New Jersey office of his company, Plymouth Distributors.

For all its carefully constructed convolutions, the "Deep Throat" distribution scheme didn't fool the authorities for long. With FBI and IRS agents dogging the movies's trail from the beginning (visiting every participating theater), it took only a minor incident for it all to unravel.

On Oct. 30, 1973, an FBI agent investigating pornography confronted a checker named Jim Newman as Newman was loading an Eastern Airlines box into a taxicab in from of the Memphis Holiday Inn. The agent served Newman with a grand jury subpoena and warned him that if the box contained a movie that would be judged obscene (by Memphis community standards), and if Newman transported it across state lines, then he would be breaking federal law.

Newman quickly left town, abandoning the box in a storage room at the Holiday Inn. Discovered by an FBI agent the next day, the box contained two prints of "Deep Throat."

Ultimately, the Memphis jury judged "Deep Throat" to be obscene and found all the defendants guilty of conspiring to distribute it interstate. Anthony Peraino and Robert DeSalvo were convicted *in absentia*, but their sentencing was held in abeyance until their capture or surrender to authorities.

The convictions of all but Anthony Peraino and Robert DeSalvo later were overturned on a technicality. When the case was retried in 1978, Joseph S. Peraino and his company, Plymouth Distributors, were acquitted. All the other defendants were convicted.

The second time around, Louis Peraino drew a three-year prision sentence, with all but six months suspended.

Though the prosecution's case remained basically the same, the 1978 trial contained one dramatic turnabout. The star prosecution witness this time was Janice DeSalvo, the wife of fugitive Robert DeSalvo.

She told the jury that she'd begun cooperating with the FBI after the disapperance of her husband "Bobby" in Europe.

She went to the FBI for help, she said, after her husband's uncle was unable to find him in Europe. "Mr. (Anthony) Peraino and Bob were partners and Bobby was going to Europe to meet with his partner and that's about the crux of it," Mrs. DeSalvo testified.

Robert DeSalvo has never been found. His wife and federal prosecutors in Memphis believe that he is dead.

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[From the Calendar, June 13, 1982]

THE JERSEY THEATER ARSON: CLASSIC CASE OF INEPTITUDE

(By Ellen Farley and William K. Knoedelseder, Jr.)

The Joseph Carmine Peraino Jr. killing in a shotgun attack in Brooklyn last January had made newspaper headlines once before. He first made the news for setting fire to the Tilton Theater in Northfield, N.J. (an Atlantic City suburb), on July 15, 1977.

At the time, 27-year-old Joseph Jr. was working for his father's porno film distribution company, Plymouth Distributors. Along with his two 22-year-old accomplices (who also reportedly were employed by Plymouth) young Peraino was easily convicted of the theater torching—a crime remembered by New Jersey authorities for its ineptitude.

"If ever these guys did a dumb arson, this was it," said Jeffrey Blitz, the Atlantic County assistant district attorney who prosecuted the case. The prosecutor's characterization is borne out by the law-enforcement reports on the incident.

The three men, all from the same Brooklyn neighborhood, drove to Northfield in a brand-new, blue Bill Blass designer edition of a Lincoln Continental Mark V. On the way, they stopped to fill a five-gallon gasoline can at a service station less than half a mile from the shopping center where the Tilton Theater is located.

They struck at 11 o'clock on a Friday morning. Peraino remained in the car while the other two broke into the theater, tied up the projectionist and his brother (ages 62 and 65), doused the projection room with gasoline and set it on fire. Then they led the two bound employees from the burning building and left them in a field behind the theater.

Making their getaway, the three men stopped at a nearly drugstore to purchase ointment and bandages to treat the severe burns that one of them had suffered on his face and hands while setting the fire. They were arrested on the Garden State Parkway less than two hours later—their Bill Blass designer car a dead giveaway to a New Jersey state trooper.

The investigation fell to Walter Buzby, an arson expert with the major crime division of the Atlantic County prosecutor's office. But almost immediately, Buzby said, "The FBI got into it and half a dozen other agencies. They felt it was part of the pornographic business of the underworld."

One investigator on the case explained that "with the advent of casino gambling in Atlantic City, we looked on it from the standpoint, "Is this an attempt by this particular group to come in here and permeate this area with X-rated movies?' "

To this day, the motivation behind the arson is a matter of conjecture. The theater's owner, Charles Tannenbaum, vice president of Bally's Park Place Casino Hotel

in Atlantic City, claims that neither he nor his theater has ever been approached or pressured to show porn films. In an interview, Tannenbaum flatly stated that "it was not a retaliatory measure for anything to do with X-rated movies."

According to a federal source. "After the fact, the New York City police told us they thought the younger Peraino had just been made a member of the Colombo family prior to the arson and that he was out of line for having done this without getting the appropriate authority. It was unauthorized and, as a result, he was told that he had screwed up and he would have to bite the bullet."

Joseph Jr. spent two months in jail before he was bailed out. None of the three men would cooperate with authorities. An investigator who attempted to question them recalled, "I asked one of the two guys that did the actual torching of the Tilton, 'What's your position going to be here?' He said, 'I'm going to do exactly what they tell me to do. If they tell me to plead guilty, I will. If they tell me to plead innocent, I'll plead innocent.' It was strictly the by-the-numbers Brooklyn approach."

Peraino's attorney attempted to have his client tried separately from the other two men, but that defense strategy was squelched when the FBI identified Joseph Jr.'s fingerprints on a note found in the front seat of the getaway car. The note gave directions on how to get from Brooklyn to the Tilton Theater.

THE GETAWAY CAR WAS A BRAND-NEW, BLUE, BILL BLASS DESIGNER EDITION OF A LINCOLN CONTINENTAL MARK V

Joseph Peraino Sr. was at his son's side throughout the court proceedings in New Jersey. The father's behavior was "a little bit acrimonious," according to an observer who said he once saw him and another man confront an FBI agent in the hall outside the courtroom where the case was heard.

Asked about the encounter, the FBI agent said, "I wouldn't want to portray it, either verbally or graphically, because it would be very offensive. He was very obscene about the whole thing." Peraino was enraged by the FBI's role in the investigation, the agent explained. "In his mind, he felt that the bureau was behind the scenes pushing to get his son because we were out to get him as well. He told me that his son had just gotten married, and he kept threatening to have me transferred."

Waiving their right to a jury trial, all three men pleaded guilty to four counts of arson and accepted their sentences of not less than four and not more than seven years in prison.

"The strange thing about this case is that there was no plea bargaining at all," said prosecutor Blitz. "They just threw up their hands. They didn't fight. It was almost as if, though I don't know this, somebody didn't want a trial."

[From the Calendar, June 20, 1982]

FAMILY BUSINESS—EPISODE 2: THE HOLLYWOOD YEARS

(By Ellen Farley and William K. Knoedelseder, Jr.)

Bill Kelly still remembers the three-paragraph article buried in the back pages of the show-business trade paper, the Hollywood Reporter, one day in October, 1972.

Kelly was then an FBI agent in Miami investigating organized crime involvement in the porno movie business. The lines that caught his eye reported the formation of an independent movie company called Bryanston Distributors Inc. Its president was a New Yorker named Louis Peraino and its first film project was to be "The Time is Now, Baldassare," described as "a fable about the Pope."

"I couldn't believe what I was reading," said Kelly, now retired from the FBI and living in Florida. "I thought it was the damndest, most ludicrous thing I'd ever heard—a bunch of gangsters making a movie about the Pope with money they made from pornography."

Along with fellow law-enforcement officers in at least four states, Kelly considered Louis Peraino to be an operative of the Joseph Colombo crime family—one of the notorious "Five Families" of the Mafia, centered in New York City.

The lawmen knew Peraino as the producer, distributor and principal owner of the phenomenally successful "Deep Throat," which he'd financed for a mere $22,000 with the help of his father Anthony. Commonly called "Big Tony," the elder Peraino is a reputed "made" (officially initiated) member of the Colombo family.

Now 42, Louis Peraino is in the Allenwood Federal Prison Camp in Montgomery, Pa., inmate No. 06675-076, serving six months for the federal crime of conspiring to distribute obscenity ("Deep Throat.") across state lines. He's appealing another federal obscenity conviction, for which he was sentenced in February to six years in prison.

Not surprisingly then, Louis Peraino's name seldom is heard around Hollywood these days. But not so long ago, he was a mogul:

Within two years of its birth announcement in the trade publications, Bryanston was being heralded as the hottest independent distribution company in the motion-picture industry. On the surface, at least, Bryanston appeared to be operating as a legitimate movie company. In October, 1974, the company was riding a crest of three straight box-office hits—"Andy Warhol's 'Frankenstein,'" "Return of the Dragon" (starring the late Bruce Lee) and "The Texas Chain Saw Massacre."

At its peak, Bryanston had more than 90 employees. Headquartered in the Film Center Building at 630 9th Ave. in New York, the company opened branch offices in Dallas, Detroit, Atlanta, San Francisco, Washington, D.C., Toronto, London, Rome, and Beverly Hills.

Louis Peraino's movie plans and corporate pronouncements received wide play in the entertainment press. Prominent producers and directors sought him out as a partner in their projects.

Moreover, at age 34, Peraino had assured himself of a place in the annals of American movie making—the man who gave the world both "Deep Throat" and "The Texas Chain Saw Massacre," the sex and violence trendsetters of the 1970s.

The rise of Louis Peraino is a kind of hard-core Horatio Alger story: An allegedly Mob-connected pornographer from the mean streets of Brooklyn, he achieved wealth and apparent respectability in the world's most glamorous industry.

That it seemed so easy may say as much about the mores of the movie business as it does about the talent and ambitions of the man.

Whatever else he may have been, Peraino was perceived in Hollywood primarily as a man with millions of dollars to spend and a knack for picking hits. In the movie business, there are no better credentials than that.

Peraino's timing was perfect. There was a recession on. Production at the major Hollywood studios was down. Producers and directors were scrambling (even more than usual) for outside sources of financing. Exhibitors were worried about how they would fill their screens in the coming product crunch.

A 1973 Bryanston prospectus played to those concerns. The colorfully written document is a testament to the lofty legitimate movie ambitions of Louis Peraino, a cocky manifesto. To quote a passage:

"Out of the citadel of giants—the glamorous and never-never Hollywood-came the tinsel, the plasticity and the cult of the superstar and, with this, the notion that anything at all could be spoon-fed or crammed down the throat of a moviegoer sitting enthralled in a pool of his own drooling stupidity and infectious gullibility."

The screen goes on to foretell the downfall of the major studios and the rise of plucky independent companies like Bryanston:

"As the demolition crews bring down the walls of the huge showcase edifices of yesterdays, the 'Last Tangoes' follow in the wake of the 'Deep Throats', and the 'Graduates' and 'Clockwork Oranges' and the 'Nigger Charlies' roll on in the footprints of the little guys who refused to do the 'Paint Your Wagons' and 'Dr. Dolittles'." (The latter two films were notorious big-budget flops.)

Peraino's aspirations were backed by considerable capital. "Deep Throat" reportedly earned $25 million in its first two years of release. In Hollywood, where profligate spending is the norm, Louis Peraino quickly established a reputation as a particularly high roller.

"He'd pay $100,000 for a script that should have cost $10,000," said one prominent entertainment attorney who did not want to be identified. "He didn't know and he didn't care, because he had so much."

Bryanston president Louis Peraino looked like the man of the hour. Between 1972 and 1976, when it somewhat mysteriously ceased operations, Bryanston either financed, produced or distributed more than two dozen legitimate (meaning non-porno) movies. The company announced its planned involvement in at least that many more movie projects, including "Fort Apache, The Bronx" and "The Greek Tycoon." The latter two projects ultimately reached the screen without any Bryanston involvement, according to the producers.

"Greek Tycoon" producer Nicos Mastorakis recalled that he first met Louis Peraino when the producer was trying to sell the U.S. distribution rights to a low-budget movie he'd made in Greece. "The Devil in Mykonos."

"He had just spilled ketchup on his shirt and he was taking the stain out—that's the first thing I remembered about him," Mastorsakis said "I wouldn't say that he was charismatic. Perhaps in his own way he was—he paid me cash for my picture, about $20,000." Bryanston never released "Devil in Mykonos").

As president of Bryanston, Louis Peraino was easily one of the most colorful movie moguls that Hollywood had seen in some time.

Called by the childhood nickname "Butchie," he was rough-edged and physically imposing at better than 250 pounds, with a tattoo of a dagger through the name "Rose" on his left forearm. He was known to carry large sums of cash and he frequently was

accompanied by a brace of burly sidemen—characterized as "gorillas" by several movie professionals who claim to have encountered them.

One of Peraino's near-constant companions was his older brother, Joseph C. Peraino. Now 49, Joseph served as Bryanston's executive vice president, but by all accounts, Louis was the brains behind Bryanston's Hollywood movie operations. Brother Joe is remembered in Hollywood primarily as a natty dresser. "He wore a diamond ring the size of Cleveland," recalled one film industry observer.

"Lou spent a lot of money on clothes, too, but you really couldn't tell," recalled one former company executive. "He'd buy a half dozen suits at a time, dark suits. He would pick up the phone and tell his wife to buy five or six pairs of shoes for him."

Another distinguishing characteristic was the Perainos' heavy Brooklyn patois—"a lot of 'dese' and 'dems' and 'dose'." One producer described them as "'Guys and Dolls' characters."

To some who met them, the Peraino brothers seemed almost caricatures of mobsters. "Straight out of 'The Godfather,'" was the phrase that several Hollywood professionals used to describe the pair.

A prominent movie producer recalled a business meeting he once had with Louis Peraino and company, saying only half-jokingly, "I didn't know if I was negotiating for my picture or my life."

During a business disagreement with Louis Peraino, "There were very definite threats made against me," the producer said, "Let's say that my nose was being threatened, and my ears, etc."

One highly respected studio executive was unnerved when a reporter called to ask him about an experience he supposedly had with the Perainos. "No way," the executive said. "As far as I'm concerned, this phone call never happened." Then he hung up.

Director Tobe Hooper, a master of scare tactics with such films as "The Texas Chain Saw Massacre" and the current "Poltergeist," nervously begged off being interviewed about Bryanston and the Perainos.

"All I know is that about two months after "Chain Saw" was released, I heard a rumor that Bryanston was some sort of Mafia operation," the director said over the phone.

Declining to discuss the matter further, Hooper added, "If these guys are behind door No. 1, then who's behind door No. 2, or door No. 3?"

Some other movie professionals recalled Louis Peraino in warm terms. They described him as a "family man," who lived in a modest Brooklyn home with his wife Sorayda and their eight children.

(Ironically, Peraino was arrested on a misdemeanor weapons charge in Brooklyn in 1971, after allegedly chasing his wife down the street with a gun.)

"Lou wanted to make family pictures; it's true," said producer Sandy Howard. "He really did want to make an image for himself as a decent man and a decent motion-picture producer."

Bryanston financed two PG rated movies produced by Howard. The first was "The Devil's Rain," a horror movie that starred Ernest Borgnine and introduced then teenage star John Travolta. Bryanston co-financed Howard's "Echoes of a Summer," a family drama that starred Richard Harris and a newcomer named Jodie Foster.

"I was impressed by the guy's energy," said producer Frank Avianca, whose 1975 movie, "The Human Factor" (starring George Kennedy and John Mills), was financed and distributed by Bryanston.

"Lou wanted to learn everything (about the movie business), he was like a sponge," Avianca said, "and he was Mr. Generosity—he'd bend over backwards to make a deal with you. I don't know of anyone in my circle who didn't like the guy."

Avianca said that he didn't believe the allegations that Peraino was connected to organized crime. "If he was, then he's gotta be the most biggest exception to the rule I've ever seen in my life, because he's a pussycat.

"I met the father, I met the brother, I met the whole (Peraino) family." Avianca said, "and if that's what organized crime is, then we've got nothing to worry about, because they're pussycats."

Producer Al Ruddy remembered Louis Peraino as "big, heavy-set, kind of bombastic, funny, a good sense of humor, very easy-going and the kind of a guy you felt was quite a sport with money. I must say, he was very easy to take."

Ruddy produced the movie that defines the Mafia in the minds of millions—"The Godfather." Ruddy subsequently produced an animated feature called "Coonskin" that was directed by Ralph Bakshi ("Fritz the Cat) and distributed in 1975 by Bryanston.

"You have to understand that when you met Butchie, you were in the presence of a guy who was *convinced* that he had the next major independent distribution company in the world," said Ruddy. "I mean, he thought, 'Hollywood, boy, this is terrific, I've got Ralph Bakshi of "Fritz the Cat" and the guy that did "The Godfather."' Man, he was *convinced!*" Ruddy said.

In an interview, Ruddy said that he heard rumors that Louis Peraino's father and uncle were connected to the Colombo crime family. But he wasn't concerned.

"First of all, I knew that Lou had done 'Deep Throat' and I know that pornography is generally controlled by certain people, OK?" Ruddy said. "It didn't matter to me, frankly. I didn't get into trying to substantiate it or not. I wanted to know what commitment they had to booking this film ("Coonskin"), how much money they were going to put up to sell it.

"I'm not trying to draw any parallels between Butchie and any other major studio executives," Ruddy said, laughing a little, "but I don't go and start checking out the personal credentials of all the people in our business.

"I'll tell you, there are rumors about a lot of people in this business, one or two who are very powerful and who reputedly have (organized crime) contacts all over the place, and I'm sure they do. And it doesn't impair their ability to function in this business."

Rumors that Bryanston and its president were linked to the Mafia apparently ran rampant in Hollywood from the beginning, but they didn't seem to impair Peraino's ability to function in the movie business.

In general, the film-industry professionals interviewed in the course of this investigation displayed a remarkably casual attitude toward the organized-crime allegations.

That attitude perhaps is epitomized by the comments of producer Jack H. Harris, who sold Bryanston the distribution rights to a science-fiction fantasy called "Dark Star," which marked the directorial debut of John Carpenter ("Halloween," "Escape from New York" and "The Thing," opening Friday).

Said Harris, "Sure I heard the rumors. So what? They didn't ask me to join (the Mafia), nor did I ask them if I could."

A note: Being a member or an associate of an organized crime group is not a crime. There's no law against criminals investing in legitimate business, so long as the money isn't from an illegal source, such as drug trafficking. Nor is it illegal for a legitimate businessperson to accept money from organized crime, provided that he doesn't know the money is illgotten to begin with.

Neither Louis Peraino nor Bryanston ever was charged with any crimes in connection with the legitimate movie business. In interviews for this series, most of the company's former employees and producing partners, as well as one police investigator, claimed that Bryanston was operated legitimately, at least in the Hollywood sense—neither more nor less honestly than any other movie company, major or minor.

Bryanston didn't become a presence in the Hollywood move business until 1973, when the company opened a West Coast office at 177 S. Beverly Drive in Beverly Hills.

Upon its arrival, Bryanston had no record in legitimate movies, but in short order, the company's top management positions were filled by experienced professionals recruited from the major studios.

A Bryanston promotional brochure, circa 1974, boasted that "Employees represent a combined film-industry experience span of 179 years!"

The list included the former assistant to the president of Paramount Pictures, a former director of advertising for 20th Century-Fox, a Harvard-educated former vice president and general manager of Columbia Records, as well as one-time executives of Columbia Pictures, Warner Bros. and Disney.

As a New York-based outsider, Louis Peraino apparently recognized the importance of hiring Hollywood insiders—executives whose personal style was more in synch with the movie establishment than his own. He scored a major coup with the hiring of Ted Zephro.

These days, Zephro probably would be called a "baby mogul." In his early 30s then, he was the assistant (and some say heir apparent) to Paramount Pictures president Frank Yablans. But Zephro resigned from Paramount in October 1973 to become vice president and general manager of Bryanston.

By all accounts, Zephro ran Bryanston's West Coast movie operations. Many movie professionals interviewed credited him as the architect of the company's meteoric rise.

"Teddy was such a hot-shot boy, one of the brightest guys I ever met in distribution," said Al Ruddy.

"I came into the company because of Ted Zephro," said Ira Teller, who joined Bryanston as vice president of advertising and publicity in December 1973, having held similar positions previously at 20th Century-Fox, Columbia Pictures and National General Pictures.

Currently the head of his own publicity firm in Beverly Hills, Teller echoed the words of a half-dozen former Bryanston executives: "To me, Ted Zephro was a legitimate entity," he said. "At the time I joined the company, they were talking to some of the top people in the industry."

Zephro was "the reason I went to the company," said producer Sidney Beckerman, who obtained initial financing from Bryanston for a black exploitation picture called

"Power," which never was made. (Beckerman's credits include "The River Niger" starring Cicely Tyson and James Earl Jones, "Marathon Man" starring Dustin Hoffman, and "Bloodline" starring Audrey Hepburn and Ben Gazzara.)

"I didn't even know who the money people (behind Bryanston) were," Beckerman said in an interview. "I don't think I ever met them. I thought it was just Teddy Zephro promoting somebody."

As Beckerman explained, "There's always someone who's promoting somebody in this business—there's always somebody who finds someone in the oil business or somewhere (to finance films). You can't even think about that (where the money comes from) or you'll never make a movie."

Beckerman said that later he heard some rumors that these guys weren't the kind of people you'd want to have over to your mother's house for dinner, or weren't the kind of people you'd want to cross."

"I laugh about those things," Beckerman said. "I think the Mob is too smart to invest in movies. They don't like to lose money. I think that's why our business is probably one of the cleanest in the world—it's too much of a gamble. Can you imagine if the Mafia had backed 'Heaven's Gate'?"

Despite repeated efforts over several months, reporters were unable to contact Ted Zephro. According to several former Bryanston executives, he fell out of favor with Louis Peraino and left the company in 1975, becoming an independent producer for a time.

Zephro apparently has left the movie business. He was reported to be "somewhere in Las Vegas" and "raising race horses down in San Diego." Neither Zephro's first wife nor his former father-in-law claimed to have any knowledge of his current occupation or whereabouts. One person questioned told reporters that "Ted Zephro has dropped off the face of the earth."

Just as Ted Zephro's reputation enhanced Bryanston's image in Hollywood, the name of Robert Meyers helped the company in the international marketplace. As founder and president of JAD Films, Meyers sold Bryanston's movies to subdistributors around the world until Bryanston's demise in 1976.

Subsequently, Meyers became president of international distribution for Lorimar Productions and president of Filmways Pictures, a post he held until February. For the last two years, he also was president of the American Film Market, the U.S. version of the Cannes Film Festival. Meyers resigned from the AFM presidency on Friday. When interviewed, he said that he is "doing nothing" now, although he keeps an office at Lorimar in New York. Meyers said he had "no idea" of Louis Peraino's alleged organized crime ties when he first became associated with Bryanston.

"Bryanston's producers were reputable people and their films were professional and it's just business," he said. "The other aspect (organized-crime allegations) was unknown to me at the time I started to represent them. I guess by the time it became somewhat known, I was into it sufficiently—I just went on doing my job, my profession.

"I didn't know whether these accusations were correct or not correct," Meyers went on. "When you don't know something, you look at it strictly on the basis of the films being made, and that's it. I don't know who finances films that the majors distribute and a lot of independents distribute. We don't know, we don't inquire actually."

However, movie distributor Fred Biersdorf said of the Perainos, "You knew up front what kind of guys these were. You went into a meeting there (at Bryanston's New York offices) and you knew it wasn't your standard operation. These weren't your everyday good guys coming out of college."

Biersdorf is president of Dal-Art, a Dallas-based company that subdistributed Bryanston's legitimate movies in the Southwest.

Biersdorf recalled that it was Ted Zephro who recruited him for the job: "He (Zephro) told me the story of the company," Biersdorf said. "He told me these guys' names (the Perainos), and he said, "These boys are big time; they're the guys that did 'Deep Throat.'

"And then I went to New York and met them (the Perainos) and I knew they were big time," Biersdorf said.

Asked exactly what he meant by that, Biersdorf smiled and said, "Well, you don't have to go too far in that business (pornography). I mean, if you're dealing in that business you're not going to be no pussycat. You're going to be a substantial tough guy."

Pressed to be more specific, Biersdorf said that he once witnessed a demonstration of Louis Peraino's tough approach to business matters:

"There was this exhibitor (theater owner) in New York who owed Bryanston a lot of money. And Lou kept asking the guy, 'Where's my money?' And finally he calls the guy up and says, I'm going to give you until 4 o'clock this afternoon, and then I'm going to come over there and throw you through the window.'

"I mean, it was yelling and screaming," Biersdorf said. "And a cashier's check arrived by 4 o'clock.

"You didn't screw with these guys; they just wouldn't take it. With other companies, you get into a lawsuit. With Bryanston, there was no lawsuit. They'd just come in and say, 'Hey, what's the problem?' "

Despite what he "knew" about the Perainos, "I made the deal with them," Biersdorf said. "I represented Bryanston like they had their own office here (in Dallas). And it was probably the best business relationship I ever had.

"These boys treated me like I was one of their own kids," he said. "When my daughter was born they sent a new set of clothes every month for two years. They were really personal people, first-class people."

In contrast with Biersdorf, all the former Bryanston employees interviewed claimed to have been unaware of the Perainos' porno activities and alleged connections to organized crime until after they started working for the company.

Said former vice president of production Steve Bono, "I think I worked for the company for three months before I realized they (the Perainos) had made 'Deep Throat.' And we never bothered discussing it even after I found out because I had nothing to do with it; I wasn't making my living off it."

Bono joined Bryanston in 1973 with a 20-year track record of production management in TV ("David Brinkley's Journal") and feature films ("On the Waterfront" and "The Fugitive Kind"). Asked about the allegations that the Perainos and Bryanston were connected to organized crime, Bono responded with a chuckle. "Did it concern me? No," he said, "because I was treated very well and the people I was working with were getting paid, and nothing else was ever brought up. It's like working for any other company—I don't know what the parent corporation does, it's none of my business."

The former Bryanston employees remembered the company as a particularly good place to work. For one thing, Bryanston paid better than the major studios, they all agreed.

When Mike Scagluso joined Bryanston as assistant general sales manager in 1974, "I had several other job options," he said, "but I chose to go with Bryanston and I guess the reason was monetary. The company was a bright star on the horizon at the time."

Currently vice president and general manager of sales at Columbia Pictures, Scagluso declared, "I did not get involved in any kind of hard-core operation (with Bryanston). As far as 'Deep Throat,' I have no knowledge of its distribution, how well it did or who was involved. As far as I was concerned it was a separate operation."

According to Ira Teller, in addition to higher-than-average salaries, Bryanston offered an employee bonus program that was unique in the industry at the time.

"At the end of the year they gave bonuses to everyone," Teller said. "They gave like a $10,000 bonus, depending on where you worked. Secretaries would get several weeks salary.

"It was sort of like when the great movie moguls were in power, when men like Darryl F. Zanuck ran the studios," he said. "They gave bonuses in those days, but it was no longer part of the way things were done."

The company offices were "outstanding," recalled one of Bryanston's four female executives, all of whom are still working in the movie business. "It was the *creme de la creme*, my dear, like driving a Mercedes," she said. "And we were paid what we called 'a man's salary' back then. Those were the good old days."

Said former Detroit branch manager Mitch Blum. "There's no question about it, the company operated in a first-class fashion. When you traveled you went first class and the company put you up at the nicer hotels."

Now a sales executive with Crown International Pictures, Blum said that he was "shocked" when he read in the newspapers that Bryanston was one of the defendants in the "Deep Throat" trial.

"We were never asked to get involved in any of their (the Perainos') X-rated films," said former Midwest division manager Jack Dione. "If they had any, that was their business. We ran a clean company and we had good people."

There was a darker side to Bryanston put forward in numerous law enforcement intelligence reports and presented as evidence during the 1976 Memphis "Deep Throat" trial.

In a 1976 confidential intelligence report, the California Department of Justice placed Bryanston at the top of a list of "key corporations," believed to be "controlled" by the Mob: "It appears that Bryanston coordinates the nationwide distribution of full-length films for organized crime."

It didn't matter that brothers Louis and Joseph Peraino held the titles of Bryanston president and vice president, respectively. Law enforcement officials believed that Anthony (Big Tony) Peraino was the real power behind his sons' company. The elder Peraino is described as the "owner" of Bryanston in intellignece reports of both the New York Police Department and the California Department of Justice.

Anthony Peraino's involvement in Bryanston can be traced back to July 12, 1971—the day the company officially was formed

as a New York corporation. According to records on file at the New York secretary of state's office, one of Bryanston's three incorporators was a woman named Carol Chalafin.

Chalafin was identified by witnesses at the Memphis trial as Anthony Peraino's "girlfriend." U.S. prosecutor Larry Parish charged that Chalafin's name was used on Bryanston's incorporation documents in order to conceal the names of a "hidden partner" in the company—Anthony Peraino.

The prosecutor also charged during the trial that Bryanston was the parent company of a string of "corporate facades" set up by Louis Peraino and his father to handle the distribution and immense cash income of "Deep Throat."

Most of Bryanston's former West Coast employees claimed that they never saw or met Anthony Peraino. But "I met the father and the mother" at the company's New York office, said Jack Wiedenmann, who ran a Bryanston subsidiary called Bryan Records in 1974 and 1975. (See article on Page 8.)

"I saw the father there maybe a dozen times," Wiedenmann said, "I remember that when the father came in, everybody, if they didn't have a suit jacket on, put it on."

Perhaps the strongest examples of Anthony Peraino's active involvement in Bryanston are contained in the company's own financial records from the Chelsea National Bank in New York. Records from Bryanston's account with Chelsea, beginning in May, 1973, through 1975, became part of the evidence in the Memphis case.

Anthony Peraino sat in on the first and other meetings between his sons and the Chelsea Bank, according to the bank vice president who handled Bryanston's account and later testified in Memphis.

The first meeting with the Perainos, and some of the other meetings, took place at an Italian restaurant called Delsomma on 47th Street in New York. Louis Peraino asked to meet there because it was his "favorite restaurant, his lucky restaurant," the banker testified.

"My impression was of a very close-knit family with a warm, loving and respectful relationship between father and sons," the bank officer testified. "And my impression was that both Lou and Joe respected their father, respected his judgment, and that they were interested in his business counsel and they wanted to share their business affairs with him and he with them."

Both Louis and Anthony Peraino submitted personal net worth statements to the bank in support of Bryanston's application for a $300,000 line of credit. Ostensibly, the loan was to help finance Bryanston's expansion into the legitimate movie business.

The loan was approved in the spring of 1973, largely on the bank's belief in the continued earning potential of "Deep Throat." But a year later, bank officers were concerned about the state of Bryanston. As one Chelsea executive explained in an interoffice memo: "When this account opened, they had promised to keep strong balances. At the beginning of this relationship this promise was kept via the profits of 'Deep Throat,' the picture generated a huge cash flow which now has dwindled."

The banker arranged for a meeting to discuss the matter with Louis and Joseph Peraino and Bryanton's accountants. According to the memo, he "questioned where all the money (from 'Deep Throat') had gone."

At first, Louis Peraino "continued to harp on the fact that it had all gone to the purchase of new (movie) productions. However, after an hour or so, he mentioned an entity called Sal-Lee located at 1400 Broadway (New York)."

The memo goes on, "This company is owned by Mr. Peraino's father. The accountants did not want to guess as to how much was ultimately loaned Sal-Lee but, after a while, Louis Peraino stated that it was at least a half-million dollars.

"However, from Mr. Peraino's conversation I feel that much more than $500,000 was indeed put into this dress manufacturer," the bank officer wrote in the memo, dated April 24, 1974.

On that same April day, Anthony Peraino was in Beverly Hills, visiting Bryanston's offices at 177 S. Beverly Drive. He arrived there early in the afternoon in a leased Mercedes, followed surreptitiously by FBI agents.

The Los Angeles agents had been tailing Anthony Peraino from the moment he stepped off a plane from Miami the night before. They'd been alerted to his arrival by a fellow agent in Miami, where an intense federal investigation was under way into Peraino's South Florida business activities—principally the distribution of "Deep Throat."

A total of eight FBI agents put in about 64 man-hours dogging Peraino's trail during his 36-hour stay in Los Angeles. But the stake-out didn't turn up much: Anthony Peraino visited Bryanston's office twice on the trip, and on one occasion he was observed delivering a film cannister marked "Last Flick."

However, the film contained in the cannister is of particular importance to the story of Bryanston in Hollywood. It was a PG-rated comedy called "The Last Porno Flick"—one of the first legitimate movies that Bryanston financed and produced "in-house."

"Last Flick" was filmed in Los Angeles in November, 1973, at a cost of about $600,000. During the filming, "There was a feeling that there were some heavy people behind the movie," according to one of the actors, who didn't want to be identified. "There was that taint to it."

"Last Porno Flick" was released in August, 1974, retitled "The Mad, Mad Moviemakers." It's the slapstick-y story of two cab-driving buddies who scheme to strike it rich by producing their own porno movie. To raise the needed $22,000 production costs, the pals con one of their Italian mothers-in-law and a group of her pious Catholic cronies into investing in the project, telling the ladies that it's a religious movie. Complications arise when the movie becomes a surprise hit.

Ironically, there's a Brando-esque Mafia boss among the movie's cast of characters, which Bryanston promotional posters described as "the wildest bunch of nuts ever to destroy Hollywood with laughter."

If the story sounds suspiciously like a takeoff on the Perainos' experience with "Deep Throat" (which also cost $22,000 to make), circumstantial evidence suggests the parallel is more than an ironic coincidence.

For example, according to a Bryanston press release, "Last Flick" was "based on a story and concept by Joseph Torchio."

Joseph (Junior) Torchio was a reputed minor-organized crime figure from Brooklyn who migrated to Los Angeles and the porno movie business in the late 1960s. According to intelligence information gathered by both the Los Angeles Police Department and the California Justice Department, Torchio was employed in Los Angeles during 1973 as "director of finance" for Bryanston. Specifically, he served as Louis Peraino's representative in the Los Angeles-area distribution of "Deep Throat."

One veteran LAPD investigator described Torchio as a "street hood." Shaking his head in disgust, the officer said, "Here was a guy who couldn't tell the difference between a cartoon and a documentary, and all of a sudden he's out here in Hollywood making movie deals."

An attorney who once represented Torchio agreed that his former client was not very impressive: "Joseph Torchio had an IQ of about 80," the attorney said.

Torchio's movie career was cut short in August 1975 when he was struck and killed by a car on the Las Vegas Strip. His death was ruled an accident by Las Vegas police investigators.

According to a knowledgeable source, Torchio was in default on a $250,000 loan from Louis Peraino at the time. His death was investigated by the FBI, the Los Angles-based Organized Crime Strike Force and LAPD intelligence detectives.

"Mad, Mad Moviemakers" bombed at the box office. "It didn't even earn back its advertising cost," said Jack Dione, then Bryanston's Midwest division manager.

Bryanston produced two more box office flops between 1973 and 1974: "Lord Shango," which featured an all-black cast and a voodoo theme, and "A Knife for the Ladies," a horror-Western that starred Ruth Roman.

In all, Bryanston's first three in-house productions resulted in a loss of at least $3 million, according to the Memphis trial testimony of Louis Peraino's New York bookkeeper-secretary.

"Knife" was produced and directed by Larry Spangler, who produced an independent movie titled "Chanel Solitaire," based on the early life of Coco Chanel. It was released in 1981.

Spangler was one of the first legitimate Hollywood producers to sign a multiple-picture contract with Bryanston. "But I never saw anyone from there," he said recently. "The deal that I made was via Steve Bono, who was my production manager on 'The Legend of Nigger Charlie' at Paramount."

"Knife" was filmed on location in Tucson. "The budget originally was $500,000," Spangler said. "But when somebody saw the dailies they said it really looks good, why not put a little more into it and make it better. So we got another $100,000 that we never asked for."

Bryanston made its mark in the movie business in 1974 by distributing other people's films.

The movie that put Bryanston on the Hollywood map was "Andy Warhol's 'Frankenstein.' " The X-rated 3-D horror spoof had been filmed in England with financing from Italian producer Carlo Ponti, the husband of actress Sophia Loren.

"Frankenstein" was shot back to back with "Andy Warhol's 'Dracula,' " using the same cast and crew, on a combined budget of about $600,000.

Bryanston acquired the U.S. distribution rights to the two films in 1974 for approximately $700,000, according to Paul Morrissey, who directed both pictures.

The executive producer of "Frankenstein" and "Dracula" was Englishman Andrew Braunsberg, whose recent producing credits include "Being There" (starring the late Peter Sellers), "The Postman Always Rings Twice" (Jack Nicholson and Jessica Lange)

and the upcoming "Lookin' to Get Out" (starring Jon Voight)—all from Lorimar Productions.

Braunsberg said he met brothers Louis and Joseph Peraino once in New York. "I saw they were extremely unusual people," he said. Describing the meeting as "very strange," the producer paused for a moment, then added, "It was hats and raincoats. They were just playing out a fantasy."

Braunsberg knew of the Perainos' involvement in "Deep Throat," but he didn't make the deal with them, he said: "I was just informed who was distributing."

The deal was made by a New York financier named Herbert Nitke, who purchased the U.S. distribution rights to "Frankenstein" and "Dracula" and sold the rights to Bryanston.

Nitke had produced "The Devil in Miss Jones," the second most famous porno movie. "Devil" was distributed via the Perainos' "Deep Throat" distribution system.

Braunsberg claimed to have no idea how much money the two Warhol movies made. "There are no books with these people (the Perainos)," he said.

In an April, 1975, article in Advertising Age, Bryanston's Ira Teller boasted that "Frankenstein" had grossed $25 million.

Bryanston's second box-office hit in 1974 was "Return of the Dragon," the last movie of the late kung-fu king Bruce Lee. Bryanston purchased the rights from National General Pictures, which was in the process of withdrawing from the motion picture business. The price was $300,000, paid to Hong Kong film financier Raymond Chow ("The Cannonball Run" and the upcoming "Megaforce," with producer Al Ruddy).

Then came "The Texas Chain Saw Massacre." The now classic cut-em-up was filmed in Austin, Tex., in the summer of 1973, at a cost of about $140,000. It was turned down for distribution by nearly every major studio in Hollywood and many of the minor ones. But legend has it that Louis Peraino screened only 10 minutes of "Chain Saw" before offering $225,000 up front for the worldwide distribution rights. Released in October, 1974, "Chain Saw" reportedly ran up a box-office gross of nearly $1 million during its first two weeks of release in Texas alone.

In all, Bryanston paid a little less than $1 million for the rights to the three independently produced movies ("Frankenstein," "Return of the Dragon," "Chain Saw"), which returned first-year" (1974) profits of "something like $11 million," according to Ira Teller.

"Bryanston Boffo," proclaimed the trade paper Variety in an October, 1974, article stating that the company had earned $20 million in film rentals during its first year of West Coast operations. "Take a gander at the Bryanston bonanza," Variety told its industry readers.

Though $20 million may sound like pocket change in comparison with the inflated figures floated around Hollywood these days, it was a substantial sum in 1974. For a small independent distributor in its rookie year, it was remarkable.

Considering the background of Bryanston's two top executives, brothers Louis and Joseph Peraino, it was astounding: Three years before, Louis (Butchie) Peraino had been producing 8-millimeter stag movies like "Sex U.S.A." with a former Brooklyn hairdresser named Gerard Damiano.

"You've got to remember that they really made a mark for themselves as an independent distributor," said Sidney Finger, one of the most respected and experienced accountants to the movie industry. As president of Solomon, Finger & Newman, Finger figures that he's overseen the auditing of "about 100 movies a year since 1963." He twice audited Bryanston's books, for Raymond Chow on "Return of the Dragon" and for the owners and producers of "The Texas Chain Saw Massacre." That could make him the foremost authority on Bryanston's earnings, outside of the Perainos themselves.

Said Finger, "There have been very few independent distributors—probably none over an extended period of time—that have really had an impact on the film distribution business. The majors control that.

"But these fellows apparently achieved what appeared to be substantial results in a very short time," Finger said. "That's the amazing thing—they made big deals out there."

Putting it in the perspective of the times, Finger explained, "Outside the majors, there really wasn't much of a game in town, and of the independents, Bryanston was obviously, I'd say more apparently successful than any of the others." Taking the producer's point of view, the accountant added. "If a major doesn't take your picture and you have to go somewhere else, you're going to go to what you perceive to be the best of the rest."

In early 1975, Bryanston appeared to be booming: Trade paper headlines heralded the company's every move—"Bryanston Promises 16 Film Releases as Moneymakers Next 18 Months" . . . "Return to Showmanship Theme at Bryanston."

Curiously, though Peraino and Bryanston were propelled to Hollywood by the profits from the most successful sex film in the history of cinema, "Deep Throat" was never mentioned in any of the news reports. There was no explanation how Louis Peraino came to be president of his own movie company.

Despite all the rumors and law enforcement intelligence reports to the contrary, Peraino and Bryanston possessed a public image in Hollywood that was as pure as new-fallen snow.

In January, 1975, Louis Peraino pledged Bryanston's support of an American Film Institute benefit called National Film Day, joining in sponsorship with the major studios—Paramount, 20th Century-Fox, United Artists, Disney and Warner Bros. In trade paper ads from AFI, Louis Peraino's name appeared alongside those of other major studios executives—accompanied by a letter of appreciation from an AFI supporter, President Gerald R. Ford.

In March, 1975, the Christian Science Monitor featured Peraino in an article titled "Movie Industry Draws New Kind of Tycoon." The article reported that Peraino was planning to make "more family-oriented pictures."

But Butchie Peraino never made his promised movie about the Pope. Barely a year after the hoopla, Bryanston was gone from Hollywood, its producing partners were out millions of dollars in profits and its president was bound for prison.

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[From the Calendar, June 27, 1982.]

FAMILY BUSINESS—EPISODE 3: "THE FALL"

(By Ellen Farley and William K. Knoedelseder, Jr.)

On Friday, May 30, 1975, a young man named Louis (Butchie) Peraino stood in a banquet room of the Beverly Wilshire Hotel addressing a crowd of 500 movie industry professionals—many of them theater owners flown in at Peraino's expense from around the country.

At 34, Peraino ran the hottest independent movie company in Hollywood. His fledgling Bryanston Distributors earned a reported $20 million on four box-office hits the year before.

Bryanston's impact could be measured that day by the notables of the panel that flanked Peraino as he spoke. On hand to plug their coming Bryanston movies: Al Ruddy, the Oscar-winning producer of the then-box-office record holder, "The Godfather"; Ralph Bakshi, the young director of two recent animated hits, "Fritz the Cat" and "Heavy Traffic"; producer Sandy Howard, who had scored such a success with "A Man Called Horse" (starring Richard Harris), and Sidney Beckerman, who'd recently produced "The River Niger" (starring Cicely Tyson and James Earl Jones).

"Lou was in heaven talking to all those producers," recalled Ira Teller, who was Bryanston's vice president of advertising and publicity at the time.

As it turned out, the Beverly Wilshire "exhibitors conference" marked the high point of Louis Peraino's extraordinary career as a Hollywood movie mogul.

But even as he basked in respectability at the Beverly Wilshire, the collapse was imminent.

He was under a federal indictment in Memphis—along with his father Anthony, uncle Joseph S. Peraino and Bryanston itself—for conspiring to distribute obscenity ("Deep Throat") across state lines.

Eleven months to the day later, the Perainos and company were convicted. One month after that, Bryanston folded its Hollywood movie operations, ingloriously owing nearly $750,000 in taxes and undetermined millions around the movie industry.

What really happened with Bryanston still is the subject of considerable speculation among former employees, producing partners and law-enforcement investigators.

The prevailing view in Hollywood is that the company was undone by the vaulting ambition of its president. Louis Peraino simply overreached. He tried to do too much too soon with too little knowledge of the business. He overextended his company and, like countless other independent distributors before him, went broke.

However, some law-enforcement officers take a darker view of Bryanston's abrupt departure from the legitimate movie business: It looks to me like a bust-out," said one West Coast investigator, referring to a classic maneuver whereby a company is taken over, milked for its cash income, then abandoned.

There are similarly conflicting views of Bryanston's president. In Hollywood, some remember him as oozing goodwill and *bonhomie:* "He took me and my wife out to dinner, one of the two or three times that we went out, and he was terrific," said producer, Marty Richards ("Fort Apache, The Bronx," the Broadway musical "Chicago"). "He was very much a gentleman, very jovial and he really knows how to order Italian food—it was sort of like an Italian banquet feast."

But Peraino's reputation in the world of porno movies, where he's spent most of his career, is anything but benign, according to one West Coast law-enforcement officer: "People are very scared of Louis Peraino," the investigator said. "A lot of people have told us of his strong-arm tactics in taking over other businesses."

Said the investigator, "A guy like Peraino doesn't have to say, 'I'm going to break your arm or break your nose,' because he's walking in there with a reputation you already know."

As president of Bryanston, Peraino resorted to threats of bodily harm during at least one business disagreement, according to the producer involved. And a law-enforcement intelligence report states that he once used a gun as a threat in an attempt to take over a music company. (More on those incidents later.)

It is generally believed in the movie business that Bryanston went bankrupt in 1976. But apparently it did not. Reporters found no record of such a filing in New York or California bankruptcy courts.

But the Hollywood view that Bryanston simply went broke for all the usual reasons is not without supporting evidence. For one thing, it seems certain that a substantial portion of the company's reported $20 million in 1974 earnings was eaten up by escalating overhead costs in 1975. In a little more than a year, Bryanston mushroomed from two offices (in New York and Los Angeles) and about 12 employees to more than 90 employees and offices in Dallas, Detroit, Atlanta, San Francisco, Washington, D.C., Chicago, Toronto, London and Rome.

Having made his mark quickly with low-budget X- and R-rated exploitation movies, Peraino led the company on an ambitious program of upgrading. He supposedly yearned to make family pictures.

At the same time, he launched an aggressive publicity campaign aimed at "establishing the company as a viable organization that exhibitors and producers should do business with," said Ira Teller. "The intent was to create an image, but whether it was an attempt to overcome past images, I don't know."

As Bryanston vice president of advertising and publicity, Teller helped to create the image. In April, 1975, for example, he represented Bryanston at a marketing seminar sponsored by the Eastman Kodak Co. during the Los Angeles International Film Exposition (Filmex).

Teller also served as company spokesman when Bryanston hosted a breakfast at ShoWest '75, an annual convention of movie-industry exhibitors and distributors held that year in San Diego.

An article in the trade magazine Box Office quoted Teller boasting of Bryanston, "No independent company in so short a time has put up so much money on good casts and good productions, with no studio overhead."

Bryanston's conference at the Beverly Wilshire was a pivotal event in the game plan for gaining industry recognition. Peraino spent a bundle on the two-day affair, picking up the tab for meals and accommodations, and even plane fare for many of the theater owners. "You would have thought it was Paramount Pictures," said Dallas-based movie distributor Fred Biersdorf, who attended the conference.

The stated purpose of the conference was to announce Bryanston's movie projects for the coming year—the first fruits of president Peraino's efforts to improve the company's product. The conference also was designed to present the company in a particularly positive light—with established producers sharing the stage with Louis Peraino.

"I'm sure Butchie asked me to come," said producer Ruddy, who was there with Ralph Bakshi to plug their coming Bryanston release called "Coonskin." "I know they wanted me there and Sandy Howard because we had names and some viability. It made them look important."

The trade paper Variety quoted producer Sidney Beckerman as telling the Beverly Wilshire audience. "We need as many Bryanstons as we can have."

Producer Howard had a two-picture deal with Bryanston. The company was co-financing and co-producing his "Echoes of a Summer," a PG-rated family drama starring Richard Harris, Lois Nettleton and newcomer Jodie Foster. Bryanston was fully financing and distributing "The Devil's Rain," a PG-rated horror film starring Ernest Borgnine as the devil incarnate, "who can control men's minds or melt their bodies," according to Bryanston promotional material.

Howard recalled how he first met Louis Peraino: "It was out here in Hollywood. He called me up and said, 'I'd like to introduce myself.' And he came in and sat down and we talked and I liked him. He was a straight fellow."

"Devil's Rain" was the first product of Bryanston's announced "Return to Showmanship" theme. With a budget of "under $2 million," according to Howard, the movie represented the company's most substantial single-project investment to that point.

It was also Bryanston's first movie boasting an "all-star cast." In addition to Borgnine, the film featured Eddie Albert, Keenan Wynn, William Shatner, Tom Skerritt, Ida Lupino and John Travolta, making his movie debut.

According to former Bryanston executives, Peraino was convinced that "Devil's Rain" would be a blockbuster. So the company heavily promoted the picture. "The most incredible ending of any motion picture ever," proclaimed newspaper ads. (The movie climaxes with the devil's disciples melting into puddles.)

Bryanston's pressbook on the movie bespoke a major publicity campaign: "We've got Ernie Borgnine, William Shatner, Ida Lupino, Keenan Wynn and High Priest of the Church of Satan, Anton LaVey, appearing on 'The Merv Griffin Show,' 'The Tonight Show,' 'Mike Douglas,' 'Kup Show,' 'Dinah Shore Show,' Hollywood Squares,' 'Dialing for Dollars,' 'Celebrity Sweepstakes' and the Sammy Davis Jr. (TV) specials."

But the movie wasn't a blockbuster. Rather, it was a modest success with a reported box-office gross of $6 million. In the light of Peraino's high hopes and considerable promotional expenses, former employees say, "The Devil's Rain" proved a major disappointment.

The second movie on Bryanston's 1975 summer release schedule was "Coonskin," an animated feature purported to be a biting satire on life in the black ghetto.

It had been financed by Paramount and produced by Ruddy. But the studio decided against distributing the movie when, after a preview screening at New York's Museum of Modern Art, a number of prominent black leaders denounced it as racist.

In an unusual maneuver, Paramount turned "Coonskin" over to Bryanston to distribute.

It's ironic that a Paramount-Ruddy project fell into the hands of a company with alleged connections to the Joseph Colombo Mafia family.

When Ruddy was preparing to produce "The Godfather" for Paramount in 1971, he personally negotiated with the late Joseph Colombo Sr., the head of the Brooklyn-based crime family. Colombo also was the founder of the Italian-American Civil Rights League, which had targeted the planned production as potentially defamatory to Italian-Americans.

Believe me, the league was very big in New York, as any FBI guy will tell you," Ruddy said. "The problem was, there were no overt threats but I couldn't get locations (for the shooting). So I called Joe Colombo and I told him I wanted to sit down and talk to him about it and he said fine. And that's how my relationship with him started out."

Ultimately, Ruddy appeared at a press conference with league officials to announce his decision to delete the words "Mafia" and "La Cosa Nostra" from the film, at the organization's request, Ruddy also attended a league testimonial dinner honoring Colombo as its man of the year.

In return, Ruddy said, "The league helped me in one enormous sense only, that suddenly any real resistance to the film faded." The organization helped find suitable homes to film in, but Ruddy denied that the league also assisted in casting character actors, as a league spokesman boasted in media stories at the time.

"Joe Colombo did ask once to have somebody put in the movie who was wrong for it," the producer remembered "He wanted a singing group and I said, 'Boy, it just won't work.' But it wasn't, 'Hey, if you don't use this, we're not going to help you out.' "

To law-enforcement officials, the league was a maddening paradox. Thousands of honest citizens supported the league's efforts to fight any association between their Italian roots and organized crime. On the other hand, the moving force behind the organization was a mobster (Colombo) who used the league to create an image of himself as a civic leader.

(In late 1971, Colombo was shot three times in the head during a league rally in Manhattan. He remained in a coma until his death in 1978.)

According to several police intelligence sources, Anthony Peraino was a buddy of Colombo. "He used to hang out with him at a real estate office in Brooklyn," said one investigator.

Producer Ruddy acknowledged that he'd heard rumors that the elder Perainos were connected with the Colombo crime family. "But I never heard that Butchie was a Colombo," he said.

"If you're asking me if there was any correlation at all between Butchie Peraino and the fact that I ever made a deal with Joe Colombo, not in the slightest," Ruddy said.

Ruddy drew a sharp distinction between Colombo and Peraino—in terms of style, at least. "Joe was quiet, very cool; if you didn't know who he was you'd say he was a regular businessman," Ruddy said. In contrast, "Butchie was straight out of 'Guys and Dolls,' a Damon Runyonesque character."

Regarding the "Coonskin" deal with Peraino's Bryanston, Ruddy said, "There is no relationship at all and no obligation on the part of Paramount toward anybody in organized crime." He pointed out that Paramount had squelched "the first deal I made" with the league, to hold a charity screening of "The Godfather" for a league-sponsored hospital.

"The last thing Charlie Bludhorn (the chairman of Paramount's parent corporation, Gulf & Western) could afford was even a suggestion of any kind of alliance—whether holy or unholy—with organized crime in any realm," Ruddy said.

Nonetheless, Paramount turned "Coonskin" over to Bryanston, according to

Ruddy, and on terms that were favorable to Louis Peraino's company.

Paramount had $1 million invested in the production of "Coonskin," and Ruddy had put up $300,000.

To acquire the finished film, said Ruddy, Bryanston paid no money up front—not to Paramount, nor to the producer. That is highly unusual, but, as Ruddy explained it, Paramount was eager to unload "Coonskin" because of adverse publicity associated with the production in the black community. "There were pickets in the lobby of the Gulf & Western building in New York for Christ's sake," he said.

Ruddy said that Paramount screened the film for Bryanston and made the preliminary arrangements for the distribution switch even before he was informed of the deal.

Ruddy could not recall who at Paramount made the decision, but "it was someone in distribution and obviously they all answer to (Paramount chairman) Barry Diller," he said. "It came back to me through my lawyer that if I OK'd the deal with Bryanston, Paramount would make it very attractive to us (Ruddy and director Bakshi)."

Responding to Ruddy's version of the "Coonskin" turnover, Diller said in an interview, "This corporation did not have any dealings with Bryanston. I never made the deal. When we chose not to distribute the film, we gave it back to him (Ruddy). I can't speak with absolute certainty about something that happened some years ago, but I know that this corporation did not make any arrangements with any other company other than as an accommodation to the producers."

(Ruddy stands by his story that Paramount chose Bryanston: "They were contractually obligated to distribute the movie so they were under some obligation to come up with a distributor," he said. "I know there were 20 guys over there scurrying around trying to find one, but it was probably someone very irrelevant who came up with Bryanston. It was no big gun," he said, hastening to add that none of the major studios wanted the movie anyway.)

Diller did not dispute Ruddy's claim that Bryanston put up no money to acquire "Coonskin," but, the Paramount chairman said, "We might have done that because we never expected to get anything out of it."

Paramount was still entitled to a share of Bryanston's distribution profits as the major financier of the film, but as it turned out no one made money from "Coonskin."

Despite considerable New York and Los Angeles press coverage of the racial controversy, the movie played in only a handful of theaters in three cities and did so poorly that Bryanston withdrew it after a few weeks.

Said publicist Ira Teller, "They thought they had another 'Godfather' with 'Coonskin,' because Al Ruddy told them they had another 'Godfather.' "

Like a number of his former Bryanston colleagues, Teller laid much of the blame for the company's ultimate collapse to Peraino's choice of pictures in 1975.

"In our second year, unfortunately, Hollywood invaded," Teller said. "A lot of producers came by and instead of just picking up (purchasing distribution rights) the company started producing, and they made a lot of mistakes.

"The turnaround really came when they started getting involved with more expensive films," Teller continued. "It didn't turn out well in terms of how they were produced, because they had no experience in the production end, and they gave to much latitude to producers who really needed to have more of an iron hand.

"All I knew was suddenly there were problems and the problems were basically internal—there wasn't any cash flow. Pictures were costing much more than they should have; a film that was budgeted at $800,000 suddenly went to $2 million," Teller said.

One veteran LAPD investigator put Teller's postulate in stronger words, opining that the Perainos were "picked clean" in Hollywood. "In two years, the deal makers out here had these guys talking to themselves," he said.

Producer Frank Avianca, a self-described "close friend" of Peraino, bristled at the notion: "Lou is not a dope; he's a bright young man," Avianca said.

Nonetheless, Avianca seemed to reinforce the view that Peraino was taken in by the ways and means of the movie business: "Here's a kid that hired people, that trusted people, that went around the Hollywood community and unfortunately hired a lot of phonies. When they heard Bryanston was in the money, then all of the grabbers come out of the woodwork. He was paying ridiculous salaries, believing in people, buying all the Hollywood baloney.

"I never saw a guy work harder than Lou. I can tell you that," Avianca went on. "He was like a *sponge*. He wanted to learn everything, but he wanted to *do* everything, and it was kind of hard. I remember a lot of people who worked with him would tell him, 'Hey, you know, Louie, Rome wasn't built in a day. Take your time.' "

According to Avianca, Bryanston cofinanced his European production of "The Human Factor" in exchange for the U.S. distribution rights. During filming in Naples, Rome and London, "Anything I asked for or wanted on that picture, I got," the producer said. "And I didn't get it from the European distributor, because they would say, 'Well, that's not necessary to have rockets and tanks.' I got it from Bryanston."

Actor George Kennedy, who starred in "The Human Factor" along with John Mills, said that he vaguely recalled that Louis and Joseph Peraino visited the movie set in Naples. He said that he'd never heard anything about any alleged connections with organized crime. But the actor didn't seem surprised by the reporter's line of questioning: "Look at Hollywood today and some of the studio heads," he said. "As a performer, there's no guarantee that if you're working for any studio, you're working for a bunch of saints."

According to producer Avianca, with advertising costs and "a minimum 200 prints," Bryanston spent about $2.5 million on "The Human Factor." Despite some favorable reviews, the movie flopped in the United States.

"That's the film that really killed us, the last hopeful blockbuster," said Bryanston's former Midwest division manager, Jack Dione. "If 'Human Factor' would have worked, I think the company might still be in business," he said.

Many former employees and producing partners contend that Bryanston was done in by big losses on its 1975 movie releases. But the numbers don't add up.

Consider Bryanston's three big hits of 1974—"Andy Warhol's Frankenstein," "The Texas Chain Saw Massacre" and "Return of the Dragon."

According to the estimates of several former Bryanston executives, "Frankenstein" grossed at least $20 million at the box office between 1974 and 1976.

"Chain Saw" also grossed "around $20 million" in the United States, estimated former Bryanston controller Stanley Bogest. In addition, "Chain Saw" earned "something like $4 million or $5 million" overseas, said Robert Meyers, then Bryanston's foreign sales agent.

"Return of the Dragon" did even better than the other two—it was Bryanston's most successful film, according to Bogest and accountant Sidney Finger, who audited the company's books for the producers of "Dragon" and "Chain Saw."

Figuring a minimum of $20 million for "Dragon," it adds up to a total gross of at least $65 million over a two-year period—from three movies acquired for a total of less than $1 million.

Figuring in advertising and promotion costs—a big campaign cost $250,000, according to former advertising vice president Teller—Bryanston could have earned as much as $30 million from those three movies.

Meanwhile, Bryanston's losses on its 1975 releases don't seem to approach the $30-million figure.

For example, the company had only $2.5 million in "The Human Factor," according to producer Avianca. In the case of "Coonskin," producer Ruddy commented, "What did the film cost them? Nothing. I doubt if they had $100,000 (advertising and distribution expenses) in it." And the production budget for "The Devil's Rain" was less than $2 million, according to producer Howard, who claims that the movie was "extremely profitable."

"It didn't make money because it introduced Tavolta, but it made money later on (in re-release) because he was in it.

"Unfortunately," Howard said, "the problems at Bryanston began very quickly and, as a result, we did not get the money. We were paid for making the movie, but we never got our participation in the profits."

"Bryanston wasn't killed by legitimate producers, but by the amateurs." Howard went on. "Lou put all his relatives and best friends from Brooklyn to work. Bryanston was so disorganized and became so big so fast in so many stupid directions. It was a Marx Brothers movie. If it weren't sad that people lost their money, it would be funny.

"In this case the Marx Brothers were all the buddies from Brooklyn, men who came out here to turn out movies who didn't have a clue of how to make a motion picture," Howard continued, in a joshing vein. "And I told Lou, when I heard about this, I said, 'You're crazy. Do not let anyone whose last name ends in "o" produce a movie.'"

"I didn't know who Bryanston was, and I still don't," said "Devil's Rain" star Ernest Borgnine. "All I know is that somehow or other, they owed me money, in terms of profit, and I never got paid. The picture comes out on a regular basis. It supposedly made quite a lot of money and I never get any residuals."

Even by Hollywood standards, Bryanston had a poor record of paying the profit participants in its profitable movies. The company defaulted on profit payments on all of its 1974 hits, according to the movies' owners and producers.

In January, 1975, for instance, "Return of the Dragon" producer Raymond Chow received a check from Bryanston for $138,000—his stated share of the film's profits for the period ending Dec. 31, 1974.

But the check bounced. So did Bryanston's replacement check a month later. Chow's company, Golden Films, filed suit in New York against Bryanston for "failure to make good on the check and failure to file a current earnings statement." That was in May, 1975—the month that Louis Peraino propounded on Bryanston's bright future at the Beverly Wilshire.

According to court papers from the suit, the audit of Bryanston's books indicated that Bryanston had under-reported (to Golden Films) "Return of the Dragon" revenues by more than $2 million.

At a hearing in June, 1975, New York district Court Judge Inzer B. Wyatt rebuked Bryanston's attorney for the company's continued failure to make good on the $138,000 check.

The attorney argued that Bryanston was a "solvent, growing company, your Honor." The judge shot back, "No, I think it's a deadbeat. I think it's a no-good deadbeat on the papers presented to me.

"Prima facie, there is a cause of action for conversion, and there is a cause of action for fraud," the judge went on, adding, "Now remember that according to the (distribution) agreement this picture belongs to this plaintiff (Golden Films), it doesn't belong to your client."

When Bryanston went out of business in late 1976, attorneys for Chow were still trying to collect on the film.

The owners and producers of "Chain Saw" have a similar tale to tell. The "Chain Saw" backers, a group of good-ol'-boy businessmen and politicians from Austin, Tex., sued Bryanston in May, 1976. Their movie had grossed an estimated $25 million (conservatively) at the international box office. But Bryanston's financial reports defined the Texans' 35% share of profits to be $5,734.

As president of his own accounting firm specializing in movies, Sidney Finger figures he's audited "about 100 movies a year since 1963." Still, he had no trouble recalling Bryanston.

Finger remembered that the "Chain Saw" audit had been "as much of a horror story as the movie." For instance, midway through the audit Finger reported to his "Chain Saw" clients that Bryanston "couldn't provide us with a picture-by-picture breakdown of film rentals billed."

In the world of independent distribution, Finger explained, "Virtually every picture is going to be represented by some independent producer or other profit participant. That's the way these fellas (brothers Louis and Joseph Peraino) went into business" (by distributing other people's movies).

"So you have to gear your books so that you can segregate on a picture-by-picture basis," Finger said. "And we found that Bryanston's books and accounting were just totally inadequate for reporting to profit participants.

"You would think that since Bryanston did prepare financial reports then they would be able to indicate to you exactly how they got those numbers together," Finger said, sounding incredulous. "But they couldn't. I never knew how in the world they got those numbers together."

Appearances rarely reflect reality in Hollywood—almost by definition. Not surprisingly then, the company's underlying financial difficulties were not reported by the entertainment press at the time. What's puzzling, however, is this: Louis Peraino and Bryanston were propelled into Hollywood by the phenomenal profits of the most successful sex film in the history of cinema. His involvement in "Deep Throat" was widely known in the industry. And yet "Deep Throat" was never mentioned in numerous articles about the company's meteoric rise.

(The Times mentioned Bryanston and its president only once, in a five-paragraph item in Film Clips in November 1974. It reported the company's success with the Andy Warhol-titled movies and described Louis Peraino as "a New York financier.")

But on Oct. 12, 1975, Bryanston received a bruising blow to its carefully polished public image. On that day, the New York Times published a front-page article headlined "Organized Crime Reaps Huge Profits From Dealing in Pornographic Films."

Written by investigative reporter Nicholas Gage, the article was a detailed report on the Mob's move into the U.S. pornography industry. Citing the success of "Deep Throat" ("roughly $25 million") Gage wrote that brothers Anthony and Joseph S. Peraino were the "most successful of all Mafia figures involved in the production and distribution of pornographic films."

"Moreover," the article stated, "the great success of these pornographic films has given several porno movie makers with Mafia connections the money to go into the production and distribution of legitimate films."

In the final two paragraphs it was noted that "Louis Peraino has used profits from 'Deep Throat' to help establish a company called Bryanston Distributors, which has become a major distributor of legitimate motion pictures."

The article concluded, "A spokesman for Louis Peraino insisted that neither his father Anthony nor his uncle Joseph is in any way involved with Bryanston."

A day later, a similar report was published by the New York Post, headlined "How the Mob Moved Into Times Square." But unlike the Times, the Post directly linked Louis Peraino to the Mafia, identifying him as a "reputed" member of the Colombo crime family.

According to former Bryanston publicist Patty Zimmerman, the company's Beverely Hills office didn't receive a single inquiry from the West Coast media following the New York newspaper articles

Neither does it appear that the articles' provocative allegations caused much of a stir among Bryanston employees. Former sales manager Mitch Blum recalled the newspaper reports as "just all the rumors that had gone around (the company) before that."

"I never read the article," said former Atlanta branch manager Kathy Sain. "I'm sure people brought it up to me but as far as I was concerned it didn't affect the job I was doing. It was something in their (the Perainos') past that was neither here nor there as far as I was concerned."

According to producer Frank Avianca, the articles had a devasting effect by Bryanston and Louis Peraino. "Especially the way the Post did the story," Avianca said. "The way the Post did they might as well have tied the kid's hands and cut his throat.

"Suddenly all the exhibitors were not so quick to want to book his product," Avianca explained. "And the advertising people and so forth suddenly wanted cash payment instead of a co-op or credit-type thing. And I don't think Lou ever got over it. I don't think he ever got over it."

Two months after the New York articles Variety published a long and largely upbeat report on Bryanston from the perspective of its president. 'Times have been rough,' Peraino told Variety in his New York office, "but nothing we can't overcome.' "

The article made no mention of "Deep Throat," the coming trial or the recent newspaper allegations. Instead, the trade paper revealed that the company was opening four more regional sales offices.

In addition, the article reported that "Peraino revealed Bryanston participation in an approximately $30 million slate of 14-18 pix (movies), 75% of which are budgeted between $750,000 and $1.25 million, plus four pix between $3.5 million and $6 million."

Peraino's rosy revelations were in stark contrast with reality, however. At the same time that Bryanston supposedly had $30 million to invest in 1976 production, the company was seriously in arrears to film labs, ad agencies and exhibitors and even was behind in rent at one branch office, according to a number of employees. Lawsuits were piling up.

But it seems that the worse things got at Bryanston, the more audacious Louis Peraino grew in his efforts to put a positive light on things. During the company's final months, there were announcements and full-page trade-paper ads claiming that Bryanston would distribute "The Greek Tycoon" and produce "Fort Apache, The Bronx."

"The Greek Tycoon," starring Anthony Quinn as an Aristotle Onassis-type character and Jacquiline Bisset in the role modeled after Jacqueline Kennedy Onassis, was ultimately released in 1978 by Universal Studies.

"Fort Apache," which starred Paul Newman and Edward Asner, reached the screen in 1981 as a Time-Life Films project released by 20th Century-Fox.

According to the producers of both films, the only money Bryanston ever invested in their projects was the cost of the ads.

"Tycoon" producer Nicos Mastorakis recalled, "He (Peraino) offered to put up half the budget for the movie, around $3.5 million, in exchange for the U.S. distribution rights. So I said, 'Fine, we'll talk about it.'

"We had no agreement, no arrangement and they took out a trade-paper advertisement announcing they would distribute my picture in the States," the producer went on. As soon as that happened, he said, "I was swarmed with phone calls from all over the world from people I knew and had dealt with. They said, 'What the hell are you doing with Bryanston? Don't you know they're a Mafia outlet or whatever?' "

The "Fort Apache" ads claimed that Bryanston would begin filming the production two months later, in May of 1976.

The ads actually were a ploy to raise money to get the project started, explained "Fort Apache" producer Marty Richards.

The trade papers' positive coverage of Bryanston reached its peak in January, 1976, in a Variety article headlined "Bryanston Expanding Its Operations." The article reported that the company had launched a London production operation called Swadevale Inc., with an initial investment of about $250,000.

"The Bryanston operation is seeking out producers and talent who may have the idea but lack either the capital or the deal," the article said. "Company appears willing to look at anything beyond the fringe and take chances accordingly."

But back to reality. At the same time, Bryanston was trying to raise money to pay its bills by selling or bartering the distribution rights to its already released movies—in

some cases without the knowledge of the films' owners and producers.

In the case of "The Texas Chain Saw Massacre," for example, Peraino assigned the movie's U.S. distribution rights to another distributor to cancel a $10,000 debt. The owners and producers of "Chain Saw" were unaware of the transfer of rights until after the fact.

Sandy Howard said that he learned about Bryanston selling off its movies just as the producer was finishing his second picture for the company, "Echoes of a Summer." Because Howard and his producing partners (including star Richard Harris) had about $750,000 of their own money invested in the project. Howard said, "I refused to turn it over to Bryanston until there was an understanding that it would not be bartered."

"Incredibly enough," Howard said, his refusal resulted in a threatening phone call while he was in Greece, where he was on location with another movie. Howard declined to be specific about the phone call, but "I did feel a certain amount of hot Sicilian breath on my neck," he said. "Let's say my nose was being threatened, and my ears, etc."

The producer didn't report the threat to authorities, he said, "because I felt it was just a performance." Instead, Howard decided on a trip to New York for a face-to-face discussion with Louis Peraino.

Howard jauntily recalled the showdown "on Brooklyn's Avenue M with Lou plus some of his people who, let's say, were not necessarily motion picture makers, who might have been better suited to another job."

"The funniest part about it," he related, "was I had an associate from California with me and we were talking about the situation on the way there. When we got out of the cab (at Peraino's residence), I asked the taxi driver, 'Would you mind waiting?' and he said, 'There's no damn way, mister. I've been listening to you,' and he drove off.

"We walked in and it was pitch black except for one light at the very end, and there were a couple of fellows sitting on either side of the room. My companion nearly had a heart attack and my heart was pounding a little too. It was really a scene right out of 'The Godfather.' I'm not exaggerting."

Then, Howard said, "A little girl came running out of the kitchen into my arms, one of Lou's youngest daughters. All during negotiations I hung onto her like she was my blanket. She was just adorable. We were negotiating—I didn't know if it was for my picture or my life," he joked—"and the little girl kept kissing me and calling me 'Uncle Sandy'."

The upshot was that Howard was able to buy back his picture from Bryanston.

Surprisingly, Howard stressed that "the bottom line is they (Peraino and Bryanston) were wonderful. They handled themselves like gentlemen all the way. I have never fould Lou Peraino or his people to be dishonest. He only was unfair when he got into trouble.

"I came out smelling like a rose," Howard said. "When he (Peraino) was being sued by a lot of people, I unfortunately got involved against my desire, because they knew I had influence with Lou because he liked me. I had to call him in a number of cases to get certain information, but"—he noted with a chuckle—"all of the (Bryanston) documents and all of the files are somewhere in the East River."

Over the years, the producer said, "When I knew that Lou was having a bad time, his wife was ill and they have 9 or 10 kids and so on, I called on several occasions to see how everything was. I'd say, 'Good luck, keep your chin up, it's happened to us all.' "

On March 1, 1976, Louis Peraino and Bryanston went on trial in Memphis, along with father Anthony and uncle Joseph S. Peraino. They were charged with conspiring to distribute obscenity ("Deep Throat") across state lines. At one point during the trial, as if to establish Louis Peraino's merit as a solid businessman, a defense attorney told the court that "William Gallagher, the (former) president of MCA Music" worked for Bryanston. (Gallagher, who says he was a consultant and not an employee, launched Bryan Records, the company's music subsidiary.)

On April 30, Bryanston and all three Perainos were convicted. (The conviction of Joseph S. was later overturned, and, in a retrial, he was acquitted.) Within a month, Bryanston had all but ceased operations.

"I never could understand why the company closed," said one former branch employee. "We had such good product and we were doing so well. It came as a big shock to us. They just padlocked the doors one day."

"This was not a case where they were suddenly in desperate trouble," said Dave Friedman, president of TVX, one of the country's most successful distributors of adult film fare. "Bryanston had movies that were making money hand over fist, one right after another. They had a couple of dogs, but nothing that they spent a lot of money on, nothing they couldn't have overcome with the profits from the others.

"That's the funny thing," Friedman went on. "I've seen companies with not even half of what Bryanston had survive a couple of bad pictures. That's the mystery of the story."

One school of thought has it that Bryanston closed because of "the Memphis heat." In order to prove Bryanston's association with "Deep Throat" money—as the parent corporation of a string of porn-film subsidiaries run by Anthony and Joseph S. Peraino—the U.S. attorney in Memphis put together his case with the help of intelligence agents from the IRS, the FBI and organized-crime strike forces in Miami and Brooklyn.

The Bryanston management point of view was put forward in a June 3 Variety headline: "Peraino Attributes Bryanston Woes to 'Deep' Conviction."

"Who did the government really hurt?" Louis Peraino was quoted as saying. "They prosecute me because I'm Italian, because, as my father (Anthony) says, they wanted to get back at him, and the people who suffer are the people I had to let go."

Reflecting on Peraino's comment in a recent interview, Teller noted, "The sins of the father don't always have to be visited on the son, but that's unfortunately the way things happen.

"I felt that Lou Peraino, aside from his family, that he himself was interested in making this thing work on its own," Teller continued. "He was always very nice to me and very fair to me. And as far as I could see, in all his business dealings, he was trying to operate the company very legitimately. His father and his family were something else again, but we rarely if ever saw anybody on that side."

Al Ruddy shrugged off the collapse of Bryanston: "This town has tended to chew up guys like that (Louis Peraino), who come into town with a quick hit or with millions of dollars.

"The fact that Bryanston didn't last long is prototypical of what generally happens. At the Beverly Wilshire (exhibitors' conference), when I saw Sandy Howard there with 'Rain of Terror' ("The Devil's Rain") and I won't even mention Frank Avianca's picture ("The Human Factor"), I looked around the room and saw dollar bills with wings on them flying out the window.

"Hollywood is a true economic democracy," Ruddy went on. "And I guarantee you that on the bottom line they didn't get Hollywood's money. Hollywood got *their* money."

In August, 1976, Louis Peraino made his last public statement to the movie industry, in the pages of Variety: "Don't worry about it," the quote said. "I can't say more until after the ("Deep Throat") sentencing, but I'll be back in business."

Peraino was back in the legitimate entertainment industry a year later, only this time it was the music business and his approach, as described in police files, was straight out of a gangster movie.

Based on information received from LAPD investigators, a September, 1977, intelligence memo alleges that Peraino loaned $50,000 to the owner of a Los Angeles-based music company in return for a 40% interest.

The memo states that, "Two weeks later, Peraino appeared at the (music company) office and he carried an envelope which contained a revolver and a document naming Peraino sole owner of the company, which he placed on the desk.

"Upon seeing the revolver," the memo goes on, a partner in the company "signed the document and went into hiding with stock certificates."

According to the intelligence memo, Peraino's $50,000 loan was in the form of a check drawn on a bank in Panama. The check "subsequently bounced."

According to an intelligence source involved in the investigation, "As this whole operation was developing, the company obtained a record contract in the $1.5 to $2 million range. Lou ended up owning the company, but after the company was obtained, it was painfully clear that no one had the expertise to follow through on the contracts. Therefore it was operated on a different level. It was a typical bust-out (Meaning the company was "Milked" for its funds) and it went under in a relatively short period of time."

Louis Peraino continued to make millions through the distribution of "Deep Throat" and other pornographic films. In 1978, to capitalize on the lucrative cassette market, he and brother Joseph C. Peraino established Arrow Film & Video with offices in New York City and Van Nuys.

The brothers were arrested in 1980 as part of the FBIs Miporn (code name for Miami pronography) case and charged with conspiring to distribute obscenity across state lines. Louis Peraino's alleged use of strong-arm tactics became public record when an LAPD administrative vice officer testified to his character at the Miporn trial last December.

The officer, Sgt. Joseph Ganley, testified that on two occasions in 1979, Peraino threatened the owners of Los Angeles-area porn film companies with "bodily harm" if the owners continued to reproduce and sell prints of "Deep Throat" without paying the royalties demanded by Peraino. (One of the owners, however, contradicted the officer; he testified that he wasn't threatened.)

The Perainos are appealing their convictions in the Miporn case. Louis was sen-

tenced to six years in prison and his brother to three for interstate shipment of hard-core videocassettes titled "Liquid Lips," "Candy Stripers" and "Hollywood Cowboy."

Louis Peraino's conviction for such low-life film fare marked how far he had fallen since the days of the Beverly Wilshire conference.

One NYPD investigator involved with the 1980 arrests that led to the Miami convictions seemed genuinely surprised to hear that Butchie Peraino once had been a rich and famous Hollywood movie mogul.

"Is that right?" the police officer responded. "Well, he was in his undershirt when I put him in jail."

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BUTCHIE, THE MOGUL

With Bryanston, Louis Peraino built a bridge between two very different worlds. Raised in Brooklyn, nicknamed "Butchie," he was the second son in a tightly knit Italian-American family whose men had a long history of alleged membership in the Mafia—his grandfather, great uncle, father and uncle.

While still in his early 20s, Butchie was introduced to the porno movie business by his father, Anthony (Big Tony) Peraino, a reputed "made" (officially initiated) member of the Joseph Colombo Mafia family.

At 26, the son owned a film processing plant in Brooklyn called All-State Film Labs, which law enforcement investigators say was a Colombo operation that played a pioneering role in the Mafia's move into the porno movie business in the late 1960s.

In 1972, father and son financed the production of "Deep Throat." They invested $22,000 and became millionaires.

Louis used his share of "Deep Throat" profits to finance his entry into the legitimate Hollywood movie business via Bryanston. But his father Anthony was described as the "owner" of Bryanston by several law-enforcement sources, leading the California Department of Justice to state in a 1976 confidential intelligence report, "It appears that Bryanston coordinates the nationwide distribution of full-length films for organized crime."

Today Louis Peraino is in federal prison on the Memphis "Deep Throat" conviction. Along with his brother (and Bryanston executive vice president) Joseph C. Peraino, Louis faces another prison term for a subsequent obscenity conviction. His father Anthony is serving a 75-day sentence for his "Deep Throat conviction (he's in a halfway house in Los Angeles and scheduled for release this week) and faces another six months in prison for a bail-jumping conviction. Louis' uncle, Joseph S. Peraino, is recovering from buckshot wounds received in a January assassination attempt that claimed the life of his son (Louis' cousin—Joseph Carmine).

E.F. and W.K.K. Jr.

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HOLLYWOOD AS LAUNDROMAT

Organized crime long has been attracted to movie investments, law-enforcement officials say. In addition to potential high returns and attendant show-business glamour, movie investments offer criminals one of the best ways known to conceal the source of ill-gotten income.

It's called "laundering," the process of legitimizing illegally obtained money. Since banks are required by law to report to the IRS all cash transactions in excess of $10,000, the immense profits of organized crime simply cannot be deposited in the bank.

In 1931, the legendary mobster Al Capone went to prison for 11 years, not for bootlegging, bookmaking or murder but for tax evasion. He piled up vast sums of money and couldn't find ways to hide it from the IRS.

The principal way that organized crime has learned to clean up its money is by passing it through legitimate businesses, preferably largely cash businesses, such as restaurants and bars, where receipts easily can be overstated or understated, depending on the need.

Neither the Los Angeles office of the FBI nor the California Department of Justice ever investigated Bryanston's dealings in the legitimate movie business, according to spokesmen for the agencies. However, one Los Angeles-based FBI agent said that he has been involved in investigations of various other activities of Louis Peraino "on and off for the last 10 years."

When Anthony Peraino paid a visit to Los Angeles on one occasion in 1974, eight undercover FBI agents were tailing him around town. During the 36-hour period, Anthony went to Bryanston's Beverly Hills office twice.

Asked why the FBI agents would follow Anthony Peraino, an alleged "made" (officially initiated) Mafia man, to the door of Bryanston's office, but not look inside so to speak, another FBI agent sighed, "Because nobody here felt there was sufficient prosecutive value in pursuing it." Said the agent, "It comes down to a question of 'Does this present a case that the U.S. Attorney is willing to prosecute?' "

"If you find that, in general, the people who should be your witnesses are not willing to give you the sweat off their brow, then you realize that you are faced with a situation where there is a community acceptance of a set of standards that might be offensive in some areas, but not here," the agent said.

"And we have to look at it that way, just like we look at pornography, based on community standards. Unfortunately, we have a set of standards about how to finance motion pictures in Hollywood that is incredibly lax."

The agent spoke with undisguised bitterness about what he claimed is Hollywood's casual attitude toward organized crime. "In the last 10 years or so, we've made six or seven efforts to try to ferret out allegations of organized crime in the movie business. And we got zero support from the industry," the agent said.

"They don't view it as a threat. It's good money to them. It's a way of life, condoned, even embraced. Nobody wants to expose it."

—E.F. and W.K.K., Jr.

[From the Parade, Aug. 19, 1979]

THE BIG BUSINESS OF SELLING SMUT

(By Michael Satchell)

Mention pornography to the average person, and names like Larry Flynt, publisher of Hustler magazine, and Al Goldstein, publisher of Screw magazine, spring to mind. But in the sleazy world of hardcore smut—a fantastically profitable nationwide conglomeration of adult bookstores, peep shows, movie theaters and live-sex emporiums—the names that really count are those like Reuben Sturman, Mickey Zaffarano and Debe DeBernardo.

Few outsiders have ever heard of Sturman, a self-made millionaire who resides in splendor in a Tudor mansion in Shaker Heights, Ohio.

Sturman, the undisputed Prince of Porn, is a man mindful of the civic responsibilities and philanthropy expected of prosperous persons. His prominence secured him a seat on the 1976 inaugural flight of the Air France Concorde to Paris, where he was to dine with French President Valéry Giscard d'Estaing. He didn't make the trip, however, because a federal judge refused him permission to leave the U.S. He was under federal indictment.

Law-enforcement authorities have identified the secretive, publicity-hating mogul as the biggest, most successful pornographer in the country—and probably in the world.

A PARADE investigation of the nation's hard-core pornography industry—aided by access to confidential reports from the FBI, Justice Department and other agencies—reveals an upper echelon of five men who control a major portion of the industry.

Below this group is a second level of two dozen major porn merchants who also produce, import and distribute a veritable "pornucopia" of 8mm. stag films, full-length 16 and 35mm. X-rated motion pictures, books, magazines, rubber goods, "marital aids" and—the newest trend—video cassettes that allow you to watch movies like Deep Throat on your TV.

The porn industry is infested by organized crime, particularly in wholesaling and distribution. Two of the five top leaders, Zaffarano and DiBernardo, have been described in federal and state organized crime reports as members of La Cosa Nostra, and mobsters are known to reap vast profits from involvement in the industry or from extortion, pirating films, skimming cash, and payoff agreements under which independent porn merchants pay financial tribute to operate in certain areas. The following are the nation's leading porn merchants, all of whom refused Parade requests to be interviewed:

Sturman, 54, is easily the biggest national porn dealer. From his Sovereign News Company headquarters in Cleveland—a three-story, redbrick, fortress-like warehouse bristling with television cameras, chain-link fences and barbed wire—Sturman controls a porn import, export and distribution empire that authorities say reaches into all 50 states, the District of Columbia and 40 foreign countries.

Michael (Mickey) Zaffarano. 56, of Wantagh, Long Island, N.Y., is described as a caporegime (captain) in the crime family of Joseph Bonanno and the late Carmine Galante. Zaffarano is considered the nation's major distributor of 16 and 35 mm. adult motion pictures. He owns or has financial interests in adult movie houses in Washington, D.C., New York, Boston and San Francisco, and exports 8 mm, porn movies to Japan. The FBI says he has been involved in numerous shakedowns and extortions of West Coast porn dealers and is an arbiter in territorial and other disputes involving the mob's porn interests, His main business affiliation is Stu Segall Associates, with offices on Broadway in New York, and in Hollywood.

Michael George Thevis, 47, of Atlanta, Ga., enjoyed the premier position in the industry until eclipsed by Sturman's ever-expanding empire. Unlike the secretive Sturman. Thevis flaunted his wealth and position in a vain effort to buy respectability.

Thevis is presently charged with a series of crimes including arson, racketeering and at least two murders—one victim a witness due to testify against him in an earlier homicide case. Although he is incarcerated in the Atlanta federal penitentiary, authorities believe he retains control of his porn business through a subordinate.

Harry Virgil Mohney, 37, of Durand, Mich., a town near Flint, is said to control the third-largest production and distribution network, after Sturman and Thevis, and to be a major importer of European pornography. His Midwestern holdings have included 60 adult bookstores, plus massage parlors, adult theaters and drive-in movies, go-go parlors, and even a topless billiard parlor. Mohney shares Sturman's passion for privacy.

Robert (Debe) DiBernardo, 42, of Hewlett Harbor, Long Island, described as a soldier in the Simone (Sam the Plumber) DeCavalcante organized crime family of New Jersey, runs Star Distributors Inc. of New York, the largest porn wholesaler on the East Coast, with facilities for film processing, printing and publishing. DiBernardo was running an automobile wheel alignment company in Brooklyn in the late 1960's when he suddenly turned up as head of Star Distributors, then a failing business. Large infusions of cash followed his arrival, and Star became a major porn distributor. Authorities have documented business connections between DiBernardo and the Sturman, Thevis and Mohney operations.

No one has been able to measure accurately the size of the U.S. porn industry, although everyone agrees it is very big—and profitable. In a study last year, the FBI estimated that Americans spend $2.4 billion on hard-core erotica. The California Department of Justice believes the annual gross to be around $4 billion.

Top money-maker is the automated peep shows, a small private booth in which a quarter dropped in a slot will bring two minutes of filmed sex. A raid on Stuman's warehouse yielded records indicating his peep-show operations were bringing in $6,000 a day—all in quarters.

X-rated books and magazines that cost 50 cents to produce retail for between $5 and $10. The 15-minute 8 mm. movies wholesale for $3 and retail in this country for $20, and Michael Zaffarano is said to have a thriving business selling these in Japan, where they go for $250 each.

Full-length 35 mm. motion pictures may cost up to $150,000 to produce and will generally return two or three times that amount. Porn film makers have tried without success to repeat the biggest blockbuster in porn history, Deep Throat, which cost only $25,000 to make and which has reportedly grossed $50 million worldwide.

By some estimates, rubber goods and "marital aids" could gross $100 million this year, and erotica aficionados are expected to spend a similar amount on home video cassettes.

Observers also see pornography becoming increasingly available outside of the traditional downtown adult entertainment districts. Hardcore feature-length movies are now shown at many suburban theaters.

The sex industry has come a long way since the early 1960s, when legal pornography was confined to soft-core sex materials in back-alley bookstores and "art" movie theaters.

A series of decisions by the U.S Supreme Court and changes in public attitudes during the so-called "sexual revolution" opened the doors to hard-core pornograpy, gradually wearing down the old barriers.

Not until child pornography began appearing on the nation's adult bookshelves and peep-show screens did the public and Congress show outrage. Today, kiddie porn has all but disappeared from public view, although it flourishes undergound.

Reuben Sturman's rise from comic book salesman—he literally peddled them from the backseat of his car—to smut sultan typifies the experience of many of this cohorts, just as his business methods are a model for the successful porn enterpreneur.

By keeping a low profile, hiding his involvement in a tangle of coroporate legal spaghetti, and maintaining an expensive battery of lawyers skilled in First Amendment (free speech) and Fourth Amendment (illegal search and seizure) issues, Sturman has managed to become the nation's premier porn merchant while being acquitted in six major prosecutions.

One of the biggest difficulties prosecutors face when tackling porn entrepreneurs—apart from the confusion over what is legally obscene—is proving ownership of companies. The porn moguls hide behind phony corporations, constantly change the names of their companies, use false names for corporate officers and names of real people without their consent, or operate their porn businesses as subsidiaries of legitimate corporations.

Following major investigations and a raid on the Sovereign News warehouse, officials determined in 1976 from examining Sturman's records that he owned two warehouses in Cleveland; major porn warehouses in Baltimore, Philadelphia, Chicago, Pittsburgh, Denver, Milwaukee, Buffalo, Toronto, Los Angeles and Detroit; and up to 300 bookstores and peep-show operations.

He also owns a controlling interest, authorities say, in the sexual rubber goods industry, marketed nationwide under the "Doc Johnson" trade name. Three years ago, his annual take was estimated at $20 million; today, his gross is reportedly larger.

How has Sturman, son of a Russian immigrant and neighborhood grocer, been able to build such an empire? While authorities say Sturman is not a member of an organized crime family, he has close ties. An FBI report sets forth Sturman's methods: "Have included the strong-arm shakedowns of other dealers, distributors and suppliers throughout the United States, particularly on the West Coast. Sturman has accomplished almost a total takeover with the assistance of Robert DiBernardo."

Apathy toward porn stems mostly from a widespread public attitude that it is a victimless crime—like gambling or prostitution—and that police resources are better used in other areas. Many state and local ordinances are ineffective, sentences are light, and the huge financial rewards far outweigh the risks.

The FBI points out that in addition to being a major source of finance for the mob, pornography may have a direct relationship to sex crimes. "In one large Western city," an agency report states, "the vice squad advised that 72 percent of the individuals arrested for rape and child-related sexual offenses had in their possession some type of pornographic material."

Anti-porn crusaders—from church groups to local prosecutors to feminist organizations—cite such studies as ammunition for their cause, but it's an uphill battle. Court decisions have made it clear that, in effect, pornography is no longer illegal and prosecution is not to be feared.

Reuben Sturman's lawyers have successfully defended him in six obscenity prosecutions, including two massive efforts by the federal government to put him behind bars and out of business.

Later this year, prosecutors in Boston and Pittsburgh will have a crack at convicting Sturman. But even if local juries find him guilty of peddling smut, it's likely he'll win on appeal.

Said a pessimistic Cleveland law-enforcement officer who has spent years trying to nail Sturman: "It's pointless to waste more time on these cases until the Supreme Court comes up with some decent guidelines. The fact is that with all the recent court decisions, Reuben Sturman is a legitimate businessman operating within the confines of the First Amendment. He prides himself on that."

THE X-RATED ECONOMY

(Pornography is older than the erotic frescoes of Pompeii or the orgiastic temple carvings of Khajuraho. It thrived underground in Victorian England and still does in Communist Russia. What is new is that it has become big business in the U.S. in the eighth decade of the 20th century.)

(By James Cook)

In an earlier time, the indictment handed up against 55-year-old Michael Zaffarano would have been an open and shut case. Owner and operator of the D.C. Playhouse, a plush "adult" movie house only two blocks from the White House, Zaffarano had shipped in from New York and California six motion pictures bearing such titles as Anyone But My Husband and Linda Lovelace Meets Miss Jones. The federal government charged that in so doing Zaffarano and two associates had violated the federal statutes forbidding the movement of obscene and pornographic materials in interstate commerce. Zaffarano did not deny he had shipped in the films and government attorneys obviously thought they had a good case. The films themselves showed not only explicit sexual encounters of a conventional kind but also some decidedly unconventional ones involving sadism and bestiality.

At the end of a week-long trial, a Washington, D.C. jury decided last January that two of the films were not obscene and was unable to make up its mind about the others.

The Zaffarano verdict only confirmed what local prosecutors, the police and entrepreneurs in many places around the U.S. have recognized for years: Pornography is in fact, if not in law, no longer an illegal business. The market for pornographic materials, experts agree, is not confined to perverts or other emotional cripples. To the contrary, the largest part of the market is made up of seemingly solid middle-class people who look and act pretty much like their neighbors. "If this is what they want," Zaffarano announced after his trial, "this is what I'll show."

Of course, pornography is still extremely distasteful to a sizable part of the population. But in an increasingly open and permissive society, those who do enjoy pornography are free to revel in it. Just as the prohibition of alcohol eventually did, the prohibition against pornography is fast becoming unenforceable.

Consider this startling statistic: According to the California Department of Justice, the nation's pornographers do a good $4-billion-a-year business, about as much as the conventional motion picture and record industries combined. That estimate may be grossly conservative. "Two or three times that is more like it," says one West Coast police officer, a veteran of many antipornography drives. "If you're not involved in it in some way, you can't imagine how much money goes into the business."

Who gets all these dollars?

The men's magazines to begin with. With a monthly circulation of 16 million, the ten leading sexually oriented titles—so-called "skin" magazines*—will generate close to $475 million in revenues this year, nearly $400 million from circulation alone.

Then there's the "adult" film business: With 2 million admissions a week at an average of $3.50 a ticket, the 780 adult film theaters in the U.S. will gross over $365 million.

Another $100 million goes into what Duane Colglazier, head of the Pleasure Chest chain of sex shops, calls sexual toys: lubricants, creams, vibrators, massagers and other devices. A sizable portion of such goods moves by mail. How big the mail-order pornography business is—films, magazines, books, toys and other devices—even Postal Service declines to guess, though a 1970 survey indicated the sex merchants pump something like 50 million advertisements into the mails each year.

But by far the biggest component of the U.S. sex business is done in the thousands of adult bookstores and peep shows around the country, which do little in the way of public accounting. How big? Large adult bookstores and peep shows in New York's Times Square area can easily gross $10,000 a day, though they're hardly typical. But even an average-size operation in Hollywood can take in as much as $1,000 a day. Based on a sampling of actual dealer invoices, the Los Angeles Police Department estimates the sex merchants do $125 million a year in the city of Los Angeles alone, which is roughly three times the retail sales of I. Magnin in the Los Angeles area.

In addition to all this, technology is beginning to open up dazzling new prospects: video cassettes that bring X-rated films into the living room; portable video cameras and player-recorders that will enable anyone to produce his or her own—in effect, do-it-yourself—pornography. Polaroid has already put its Polavision instant motion-picture system on the market. Sony will introduce a portable color video camera in the fall. Makers of these devices like to think that they will be used to enable people to watch more cultural and sports events. They are only kidding themselves. It is an open secret that the biggest market is among those for whom visual sex is a turn-on or entertainment or both.

Although pornography is probably as old as civilization, it was, until recently at least, the plaything of the rich and eccentric. What changed all this in the U.S. was a series of Supreme Court decisions that initially applied the protection of the First Amendment to literary works like Ulysses and Lady Chatterley's Lover and ended up extending the Court's concern about free speech to fairly forthright pornography. In the landmark Roth decision of 1957, the Court maintained that sexual content alone was not enough to distinguish obscenity. What mattered was whether the material as a whole appealed to "prurient interests." In 1966, the Court widened the definition to material "utterly without redeeming social value." That single adverb, utterly, meant almost anything would go. The 1974 Miller decision threw the burden of definition back on local community standards, which is what got Washington movie exhibitor Zaffarano off the hook. "For the most part," says Beverly Hills lawyer Stanley Fleishman, a prominent member of what might be called the U.S. pornography bar, "if material is distributed to willing adults under discreet circumstances, there is very little prosecution."

"If I were a pornographer," says one U.S. Customs official, "I would not fear any city, state or federal authority. Once you know what the climate of law enforcement is, you can understand how people get into it."

Which is not to suggest that the pornographer's lot, legally speaking is always, everywhere, an easy one. The federal government continues active in suppressing pornography. It launched 40 obscenity prosections last year and won 57, most of them launched in previous years. The U.S. Customs Service made 15,000 seizures of pornographic material and was able to defend its right to destroy all of it. Even the U.S. Postal Service, acting mainly on citizen complaints, won 11 convictions.

But this kind of harassment does not suppress pornography; it only cuts into the profit margins. "It's a high-profit business, pornography," says Al Goldstein, publisher of Screw, "but it's also high risk. My lawyers made as much as I have."

But Goldstein, who started Screw magazine just ten years ago, says he has been a millionaire for some time now. And that goes to the heart of the matter. The sex business is precisely that—a business—and one in which a lot of money can be made. The sex business made Hugh Hefner rich, $150-million rich at last count. The magazine he founded, Playboy, was in many ways among the prime movers of the sexual revolution that helped legitimize pornography. His success inspired a host of imitators, not only Penthouse, whose circulation of 4.6 million is second only to Playboy's 5 million, and Hustler, which went from 160,000 to over 2 million circulation in three years, but a host of others: Gallery, which had the backing of F. Lee Bailey as Genesis had that of Benihana tycoon Rocky Aoki; Club, Oui, Chic; and a group of more recent and unexpectedly raunchy entrants: High Society, Velvet, Eros and Cheri.

Playboy and its imitators, expensive-looking and expensive to produce, command the highest prices ever charged by large circulation magazines in publishing history—these days an average of $2 a copy. Life, when it expired as a regular periodical, Eoros fetched only 50 cents.

The central element in the sex-oriented magazine business is that sky-high cover price. Individual arrangments vary, but in general the publisher retains close to 50 percent of the cover price. Another 5 percent or so goes to the national distributor, with the rest split between the regional wholesaler and retailer. These percentages are not appreciably different from what other major magazines offer, but other things being equal, to a retailer, 30 percent of $2 is twice as nice as 30 percent of the $1 that Time, Newsweek or Sports Illustrated sell for. So the newsdealers have plenty of incentive to promote these magazines. And they do. Today 30 percent of all newsstand sales come from periodicals that only 20 years ago might not lawfully have been there at all.

The profits are large whoenough to assuage even the most puritan conscience. Pressmen walked off the job when Iowa's staid old Meredith Corp. (Better Homes & Gardens) picked up the Penthouse printing contract two years ago, but with a multimillion-dollar contract at stake, Meredith told the pressmen to get back to their job or look for another. They went back.

Corporate America has pretty much shied away from any direct involvement in the skin-magazine business. Most companies with large printing operations live in terror of some outraged stockholder storming into their annual meeting waving a copy of a skin magazine hot off its press. Philadelphia-based ARA Services, the U.S.' largest magazine wholesaler, inevitably handles a large proportion of such publications. In deference to the attitudes of the communities it serves, ARA requires its distributors to enclose most of the magazine titles in opaque plastic wrappers. "One of the reasons were especially sensitive," says George Epstein, head of ARA's periodical distribution division, "is that we're a public company." Fawcett, which distributes High Society, a skin magazine published by porn-movie star Gloria Leonard, is becoming more sensitive now that they're owned by a big public company like CBS.

For the moment, at least, the men's magazine business seems to have peaked out. Playboy's average circulation has been declining for five years—from 7 million in the last half of 1972 to little more than 5 million in 1977, Viva and playgirl have been declining since 1974, and in the last half of 1977 sales were off again for all the major titles except Penthouse and Gallery, Hustler's circulation in particular has taken an ominous slide—from just under 2 million in the last half of 1976 to 1.7 million last year.

But don't conclude from this that pornography is peaking; the evidence is all to the contary. The business is simply getting more competitive—and more diversified. There are more bidders for the porno patron's dollar. Though filmmakers like Russ Meyer (see box, p. 92) succeeded in distributing soft-core porn to the conventional movie market as far back as the late Fifties, it's only in the last few years that the adult film has emerged as a mass-entertainment medium and as a real competitor to Playboy and Penthouse. Until a few years ago the business consisted primarily of 16-mm cheapies made on a shoestring by amateurs for as little as $4,000 apiece.

But no more.

What happened that an upwardly mobile ex-hairdresser from Queens named Gerard Damiano made a 35-mm movie called Deep Throat and demonstrated for the first time it was possible to reach a mass audience with a hard-core film. Made in 1972 for something like $25,000, Deep Throat has since grossed some $50 million worldwide, with returns still coming in, and, in the process, set the trend that drove the 16-mm cheapies out of the business.

The instant notoriety that Deep Throat achieved made it a kind of "media event." It became respectable, or at least chic, for people aspiring to be "with it" to go to an adult film house—if for nothing else, to find out what all the fuss was about. Having gone once, they come back for more. Deep Throat not only created a new audience, but a porno-star system (Linda Lovelace, Harry Reems) as well, and put X-rated movies into the big money for the first time.

The profit potential inherent in adult films is awesome. According to David F. Friedman, chairman of the 260-member Adult Film Association of America, it costs an average of $115,000 to bring in a porno film these days, including $40,000 for promotion and prints, and the average film will return $300,000 to the producers within 18 months—for a not-quite-200% return on investment. That's the average. Films like The Devil in Miss Jones, Behind the Green Door and Misty Beethoven have returned millions. And the life expectancy of a hard-core movie is considerably longer than the

conventional film, which may die within a few months. Five years after its initial release, a reedited and somewhat less shocking version of Deep Throat is still a box office smash.

As head of Entertainment Ventures, the oldest adult film company in the business, Friedman has been turning out pornographic movies for years, including Seven Into Snowy, a porn version of Snow White, and Close Call, a porn version of A Chorus Line. Friedman explains that certain costs—film stock, processing, equipment rentals and so on—are no less for a $200,000-budget adult film like Misty Beethoven than they are on a $25-million blockbuster like Jaws 2. But where Jaws 2 took months to film with a lot of expensive talent, it takes only two weeks to make a Misty Beethoven with nonunion crews, a writer, director and cast that cost a fraction of what even a second-tier star like Jaws' Roy Scheider commands. And the porn director shoots only two feet of film for every one used, as against four, six or eight for the conventional feature. Says Friedman, "It's a very hard business to lose money in."

About 125 feature films will be made this year, most of them by independent producers. But there are moguls, of sorts, at large these days. In Los Angeles there's not only Friedman's Entertainment Ventures but also Essex Films, which turns out maybe a dozen a year. In New York there is Mature Pictures, which turns out two or three every year, and Audubon Films, which makes one or two hard-core films a year under the name of Henry Paris, soft-core films under that of Radley Metzger.

As in men's magazines, the profit margins are so wide that everybody cashes in all the way down the line; producer, distributor and exhibitor. "X-rated product," says one southern theater operator, "is probably the only film product you can make a profit on anymore. On regular films, most of the profit comes from the concession business: popcorn, candy. But X-rated customers are very poor on concessions. We're in the X-rated product because it's business, and good business, and in some instances our theaters wouldn't be viable with any other type of product. In our theaters, pornographic movies are like 50 percent more profitable than regular movies.

As this southerner well knows, the real advantage is that with X-rated movies the theater owner has the upper hand in bargaining with the distributor. Conventional movies are in such short supply that, with a hit film like Star Wars, the distributor commands 70 percent, 80 percent even 90 percent of the theater gross (after the overhead is covered). But in adult film there is now more product available than theaters to show it, so more leverage lies with the exhibitor. In the Washingon, D.C. area, for example, there are only 5 adult screens out of 200. Nationwide there are 780 out of 16,827. So the result is that in New York the adult film houses reduce the distributors' cut to 50 percent, and in Los Angeles and in most other parts of the country to 35 percent and sometimes considerably less than that.

The market for all manner of sexually explicit films seems certain to grow, not least because the line between hard-core and conventional films is beginning to blur. The Hollywood product is getting more explicit—witness Jon Voight's oral sex scene in Coming Home, an R not an X-rated film. At the same time, the hardcore product is getting some class, with more emphasis on story and production values. Many producers these days are making their films in two or even three versions—hard core, soft core and R—so that their films can play in a variety of markets.

"It's almost like making three pictures at once," says Mature Pictures' President Robert Sumner, who's just getting his new film, Take Off, into release. Take Off is symptomatic of what's happening to hard-core films. Stylishly photographed and handsomely produced, it has a fairly well-developed story line, suggested by The Picture of Dorian Gray, and it imposes a pastiche of Hollywood films and film actors over the past 60 years—Cagney, Bogart, Brando, Gould—on the usual pornographic confrontations. Take Off cost $225,000, and Sumner's confident the film in its three versions will eventually yield him $3 million to $4 million after costs on a box-office gross of $12 million to $20 million. Which would make it the most successful porn film since Deep Throat. Producer's hype? Probably. But Sumner has already sold the German rights for $100,000 and the film has grossed $288,000 in its first six weeks at theaters in six cities around the country.

Sumner believes it to be inevitable that the major motion picture companies will themselves start turning out explicit sex films. He may be right. Paramount, a subsidiary of Gulf & Western, did not hesitate to distribute the soft-core Emmanuelle. Penthouse has a $16-million hard-core version of Gore Vidal's Caligula already in the can, with a cast that includes Peter O'Toole, John Gielgud and Malcolm McDowell.

The hottest topic in the movie business these days is videotape, and the hottest thing in videotape is X-rated movies. So far a dozen or so companies have entered the field, including Sumner's Quality X Video Tape and Friedman's TVX tapes, offering X-rated cassettes for showing on home television sets. Sumner got into the business early last spring—at a cost of $75,000—with the only system, he says, that cannot be pirated.* With a library of 40 X-rated films (Xaviera Hollander, Naked Came the Stranger, Bel Ami, among others). Sumner has been getting 70 inquiries a day since he ran his first ad in Hustler and has already recovered his initial investment. The future, Sumner believes, is in video disks rather than tape, but until then he's hoping to clean up—selling, at $110 each, tapes that cost him just $56 to produce.

At least 10% of the people who buy tapes," David Friedman figures, "will want a collection of hard-core films for their libraries. It's an absolute natural for homes, for parties, when the boys come over for a beer. The man who buys a copy of Patton may look at it one or two times, but one who buys Seven Into Snowy is going to look at it 10 or 15 times."

Magazines, films, videotapes—all these amount merely to the most visible part of the X-rated economy. The bulk of the sex industry operates underground, where hundreds and even thousands of small producers—print shops, film processors, publishers, filmmakers, photographers—feed a vast distribution system that reaches into thousands of adult bookstores and peep shows across the country. The profitability varies considerably from product to product, and from one point in the marketing system to another. But even at its worst, it's still considerable.

The least profitable product at present is probably the pornographic paperback. The production economics of pornographic publishing are the same as in any other kind of publishing. Because their press runs are relatively small, pornographic paperbacks are generally more costly to produce than mass-market paperbacks. At the same time, competition has eliminated the premium price that paperback publishers used to enjoy, so their margins are painfully squeezed.

Many of the independents have long since been absorbed by the big distributors. One survivor is Midwood Books, an arm of New York-based Tower Publications, which produces the Belmont-Tower and Leisure Books lines of mass-market paperbacks as well as a handful of magazines, and which still manages to make money on them. Midwood operates almost like a paperback magazine. Its writers will grind out a pornographic novel for a flat fee of $1,000 to $1,500. Midwood publishes 16 titles a month—192 a year—bearing titles like Naked Caller, Teen Tramp and Blow by Blow. Each book runs around 200 pages, costs about 25 cents a copy to produce and sells about 40 pecent of its 20,000-copy press-run at $2.25 a copy retail.

The really big moneymaker in the sex business is the peep show—a 16-minute loop of 8-mm pornographic film which the customer views in 2-minute segments as he pumps quarter after quarter into the peep machine. The machines are made by outfits like Louisville, Ky.'s Urban Industries. They cost little to produce—maybe $300. They cost less to maintain—an occasional light bulb and a change of film every two weeks. They generally live rent-free in the adult bookstore they occupy. The film loops they use cost maybe $3 to produce.

"There are companies," says Captain Jack Wilson, recently retired commanding officer of the Los Angeles Police Department's Administrative Vice Division, "that will provide the arcade booth, a change of movie and even mop the floors once in a while. You [the store owner] have no capital investment, and you get 50 percent of the take. It's a cash business." Wilson says there are 945 such machines in the city of Los Angeles that take in on average $75 a week—$120 a week in a good location—or $3.7 million a year.

As legal and community standards have grown more permissive, pornography has been evolving slowly but surely into a more sophisticated and more concentrated business. What began as fairly simple distribution systems have tended to grow into large integrated enterprises. At the center has been the distributor, with the capital to finance publishers, filmmakers and store owners. Inevitably this had led them forward into retailing and backward into production. In the U.S. market, U.S. entrepreneurs have taken over. "At one point," says a U.S. Customs official, "most of our pornography came from foreign sources. Now the U.S. can outporn any country in the world."

Competition is everywhere now. Says Beverly Hills porn lawyer Elliot Abelson. "Some very sophisticated people who knew how to market, how to package, how to cut costs, came into the business. A small stag movie used to sell for $50. The price went down to $12.95."

The biggest porn entrepreneur in the U.S. was, until recently, Michael G. Thevis, 46, Atlanta millionaire, purported Carter campaign contributor and convicted pornographer, who walked out of jail in Indiana last April, a day or two before he was indicted for arson and murder, and disappeared. At this writing, he is still at large. A North Carolina boy, Thevis started out with a

single newsstand in Atlanta, discovered that his public had an appetite for sexually oriented material, and over the years built a $100-million pornographic empire.

Thevis operated out of a building occupying one square block of downtown Atlanta—a factory devoted to the mass production of pornography, with printing presses, film-processing laboratories, screening rooms, warehousing facilities. By the time he went to jail in 1974, convicted of transporting obscene materials across state lines, Thevis claimed to have sold his interests in his pornographic enterprises to a former employee, LaVerne Bowden. Law enforcement officials have never believed him. In any case, his firm, Peachtree Discount Distributors, is still busy as ever. An old girlfriend and former secretary, Patricia McLean, has taken over as president of Global Industries, a holding company for his more legitimate businesses.

Thevis' counterpart on the West Coast was Milton Luros. A onetime art director for a number of skin publications, Luros moved into the big time by pirating the line of literary pornography that French publisher Maurice Girodias (whose Olympia Press first published Nabokov's Lolita, Henry Miller's Tropic of Cancer) introduced into the U.S. in the late Sixties. At one time, Luros had a printing plant in Chatsworth, Calif. second only to that of the Los Angeles Times. When Luros was indicted in 1974 on a pornography charge, he agreed to plead guilty if the government dropped the charges against his wife. (Friends always thought she was the real brains of the business.) Having been given three years' probation and a $5,000 fine, Luros, like Thevis before him, has been liquidating his empire. He sold Parliament News, keystone of his operation, to a former executive, Paul Wisner, but at least one unit—a theater chain called Erotic Words & Pictures—has gone to an outsider, a Cleveland sex merchant named Reuben Sturman.

With Thevis gone underground, and with Luros watching his step, Reuben Sturman now ranks as the number one merchant of sex in the U.S. Having got his start peddling second-hand comic books, Sturman now operates out of a large three-story brick warehouse in Cleveland's black ghetto. Sturman's company, Sovereign News, encompasses distribution operations in most major cities in the East and Midwest. In addition, he operates a chain of peep shows under the name of Western Amusements, manufactures his own peep machines (Automatic Vending), provides lie-detector tests for employee security (National Polygraph), distributes and manufactures marital aids (Doc Johnson Products and Marche Manufacturing), owns one of the more successful new men's magazines (Eros), distributes the Lasse Braun films for Dutch pornographer Albert Ferro and runs a chain of 800 retail bookstores in 60 cities, 50 states and 40 foreign countries.

Under Sturman, the adult book shop has become a clean, well-lighted place. "In our stores," he once told a board meeting, "clerks should be upgraded in intelligence, appearance, etc. . . . Our key store in an area will be known as a Doc Johnson store. It will be upgraded as far as interior, etc." He is bullish on the U.S. porn market, and he thinks he knows how to make the most of it. "The future," he says, "is in audiovisual tape."

What worries law-enforcement people these days—state and local police, and the FBI—are the unmistakable signs of organized crime's growing interest in the porn business. What really opened the industry to the godfathers was the increasingly difficult time legitimate operators had in determining what was legally obscene and what was not. Al Goldstein frankly admits he turned to Star Distributors and Astro News, two outfits controlled by organized crime, because he was unable to find a legitimate distributor willing to handle Screw. "The mob influence in distribution," Goldstein says, "is there because nobody else wants to be in the business." Goldstein's view was confirmed in the 1976 Report of the Task Force on Organized Crime of the National Advisory Committee on Criminal Justice Standards and Goals. "Because legitimate distributors were reluctant to handle such potentially illegal material," the report said, "organized crime moved in; first, in the distribution of pornography, and then into all aspects of the industry, literature and films of all types and their production, wholesaling and retailing."

The most notorious presence right now is Screw's national distributor. New York's Star Distributors. Ltd., which a decade or so ago fell under the domination of Robert (Debe) Di Bernardo, a member of New Jersey's DeCavalcante crime family. Star operates out of a massive warehouse on Lafayette Street on the edge of New York's Little Italy, in a building which it shares with a number of related businesses, including Di Bernardo's local distributing organization, Bonate, Inc., and the New York branch of Thevis' Atlanta operation. As a distributor, Star specializes in hard-core material, while an associated company, Model, handles soft core.

Star started out as a producer of nudies and girlie magazines, according to a report of the State of New York Commission of Investigation, and was headed for bankruptcy when Debe Di Bernardo took over as president of the company.

Though he had run only a wheel-alignment shop until then, Di Bernardo proceeded to revamp the company. Star's cash position mysteriously improved, and it began acquiring adult bookstores in New York and Philadelphia. These stores quickly won a competitive edge by being able to get the newest material ahead of their independent competitors. Today, Star has all the trappings of a pornographic conglomerate, controlling film-processing labs, printing and publishing operations, even filmmaking, as well as distribution.

Police officers in New York, Washington and Los Angeles believe that Di Bernardo controls Thevis' operation in Atlanta. ("Don't forget, Mike," a police wire-tap recorded Di Bernardo as saying when Thevis boasted of owning 90 percent of the peep shows in the country, "you manage the machines. The family is in charge.") And Los Angeles Police Department officials are convinced that Di Bernardo has settled in a big way on the West Coast where Milton Luros was once the dominant factor.

Though its influence has waned considerably since 1971, when Joe Colombo was shot, the Colombo family is the other big organized crime influence in New York porn: in peep shows (though Allstate Film Labs), in local periodical distribution (through Astro News) and in filmmaking (through the Perainos, who helped bankroll the spectacularly successful and trend-setting Deep Throat).

Holding an uncertain place in the present U.S. porn market is the aforementioned Michael Zaffarano, onetime bodyguard for Mafia chieftain Joe Bonnano, proprietor of the Pussycat Theater in New York and the D.C. Playhouse in Washington. An assoicate of Bonanno's East Coast strongman, Carmine Galante, Zaffarano was convicted for assault and robbery but has never been convicted on a pornography charge. He paid $1.35 million for the Pussycat property at 49th Street and Broadway in New York 18 months ago, and has since turned it into a porno amusement center—a hard-core theater, which Zaffarano operates, a bookstore and peep show and a homosexual club. Zaffarano is described by the California Organized Crime Commission as a kingpin in pornography in New York and Los Angeles. Some years ago, he pooled the Bonanno-Galante interests with those of Colombo by taking over the managment of the Colombo group's Allstate Film Labs, which produced films for their Times Square peep shows. Among other achievements, he's supposed to have divided the country into regional distributorships, extracted tribute from independents for the privilege of operating. "Zaffarano," the report goes on, "also acts as mediator when disputes arise among the East Coast groups which now control parts of the pornography business in southern California. . . . He's involved in the production and distribution of films and owns theaters. He's also financed the production of films through legitimate fronts." One police officer puts it more bluntly: "He converts money for the mob, puts illegitimate money into legitimate business."

People like Zaffarano, as a rule, don't get involved in operating these businesses. They are usually content just to have a piece of the action. In New York, according to Jeremiah B. McKenna, general counsel to the New York State Select Committee on Crime, the mob's main interest in the sex business is expressed in real estate deals. Organized crime figures lease buildings for ten years from legitimate owners and then sublease them to the fly-by-night operators of massage parlors, adult book shops, peep shows, at $110, $125 a day cash—double what other business would pay. "The shops close up and move on, but that lease stays there until the next fly-by-nighter comes along. The property is held for the sex industry," McKenna says. "A guy can't come in and start selling shoes because the money is too great."

Is the U.S., then, about to be engulfed in a great wave of pornography? Don't bet on it. In the end, the pornography business may become the victim of the very permissiveness that helped it flourish. David Friedman of the Adult Film Association, an apologist for pornography, has something significant to say about the audience for pornographic movies: "Our basic audience is still people over the age of 35, and though we are beginning to attract some young marrieds and younger couples in their middle-to-late 20s; the audience is still composed of people who are probably more sexually repressed than people are today." But that may be merely a marketing problem. If so, it is only a matter of time before someone from Hollywood, *Hustler*, or the Harvard Business School gets to work solving it.

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### Growth Business

"I can't wait for the federal government to come in and say I have a monopoly," says Ron Braverman. "That's as far as I want to go."

Braverman is vice president and operating head of North Hollywood's Marche Manu-

facturing, and his would-be monopoly is in what is sometimes delicately known as sexual aids: dildos, creams, lubricants, rubber goods, vibrators and massagers. Dildos used to be the mainstay of Marche's business, but they're losing importance beside the booming demand for vibrators and massagers.

"We have taken a line of merchandise." Braverman says, "and given it a trademark: Doc Johnson Products. We developed the name four or five years ago. You go in to buy toothpaste, you don't say toothpaste, you say 'Crest.' We want people to say 'Doc Johnson.' We thought Johnson was a universal type of name that people will relate to. The Doc gave the name credibility."

Traditionally Marche has sold its output to mail-order outfits like Hustler's Leisure Time Products or Frederick's of Hollywood, or to wholesalers who funnel it into sex shops like the Pleasure Chest chain or adult bookstores like those Reuben Sturman runs under the Doc Johnson rubric. But now Braverman is repackaging his line to make Doc Johnson Products acceptable at retail counters all over the U.S.—beauty shops, drug chains and supermarkets. The emergence of large chain stores has already gotten items like Tampax and condoms out from under the counter, and Braverman doesn't see why the same thing can't happen with Marche's line—if they are tastefully packaged. Massagers, which Marche markets in competition with General Electric, Hitachi and Water Pik, are already gaining acceptance, with vibrators just a little behind. "Once we have public acceptance," Braverman says, "we're going to make an entire line of products available."

It costs Marche $2 to import and repackage one of its basic seven-inch elite vibrators, and it sells this at $3.60 to the retailer who marks it up to $7.95 or more. Braverman expects to do over $2.5 million this year, up from $250,000 when he took over. Which makes Doc Johnson a nice little growth business.—J.C.

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### Losing Battle

Beverly Hills lawyer Elliot Abelson has represented a substantial number of pornographers: the owners of Deep Throat and The Devil in Miss Jones, Los Angeles' Parliament News, as well as some of Reuben Sturman's far-flung interests. "Certain parts of the country are uptight about porn," Abelson says, "and even within states attitudes differ." Los Angeles is so rough that filmmakers have moved to San Francisco, where it's virtually impossible to convict anyone for anything. "Tucson is cool, Phoenix is hot. Dallas is hot, Houston is not. If you're in L.A. city, things are hot. If you're in L.A. county, they're not. And so it goes."

The legal logic of the situation, Abelson argues, is that if it is legal to posses pornography, and it is, then it ought to be legal to sell it. But that's a rationale the Supreme Court has not yet accepted and isn't likely to any time soon. But the balance is a delicate one. "There are five judges on the U.S. Supreme Court who are saying pornography is a no-no," says Abelson, "and until one of those justices leaves the bench, the law will not move or change."

The fight against pornography, Abelson, says, is not only a losing one, it's also costing the taxpayers a great deal of money. He estimates that prosecuting pornography costs Los Angeles $1 million a year, and that nationwide the figure runs as high as $50 million, with an additional $20 million spent in defending the accused. "There's no doubt that the attorneys defending pornography have had a tremendous advantage. The prosecutor must prove not only that the defendant did it, but also that what he did was wrong. Secondly, the attorneys defending porn have been doing it for a number of years, and that's all they do. I can try a pornography case without a note because I've done it so often. But I've come across so many prosecutors trying their first case who didn't know what they were doing. When the client has enough money to pay for expert witnesses, we win 90 percent of the cases."

Abelson has seen the situation from both sides of the fence. Until eight years ago, he was district attorney for Los Angeles County and then gave that up for a chance at the big money in defending pornography.—J.C.

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### Where The Money Is

What's it like running an adult bookstore in New York's midtown entertainment district? Listen to Vic Rice, a tough, fast-talking cop who used to run one as an undercover agent for the New York Police Department:

"I had a store in the area for a year. We had a very bad spot. It was down by Tenth Avenue. The business is up there by T Square. When I had my store, the bookstore was up front, the machines was in the middle and the massage parlors in the back. I just had the bookstore. Somebody else had the machines. Somebody else had the massage. Everything was owned separately. The bookstores and peep shows and massage parlors are separate lines of business. You don't see the same people. You don't see the bookstore fellows go into the massage parlor.

"I got my store from one of the guys up there. I had to pay him rent—$125 a week. I got to have help, so I had to pay this guy $30. You paid the guy by the day, you paid the rent by the week. In cash. Everything in cash. I never got a receipt for my rent, never a receipt for the stuff I had out. The average that we used to make was something like $200 a day. $200 was our profit. Not every day. It averaged like that. My store was open 24 hours. We had the girls in the back, so we didn't close 10, 12 o'clock.

"I got the stuff from various distributors. At that time we had about nine selling magazines, films, stuff like that. Some of them would sell the same thing. We'd always go for the cheapest. A lot of them operated out of the back of the car. They'd open the trunk of the car and you'd look at their stuff. You pay, say, $3 for a film, you sell the same film for $20. Eight millimeter, 10- or 15-minute things. For children, you'd pay more, maybe $7, then you sell for $25.

"A lot of people think books and films is the money. That's not true. The money is in the machines. I could take a guess with the machines and what the girls made in the back. The machines made more money than the girls. They have these loops and you spend ten quarters for the whole thing. A machine takes in $200 a day, one machine, depending on how good the machine is. The average store has 40 or 50. They come in every hour, every two hours with buckets, and they empty them out. Take them to the banks. The machines is good for you because they're selling the films. Half the stuff in the machines you've got it for sale in the bookstore, so if they want to just buy it, they can buy it. It's like advertising. Good for business.

"The machines in my store were from Marty Hodas. He would service his machines. All I did was hand out change for the machines. I had nothing to do with the machines. Go up to Marty Hodas—his place of business, you never see him, you see somebody else. He wants to find out how much business you're doing before you get a machine in the store—how much you buy, how many people come in.

"We thought there was going to be a lot of extortion. But they don't care if you opened a store tomorrow. You're not cutting into organized crime by opening up a store. Where organized crime comes in is they don't want any dupes. You could put out a line of stuff and have it duped tomorrow, and then you wouldn't have it. You're selling a line for $5. If I duped your line, I'd get $2 and still make money, put you right out of business. So to protect that line you have to go to somebody and make sure your line won't be duped. That's where organized crime comes in. Making sure your line is safe.

"One thing. When you're in the business, I found out you can't ask questions. A guy comes in there with a film, you like it, you take it from him, you never ask him where he got it. If you did, you didn't last long. I lasted a year and a half up there."

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### Look at All the Naked Ladies!

A hulking, handsomely mustached man of 56, Russ Meyer is by way of being the Hugh Hefner of the adult-movie business. Twenty year ago Meyer made a little landmark of a movie called. The Immoral Mr. Teas, about a deliveryman who emerges from a dentist's anesthetic with the ability to see every girl he runs into stark naked. "It was a very bold picture at the time," Meyer says.

Made for a mere $24,000, Mr. Teas was the first adult film ever to make any really big money. Mr. Teas grossed well over $1 million. Since then Russ Meyer has made 29 other films, all but one of which has made money. By 1975, the last time his accountant added up the figures, they had grossed nearly $60 million, and four of them rank among the 1,000 top-grossing movies of all time: Beyond the Valley of the Dolls, Vixen, Cherry, Harry & Raquel and The Supervixens. "I came calling at the right time," Meyer says modestly.

A combat cameraman in World War II, Meyer made his living after the war shooting pictures of girls for Playboy and making industrial films for companies like Southern Pacific, Crown Zellerbach and Standard Oil of California. "That's where I learned my craft," he says. "You'd go out with three people and do everything."

To a large extent he still does. He's the producer, the director, the screenwriter on most of his films. He owns his own equipment, works with a small crew, does his own distribution and even puts up all of the money. "I make quality films as reasonably as anyone possibly could."

Russ Meyer films are generally not only sexy, they're violent and funny. "Outrageous" is how Meyer puts it. "What I do turns me on," he says. "I essentially make a film to entertain myself. But I think sex on the screen is probably a lot more palatable if it is made outrageous. In my films, the women are always outrageously abundant, the men are their willing tools, so to speak, and they drive around in beat-up old cars. They do that so the cars won't go out of date, because the film will play a long time.

"I've tried several times to do other things, but I wasn't successful. If I don't deliver the kind of picture—the kind of girls—that are synonymous with my motion pictures, the kind of exposure, the kind of sex, it's not going to do well. If you create the monster, you'd better damned well live with him."

The monster has made him a millionaire, though not as big a one as you'd think. The Supervixens (1974), Meyer's most successful film, cost $213,000 to make and grossed over $14 million. Meyer took in $4 million on that one, and then paid most of it out in taxes. "The only salvation now is that limit of 50% of taxation of personal income. I just made my big winner at the wrong time."

Meyer's newest movie is Beneath the Valley of the Ultravixens. Scheduled to be released in January. Beneath concerns the efforts of a number of extravagantly proportioned gentlewomen to cure the hero of a profound sexual maladjustment. "It's a very strong picture," Meyer says calmly. X-rated, that is, but soft core. "I don't do hard-core films," he says. "My competition doesn't come from hard core, it comes from the majors. There's a market for hard core. But it's not my cup of tea."—J.C.

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[From Report of the Task Force on Organized Crime, December 1976]

PORNOGRAPHY

Probably the most comprehensive study of pornography was conducted by the Commission on Obscenity and Pornography from 1968 to 1970. The Commission was unable to assess the degree of involvement of organized cime, but assumed that this element might be involved because so many criminals were in the industry.[89] The Commission did find that the pornography industry consisted of several distinct markets and submarkets, some organized, some chaotic.[90] The wares consisted of films, magazines, books, sexual devices, and various "service" establishments. Subdivisions of the industry were production, distribution, and retail outlets. The market was primarily composed of white, heterosexual males. The Commission did not think that the business was overly profitable.[91]

Since that report, a number of studies have indicated that pornography has become organized crime's latest business. It is a logical field for entry given the facts of a prohibited product with a large market; susceptibility to good organization and muscle; and lax law enforcement.[92]

Just when organized crime became involved in pornography is uncertain, but a contributing factor may have been a Supreme Court decision in 1967, *Redrup* v. *New York*. This ruling left unclear what exactly constitutes pornography, thus making it difficult for law enforcement officers to make cases, but also making it hard for legitimate businesses to know if they were handling legal or illegal material. Thus legitimate distributors were unwilling to handle potentially pornographic material.[93]

That development created a situation ripe for organized crime. Al Goldstein, publisher of Screw, one of the better selling publications, admits freely that organized crime businesses distribute his magazine. He says that he has no choice in the matter, because no legal firms will undertake distribution. Although Goldstein has been left editorial independence, his books and production facilities are watched closely.[94]

Organized crime's links to the pornography industry were documented as far back as the early 1950's in the Kefauver committee investigations,[95] but most sources show few links before the late 1960's.

One author says that organized crime got involved in pornography in New York in 1968, when John Franzese, a member of the Colombo family, realized how profitable the peepshows in Times Square were. Subjected to typical strongarm tactics, the owners soon had to give organized crime 50 percent of their profits. From there, it was but a short step to insisting that all outlets use projection machines suppled by organized crime. By 1969, the Colombo family had obtained about 60 percent control of the porno movies in New York.[96]

Organized crime is believed to be in all aspects of the pornography industry: literature and films of all types (i.e., hard core, soft core, art, 16mm, magazines, books), sexual devices, "service" establishments (including live sex shows), production, wholesaling and retailing, and distribution.

For example, Michael Zaffarano of the Bonano family is said to be a major operator on both the east and west coasts. He is involved in the production and distribution of films and owns theaters. He also finances production of films through many legitimate fronts.[97]

The Peraino brothers, informally adopted members of the Colombo family, are said to be the biggest in the business. They, too, operate behind various legal fronts headquartered in New Jersey and Florida. They are said to have put up the money for "Deep Throat," one of the most successful of pornographic films, which has grossed at least $25 million. With the proceeds of that venture, the Perainos set up Bryanston Distributors, which is involved in legitimate films such as Andy Warhol's "Frankenstein."[98] In fact, one New York City police official fears that organized crime eventually could become a major factor in the legitimate film industry.[99]

Organized crime also has become heavily involved in the distribution of pornographic materials. The two distributors of Screw were once legitimate companies that suddenly developed very strong organized crime ties about the time that recent Supreme Court decisions scared off legal distributors. Star Distributors in Manhattan is one of the largest national distributors (its position is enhanced by its exclusive rights to Screw), while Astro News of Brooklyn handles the New York City market.[100]

Some independent producers say they actually prefer dealing with organized crime enterprises because the latter are the most reliable of companies and pay quickly. Others find that they must deal with organized crime in order to protect themselves from extortion or piracy.[101]

Piracy is a big part of organized crime's pornography business. If a producer refuses to allow organized crime figures to distribute a film, those figures threaten piracy, among other actions. If its request is still refused, organized crime elements make their own copies of the film and distribute them widely, very often closing substantial markets to the legitimate producer.

The fate of "Behind the Green Door," another successful porn movie, is a case in point. Organized crime figures approached the producers concerning distribution rights, which the producers continuously refused to grant, despite threats of piracy. Within a short time, hundreds of pirate versions appeared all over the country. The producers lost several key markets—Las Vegas, Miami, and Dallas among them. Also, because the pirated versions were often of poor quality, the movie got a bad reputation, which further reduced its market.[102]

According to one source, few independents in any area of the industry can escape the influence of organized crime. Says this observer: "Combining old-fashioned muscle with sizeable payoffs to cops and politicians, Mafia dons from coast to coast make sure no dirty magazine, hard-core film or peep show machine enters their city without the payment of tribute to the local crime 'family'"[103]

The centers of organized crime's pornography activities are Los Angeles[104] and New York City.[105] The New York police estimate that three out of five Italian crime families are involved in the New York business and are responsible for 90 percent of the pornography in the area.[106]

Organized crime's operations actually blanket the country. A former Dallas chief of police said: "The pornography business in Dallas has all the earmarks of an organized crime operation. We have learned that the organizations in Dallas are linked to an organization which owns and controls the production, printing, distribution and retail sale outlets for pornographic material."[107]

No accurate figures exist on what profits organized crime receives from the industry, but money must be good or organized crime would not be involved. One source puts the gross from peepshows in Baltimore alone at about $10 million a year in 1973,[108] while another says that each peepshow machine earns $10,000 a year.[109] A third source says that a high quality, 12-minute pornographic film takes about an hour to make at a cost of $3 (the actors and actresses are paid in drugs), and sells for about $50.[110]

Prosecution of organized crime pornography operations has been very difficult.[111] In New York City, for example, this legal action has run up against not only the Supreme Court's imprecise definition of pornography, but also the slowness of the court system and the lack of city resources. If a film is declared pornographic, the producer simply doctors it enough to qualify it as a new film, forcing the city to go through a long, expensive court procedure all over again.[112] In the meantime, the film is shown.

Licensing and code violation enforcement has also had little success against pornography, because most violations are eventually corrected. Also, organized crime lawyers file a steady stream of challenges to new laws or regulations, especially zoning laws, and have even sued a city for harassment.[113] All this means more delay and expense for the city and continued operations for organized crime. Some cities have more or less compromised. Boston, for example, has opted for a policy of containment to a certain part of town—the so-called Washington Street "combat zone."[114]

THE BROADER IMPLICATIONS

Much concern over the involvement of organized crime stems from the broader ramifications. First, here is concern over the use to which profits from these crimes are put: possible illegal activities such as loansharking, extortion, consumer frauds, and subversion of the political system. For example, "In recent years it has been possible for organized elements to allocate sufficient financial resources and exert enough influence at the local level to dictate who will or will not be elected."[115]

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Footnotes at end of article.

Second is the widespread corruption connected with organized crime. Although most officials are honest, "It is a matter of public record in some cities . . . that certain policemen and police officials—other public officials as well—have protected bookmakers, prostitutes, and narcotics pushers, . . . have favored politicians or other people with 'pull' and have acted in concert with leaders of organized crime."[116] Bribery is a vicious circle in which the briber is in a position to make more demands and the official is not in a position to refuse.

Even honest officials may be reluctant to enforce the laws. The public does not support them, they absorb scarce resources, and the jail sentence may be more harmful than the offense. At best the sentence has no effect.

A third concern is that cynicism toward law enforcement and government generally is engendered by ineffective and arbitrary enforcement, the existence of meaningless laws, and extensive corruption.

FOOTNOTES

[86] Op. cit., Pace and Styles.
[87] Op. cit., Sheehy, "Cleaning Up Hell's Bedroom."
[88] Op. cit., Kiester, p. 40; and Ianni.
[89] The Commission on Obscenity and Pornography, The Report of the Commission on Obscenity and Pornography, Washington, D.C.: U.S. Government Printing Office, Sept. 1970, p. 19.
[90] Ibid., p. 7.
[91] Ibid.
[92] "The Porno Plague," Time, Apr. 5, 1976, pp. 58-63; Gage, Nicholas, "Organized Crime Reaps Huge Profits from Dealing in Pornographic Films," New York Times, Oct. 12, 1975, 1:1; and Gage, Nicholas, "Pornographic Periodicals Tied to Organized Crime," New York Times, Oct. 13, 1975, 1:1.
[93] Op. cit., Gage, and Goldstein, Tom, "Experts Say Two Laws Proposed to Clean Up Times Square Face Constitutional Problems," New York Times, Nov. 3, 1975, 42.
[94] Ibid.
[95] Op. cit., Pace and Styles.
[96] Denison, George, "Smut: The Mafia's Newest Racket," Reader's Digest, Dec. 1971, 157-160.
[97] Op. cit., Gage, "Organized Crime Reaps. . . ."
[98] Ibid.
[99] Ibid.
[100] Op. cit., Gage, "Pornographic Periodicals. . . ."
[101] Ibid.
[102] Op. cit., Gage, "Organized Crime Reaps. . . ."
[103] Barrett, James K., "Inside the Mob's Smut Rackets," Reader's Digest, Nov. 1973, p. 129.
[104] Rafferty, Max, "Crack Down on the Smut Kings!" Reader's Digest, Nov. 1968, pp. 97-100.
[105] Op. cit., Sheehy, "The Landlords of Hell's Bedroom."
[106] Ibid.
[107] Op. cit., Pace and Styles, p. 176.
[108] Op. cit., Barrett.
[109] Op. cit., Time.
[110] Op. cit., Barrett.
[111] Op. cit., Goldstein, "Experts Say . . .," and Goldstein, Tom, "City Is Moving with Difficulty to End Times Square Pornography," New York Times, Nov. 2, 1975, 1, p. 46.
[112] Op. cit., Goldstein, "Expert Say. . . ."
[113] Op. cit., Sheehy, "The Landlords of Hell's Bedroom."
[114] King, Seth S., "Foes of Pornography Winning a Few Skirmishes but Not the Major Battles," New York Times, Nov. 28, 1975, p. 52.
[115] Op. cit., Pace and Styles, p. 25.
[116] Op. cit., President's Commission on Law Enforcement, p. 115.

Mr. HELMS. Mr. President, the above materials demonstrate that organized crime is very much involved in the pornography traffic. One way to help curb this activity is to give Federal law enforcement agencies the additional authority contained in the RICO statute. That is what my amendment does, and I urge its adoption.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, we think the amendment is reasonable, and we are willing to accept it.

The PRESIDING OFFICER. Is there further debate?

Mr. THURMOND. I am informed that the distinguished ranking minority member of the committee is willing to accept the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from North Carolina.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, may I ask whether this amendment has been cleared on this side of the aisle?

Mr. THURMOND. The ranking minority member has accepted it.

Mr. METZENBAUM. I have no objection.

Mr. BIDEN. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2682) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I thank the distinguished managers of the bill, and I also thank the able Senator from Maryland for permitting me to present this amendment.

Mr. THURMOND. Mr. President, as I understand it——

The PRESIDING OFFICER. The question occurs on the amendment of the Senator from Maryland.

Mr. THURMOND. Mr. President, is the Senator from Maryland ready to vote on amendment No. 1?

Mr. MATHIAS. Mr. President, since the amendment has been temporarily laid aside, I ask unanimous consent to continue to lay it aside and to call up the last amendment upon which I think we could then have a very prompt vote. That is amendment No. 2651.

Mr. THURMOND. Mr. President, I have no objection.

Mr. MATHIAS. Then, Mr. President, for the advice of Senators, we will return to the other three.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

AMENDMENT NO. 2651

(Purpose: To maintain the current aggregate length of terms of imprisonment)

Mr. MATHIAS. Mr. President, I call up amendment No. 2651.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an amendment numbered 2651:

On page 114, between lines 11 and 12, add the following:

"(x) The Commission shall ensure that the guidelines and policy statements issued pursuant to the chapter are not intended to increase, nor likely to have the effect of increasing—

"(i) the aggregate length of terms of imprisonment served by prisoners in the Federal prison system;

"(ii) the average term of imprisonment served by persons convicted of Federal offenses; or

"(iii) the inmate population of the Federal prison system.".

Mr. MATHIAS. Mr. President, this is a very simple amendment. It merely attempts to incorporate into the bill a statement of the intent of the authors, just as simple as that. Where do I get the language stating the intent of the authors? I get it from the authors.

Now, it will be obvious from the date that this is not the first time this subject has been discussed in the Senate because it was on September 30, 1982, that the able and distinguished Senator from Delaware and I were discussing the very same subject. I addressed the Chair and said:

The Senator from Delaware, I think, has served a very useful purpose this afternoon

I might say, parenthetically, Mr. President, as he does on many afternoons——

by stating on behalf of the managers of the bill—and I hope that both of the managers of the bill will concur in what I am about to say—that it was not the intention, or at least that is what I thought I heard him say, that sentences should be increased as a result of passage.

Mr. BIDEN. That is correct.

Mr. MATHIAS. I tend to believe, if that is the intention, that they are going to be disappointed.

Mr. BIDEN. Mr. President, I want to make it clear, overall it is not the intention. There are increases for certain violent crimes, two of which were just accepted, one being on crimes with handgun.

Mr. MATHIAS. We are discussing in general that there should not be a general advance, a general increase, in the length of sentence, which I think will happen and which the Senator from Delaware thinks will not happen. But I think it is of some importance that he has made that statement on behalf of the managers of the bill because the guidelines commission is going to obviously look at the Senate processing for some direction.

Mr. BIDEN. That is my strong conviction and I hope they do read it. I hope they do listen to it. From the beginning, from the outset, that has been the intention of the Senator from Delaware, and prior to that

the Senator from Massachusetts. I want to reiterate for the record that that is exactly our intention.

Now, unfortunately, some of the conversations reported in the CONGRESSIONAL RECORD are not always illuminating, but in this case the signal that is given by the Senator from Delaware is very clear. The pending amendment before the Senate simply writes into the statute exactly what the Senator from Delaware said. It simply spreads upon the statute books the intent as he has described it in as plain and simple and clear English as I could conceive.

The amendment would add an additional instruction to the sentencing commission to just carry out the intention expressed so well by the Senator from Delaware. The commission would be required to develop guidelines which are not intended to increase nor likely to have the effect of increasing any of three measures of the population pressure upon Federal prisons.

The first measure is the aggregate length of terms of imprisonment served by Federal prisoners. In other words, if you added up the number of months served by all prisoners in Federal institutions, that number would not be higher after the inclusion of the guideline systems than it was before. Of course, it is obvious that some kinds of prisoners convicted of some offenses might serve longer sentences than they do now, but that would be offset by decreases in the time served by other prisoners. Obviously, if the aggregate length of terms increases, we will need to build more prisons, because more prisoners will be incarcerated for longer periods than is currently the case.

The second measure is the average term of imprisonment served by persons convicted of Federal crimes. There are several ways to calculate averages. The simplest is just to take the aggregate length of terms figure which is the first measure and to divide it by the number of prisoners.

There may be more sophisticated methods of calculating the average prison term, but I think all of them have in common the fact that, if the average term increases, there will be pressure on prison capacity and new prisons will be needed.

The third measure is perhaps the simplest one: the inmate population of Federal prisons. This calls for a comparison between the number of people imprisoned before the implementation of the guidelines and the number of people imprisoned at an appropriate point of comparison after the guidelines are implemented. I need hardly add that if this count increases, then once again more prison space will be needed.

So this amendment is very simply directed toward intentions and toward what is likely. It is not designed to demand certainty because, as we have discussed already today, no certainty is possible in dealing with the future. But it simply calls on the Sentencing Commission to make sure that its guidelines will not be likely to have the effect of increasing any of the three measures of prison population which I have just discussed.

In making that judgment, the Commission will, of course, make assumptions about demographic trends, about social conditions, about other factors that may have an influence on how many people ought to be incarcerated in Federal prisons and for how long.

All this amendment requires is that given reasonable assumptions, the projected prison population after the implementation of guidelines is unlikely to be higher than at present, and that the projected aggregate and average term of imprisonment are also not likely to increase.

I am advised that from a statistical point of view, these projections are not difficult to make. In fact, I think the Minnesota Sentencing Guidelines Commission relied very greatly upon them in developing the guidelines in that State, which we have already discussed.

Mr. THURMOND. Mr. President, this amendment would require the Sentencing Commission to tailor sentencing guidelines and policy statements so as not to have the probable effect of increasing either: First, the aggregate length of terms of imprisonment currently served by Federal prisoners; second, the average term of imprisonment currently served by persons convicted of Federal offenses; or third, the current Federal inmate population.

Mr. President, the amendment, in essence, attempts to bind the Commission to issuing guidelines that will not increase aggregate and average sentences to imprisonment and inmate population above current levels regardless of whether such a scheme conforms with rational sentencing policy. The sentencing provisions of this bill have been proposed primarily because current sentencing practices are undisciplined and chaotic. Studies cited in the committee report establish that the current system results in totally unpredictable sentencing with wide unwarranted disparity both as to which defendants will be sentenced to any imprisonment and, if sentenced to imprisonment, the length of the term. It would be most unwise to arbitrarily use the results of current sentences and inmate population as an unreasoned yardstick for establishing an ordered sentencing system.

Mr. President, experience under current practices may upon study reveal the application of principles useful to the sound crafting of uniform sentencing guidelines and policy statements. But the appropriate approach is, as provided in this bill, to charge the Commission with the duty to evaluate current practices and to make reasoned judgments as to whether it is desirable to reach a similar result through guidelines.

Mr. President, one further comment should be made concerning that part of the amendment to limit the inmate population of the Federal prisons to current levels. Sentencing policy is only one of many factors that rightfully affects inmate population. For example, success in solving crimes affects the number of convictions. Similarly, prosecution priorities, such as shifting the emphasis from white collar crime to serious narcotics and violent offenses, affect the number of persons properly sentenced to imprisonment. Again, the bill approaches this problem in a sound fashion by requiring the Commission to evaluate the probable impact of the new sentencing system and to make recommendations to Congress concerning the inmate capacity of the system.

Mr. President, for these reasons I believe this amendment is unwise. I hope the Senate will not adopt it.

Mr. President, the administration is opposed to this amendment. The Justice Department is opposed to this amendment. The Judiciary Committee is opposed to this amendment. In the Judiciary Committee, we voted 15 to 1 against it. The Senator from Maryland was the only Senator who voted for it. I hope the amendment will be defeated by the Senate.

Mr. LAXALT. Mr. President, the amendment to bar the guidelines from increasing the aggregate of current prison terms should be opposed. It is far too rigid.

The bill already requires the Sentencing Commission to take the capacity of the prison system, as well as that of other parts of the criminal justice system, into account in promulgating the guidelines. However, rather than lock the Sentencing Commission into current practice, the bill provides that the Commission should make recommendations to the Congress concerning changing that capacity, if the capacity of the system would be exceeded by the guidelines.

Any responsible Sentencing Commission is going to take the capacity of the system into account in promulgating guidelines. The Commission should not, however, be locked into current practice if it finds that the practice does not adequately serve the purpose of sentencing. This is not to suggest that we anticipate that guidelines will cause and increase in the demands on the prison system or other parts of the criminal justice system; it is only to suggest that the Sentencing Commission should be able to recommend guidelines that reflect its best judgment regarding appropriate sen-

tencing policy without having its hands tied by undue restrictions imposed by the Congress.

The whole impetus for sentencing reform stems from the fact that present sentences are often disproportionate and unjust. It makes little sense to lock in the Sentencing Commission to the average sentences of the present system rather than to allow the Commission to improve sentencing. Congress, of course, need not approve the Commission's guidelines.

For these reasons, I urge the Senate to reject this amendment.

Mr. BIDEN. Mr. President, I should like to respond briefly to the Senator from Maryland regarding his amendment.

Although this amendment affects the intent of Congress, it is impossible to predict with certainty whether or not the prison population will increase at any time in the future because of these new guidelines. For example, what if there is a sudden large increase in terrorist activities? What if there is a sudden large increase, such as we had in the 1960's, with respect to violence on campuses, or any number of things that are affected by trends that occur in this country?

Should persons, for example, who are involved in terrorist activities—and I want to make it clear that I am not making a comparison between terrorism and what happened on the campuses in the 1960's, because that is where I was in the 1960's—should those persons who otherwise would be imprisoned be released to accommodate terrorists because there is an influx of terrorism?

If the new guidelines, on their face, would result in a net increase in the prison population, Congress could reject them and ask the Sentencing Commission to draft new ones, more in line with congressional intent, and Congress could face up to the issue of what it is going to do about prison size.

The amendment, though well-intended, is too vague. From what point in time will aggregate terms or average terms be determined? Does inmate population include persons detained in State institutions, in halfway houses, or on furlough?

Mr. President, there is a consistency to all the amendments the Senator has offered. If you accept his basic premise, they all have compelling reasons to be adopted. But I do not think the basic premise on which the Senator from Maryland is proceeding is that sound, which is that, automatically, prison population will increase and that this lack of discretion on the part of the judges will produce this hemorrhaging new statistic.

Mr. MATHIAS. Mr. President, I say to the distinguished Senator from South Carolina, yes, It is true that I fight alone, but I fight on.

I say to the distinguished Senator from Delaware that I express my appreciation to him for saying that this amendment does correctly state the intention of the authors of the bill—that is the important contribution to the legislative history here—and I hope Congress will adopt it in that light.

Mr. President, I ask for the yeas and nays on this amendment.

Mr. THURMOND. Mr. President, I move to table the amendment.

Mr. MATHIAS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second on the request for the yeas and nays? There is a sufficient second.

The yeas and nays were ordered.

Mr. THURMOND. I move to table the amendment.

Mr. MATHIAS. I make the same request on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second on the motion to table? There is a sufficient second.

The yeas and nays were ordered.

● Mr. LEVIN. I will vote in favor of the Thurmond motion to table the Mathias amendment. However, I would have voted against the Thurmond motion to table the amendment if it had been phrased in neutral terms. If the amendment had stated that it was not the Congress intent to increase or decrease the Federal prison population in implementing sentencing reform, it would have been consistent with the primary purpose of title II of S. 1762—to eliminate disparity in sentencing at the Federal level.●

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Maryland. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. JEPSEN), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Wisconsin (Mr. KASTEN), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. PERCY), and the Senator from Virginia (Mr. TRIBLE), are necessarily absent.

I further announce that, if present and voting, the Senator from Wisconsin (Mr. KASTEN), would vote "yea".

Mr. BYRD. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr. DECONCINI), the Senator from Arkansas (Mr. BUMPERS), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. FORD), the Senator from Colorado (Mr. HART), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Maryland (Mr. SARBANES), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 76, nays 1, as follows:

[Rollcall Vote No. 3 Leg.]

YEAS—76

| | | |
|---|---|---|
| Abdnor | Glenn | Packwood |
| Andrews | Gorton | Pell |
| Armstrong | Grassley | Pressler |
| Baker | Hatch | Proxmire |
| Baucus | Hawkins | Pryor |
| Bentsen | Hecht | Quayle |
| Biden | Heflin | Randolph |
| Bingaman | Heinz | Riegle |
| Boren | Helms | Roth |
| Burdick | Hollings | Rudman |
| Byrd | Humphrey | Sasser |
| Chafee | Johnston | Simpson |
| Chiles | Lautenberg | Specter |
| Cochran | Laxalt | Stafford |
| Cohen | Leahy | Stevens |
| D'Amato | Levin | Symms |
| Danforth | Lugar | Thurmond |
| Denton | Matsunaga | Tower |
| Dixon | Mattingly | Tsongas |
| Dodd | McClure | Wallop |
| Dole | Melcher | Warner |
| Domenici | Metzenbaum | Weicker |
| East | Mitchell | Wilson |
| Evans | Moynihan | Zorinsky |
| Exon | Murkowski | |
| Garn | Nunn | |

NAYS—1

Mathias

NOT VOTING—23

| | | |
|---|---|---|
| Boschwitz | Goldwater | Kennedy |
| Bradley | Hart | Long |
| Bumpers | Hatfield | Nickles |
| Cranston | Huddleston | Percy |
| DeConcini | Inouye | Sarbanes |
| Durenberger | Jepsen | Stennis |
| Eagleton | Kassebaum | Trible |
| Ford | Kasten | |

So the motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I will state for the majority leader that there will be no further votes this evening.

Mr. LEAHY. Mr. President, when the Judiciary Committee traveled to Burlington, Vt., for a hearing on rural crime in 1982, I called violent crime everyone's nightmare. It still is. Almost one-third of American households are victimized by crime each year, and the national bill for this rampage amounts to $125 billion or more. According to a recent magazine survey, a majority of Americans are afraid to walk in some

areas within 1 mile of their own homes.

In Vermont, as in the rest of rural America, the problems are even more acute. Statistics show that rural crime has risen faster in the last decade than urban crime, and yet relatively little attention has been given to the rural crime problem by Congress. If this has been the year for action in Congress to deal with the effects of crime on our lives and our culture, it is also the year of the shrunken budget and the tightened belt. I have deep concerns about the collision of these laudable goals. Law enforcement is one area where government is indispensable, and where even the appearance of backing away from the war on crime can have the effect of a major retreat.

Any retreat from rural law enforcement can mean not only dramatic increases in the cost of crime to society and government, but a tragic change in the quality of rural life.

The training of local law enforcement officials is the cornerstone of the fight against rural crime, and training is principally a responsibility of State and local jurisdictions, not the Federal Government. But the Federal Government has an important role to play in providing financial and other support to local training efforts. Building the apparatus of enforcement and a climate of safety and civility in our communities takes years of planning and continued nurturing. Once gone they will take a very long time to restore.

The rural crime amendment to S. 1762 is a modest but important step forward. It amends the Justice Assistance title of the bill—title VI—to focus national attention on the problems of rural crime in four specific areas:

First. One of the problems in combating rural crime is identifying it as a specific problem requiring specific strategies and resources. The rural crime amendment would identify and specify rural crime as a specific target for the National Institute of Justice, which is established in title VI—Justice Assistance—and which is directed in part C to provide and encourage research and demonstration grants.

Second. It is difficult to identify and treat the problems of rural crime without comprehensive information about the problem. This is a point that was stressed in our Vermont hearing. There have been some useful studies in the past, but they have served to demonstrate the need for ongoing and comprehensive data about rural crime, with an emphasis on the needs of State and local justice systems. The rural crime amendment would require the Bureau of Justice Statistics, which is established in part D of title VI, to compile, analyze, and publish national statistics concerning rural crime, in addition to the other categories of criminal problems presently enumerated.

Third. In addition to identification and study, the rural crime amendment would seek to fund a certain number of programs and projects that would translate learning into action. Part E of title VI established a Bureau of Justice program, which makes grants to States for specified purposes. The rural crime amendment would establish a new category for grant-eligible programs or projects, to "provide training, technical assistance, and programs to assist State and local law enforcement authorities in rural areas in combating crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention."

Fourth. In response to almost every witness at our Vermont hearing on rural crime, part L of title VI provides for FBI training of State and local criminal justice personnel. This training effort does not duplicate the programs initiated under part E, which are designed to help the States and local government units to set up programs of proven effectiveness, using resources specified in the program. Part L seeks to directly transfer FBI skill and know-how to State and local justice officials who are already involved in the fight against rural crime. While rural areas are already eligible for FBI training assistance under part L, the rural crime amendment focuses the training effort on the "effective use of regional resources and improving coordination among criminal justice personnel in different areas and in different levels of government."

I believe that in sparse population areas, justice officials must make maximum use of regional capabilities to combat certain problems that might exceed the reach of local enforcement authorities from time to time. For the same reason, high levels of coordination are essential.

The rural crime amendment has wide bipartisan support and is long overdue. I urge its adoption by all of my colleagues, rural and urban. Crime anywhere hurts all of us everywhere. A gain against rural crime will benefit all Americans.

In closing, I would like to express my great appreciation to Senators LAXALT, THURMOND, and BIDEN for their great help on this amendment. Their comments were invaluable and their cooperation in bringing the amendment to the floor was much appreciated by this Senator.

Mrs. HAWKINS. Mr. President, as chairman of the Senate Drug Enforcement Caucus and cosponsor to S. 1762, I want to applaud the hard work and leadership of Senator THURMOND, Senator BIDEN, and Senator LAXALT. This major law enforcement initiative deserves the strong support of the Senate.

Epidemic levels of drug abuse and drug related violent crime threaten to cripple our youth and our Nation, unless we take action now. For too long law enforcement has been outmanned, outspent, and outgunned by drug traffickers.

Last year, Senator THAD COCHRAN and I held an investigative hearing into gulf coast drug interdiction. This joint hearing of the Senate Drug Enforcement Caucus and the Senate Appropriations Subcommittee on Defense revealed shocking facts related to the role of organized crime in drug trafficking.

Mississippi Bureau of Narcotics Director Tom Dial presented the Biloxi, Miss., hearing with a partial list of a drug operation's "standing orders" his office confiscated during one of their investigations. It directed:

Very little drinking, and no drugs allowed during the course of a job.

Two workers per room. Rooms are preregistered by a female advance worker.

No telephone calls allowed from the motel room. Calls must be made on a pay telephone at least 5 miles from both the model and the jobsite. Contact with family will be through a message service.

Eat all meals away from the motel.

Top off the gas tank at every stop en route.

Carry $500 petty cash.

He indicated that drug smugglers have Mississippi law enforcement outfunded, outequipped and outstaffed.

"The entire budget of the Gulfport Police Department is $2.1 Million," said its acting chief, Hayward Hargrove. "But one drug operation can net $40 million."

Reform of our criminal justice laws are desperately needed now.

Narcotic traffickers consider the present bail bond requirements to be a cost of doing business. In May 1983, a kingpin of major underground organization was arrested for smuggling marihuana. The Government requested $1 million bail. The bail, however was set at only $50,000. The suspect posted bail, and fled.

In April 1983, a man who controlled several drug trafficking operations was delivering hundreds of pounds of marihuana from the Gulf of Mexico to the Southeastern United States. He was making between $250,000 and $500,000 a month. He was arrested and bail was set at $21 million. Bail was later reduced to $10 million, and then to $500,000. The man posted bail, fled and is still at large.

In February 1983, two people were arrested in Miami for possession of 20 kilograms of cocaine. The Government recommended that each be held on $5 million bail. A bail of only $500,000 was set for one. The suspect posted bail, fled and is still at large. The recommendation was followed for the other suspect, however. He did remain

in jail, was convicted, and is now serving a prison term.

In recent years, this Nation has been plagued by an outbreak of crime unparalleled in our history and unequaled in any other free society.

The perniciousness of crime in America has been fostered of late by two interrelated developments. Crime has become increasingly organized and sophisticated. And organized crime has become especially lucrative because of the enormous market for illicit drugs. Drugs and organized crime have combined to wreak havoc on our communities and our lives. The combination of drug trafficking and organized crime represents the most serious crime problem facing this country today. Directly or indirectly, it threatens each person and institution in this country. It threatens the fabric of society—and the gown of public integrity.

In 1983, illicit retail drug sales are estimated to total more than $100 billion, an increase of about 100 percent from 1977. To give you a little perspective, in 1980, illicit drug sales were about equal to the combined profits of America's 500 largest industrial corporations. It is, however, organized crime that reaps the overwhelming bulk of these profits and more, because drugs are just one of the businesses of organized crime. And no taxes were paid on these enormous sums.

On a human level, the drug problem caused by organized crime is even more staggering. Drugs victimize not only addicts, but also those whom addicts assault, rob, and burglarize to obtain the large sums of money they need to feed their drug habit. There is no doubt that drug trafficking spawns an unbelievable amount of related crime. One recent study demonstrated that over an 11-year period, some 243 addicts committed about one-half million crimes—an average of 2,000 crimes each or a crime every other day—just to support their habits. In fact, half of all jail and prison inmates regularly used drugs before committing their offenses. According to a very recent Rand study, addicted offenders in my home State, for example, committed nearly nine times as many property crimes each year than did nonaddicted offenders.

The drug trafficking that creates these other crimes is itself organized crime. Large-scale drug dealers must organize their operations. They obtain the illicit substances, or the rights to the substances, overseas. In many cases, they make payoffs to foreign officials so that their "foreign operations divisions" run smoothly. They arrange for the processing of drugs overseas—the making of poppy into heroin, the making of coca into cocaine—and they develop operations to smuggle the product into this country. Within our border, the drug dealers have set up elaborate enterprises for cutting the pure imported drugs and distributing them over wide geographical areas.

And the organization does not stop there. Drug money is laundered through legitimate businesses set up as "fronts" for drug dealers. The profits are then plowed back into the drug business, just as in a legitimate major enterprise. Increasingly, some of the profits are actually invested in legitimate businesses, including real estate in Florida, restaurants in California, and other businesses across the Nation.

The popular notion that the syndicate—or traditional organized crime—stays out of drugs is simply not true. Many of the syndicate's families have developed elaborate drug trafficking networks. Virtually every one of them is involved in drug trafficking in one way or another.

By achieving the amendment of the posse comitatus law, we have been able to utilize the military's resources—and its tracking and intelligence capabilities—in the fight against drug traffickers. Through amendments to the Tax Reform Act, more crucial information is more readily available to law enforcement—and more tax cases are possible against drug dealers and organized crime.

S. 1762, the Comprehensive Crime Control Act, is desperately needed now, as a tool against drug traffickers and organized crime. I call upon my colleagues to join me in passing this important law enforcement initiative. We must become a nation with zero tolerance for illegal drugs and narcotics traffickers.

Mr. NUNN. Mr. President, I first wish to thank my friend and distinguished colleague from South Carolina (Mr. THURMOND) for his outstanding leadership in the area of crime control and for bringing S. 1762, the Comprehensive Crime Control Act of 1983, to the floor of the U.S. Senate. I also wish to thank my friend and distinguished colleague from Delaware (Mr. BIDEN) for his outstanding leadership in this area and for the fine work which he has done on this legislation.

As former chairman and current ranking member of the Senate Permanent Subcommittee on Investigations, I have seen firsthand the serious crime problem facing our Nation. Hearings we have conducted vividly described and portrayed the problems created by drug trafficking, mob violence, and labor racketeering.

In the last Congress, many of us in the Senate introduced tough legislation designed to deal with such nationwide problems as organized crime, narcotics trafficking, juvenile justice, arson, and sentencing reform. Many of these proposals passed the Senate in the Violent Crime and Drug Enforcement Improvement Act of 1982, which was introduced by Senators THURMOND and BIDEN, and which I cosponsored. Several of the proposals contained in that legislation were also passed by the House as amendments to H.R. 3963 in the final hours of the 97th Congress but were vetoed by President Reagan on January 14, 1983.

In this Congress, I have joined my distinguished colleague, Senator CHILES, in introducing S. 117, the Crime Control Act of 1983. Many of the provisions of the legislation now before us, including those provisions affecting contract murder, protection of the families of Federal officers, bail reform and sentencing reform, are identical or similar to those previously included by Senator CHILES and I in S. 117. On June 20, 1983, the Senate passed the Labor-Management Racketeering Act of 1983, a bill which I introduced, in order to combat the problem of labor union corruption. I am pleased that S. 1762 also contains many of the key provisions of that bill. In the last Congress, I introduced a bill designed to reform the insanity defense. I am also pleased to see several of the key provisions of that bill included in this legislation.

We all agree that Congress must take action to combat crime in America. Crime continues to be one of the most serious problems facing our Nation. I am pleased to report that, according to the latest statistics released by the Federal Bureau of Investigation, the crime rate was down 3 percent in 1982. However, the bad news is, even with the decrease, serious crime is up 15 percent over 1978 and 47 percent higher than a decade ago. In 1982, there were 12.9 million serious crimes in our country.

One significant result of the crime epidemic is the paralyzing affect that it has on the American people. Citizens of this country are virtually being held prisoner in their own homes by criminals who operate in the streets with impunity and with little or no fear of arrest or punishment. This is particularly true for those citizens who live in the inner cities, which includes a great many of our elderly and minority citizens. A 5-minute drive through this very city, the Capital of this great Nation, reveals this shocking truth: honest citizens have had to bolt iron bars over their doors and windows for protection from crime. We seem to have reached a complete reversal in our society: The law-abiding citizens lock themselves behind bars and the criminals freely roam our streets. It is as if we have been conquered by an evading army.

A recent study conducted by Reader's Digest and Gallup indicated that 13 percent of all Americans and 31 percent of women living in central cities are afraid to walk in their own neighborhoods during daylight hours. The same survey found that approxi-

mately 50 percent of all individuals are afraid to walk their own neighborhood streets at night.

It is true that over 90 percent of all crime committed in the United States falls within the jurisdiction of State and local law enforcement, including a large part of violent street crime. It is estimated by the FBI that, on the average, a murder is committed in the United States every 24 minutes, a home burglarized every 10 seconds and a woman raped every 7 minutes. Based upon these figures, it can be estimated that in terms of human suffering, over 42,000 people were killed, over 150,000 women raped and over 6 million homes burglarized during the 97th Congress. By and large, these crimes are beyond our direct reach here on the floor of the U.S. Senate. But they are not beyond the reach of our constituents who are in fact the daily victims of this criminal activity.

At the same time, organized crime flourishes as an interstate network of criminal activity which, in some areas of our country, control entire industries. The illegal narcotics trade now does as much business in the United States as Exxon, the largest U.S. corporation. Organized crime and drug trafficking are problems which we can and must directly address in the Chamber. And as we do, we will see that we have had an impact on burglary and murder and many of the other crimes which occur in our Nation. Organized crime and drug traffickers spawn much of the violent crime which now infects our streets. A recent study, which has become all to familiar, found that over an 11-year period 237 addicts were responsible for over a half a million crimes.

We can and must address this most serious problem by taking action in several areas. Specifically, we can and must address the areas of bail and sentencing reform. We must reform the insanity defense and the procedures whereby moneys and properties of criminal enterprises are forfeited to the United States. We also must address labor racketeering, certain violent crimes and certain nonviolent serious offenses. The Comprehensive Crime Control Act of 1983 does address these and other issues in a most forthright manner and deserves our support.

Crime is not a partisan question. This is a bipartisan question which affects all of our constituents. Certainly, while we are struggling over many controversial items in many diverse areas, we should pause and attempt to come together on this important package of criminal law reforms. In doing so, we can help turn the tide against the crime wage which today continues to afflict our people.

AMENDMENT NO. 2330

(Purpose: To clarify the responsibility of the Department of Labor to detect, investigate, and refer civil and criminal violations of the Employee Retirement Income Security Act and related federal laws)

Mr. NUNN. Mr. President, I have an amendment to this Comprehensive Crime Control Act of 1983 that has been cleared on both sides. I send it to the desk and ask that it be stated.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Maryland will be set aside.

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN) proposes an amendment numbered 2330.

On page 313, line 1, insert the following new section:

SEC. (a) The first paragraph of section 506 of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by striking out "In order" and inserting in lieu thereof the following:

"(a) COORDINATION WITH OTHER AGENCIES AND DEPARTMENTS.—In order".

(b) Such section is amended by adding at the end thereof the following new subsection:

(b) RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS.—The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title and other related Federal laws.".

(c) The title of such section is amended to read as follows:

"COORDINATION AND RESPONSIBILITY OF AGENCIES ENFORCING EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS".

Mr. NUNN. Mr. President, I rise today, joined by Senators HATCH, RUDMAN, CHILES, NICKLES, ROTH, KENNEDY, DECONCINI, STENNIS, JOHNSTON, PRYOR, HOLLINGS, and EAST, to offer amendment No. 2330 to title VIII of S. 1762, the Comprehensive Crime Control Act of 1983. Title VIII of that bill deals with the critical problem of labor racketeering. Designed to assist law enforcement in their efforts against labor-management racketeering, that title is identical, with one exception, to the Labor-Management Racketeering Act, a bill which I introduced as S. 1785 in the last Congress and again as S. 336 on February 1, 1983. Approved by the Senate Labor and Human Resources Committee during both Congresses, that bill passed the Senate without opposition on three separate occasions: twice during the last Congress and again on June 20, 1983. It is now pending before the House Subcommittee on Labor-Management Relations and is today again before the Senate in the form of title VIII of the comprehensive crime bill.

I want to take this opportunity to thank Senator HATCH, as chairman of the Labor and Human Resources Committee, Senator KENNEDY, as ranking minority member of that committee, and Senator NICKLES, as chairman of the Labor Subcommittee, for their work on the Labor-Management Racketeering Act, including this amendment. I also want to thank Senator ROTH, Senator CHILES, and Senator RUDMAN for their work with the Permanent Subcommittee on Investigations in the hearings on which this legislation was based.

The provisions on labor-management racketeering attempt to remedy serious problems concerning the infiltration of some unions and some employee benefit plans by corrupt officials who have no real concern for the well-being of the honest rank-and-file union members they pretend to represent. Those problems were graphically illustrated in public hearings on waterfront corruption before the Permanent Subcommittee on Investigations in February 1981. The legislative proposals in title VIII are a direct result of those hearings. As ranking minority member and former chairman of the subcommittee, I had the opportunity to direct an extensive staff investigation of criminal activity within both the International Longshoremen's Association, the ILA, and the American shipping industry.

The hearings followed a very extensive investigation of the waterfront and the corruption on the waterfront by the U.S. Department of Justice and the FBI. They did a superb job.

In 1975, the Justice Department launched a nationwide investigation of racketeering on our waterfronts. This sweeping inquiry culminated in the criminal convictions of more than 100 high-level ILA officials and shipping company executives. These persons were charged with a variety of offenses ranging from violating the Taft-Hartley Act to extortion, payoffs, kickbacks, threats, intimidation, obstruction of justice, and income tax evasion.

Spurred by the success of the Department of Justice's UNIRAC investigation, the subcommittee staff interviewed numerous witnesses and reviewed countless other items of evidence in order to convey to the American public an accurate portrait of the American waterfront in the 1980's. That portrait, as presented in 2 weeks of hearings in February 1981, is, unfortunately, a dismal one. Witness after witness described the struggle for economic survival in some ports which are riddled with a pervasive pat-

tern of kickbacks and illegal payoffs to union officials.

Our hearings provided compelling evidence of the corrupt influence of organized crime in labor-management relations. Clearly, the vast majority of union officers, employee benefit plan officials, and rank-and-file union members are honest, hard-working, law-abiding citizens. Unfortunately, however, our hearings have shown that a small group of parasites have fastened themselves onto the body of the labor movement. These parasites are perverting the true interests of the union members they claim to represent through a pattern of payoffs and extortion. The Labor-Management Racketeering Act provides the extra assistance needed for unions to rid themselves finally of those corrupt officials who are motivated not by the welfare of the American worker but by their own greed.

As included in title VIII of the crime bill now before us, this legislation will increase criminal penalties for illegal payoffs and kickbacks in violation of the Taft-Harley Act and will prohibit immediately upon conviction of certain crimes persons from holding certain union and management positions. Both of those provisions have passed the Senate on three previous occasions and have been included in title VIII of the crime package which is before us today.

In previously passing the Labor-Management Racketeering Act, the Senate also approved amendment No. 2330, which I now offer, and which is not included in the crime bill now before us. The amendment, which previously passed in the Senate as the final section of both S. 1785 and S. 336, is designed to clarify the Department of Labor's responsibilities to investigate and refer allegations of criminal activity. The need for this amendment has been clearly established in Senate hearings before the Permanent Subcommittee on Investigations, the Committee on Labor and Human Resources, and the Labor Subcommittee.

I might also point out that, in addition to having been previously passed by the Senate on three occasions, this amendment, as part of the Labor-Management Racketeering Act, has had the strong and enthusiastic support of a wide range of interests. The Labor-Management Racketeering Act has been endorsed by the Department of Labor, the Department of Justice, Lane Kirkland of the AFL-CIO, as well as George Lehr of the Teamsters Central States pension fund.

Of particular note was Lane Kirkland's endorsement of the bill in his testimony before the Permanent Subcommittee on Investigations in October 1981 and his written testimony submitted to the House Subcommittee on Labor-Management Relations of the Committee on Education and Labor in December 1982. We have worked very closely with Mr. Kirkland as well as Larry Gold of the AFL-CIO on this legislation. Their cooperation and support have undoubtedly added significantly to the merits of these proposals and greatly increased the prospects of final enactment into law.

This amendment clearly delineates the responsibility and authority of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities relating to union or employee benefit plan corruption. This provision responds to the evidence which we found in our investigations that, although the Labor Department is often active in proceeding with civil actions to enforce Federal law, there has been in the past a great deal of confusion as to whether it should or even could engage in criminal investigations and referrals.

As but one example, we found that under past leadership, the Department of Labor had intentionally deemphasized the criminal aspects of its inquiry into the management of the Teamsters Central States pension fund. As a result, we found that persons who allegedly defrauded the fund would never be properly investigated.

Moreover, this amendment speaks to the many witnesses who, during our hearings, testified that the Department of Labor had failed in other investigations to act against labor racketeering on the waterfront and elsewhere.

In 1981, we heard from both Federal prosecutors and the FBI that the Department of Labor had taken no role in the fight against criminal corruption on the New York/New Jersey waterfront. A Federal prosecutor told us that the Department of Labor had simply not addressed the problem of waterfront corruption in south Florida. The chief investigator of the State attorney's office in Dade County told us that no Federal agency, including the Department of Labor, was then monitoring criminal corruption on the Miami waterfront. A witness, convicted in the UNIRAC investigation and familiar with the scope of labor racketeering, suggested that the Labor Department, given its failure to act in the area, should be abolished.

Faced with our criticism on the past lack of effort by the Labor Department, Secretary Donovan assured our subcommittee, in his November 1981 testimony, of a more active enforcement role by the Department in the future. In keeping with the Secretary's statement, the Department has, in fact, vigorously pursued the outstanding civil litigation in the Teamsters Central States pension and health and welfare funds investigations, achieving substantial settlements in some of those cases and the imposition of a judicially enforced consent decree to monitor future asset management in the pension fund. I commend those efforts and am hopeful that this type of strong enforcement effort will continue in the future. In the criminal arena, I am equally encouraged by the fine efforts of the organized crime and racketeering section of the Labor Department's Inspector General's office in investigating and presenting for prosecution major labor racketeering cases. This emphasis on criminal enforcement by the Labor Department has undoubtedly been of tremendous assistance in the total Government effort against organized crime and labor racketeering.

Nevertheless, while Secretary Donovan has gone a long way toward correcting past mistakes and focusing the Department's energies on rooting out crimnal corruption in unions and benefit plans, we cannot and should not rest the future of law enforcement efforts against labor racketeering on oftentimes changing departmental policies. The law should be clarified once and for all to avoid future misunderstandings of congressional intent. This amendment would achieve that purpose by clearly setting forth the Labor Department's responsibility to actively investigate and refer criminal violations in the labor field. Clearly, such action suggests that the directive set forth in this amendment is necessary to insure an active and effective role by the Department in the criminal area.

Some may ask whether this amendment might possibly encroach on the authority of other Federal investigative and prosecutorial agencies to pursue criminal allegations. On that point, there is a specific proviso in this amendment which we intentionally included to avoid such a result. The amendment expressly states:

> Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws.

Moreover, testimony before the Subcommittee on Investigations from representatives of other law enforcement agencies clearly supports the need for the assistance of the Department of Labor in this area. When asked whether the Department of Justice is capable of continually policing the waterfront on the level of UNIRAC, a Federal prosecutor testified:

> • • • It is impossible, Senator. What has happened is, for instance, the agents and attorneys who were first involved in this investigation and prosecution have gone on into other areas and we have other priorities. It takes an enormous amount of resources to be committed to this matter in order to monitor and police the industry.

That some prosecutor testified that the Department of Labor could play an effective role in the effort against labor racketeering, noting that:

They have the authority to monitor this better than the FBI can in terms of constant monitoring. The FBI, I think, has to devote its resources to too many other areas, and the notoriety of the corruption in the waterfront industry and in the ILA * * * should catch the Department of Labor's attention to monitor what is going on in that industry.

In areas of labor racketeering beyond the waterfront, the record of the Permanent Subcommittee on Investigations' 1980 hearings on the investigation of the Teamsters Central States pension fund includes a Department of Justice memorandum from then Deputy Assistant Attorney General John C. Keeney to then Attorney General Benjamin Civiletti. In that memorandum, Keeney states that problems in the Justice Department investigation had resulted from the Department of Labor's "failure to refer evidence of criminal misconduct to us." This amendment would prevent that type of situation by insuring an active and helpful role for the Labor Department in criminal investigations. Rather than inhibit enforcement by other agencies, the bill would assist their efforts by adding the full resources of the Department of Labor to the fight against labor racketeering.

In sum, this amendment, when coupled with the other provisions of title VIII, is a major step toward insuring the integrity of the collective bargaining process and protecting the interests of the honest union member. I again urge the Senate to pass this amendment, as it has so wisely done on three prior occasions, and to work diligently toward its early passage in the House as part of the Comprehensive Crime Control Act of 1983.

Mr. President, this amendment has been cleared on both sides. It has been passed, I believe, three times by the Senate as part of the overall labor-management racketeering bill. The other parts of that legislation are incorporated in this main crime bill. This portion was left out. I do not think it was intentional, but this portion, I think, can best be explained by simply reading the paragraph of what it does.

(b) RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS.—The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title and other related Federal laws.

This amendment I have sent to the desk is on behalf of Senator HATCH, myself, and Senator NICKLES. It does clarify the responsibilities of the Department of Labor and makes it abundantly clear in the law what I think is already in the Federal law but not as clear as it should be—that the Labor Department has the obligation to detect both civil and criminal violations of what we call ERISA or the Employee Retirement Income Security Act and related Federal laws.

We have had a whole series of hearings on this over the last 3 or 4 years. It is clear that there has been some vagueness and ambiguity as to what the Labor Department's appropriate role is. This makes it absolutely clear that they are to detect both criminal and civil violations and then they refer them to the Justice Department under the appropriate procedures.

Mr. President, I see the distinguished Senator from Utah is here as the prime cosponsor. I yield to him.

Mr. HATCH. Mr. President, I am proud to be a cosponsor of the amendment being offered by my distinguished colleague from Georgia, Senator NUNN. To date we have had a little fortune in getting the other body to take up the Labor Management Racketeering Act, S. 336. By including that bill in the crime control package, I hope that we will be able to break the apparent procedural deadlock we seem to be facing.

As reported out of committee, the crime control package failed to include an important provision found in S. 336, that which concerns the delegation of authority between the Department of Labor and the Department of Justice.

The amendment will make it clear that the Department of Labor has not only the authority but also the responsibility for detection, investigation, and referral of civil and criminal violations of the appropriate Federal labor laws to the Department of Justice. In my view, this is probably the most important provision in S. 336. Unless the Department of Labor not only is committed to the principles of this legislation, but also is actively ridding the labor movement of organized crime and other racketeers, the purpose behind S. 336 may prove fruitless.

Consequently, the amendment makes it clear that it is the intent of Congress that the Department of Labor enforce the antiracketeering statutes aggressively.

By adopting this amendment, the Senate will insure that the Labor Management Racketeering Act found in the crime control package is consistent with the legislation that has been unanimously approved by this body on three previous occasions. I urge my colleagues to vote in favor of this amendment.

Mr. President, I thank the distinguished Senator from Georgia for his leadership in this area. Not only has there been excellent leadership by the Senator from Georgia; I might add many other people, including the distinguished Senator from New Hampshire (Mr. RUDMAN) have led the fight in this body to try to resolve some of the labor racketeering problems. As the distinguished Senator from Georgia has said, this will be the third or fourth time this has passed this full body. This is a very important correction, to correct an oversight that is literally in the bill. I agree with the distinguished Senator from Georgia that it is one of the more important corrections we can put in the bill.

I again wish to pay tribute to those who have worked so hard to try to resolve problems in this area, including the top labor leaders in this country. I want them to know that I personally appreciate it.

I thank the distinguished Senator from Georgia for yielding.

Mr. NUNN. I thank the distinguished Senator from Utah.

Mr. President, I might add that Senator RUDMAN, along with Senator HATCH, is a prime cosponsor of this amendment, along with Senator ROTH, Senator CHILES, Senator NICKLES, Senator KENNEDY, Senator DECONCINI, Senator JOHNSTON, Senator PRYOR, Senator HOLLINGS, and Senator EAST.

This results from a long series of hearings we have had in the subcommittee known as the Permament Subcommittee on Investigations, chaired by myself as well as the Presiding Officer (Mr. RUDMAN), who has been involved in all of these hearings as well as the Senator from Delaware, Senator CHILES, and others. This is a collective effort.

I thank the Senator from South Carolina and the Senator from Delaware (Mr. BIDEN), who have agreed to this amendment. We think it is a very important part of the authority of the Department of Labor.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER (Mr. RUDMAN). The Senator from South Carolina.

● Mr. NICKLES. Mr. President, I wish to take this opportunity to support Senator NUNN on his amendment to S. 1762, the "Comprehensive Crime Control Act." This provision would specifically give authority and responsibility to the Department of Labor to detect, investigate and refer, where appropriate, civil and criminal violations of the Employee Retirement Income Security Act and other related Federal statutes.

Along with other provisions already contained in S. 1762, this amendment completes the Labor Management Racketeering Act of 1983 which has previously passed the Senate on three separate occasions. Senators Nunn and Rudman have both presented compelling reasons at hearings on the Labor

Management Racketeering Act conducted by the Labor Subcommittee, which I chair, to legislate this responsibility and authority to the Department of Labor. As members of the Permanent Subcommittee on Investigations, they have developed and are still developing an extensive record into the problems of organized crime and the need for a united effort by the Federal Government to combat these activities. This amendment mandates cooperation among the responsible Federal agencies.

Again, I commend Senator NUNN for his efforts, and I am confident this amendment as well as the other provisions of the Labor Management Racketeering Act will pass again for the fourth time today.

I sincerely hope that the House of Representatives will take notice of our continued efforts to pass this legislation and act expeditiously to enact these changes into law.●

Mr. THURMOND. Mr. President, the distinguished ranking member of the Judiciary Committee has left the floor. I understand he has caught a train for Delaware. I believe it was understood there would be no more amendments that would come up.

The distinguished minority leader (Mr. BYRD) tells me that this meets the approval of Senator BIDEN. I am told his staff member says it meets his approval to take this up.

So far as I know, Mr. President, there is no objection to it. I have no objection to it. In view of that, it is satisfactory to me, since Senator BYRD says that Senator BIDEN approves it, for us to go ahead and act on it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Georgia.

The amendment (No. 2330) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I thank the Senator from South Carolina for his courtesy. I am pleased to have been able to work with our good friend from Georgia on his amendment.

There will be no further amendments offered tonight, as I understand it.

## ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, we have some routine business to attend to. I ask unanimous consent that there be a period for the transaction of routine morning business during which Senators may speak for not to exceed 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER TO HOLD H.R. 1961 AT THE DESK

Mr. STEVENS. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 1961, Vietnam Veterans Agent Orange Relief Act, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

## REHABILITATION AMENDMENTS

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representative on S. 1340.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved,* That the House insist upon its amendments to the bill (S. 1340) entitled "An Act to revise and extend the Rehabilitation Act of 1973 and to extend the Developmental Disability Assistance and Bill of Rights Act, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

*Ordered,* That Mr. Perkins, Mr. Ford of Michigan, Mr. Biaggi, Mr. Andrews of North Carolina, Mr. Simon, Mr. Miller of California, Mr. Murphy, Mr. Corrada, Mr. Willis of Montana, Mr. Kogovsek, Mr. Erlenborn, Mr. Bartlett, Mr. Goodling, Mr. Gunderson, and Mr. Coleman of Missouri be the managers of the conference on the part of the House.

Mr. STEVENS. Mr. President, I move that the Senate disagree with the House amendments, agree to the conference requested by the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Senators HATCH, WEICKER, STAFFORD, HAWKINS, NICKLES, KENNEDY, RANDOLPH, EAGLETON, and MATSUNAGA conferees on the part of the Senate.

## REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 98-14

Mr. STEVENS. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Consular Convention between the United States of America and the Republic of South Africa (Treaty Document No. 98-14), which was transmitted to the Senate on January 27, 1984, by the President of the United States.

I also ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

*To the Senate of the United States:*

I am transmitting for the Senate's advice and consent to ratification the Consular Convention between the United States of America and the Republic of South Africa which was signed at Pretoria on October 28, 1982. I am also transmitting for the information of the Senate the report of the Department of State with respect to the Convention. This Convention will establish firm obligations on such important matters as free communication between a national and his consul, notification of consular officers of the arrest and detention of their nationals and permission for visits by consuls to nationals who are under detention.

I welcome the opportunity through this Convention to improve the relations between the two countries and their nationals. I urge the Senate to give the Convention its prompt and favorable consideration.

RONALD REAGAN.

THE WHITE HOUSE, *January 27, 1984.*

## SUSPENSION OF PARAGRAPH 2 OF RULE XXVI FOR CERTAIN COMMITTEES

Mr. STEVENS. Mr. President, I ask unanimous consent that paragraph 2 of Rule 26, requiring the printing of committee rules in the CONGRESSIONAL RECORD by March 1 of this year, be suspended for those committees who have made no changes in their rules.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## ANNUAL REPORT ON ADMINISTRATION OF FEDERAL RAILROAD SAFETY ACT—MESSAGE FROM THE PRESIDENT—PM 107

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the

Committee on Commerce, Science, and Transportation:

*To the Congress of the United States:*

I transmit herewith the Twelfth Annual Report on the Administration of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.) as required by the Act. This report was prepared in accordance with Section 211 of the Act and covers calendar year 1982.

RONALD REAGAN.

THE WHITE HOUSE, *January 30, 1984.*

## ANNUAL REPORT ON PIPELINE SAFETY—MESSAGE FROM THE PRESIDENT—PM 108

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

*To the Congress of the United States:*

In accordance with the requirements of section 16 of the Natural Gas Pipeline Safety Act of 1968, as amended, and Section 213 of the Hazardous Liquid Pipeline Safety Act of 1979, I hereby transmit the Annual Report on Pipeline Safety for calendar year 1982.

RONALD REAGAN.

THE WHITE HOUSE, *January 30, 1984.*

## MESSAGES FROM THE HOUSE

At 1:05 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 1097. An act to consolidate and authorize certain atmospheric and satellite programs and functions of the National Oceanic and Atmospheric Administration under the Department of Commerce.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2714. An act to direct the Secretary of Agriculture to take certain actions to improve the productivity of American farmers, and for other purposes.

## MEASURE REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2714. An act to direct the Secretary of Agriculture to take certain actions to improve the productivity of American farmers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2350. A communication from U.S. Bankruptcy Court judge for the Eastern District of Michigan, George Brody, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2351. A communication from U.S. Bankruptcy Court Judge Krasniewski, Northern District of Ohio transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2352. A communication from U.S. Bankruptcy Court Judge Coleman, Northern District of Alabama, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2353. A communication from U.S. Bankruptcy Court Judge Breland, Northern District of Alabama, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2354. A communication from U.S. Bankruptcy Court Judge Brauer, Eastern District of Missouri, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2355. A communication from U.S. Bankruptcy Court Judge Elliott, Western District of Texas, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2356. A communication from U.S. Bankruptcy Court Judge Glennon, District of Massachusetts, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2357. A communication from U.S. Bankruptcy Court Judge Ecker, District of South Dakota, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2358. A communication from U.S. Bankruptcy Court Judge Skidmore, Western District of Washington, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2359. A communication from U.S. Bankruptcy Court Judge Moore, Eastern District of North Carolina, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2360. A communication from U.S. Bankruptcy Court Judge Lipkin, Central District of Illinois, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2361. A communication from U.S. Bankruptcy Court Judge Goldhaber, Eastern District of Pennsylvania, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2362. A communication from U.S. Bankruptcy Court Judge Rainville, Northern District of California, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2363. A communication from U.S. Bankruptcy Court Judge O'Neill, Northern District of Ohio, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2364. A communication from U.S. Bankruptcy Court Judge Lifland, Southern District of New York, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2365. A communication from U.S. Bankruptcy Court Judge Ryan, Eastern District of Oklahoma, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2366. A communication from U.S. Bankruptcy Court Judge Dooley, Central District of California, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2367. A communication from U.S. Bankruptcy Court Judge Paskay, Middle District of Florida, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2368. A communication from U.S. Bankruptcy Court Judge Franklin, District of Kansas, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2369. A communication from U.S. Bankruptcy Court Judge Parente, Eastern District of New York, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2370. A communication from U.S. Bankruptcy Court Judge Radoyevich Eastern District of New York, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2371. A communication from U.S. Bankruptcy Court Judge Morton, District of Kansas, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2372. A communication from U.S. Bankruptcy Court Judge Balick, District of Delaware, transmitting, pursuant to law, notice of her acceptance of appointment; to the Committee on the Judiciary.

EC-2373. A communication from U.S. Bankruptcy Court Judge Hess, District of Oregon, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2374. A communication from U.S. Bankruptcy Court Judge Hopper, Middle District of Alabama, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2375. A communication from U.S. Bankruptcy Court Judge Davis, District of South Carolina, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2376. A communication from U.S. Bankruptcy Court Judge Norton, Northern District of Georgia, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2377. A communication from U.S. Bankruptcy Court Judge Dahl, Eastern District of California, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2378. A communication from U.S. Bankruptcy Court Judge McCormick, Northern District of Illinois, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2379. A communication from U.S. Bankruptcy Court Judge Hertz, Northern District of Illinois, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2380. A communication from U.S. Bankruptcy Court Judge Ford, Northern District of Texas, transmitting, pursuant to

law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2381. A communication from U.S. Bankruptcy Court Judge Mednick, Central District of California, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2382. A communication from U.S. Bankruptcy Court Judge Hess, District of Oregon, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2383. A communication from U.S. Bankruptcy Court Judge Shelley, Eastern District of Virginia, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2384. A communication from U.S. Bankruptcy Court Judge Schneider, District of Maryland, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2385. A communication from U.S. Bankruptcy Court Judge Kelley, Eastern District of Tennessee, transmitting, pursuant to law, notice of his acceptance of appointment; to the Committee on the Judiciary.

EC-2386. A communication from Judge Eisen, of the Northern District of Illinois, transmitting, pursuant to law, acceptance of his appointment as a judge of the Bankruptcy Court; to the Committee on the Judiciary.

EC-2387. A communication from Judge Williams, of the Northern District of Ohio, transmitting, pursuant to law, acceptance of his appointment as a judge of the Bankruptcy Court; to the Committee on the Judiciary.

EC-2388. A communication from Judge Buschman, of the Southern District of New York, transmitting, pursuant to law, acceptance of his appointment as a judge of the Bankruptcy Court; to the Committee on the Judiciary.

EC-2389. A communication from Judge Sullivan, of the District of Oregon, transmitting, pursuant to law, acceptance of his appointment as a judge of the Bankruptcy Court; to the Committee on the Judiciary.

EC-2390. A communication from the Chief Justice of the United States, transmitting, pursuant to law, a copy of the Proceedings of the Judicial Conference of the United States held in Washington, D.C. on September 21 and 22, 1983; to the Committee on the Judiciary.

EC-2391. A communication from the Administrative Secretary of the National Music Council, transmitting, pursuant to law, the audit report of the National Music Council for the year ended April 30, 1983; to the Committee on the Judiciary.

EC-2392. A communication from the Executive Secretary of the National Security Council, transmitting, pursuant to law, the annual report of the Council on activities under the Freedom of Information Act for calendar year 1983; to the Committee on the Judiciary.

EC-2393. A communication from the Chairman of the U.S. Commission on Civil Rights, transmitting, pursuant to law, a report of the Commission entitled "Federal Civil Rights Commitments; An Assessment of Enforcement Resources and Performance;" to the Committee on the Judiciary.

EC-2394. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a summary of the report entitled "Legislative Changes Needed To Financially Strengthen Single Employer Pension Plan Insurance Program;" to the Committee on Labor and Human Resources.

EC-2395. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Legislative Changes Needed To Financially Strengthen Single Employer Pension Plan Insurance Program;" to the Committee on Labor and Human Resources.

EC-2396. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "The Health Consequences of Smoking—Cardiovascular Disease;" to the Committee on Labor and Human Resources.

EC-2397. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report on the Department's administration of its responsibilities under ERISA for calendar year 1982; to the Committee on Labor and Human Resources.

EC-2398. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the 1983 edition of the report entitled "Health, United States;" to the Committee on Labor and Human Resources.

EC-2399. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "The Effects of Copayment on Beneficiaries of the United Mine Workers Health Plan and on Their Medical Providers;" to the Committee on Labor and Human Resources.

EC-2400. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the alcohol and drug abuse and mental health services block grant; to the Committee on Labor and Human Resources.

EC-2401. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the eleventh annual report of the National Heart, Lung, and Blood Advisory Council for the year ended November 30, 1983; to the Committee on Labor and Human Resources.

EC-2402. A communication from the Board Members of the Railroad Retirement Board, transmitting, pursuant to law, an appeal of the so-called passback from OMB of their administrative budget figures for fiscal year 1985; to the Committee on Labor and Human Resources.

EC-2403. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the examination of the Senate Building Beauty Shop financial statements for the fiscal years ended February 28, 1983 and 1982; to the Committee on Rules and Administration.

EC-2404. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a copy of the letter to the President regarding the fiscal year 1985 funding; to the Committee on Rules and Administration.

EC-2405. A communication from the Executive Secretary to the Secretary of Defense, transmitting, pursuant to law, a report on Department of Defense Procurement from Small and Other Business firms for October 1982 through August 1983; to the Committee on Small Business.

EC-2406. A communication from the Administrator of Veterans' Affairs, transmitting, pursuant to law, the first formal report of the Advisory Committee on Former Prisoners of War; to the Committee on Veterans' Affairs.

EC-2407. A communication from the Architect of the Capitol, transmitting, pursuant to law, a report of all expenditures during the period April 1, 1983, through September 30, 1983, from moneys appropriated to the Architect of the Capitol; ordered to lie on the table.

## PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicates:

POM-487. A joint resolution adopted by the Legislature of the State of Wisconsin; to the Committee on Agriculture, Nutrition, and Forestry.

"1983 ASSEMBLY JOINT RESOLUTION 41

"Whereas, the federal government, acting through the United States Department of Agriculture, imposes a 50-cent per hundredweight assessment on milk against dairy farmers in April 1983, and a subsequent 50-cent per hundredweight assessment in August 1983; and

"Whereas, the 2 assessments combined will cost Wisconsin dairy farmers as much as $220 million a year and individual farmer an average of $5,000 a year; and

"Whereas, the USDA has proceeded in this matter despite the persistent outcry from dairy farmers from throughout the nation and particularly in Wisconsin; and

"Whereas, a broad coalition of farm groups has worked diligently and conceived the Voluntary Incentive Program (Dairy Surplus Reduction Act of 1983, H.R. 1528) that will achieve the same goals sought by the USDA with the $1 assessment but without the undue hardship on dairy farmers that the assessment will cause; and

"Whereas, the United States senate has passed legislation that would supersede the $1 per hundredweight assessment and address the dairy surplus situation more equitably; and

"Whereas, the USDA and its secretary, John Block, are insensitive to the needs of Wisconsin's dairy farmers and instead seem to be more sensitive to the needs of dairy farmers in other sections of the nation, particularly the south, where dairy farming is not as crucial a part of the economy as it is here; and

"Whereas, the assessments will fail at the stated goals of cutting production and will only transfer the cost of the program from government to producers; and

"Whereas, Secretary Block and the administration seem intent on solving surpluses in other commodities but do not understand the problems faced by dairy farmers; and

"Whereas, Secretary Block and the USDA fail to take into account the thin profitability of many dairy operations and the importance of the dairy industry to the economic infrastructure of the state of Wisconsin; now, therefore, be it

"Resolved by the assembly, the senate concurring, That the legislature of the state of Wisconsin condemns the administration of the federal government, particularly the administration of the United States Department of Agriculture and its secretary, John Block, for taking actions that will harm the dairy industry in Wisconsin without solving the problems currently facing the dairy price support program; and, be it further

"Resolved, That the state of Wisconsin and its legislature support implementation of the Voluntary Incentive Program or other programs that address dairy price

support problems without harming the dairy industry; and, be it further

"Resolved, That the state of Wisconsin and its legislature urge the United States house of representatives to immediately schedule and promptly complete action on legislation to supersede the dairy assessments and address the dairy surplus situation more equitably; and, be it further

"Resolved, That a duly attested copy of this joint resolution be immediately transmitted by the assembly chief clerk to the president and secretary of the senate of the United States, to the speaker and clerk of the house of representatives of the United States, and to each member of the congressional delegation from this state, attesting the adoption of this joint resolution by the 1983 legislature of the state of Wisconsin."

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POM-488. A joint resolution adopted by the Legislature of the State of Wisconsin; to the Committee on Agriculture, Nutrition, and Forestry.

"1983 ASSEMBLY JOINT RESOLUTION 41

"Whereas, the federal government, acting through the United States Department of Agriculture, imposed a 50-cent per hundredweight assessment on milk against dairy farmers in April 1983, and a subsequent 50-cent per hundredweight assessment in August 1983; and

"Whereas, the 2 assessments combined will cost Wisconsin dairy farmers as much as $220 million a year and individual farmers an average of $5,000 a year; and

"Whereas, the USDA has proceeded in this matter despite the persistent outcry from dairy farmers from throughout the nation and particularly in Wisconsin; and

"Whereas, a broad coalition of farm groups has worked diligently and conceived the Voluntary Incentive Program (Dairy Surplus Reduction Act of 1983, H.R. 1528) that will achieve the same goals sought by the USDA with the $1 assessment but without the undue hardship on dairy farmers that the assessment will cause; and

"Whereas, the United States senate has passed legislation that would supersede the $1 per hundredweight assessment and address the dairy surplus situation more equitably; and

"Whereas, the USDA and its secretary, John Block, are insensitive to the needs of Wisconsin's dairy farmers and instead seem to be more sensitive to the needs of dairy farmers in other sections of the nation, particularly the south, where dairy farming is not as crucial a part of the economy as it is here; and

"Whereas, the assessments will fail at the stated goals of cutting production and will only transfer the cost of the program from government to producers; and

"Whereas, Secretary Block and the administration seem intent on solving surpluses in other commodities but do not understand the problems faced by dairy farmers; and

"Whereas, Secretary Block and the USDA fail to take into account the thin profitability of many dairy operations and the importance of the dairy industry to the economic infrastructure of the state of Wisconsin; now, therefore, be it

"Resolved by the assembly, the senate concurring, That the legislature of the state of Wisconsin condemns the administration of the federal government, particularly the administration of the United States Department of Agriculture and its secretary, John Block, for taking actions that will harm the dairy industry in Wisconsin without solving the problems currently facing the dairy price support program; and, be it further

"Resolved, That the State of Wisconsin and its legislature support implementation of the Voluntary Incentive Program or other programs that address dairy price support problems without harming the dairy industry; and, be it further

"Resolved, That the state of Wisconsin and its legislature urge the United States house of representatives to immediately schedule and promptly complete action on legislation to supersede the dairy assessments and address the dairy surplus situation more equitably; and, be it further

"Resolved, That a duly attested copy of this joint resolution be immediately transmitted by the assembly chief clerk to the president and secretary of the senate of the United States, to the speaker and clerk of the house of representatives of the United States, and to each member of the congressional delegation from this state, attesting the adoption of this joint resolution by the 1983 legislature of the state of Wisconsin."

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POM-489. A resolution adopted by the Third Congress of the Federated States of Micronesia; to the Committee on Appropriations.

"CONGRESSIONAL RESOLUTION No. 3-102

"Whereas, the College of Micronesia was designated a land-grant college by the United States Higher Education Act of 1980 (United States Public Law No. 96-374); and

"Whereas, in lieu of the College of Micronesia receiving federal land from the United States Government as have other land-grant colleges, the United States Congress in said law authorized an appropriation of $3 million to be placed in a trust fund as an endowment for the College of Micronesia, with the interest from such trust fund to be available to the College of Micronesia for its various programs and projects related to agriculture and other permitted fields of study; and

"Whereas, the College of Micronesia has entered into a Memorandum of Understanding with the United States Department of Agriculture regarding extension services in agriculture and home economics in Micronesia pursuant to the Smith-Lever Act and other applicable laws; and

"Whereas, the College of Micronesia Cooperative Extension Service has entered into a Project Agreement with the Extension Service of the United States Department of Agriculture regarding the organization and administration of the Cooperative Extension Program * * *.

"Whereas, the College of Micronesia has established a College of Tropical Agriculture and Sciences; and

"Whereas, it is the sense of the Third Congress of the Federated States of Micronesia, Second Regular Session, 1983, that the College of Micronesia has done all that it has been requested to do as a result of its designation as a land-grant college; now, therefore,

"Be it resolved by the Third Congress of the Federated States of Micronesia, Second Regular Session, 1983, that the Secretary of the United States Department of Agriculture, the Secretary of the United States Department of Education, the Secretary of the United States Department of the Interior, and the United States Congress be hereby respectfully requested to take all steps necessary to expedite the appropriate of the $3 million authorized by the United States Higher Education Act of 1980 to be used as an endowment for the College of Micronesia as a land-grant college; and

"Be it further resolved that certified copies of this resolution be transmitted to the Secretary of the United States Department of Agriculture; to the Secretary of the United States Department of Education; to the Secretary of the United States Department of the Interior; to the Speaker of the House of Representatives and the following Congressmen: Donald E. Young, Robert J. Lagomarsino, Antonio B. Won Pat, John F. Seilberling, and Sala Burton; and to the Presiding Officer of the Senate and the following Senators: James A. McClure, J. Bennett Johnston, Spark M. Matsunaga, and Daniel K. Inouye."

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POM-490. A resolution adopted by the Queens Jewish Community Council, Inc. relating to Israel; to the Committee on Armed Services.

POM-491. A resolution adopted by the Council of the County of Maui, State of Hawaii relating to housing and community development; to the Committee on Banking, Housing, and Urban Affairs.

POM-492. A resolution adopted by the General Assembly of the Universalist Association of Churches in North America relating to the U.S. Capital Government support of the current repressive regimes of El Salvador and Guatemala and elsewhere and urging an end to the U.S. military adviser program in El Salvador; to the Committee on Foreign Relations.

POM-493. A resolution adopted by the General Assembly of the Unitarian Universalist Association of Churches in North America relating to the arms race; to the Committee on Foreign Relations.

POM-494. A resolution adopted by the General Assembly of the Unitarian Universalist Association of Churches in North America relating to the military operations in Central America; to the Committee on Foreign Relations.

POM-495. A resolution adopted by the General Assembly of the Unitarian Universalist Association of Churches in North America relating to the nuclear freeze; to the Committee on Foreign Relations.

POM-496. A resolution adopted by the General Assembly of the Unitarian Universalist Association of Churches in North America urging Congress to provide funds immediately for the transportation and supporting of Amerasian petitioners for immigration and to facilitate the adoption of Amerasian children into American homes; to the Committee on the Judiciary.

POM-497. A resolution adopted by the General Assembly of the Unitarian Universalist Association of Churches in North America relating to the equal rights amendment; to the Committee on the Judiciary.

POM-498. A resolution adopted by the General Assembly of the Unitarian Universalist Association of Churches in North America relating to the Peace Academy Commission's report; to the Committee on Labor and Human Resources.

POM-499. A resolution adopted by the Inland Rivers Ports & Terminals, Inc. relating to the flood plain protection regulations; to the Committee on Banking, Housing, and Urban Affairs.

POM-500. A resolution adopted by the American Association of Port Authorities relating to the port authorities independence from Government control of port and terminal use and development; to the Committee on Commerce, Science, and Transportation.

POM-501. A resolution adopted by the Senate of the State of Michigan; to the Committee on Commerce, Science, and Transportation.

"RESOLUTION No. 108

"Whereas, The telephone has become a standard fixture in American households. * * *

"Whereas, Actions have recently been taken by the Federal Communications Commission and the United States Department of Justice which will create astronomically high telephone rate increases. Involving new charges, new depreciation methodology, equipment deregulation, new accounting treatments, and loss of * * * support, these actions pose a clear and immediate threat to universal telephone service. Many citizens, including residential users, farm and rural customers, the poor, and fixed income elderly may not be able to afford to maintain telephone service. Studies have indicated that the local rate increases resulting from the implementation of these measures will triple the number of households without basic telephone service; and

"Whereas, Recognizing the significance of the telephone and its critical importance in our lives, the members of the Michigan Senate wish to express to the United States Congress our support for the passage of H.R. 4102, a measure which would counteract dramatically high telephone rate increases; now, therefore, be it

Resolved by the Senate, That the members of this legislative body hereby memorialize the Congress of the United States to pass H.R. 4102, counteracting telephone rate increases resulting from the actions taken by the Federal Communications Commission and the Department of Justice; and be it further

"Resolved, That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the House of Representatives, the Michigan congressional delegation, the Federal Communications Commission, and the Department of Justice."

POM-502. A resolution adopted by the board of directors of the Association of Monterey Bay Area Governments relating to the fisheries off the California coast; to the Committee on Commerce, Science, and Transportation.

POM-503. A resolution adopted by the International Association of Chiefs of Police relating to the highway safety; to the Committee on Commerce, Science, and Transportation.

POM-504. A resolution adopted by the board of directors of the Alaska State Chamber of Commerce relating to obtaining variances or other suitable relief for Alaska mills; to the Committee on Environment and Public Work.

POM-505. A resolution adopted by the board of directors of the Florida Federation of Women's Club relating to cable television legislation; to the Committee on Commerce, Science, and Transportation.

POM-506. A resolution adopted by the assembly of the State of California; to the Committee on the Judiciary.

"HOUSE RESOLUTION No. 28

"Whereas, Vincent Chin, a 27-year-old Chinese American draftsman, was brutally murdered by two white men in Detroit, Michigan, on June 19, 1982; and

"Whereas, Vincent Chin's murder was the result of a racially motivated attack which could have been perpetrated against any Asian person; and

"Whereas, The defendants were initially charged with second degree murder but the prosecuting attorney eventually accepted a guilty plea for the lower charge of manslaughter; and

"Whereas, On March 16, 1983, after hearing arguments only from the defense attorneys, Judge Charles Kaufman sentenced the defendants to three years' probation and a fine of $3,000; and

"Whereas, Judge Kaufman has refused to vacate his sentence; and

"Whereas, It is the criminal justice system which is entrusted to protect the rights of all those concerned, the state, the defendants, and the victim; and

"Whereas, It is the duty and obligation of the criminal justice system to alleviate and rectify all errors occurring in the administration of justice and the enforcement of the laws; now, therefore, be it

*"Resolved by the Assembly of the State of California,* That the President and Congress of the United States are respectfully memorialized to request the United States Department of Justice to undertake a prompt and thorough investigation of, and prosecution for, all federal civil rights violations that may have been committed against Vincent Chin; and be it further

*"Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, and to the United States Department of Justice."

POM-507. A resolution adopted by the board of directors of the Florida Federation for Women's Clubs relating to the Environmental Protection Agency; to the Committee on Environment and Public Works.

POM-508. A resolution adopted by the American Association of Port Authorities relating to the deepdraft navigational development legislation; to the Committee on Environment and Public Works.

POM-509. A resolution by the American Association of Port Authorities relating to the Clean Air Act reauthorization; to the Committee on Environment and Public Works.

POM-510. A resolution adopted by the American Association of Port Authorities relating to space economic and environmental factors related to port construction and improvements; to the Committee on Environment and Public Works.

POM-511. A resolution adopted by the Senate of the State of Michigan; to the Committee on Energy and Natural Resources.

"SENATE RESOLUTION 253

"Whereas, Passage of the National Gas Policy Act of 1978 by the United States Congress began the decontrol process for natural gas prices; and

"Whereas, Natural gas is the major source of home heating for Michigan households; and

"Whereas, Despite an oversupply of domestic natural gas, the consumer cost of natural gas rose as much as 60% during the last year; and

"Whereas, Utility companies have entered into long-term contracts with pipelines, which contain certain inflationary and anticompetitive clauses, causing rapid increases in natural gas prices; and

"Whereas, The Federal Emergency Regulatory Commission has created new categories of natural gas which have resulted in increased costs to consumers; and

"Whereas, The current natural gas situation has developed into a crisis for all categories of consumers. Legislation is urgently needed in Congress to alleviate this crisis. H.R. 2154, known as the Natural Gas Consumer Relief Act, represents a reasonable approach to alleviating this dilemma; now, therefore, be it

*"Resolved by the Michigan Senate,* That we hereby memorialize the United States Congress to enact H.R. 2154, known as the Natural Gas Consumer Relief Act; and be it further

*"Resolved,* That a copy of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Michigan congressional delegation."

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POM-512. A resolution adopted by the Legislature of the State of Wisconsin; to the Committee on Energy and Natural Resources.

"1983 ASSEMBLY JOINT RESOLUTION 18

"Whereas, prices for natural gas continue to rise in spite of a surplus of natural gas and a decrease in demand; and

"Whereas, natural gas pipeline companies have little incentive to forcefully negotiate or renegotiate supply contracts with producers, and have entered into contracts with provisions which require pipelines to take or pay for unneeded gas and with provisions which could raise prices dramatically in 1985, when certain controls under the natural gas policy act of 1978 are scheduled to be removed; and

"Whereas, the exercise of the Federal Energy Regulatory Commission's authority to decontrol natural gas by administrative action without the approval of congress is contrary to the interests of consumers; and

"Whereas, the president of the United States has proposed to accelerate the decontrol of natural gas prices beyond the gradual decontrol set forth in the natural gas policy act of 1978; and

"Whereas, the accelerated decontrol of natural gas prices could cause Wisconsin residential, commercial and industrial consumers to pay considerably more for natural gas for heat and process use and could result in higher consumer prices; and

"Whereas, rising natural gas prices result in economic hardship for all consumers, especially unemployed, low-income and elderly residential consumers; now, therefore, be it

*"Resolved by the assembly, the senate concurring,* That the legislature of the state of Wisconsin opposes the accelerated decontrol of natural gas prices beyond what is set forth in the natural gas policy act of 1978, and opposes administrative decontrol of natural gas prices by the federal energy regulatory commission; and, be it further

*"Resolved,* That the legislature of the state of Wisconsin urges congress to create a regulatory environment to ensure that natural gas pipelines will aggressively negotiate contracts for the purchase of natural gas at reasonable prices and renegotiate imprudent existing contracts; and, be it further

*"Resolved,* That copies of this resolution shall be transmitted to the president of the United States, the members of the Wisconsin congressional delegation, the speaker of the U.S. house of representatives and the president of the U.S. senate."

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POM-513. A resolution adopted by the Legislature of the Territory of Guam; to the Committee on Energy and Natural Resources.

"RESOLUTION No. 363

*"Be it resolved by the Legislature of the Territory of Guam:*

"Whereas, Kitty Baier, a former confidential secretary to departed Department of Interior Secretary James G. Watt, has worked as a secretary for a public relations firm from 1975 to 1977; and

"Whereas, she was the managing editor of a Memphis real estate publication; and

"Whereas, she was chosen for promotion to her present position because her work covered the spectrum of Interior issues and she won the respect of the people in the Interior department; now, therefore, be it

"*Resolved,* That the people of Guam congratulate Kitty Baier on her promotional appointments as Deputy Assistant Secretary for Territorial Affairs; and be it further

"*Resolved,* That the people of Guam express their appreciation to the President of the United States for recognizing the capabilities as well as potential of one of America's young women; and be it further

"*Resolved,* That the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to Ms. Kitty Baier; to the President and Vice-President of the United States; to Interior Secretary William Clark; to Mr. Richard Montoya, Assistant Interior Secretary for Territorial and International Affairs; to Congressman Antonio B. Won Pat; and to the Governor of Guam."

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POM-514. A resolution adopted by the Fifth Chief Executives of the Federated States of Micronesia regarding consideration and approval of the Compact of Free Association by the Government of the United States; to the Committee on Energy and Natural Resources.

POM-515. A resolution adopted by the town of Lincoln, Mass., relating to the deployment of missiles; to the Committee on Foreign Relations.

POM-516. A resolution adopted by the Florida Federation of Republican Women supporting the President and his policies of stopping Communist expansion within the Americas and Carribbean area; to the Committee on Foreign Relations.

POM-517. A resolution adopted by the Church in Society of the Midway Hills Christian Church relating to the need of the people of El Salvador; to the Committee on Foreign Relations.

POM-518. A resolution adopted by the ad hoc executive committee relating to the relief for the United States tax payer and victims of Turkish aggression in Cyprus; to the Committee on Foreign Relations.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GOLDWATER, from the Select Committee on Intelligence, without amendment:

S. Res. 317. An original resolution authorizing expenditures by the Select Committee on Intelligence; referred to the Committee on Rules and Administration.

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, without amendment:

S. Res. 318. An original resolution authorizing expenditures by the Committee on Commerce, Science, and Transportation; referred to the Committee on Rules and Administration.

By Mr. HEINZ, from the Special Committee on Aging, without amendment:

S. Res. 319. An original resolution authorizing expenditures by the Special Committee on Aging; referred to the Committee on Rules and Administration.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation:

William Lee Hanley, Jr., of Connecticut, to be a member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 1, 1984 (recess appointment).

Donna F. Tuttle, of California, to be Under Secretary of Commerce for Travel and Tourism (recess appointment).

(The above nominations were reported from the Committee on Commerce, Science, and Transportation with the recommendation that they be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BAUCUS:

S. 2231. A bill to amend the Internal Revenue Code of 1954 to limit the amount of depreciation and investment tax credit allowable for luxury automobiles; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 2232. A bill to amend the Internal Revenue Code of 1954 to limit the amount of depreciation, investment tax credit, and deductions allowable for luxury automobiles; to the Committee on Finance.

By Mr. MITCHELL:

S. 2233. A bill to increase the amount a State may set aside for low-cost weatherization under the Low-Income Home Energy Assistance Act of 1981; to the Committee on Labor and Human Resources.

By Mr. D'AMATO:

S. 2234. A bill entitled the "State Infrastructure Financing Act of 1984"; to the Committee on Environment and Public Works.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GOLDWATER, from the Select Committee on Intelligence:

S. Res. 317. An original resolution authorizing expenditures by the Select Committee on Intelligence; to the Committee on Rules and Administration.

By Mr. PACKWOOD, from the Committee on Commerce, Science and Transportation:

S. Res. 318. An original resolution authorizing expenditures by the Committee on Commerce, Science, and Transportation; to the Committee on Rules and Administration.

By Mr. HEINZ, from the Special Committee on Aging:

S. Res. 319. An original resolution authorizing expenditures by the Special Committee on Aging; to the Committee on Rules and Administration.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS:

S. 2231. A bill to amend the Internal Revenue Code of 1954 to limit the amount of depreciation and investment tax credit allowable for luxury automobiles; to the Committee on Finance.

LIMIT OF TAX DEDUCTIONS FOR LUXURY AUTOMOBILES

● Mr. BAUCUS. Mr. President, today I am introducing a bill to limit business tax deductions for luxury cars. By doing so, the bill would prevent unfair tax subsidies and would help reduce the Federal deficit.

BACKGROUND

Under Tax Code section 162, a taxpayer can deduct "ordinary and necessary" business expenses. These expenses include the expenses associated with operating a car for business purposes. The expenses associated with operating a car for business purposes, in turn, include not only everyday expenses like gas and repairs, but also an allowance for wear and tear.

For cars purchased after 1981, this allowance may be calculated according to the 1981 tax bill's accelerated cost recovery system, or ACRS. Under ACRS, the cost of a car can be fully deducted in 3 years. When this rapid writeoff is combined with the 6-percent investment tax credit that business cars also generally are eligible for, the overall tax benefit becomes generous indeed. And the more expensive the car, the greater the absolute tax benefit. For example, a taxpayer who bought a Mercedes 380SL for $43,030 and used it entirely for business could write off the entire cost of the car in 3 years and receive a $2,324 investment tax credit in the first year.

For a taxpayer in the 50-percent marginal tax bracket, the total value of these benefits would be more than $20,000.

THE TAX PROBLEM

The existence of such tax benefits, for an asset like a car that frequently has personal as well as business value, creates a variation of the general "three-martini lunch" problem. The general problem is that upper and upper middle-class taxpayers can write off business expenses that have significant personal value.

In the case of business cars, the problem is exacerbated because cars are depreciable assets that can be used for several years. Under the ACRS

system, depreciable assets can be written off even faster than they are used up; consequently, they are eligible for especially generous tax writeoffs.

More specifically, to do their work, many business people need cars, but not necessarily luxury cars. To the extent one of them decides to use a luxury car, it is probably because of the personal satisfaction he gets from driving, say, a Mercedes instead of a Camaro. And since a taxpayer generally can deduct the expense of driving a luxury car just as easily as that of driving a nonluxury car, a substantial part of the cost of this personal satisfaction is subsidized through the Tax Code. For example, a lawyer may need a car to drive to meetings and the courthouse; a $10,336 Camaro Z-28 might serve this limited need as well as a $43,030 Mercedes. If the lawyer decides to buy the Mercedes, a large part of the additional cost is subsidized through the tax system.

THE BASIS LIMITATION PROPOSAL

The bill I am introducing today would reduce this unfair and unnecessary subsidy. Like an identical bill Congressman STARK has introduced in the House, it would limit a business car's tax basis, for ACRS and investment tax credit computations, to $15,000. In other words, a business person could buy as expensive a car as he wants, but only write off a total of up to $15,000 of its value. That way, the bill would have no effect on business people who use cars worth less than $15,000—and this includes almost 95 percent of all the cars sold in the United States in 1982. Instead, it would affect only business people who decide to use luxury cars and to write them off for a tax subsidy.

Two special provisions of the bill are important. First, the bill exempts hearses and limousines or other vehicles operated for hire. Second, the $15,000 basis limitation will be adjusted upward, annually, to reflect inflation.

CONCLUSION

Mr. President, the annual Federal budget deficit has reached unprecedented $200 billion levels. And the Tax Code has become riddled with loopholes, encouraging aggressive tax avoidance and undermining public confidence in our overall tax system. Given these problems, we must close loopholes that create unfair and unnecessary tax subsidies. The legislation I am introducing today would do so. I hope my colleagues will support it and help me enact it into law.

I ask unanimous consent that the full text of the bill be inserted in the RECORD immediately following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2231

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subsection (d) of section 168 of the Internal Revenue Code of 1954 (relating to unadjusted basis; adjustments) is amended by adding at the end thereof the following new paragraph:

"(3) LIMITATION IN CASE OF LUXURY AUTOMOBILES.—

"(A) IN GENERAL.—In the case of a passenger automobile, the basis of such automobile taken into account—

"(i) for purposes of determining the amount of the deduction allowable under this section (and any other deduction allowable for depreciation or amortization),

"(ii) for purposes of determining the amount of the credit allowable under section 38, and

"(iii) for purposes of section 179, shall not exceed $15,000 increased by the automobile price inflation adjustment (if any) for the calendar year in which the automobile is placed in service by the taxpayer.

"(B) PASSENGER AUTOMOBILE.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'passenger automobile' means any 4-wheeled vehicle—

"(I) which is manufactured primarily for use on public streets, roads, and highways, and

"(II) which is rated at 6,000 pounds gross vehicle weight or less.

"(ii) EXCEPTION FOR CERTAIN VEHICLES.—The term 'passenger automobile' shall not include—

"(I) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business, and

"(II) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire.

"(C) AUTOMOBILE PRICE INFLATION ADJUSTMENT.—For purposes of this paragraph—

"(i) IN GENERAL.—The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

"(I) the CPI automobile component for November of the preceding calendar, exceeds

"(II) the CPI automobile component for November of 1983.

In the case of calendar year 1984, the automobile price inflation adjustment shall be zero.

"(i) CPI AUTOMOBILE COMPONENT.—The term 'CPI automobile component' means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

"(D) COORDINATION WITH SECTION 1031.—In the case of an exchange described in section 1031 where the property received in the exchange is a passenger automobile, the excess of the fair market value of such property over the limitation of subparagraph (A) shall be treated as an amount received in cash for purposes of section 1031."

(b) The amendment made by subsection (a) shall apply to property placed in service after December 31, 1983, in taxable years ending after such date.●

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By Mr. MOYNIHAN:

S. 2232. A bill to amend the Internal Revenue Code of 1954 to limit the amount of depreciation, investment tax credit, and deductions allowable for luxury automobiles; to the Committee on Finance.

BUSINESS TAX BREAKS FOR LUXURY AUTOMOBILES

● Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill to limit the amount of depreciation deductions, investment tax credits, and business expenses deductions allowed for the purchase or lease of luxury cars by businesses.

Under present law, the cost of automobiles used in trades or business or in connection with an income-producing activity is deductible, using the 3-year depreciation schedule under the accelerated cost recovery system (ACRS); 25 percent in the first, 38 percent in the second year, and 37 percent in the third year. In addition, a 6-percent investment tax credit (ITC) can be claimed in the first year. The only limit on these tax benefits, under current law, is the purchase price of automobiles. As a result taxpayers receive greater tax benefits if a $100,000 luxury limousine is purchased than if a $10,000 automobile is purchased. My concern is that through these tax benefits, the Treasury is subsidizing the purchase of luxury limousines by many businesses for use by their top executives.

My bill would amend section 168(d) of the Internal Revenue Code to limit the tax benefits, the tax subsidy, for business purchases of luxury passenger automobiles. The basis of such autos would be limited to $15,000, subject to an annual adjustment based on the automobile component of the Consumer Price Index (CPI). Those vehicles engaged directly in providing transportation services, such as ambulances, hearses, and airport limousines, would not be subject to this limitation. Trucks, of course, also would not be affected by this limitation. A business could not avoid the effects of this provision, however, by leasing its limousines—in that situation it would only be allowed to deduct the fair market value of a lease on an automobile costing $15,000.

My bill would not prevent businesses which own luxury cars from depreciating them under ACRS and claiming the ITC credit. It simply would limit the basis used in computing the ACRS and ITC benefits to $15,000. A similar limit would be imposed on long-term leases of such luxury automobiles.

There are two basic reasons to limit the favorable tax treatment currently being accorded businesses for luxury cars. First, many of these luxury cars have become good investments maintaining much of their original value. For example, a Mercedes-Benz 300SD four-door sedan sold in 1979 for $22,000; today that 1979 car sells for $17,500. This represents a depreciation of less than 25 percent over 4 years. After 4 years the vehicle retains over

75 percent of its original value, while current tax law would permit the owner to depreciate it completely in 3 years. Similar statistics apply to BMW's and, of course, to Rolls Royces. Indeed, certain luxury cars have become classics, actually increasing in value. To grant the depreciation allowed by ACRS without a dollar limit for luxury cars fails to account for the nondepreciating quality of some of these cars.

The second reason to place a limit on these luxury cars is to recognize that there are quality automobiles used today which cost well under $15,000 in the United States that provide perfectly suitable business transportation. The average retail price of new cars in 1983 was about $11,000. A luxury car, on the other hand, provides more than transportation—it lends a certain prestige to the occupants of the vehicle. Anyone who wishes to purchase such prestige can do so, with his own money. That is his business. But the additional prestige and comfort associated with luxury cars, used by business executives, should not be subsidized by the rest of the American taxpayers. That is what this bill proposes to change.

The bill would also limit the Treasury subsidies for the use of luxury limousines by business taxpayers who lease luxury limousines rather than purchasing them. The bill imposes a limit on the amount of an automobile lease that can be deducted as an ordinary and necessary business expense. For automobile leases longer than 1 month, a taxpayer would only be allowed to deduct the rental costs attributable to a $15,000 automobile.

Cars used for the transportation requirements of a trade or business properly generate tax advantages. But luxury cars, by definition, provide more than just transportation to the user.

Consider cars manufactured by Mercedes-Benz of Germany, as an example; 46,000 Mercedes were imported into the United States between January and July of 1983. Approximately 50 percent were bought by partnerships and corporations, and used or leased out to various businessmen and professionals for business use.

Now, a businessman can buy a new Chevrolet Impala for $11,000 and claim all current tax benefits. Today, if he buys a Cadillac Eldorado which retails for $23,500 these tax advantages will cost the Treasury nearly double that for the Chevrolet. And a business can claim the same tax breaks if it buys a Rolls Royce for anywhere from $98,000 to $160,000, but these tax breaks are worth 10 to 15 times that for the Chevy.

The Tax Code, quite properly, subsidizes transportation costs incurred in the course of business activity—but should it also subsidize extra prestige and comfort not required by the course of that business activity? It is time to stop the practice of the ordinary taxpayer subsidizing the use of luxury limousines by business executives—limousines, I might add, mainly manufactured abroad.

Mr. President, this worthy legislation, is necessary legislation at a time of spiraling deficits. I urge my colleagues to join me in this legislation.

I ask that the complete text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2232

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subsection (d) of section 168 of the Internal Revenue Code of 1954 (relating to unadjusted basis; adjustments) is amended by adding at the end thereof the following new paragraph;

"(3) LIMITATION IN CASE OF LUXURY AUTOMOBILES.—

"(A) IN GENERAL.—In the case of a passenger automobile, the basis of such automobile taken into account—

"(i) for purposes of determining the amount of the deduction allowable under this section (and any other deduction allowable for depreciation or amortization),

"(ii) for purposes of determining the amount of the credit allowable under section 38, and

"(iii) for purposes of section 179, shall not exceed $15,000, increased by the automobile price inflation adjustment (if any) for the calendar year in which the automobile is placed in service by the taxpayer.

"(B) PASSENGER AUTOMOBILE.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'passenger automobile' means any 4-wheeled vehicle—

"(I) which is manufactured primarily for use on public streets, roads, and highways, and

"(II) which is rated at 6,000 pounds gross vehicle weight or less.

"(ii) EXCEPTION FOR CERTAIN VEHICLES.—The term 'passenger automobile' shall not include—

"(I) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business, and

"(II) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire.

"(C) AUTOMOBILE PRICE INFLATION ADJUSTMENT.—For purposes of this paragraph—

"(i) IN GENERAL.—The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

"(I) the CPI automobile component for December of the preceding calendar year, exceeds

"(II) the CPI automobile component for December of 1983.

In the case of calendar year 1984, the automobile price inflation adjustment shall be zero.

"(ii) CPI AUTOMOBILE COMPONENT.—The term 'CPI automobile component' means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

"(D) COORDINATION WITH SECTION 1031.—In the case of an exchange described in section 1031 where the property received in the exchange is a passenger automobile, the excess of the fair market value of such property over the limitation of subparagraph (A) shall be treated as an amount received in cash for purposes of section 1031.

"(E) COORDINATION WITH SECTION 162.—For purposes of determining the amount of the deduction allowed under section 162 for rentals or other payments relating to the rental for longer than one month of a passenger automobile, the amount of the deduction allowed under section 162 shall not exceed the fair market value of a rental or other payment for an automobile costing $15,000, increased by the automobile price inflation adjustment (if any) for the calendar year in which the automobile is placed in the service of the taxpayer."

(b) The amendment made by subsection (a) shall apply to property placed in service after January 30, 1984, in taxable years ending after such date.●

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By Mr. MITCHELL:

S. 2233. A bill to increase the amount a State may set aside for low-cost weatherization under the Low-Income Home Energy Assistance Act of 1981; to the Committee on Labor and Human Resources.

ENERGY ASSISTANCE FUNDS FOR WEATHERIZATION

Mr. MITCHELL. Mr. President, I am pleased to introduce legislation today which I believe has both practical and symbolic importance to this country's energy policy. Specifically, I am proposing legislation to amend the Home Energy Assistance Act to allow States to use up to 25 percent of funds distributed under the low income energy assistance program for weatherization in accordance with the Department of Energy's present weatherization program.

This proposal would impose absolutely no new requirements on the States, would require no new appropriations or funding, and would not establish any new programs. Rather this legislation merely allows the States to determine the most effective use of moneys Congress has already appropriated, thereby strengthening their ability to meet the energy needs of low-income families and individuals under the Home Energy Assistance Act.

Both weatherization and fuel assistance are designed to meet the same overall goal; that is, to help low-income families cope with today's energy problems. I firmly believe, Mr. President, that the most effective and commonsense way of insuring that this goal is met is to give States—who are far more familiar with their energy needs than the Federal Government—flexibility to use the programs together.

I recognize that in the short term, low-income fuel assistance funds are indeed necessary to help poor families pay this winter's heating bills. For this reason, my legislation insures that at least 75 percent of low-income fuel as-

sistance funds go for direct fuel assistance. At the same time, however, there are many cases where a minor weatherization investment would not only reduce energy costs this winter, but would reduce both costs and comsumption in the long-term. It is far superior public policy to spend money to insulate and weatherize homes than to continue to spend money to purchase fuel that goes up the chimney, through the cracks and out the window.

In my own State of Maine this winter, approximately $300 is going to be distributed for fuel assistance to 50,000 households when a $100 investment in weatherizing a home would substantially reduce both present and future heating costs. By allowing States to use up to 25 percent of low-income fuel assistance funds for weatherization, States will have the flexibility needed to make the $100 improvement, thereby reducing low-income fuel bills both today and tomorrow.

For far too long we have reacted to energy shortages and increased fuel costs as if the energy crisis were a one time emergency. Our energy policy has focused on treating the symptoms of the disease—our ever increasing energy costs—rather than the disease itself—our excessive energy consumption and reliance on nondomestic energy sources. As the price of heating fuels continues to rise, it becomes more and more apparent that conservation and development of energy alternatives must be the energy policies of the future if we are to ever reduce our dependence on imported oil. Unfortunately, however, we have been painfully slow in coming to this realization.

In fiscal year 1984 for example, Congress has appropriated $1.85 billion for home energy assistance, but only $190 million for weatherization, which is $55 million less than what was appropriated in fiscal year 1983. In other words, Congress has placed more than nine times as much emphasis on meeting immediate low-income energy needs than on implementing long-term conservation measures for low-income households. If we are to continue to ask the people of this country to reduce energy consumption and to work with us in solving our energy problems, we must give them sufficient reason to have faith in our national energy policies. We must show them that Congress recognizes the long-term nature of our energy problems and is prepared to deal with these problems in a long-term manner.

There is perhaps no other region in this country as dependent on foreign oil for the basic necessities of life than my own native New England. And there is probably no other State in New England where the effects of our current energy crisis and the lack of a cohesive national energy policy have been felt as harshly than my own State of Maine. There are Maine homes where the thermostat was kept at 50 degrees and a space heater was used to keep a room where a new baby slept warm. There are elderly Maine citizens who live in fear of not having enough money to pay their fuel bills and having their heating supply cut off. There are Maine people for whom the choice of eating and keeping warm is very real.

These Maine people have made tremendous sacrifices to conserve energy and reduce our dependence on foreign oil. And I for one am committed to doing everything I can to insure that these sacrifices are not in vain; that we at the national level formulate the conservation-orientated energy policies that will see us through our immediate energy problems and the energy alternative program which will stress development of our own indigenous energy resources thereby reducing long-term dependence on foreign oil.

The legislation I am introducing today is hardly a panacea for all our energy problems. But it will send a meaningful message that Congress is prepared to give States flexibility in the weatherization and fuel assistance programs to meet their low-income energy needs as they see best and that Congress is intent on developing an energy policy which stresses long-term conservation rather than short-term assistance.

I strongly urge my colleagues to join me in support of this commonsense approach to our energy policies.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2233

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That subsection (k) of section 2605 of the Low-Income Energy Assistance Act of 1981 (Public Law 97-35; 42 U.S.C. 8624(k)) is amended by striking out "15 percent" and inserting in lieu thereof "25 percent".

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By Mr. D'AMATO:

S. 2234. A bill entitled the "State Infrastructure Financing Act of 1984"; to the Committee on Environment and Public Works.

STATE INFRASTRUCTURE FINANCING ACT OF 1984

● Mr. D'AMATO. Mr. President, today I am introducing the State Infrastructure Financing Act of 1984, legislation that would establish an infrastructure bank on a State-by-State basis to be capitalized by Federal and State grants. My bill would establish a public works bank which would provide the necessary financing to begin to repair our Nation's decaying infrastructure.

Today, there is much talk in Washington concerning the plight of America's industries and the Federal Government's role in shaping their future. This debate over industrial policy, however, has become increasingly mingled with partisan politics. As the election campaign heats up, it will be difficult to see the issues through the political rhetoric.

The most vocal proponents of industrial policy believe that a conscious effort by the Federal Government is needed to save America's "smokestack" industries. If left alone, the advocates of industrial policy claim, these industries will gradually become less competitive and, ultimately, will disappear.

The underlying premise of this argument is that the manufacturing sector is in an almost irreversible decline. The Federal Government can forestall this fate only by redirecting massive resources to heavy industry. The ultimate solution, for many, is a multibillion-dollar Federal program to provide loan guarantees or low interest loans to designated industries. Born again New Dealers suggest the creation of another Reconstruction Finance Corporation as the Federal mechanism to select industries deserving of subsidies.

In my opinion, this view of industrial policy is ill-founded. Advocates of this simplistic view ignore the fact that manufacturing production is highly capital intensive. Thus, it is likely to be adversely impacted by any cyclical downturn in economic activity. On the other hand, as economic activity accelerates, manufacturing production generally exceeds growth in the economy at large. It is true that certain industries, for example, autos and steel, have deep-seated problems. However, these industries can, and must, react to changing time by retooling antiquated facilities.

Mr. President, I believe that the Nation's declining infrastructure should be the focus of our industrial policy. If our bridges, roads, and water systems deteriorate, both service and basic industries will be unable to expand. Industry will either decline or move abroad. In the end, jobs will be lost.

The magnitude of the infrastructure problem is mammoth. For the Nation as a whole, the cost of rehabilitating or refurbishing public works could be as high as $500 billion. In New York State, the Joint Economic Committee of Congress estimates that $108.8 billion may be needed for infrastructure repair and refurbishment by the year 2000. This figure includes funding for mass transit, water delivery, wastewater, bridges, highways, rail, and airports.

The problem of a deteriorating infrastructure did not occur overnight. Through years of neglect, the infrastructure dilemma has grown to in-

credible proportions. Declining Federal, State, and local funding of maintenance and refurbishment activities caused the problem. Investment in infrastructure as a percent of GNP in the New York region, for example, has steadily declined: from 1.25 percent in 1970 to 0.7 percent in 1980. This is the source of the infrastructure problem.

No one level of government, however, can afford to be solely responsible for the rehabilitation of our Nation's infrastructure. However, if we continue to ignore the problem and if investment rates continue to decline, sustained economic growth will be impossible. To date, there is still no coordinated plan to mesh the activities of all levels of government for infrastructure financing.

Mr. President, I am, therefore, proposing today that each State develop its own infrastructure bank. Such an institution would be an independent institution directed by State and local officials, as well as members of the private sector. The infrastructure bank would only make loans to local governments for the repair or new construction of bridges, roads, tunnels, water-delivery facilities, solid waste or wastewater facilities, and mass transit equipment or facilities. Since each State could establish its own bank, the unique needs of that region would be addressed. For instance, New York State must stress refurbishment of existing facilities, whereas Texas might wish to concentrate on the building of new systems.

My proposal is modest in size. The purpose is to establish a bank that must face directly the financial and political problems of infrastructure repair or replacement. Once the difficulties facing this bank are ironed out, the model bank could be expanded. Consequently, this legislation only requires a maximum authorization of $440 million, spread over 3 years. The formula for allocation of Federal funds would be $2 per person in each State, divided into three annual disbursements. The Federal contribution to the infrastructure bank would have to be matched by a least a 20-percent State grant.

The Federal and State contributions would be used as capital for the bank. Based upon the capital infusion, the bank would, through leverage, be able to issue tax-exempt bonds equal to 10 times its total capital. The proceeds from these bond sales then would be loaned to local governments for infrastructure repair or replacement. Loans to local entities would be treated as general obligations of the borrowers. Default on these loans would throw a locality into general default. The infrastructure bank's capital, however, would not be used for loans, but, rather, would be invested in high-credit financial instruments. The investment income earned would then be used to reduce interest costs on loans made to localities.

If the State infrastructure bank made loans to entities for nonauthorized purposes, the Federal grant would be recaptured by the Secretary of the Treasury. The State lending institution would also have to make annual reports to the Treasury concerning the quality of the loan portfolio and its investment, as well as the concentration of loans by individual borrowers. Loans to any single borrower could not exceed the total federal capital contribution to the bank.

I believe that Federal and State funding of an infrastructure bank would lead to the institution's debt receiving the highest credit rating available. This would translate into lower interest rates on its bonds, and, thus, reduced rates for borrowers. Furthermore, the investment income earned on the bank's capital would be used to reduce the loans made for infrastructure repair. The net effect would be that local governments would receive loans at more favorable rates than if funds were raised based upon their own credit ratings.

Mr. President, I believe that this infrastructure bank would be the most efficient means of financing the Nation's infrastructure problems. It spreads the costs of necessary repair and refurbishment among local, State, and Federal levels of government. My legislation may be small in scope but it provides a model that could be expanded. I could propose a multibillion-dollar public works repair program, but this would be inefficient and would stand no chance of passage. The legislation I offer instead, is an efficient and practical approach to infrastructure repair. Further study of the issue alone will not solve the problem. If we do not act now, our cities will decay further and more jobs will be lost.

Mr. President, I urge my colleagues to support this legislation and I ask unanimous consent that the bill be printed in the RECORD in its entirety at the conclusion of my remarks. Thank you, Mr. President.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2234

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "State Infrastructure Financing Act of 1984".

GRANTS TO STATES

SEC. 2. The Secretary of the Treasury is authorized to make grants, in amounts determined pursuant to section 5, to States for the purpose of providing capital to State infrastructure lending institutions which meet the requirements of this Act.

ELIGIBILITY

SEC. 3. (a) To be eligible for a grant under this Act, a State infrastructure lending institution must be a State authority headed by an independent board of directors which is appointed by the Governor of the State and which is comprised of State officials, local officials, and representatives from the private sector, provided that none of these three groups independently comprise a majority of the Board of Directors. The Board of Directors of the institution shall establish lending policies and procedures.

(b) A State infrastructure lending institution must be authorized to make loans to units of general local government and agencies and instrumentalities thereof for the repair or new construction of bridges, roads, ports, tunnels, water delivery facilities or systems, solid waste and waste water facilities or systems, and mass transportation equipment or facilities. Any loan made by an institution shall be approved by or pursuant to procedures established by the Board of Directors of the institution and shall be repayable upon such terms and conditions as the Board of Directors shall prescribe. Aggregate loans to an individual borrower cannot exceed the aggregate of the federal grant to the state infrastructure lending institution.

(c) As a condition of a loan under this Act, the unit of general local government or agency or instrumentality thereof shall agree that any default on the loan made by the State infrastructure lending institution shall be deemed to be a default on a general obligation issued by the borrower.

FINANCING

SEC. 4. Grant funds made available under this Act shall be available only for the purpose of capitalizing State infrastructure lending institutions. Any such institution may invest grant funds under this section only in obligations rated in a category above investment grade by a nationally recognized statistical rating organization. Any amounts realized by a State infrastructure lending institution under such investments shall be available to reduce the interest costs to borrowers. Each such institution may issue its own obligations, pursuant to its charter, based on the capitalization provided under this Act and the State's contribution under section 5.

GRANT AMOUNT

SEC. 5. (a) The Federal grant under this Act to a State infrastructure lending institution shall not exceed the lesser of $2 per resident of the State or four times the State's capital contribution to the State lending institution. The population of recipient states will be determined by the most recent census.

(b) No grant funds may be made available to any State infrastructure lending institution unless the Secretary of the Treasury determines that the institution meets the requirements of this Act, and has established and will enforce policies and procedures to assure compliance with this Act. The Secretary of the Treasury is authorized to take appropriate action to recapture any funds made available under this Act which are used for purposes not authorized by this Act.

REPORTING REQUIREMENTS

SEC. 6. State infrastructure lending institutions, as defined in section 3 of this Act, must report annually, by January 1 for the twelve month period ending the previous September 30, to the Secretary of the

Treasury on the following: (1) Quality of the loan portfolio; (2) Quality of the investment portfolio; (3) Matching of the tenor of assets and liabilities; (4) Concentration of loans by individual borrowers as percentages of total loans; (5) Operating expenses, and (6) Certification that all loans were extended for the purposes described in Sec. 3(b) of this Act. The form of this annual statement will be prescribed in regulations issued by the Secretary of the Treasury.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $440 million.●

## ADDITIONAL COSPONSORS

S. 591

At the request of Mr. INOUYE, the name of the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of S. 591, a bill to amend the Internal Revenue Code of 1954 to provide a mechanism for taxpayers to designate $1 of any overpayment of income tax, and to contribute other amounts, for use by the U.S. Olympic Committee.

S. 1059

At the request of Mr. DENTON, the name of the Senator from Mississippi (Mr. STENNIS) was added as a cosponsor of S. 1059, a bill to provide that it shall be unlawful to deny equal access to students in public schools and public colleges who wish to meet voluntarily for religious purposes and to provide district courts with jurisdiction over violations of this act.

S. 1504

At the request of Mr. BENTSEN, the names of the Senator from Alaska (Mr. MURKOWSKI) and the Senator from Maine (Mr. MITCHELL) were added as cosponsors of S. 1504, a bill to provide for protection of historic shipwrecks, structures, and artifacts located on a seabed or in the subsoil of the lands beneath waters of the United States.

S. 1730

At the request of Mr. DIXON, the names of the Senator from West Virginia (Mr. BYRD), the Senator from Alabama (Mr. HEFLIN), and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 1730, a bill to amend the Small Business Act to increase small business participation in the procurement process, thereby reducing costly noncompetitive procurements and increasing defense preparedness, and for other purposes.

S. 1762

At the request of Mr. THURMOND, the name of the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1762, a bill entitled the "Comprehenisive Crime Control Act of 1983."

S. 1816

At the request of Mr. THURMOND, the names of the Senator from Illinois (Mr. DIXON) and the Senator from Virginia (Mr. TRIBLE) were added as cosponsors of S. 1816, a bill to amend the Textile Fiber Products Identification Act, the Tariff Act of 1930, and the Wool Products Labeling Act of 1939 to improve the labeling of textile fiber and wool products.

S. 1921

At the request of Mr. MATTINGLY, the name of the Senator from New York (Mr. D'AMATO) was added as a cosponsor of S. 1921, a bill to allow the President to veto items of appropriation.

S. 2031

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 2031, a bill relating to the residence of the American Ambassador to Israel.

S. 2049

At the request of Mr. HEFLIN, the name of the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 2049, a bill to amend the Federal Rules of Civil Procedure to provide for certain service of process by mail.

S. 2145

At the request of Mr. HATCH, the names of the Senator from Oklahoma (Mr. NICKLES) and the Senator from Alabama (Mr. DENTON) were added as cosponsors of S. 2145, a bill to amend the Fair Labor Standards Act of 1938 to facilitate industrial homework, including sewing, knitting, and craftmaking, and for other purposes.

S. 2159

At the request of Mr. BAUCUS, the names of the Senator from Rhode Island (Mr. PELL) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 2159, a bill entitled the "Hazardous Air Pollutant Control Act of 1983."

S. 2165

At the request of Mr. DANFORTH, the name of the Senator from Wyoming (Mr. WALLOP) was added as a cosponsor of S. 2165, a bill to amend the Internal Revenue Code of 1954 to increase research activities, to foster university research and scientific training, and to encourage the contribution of scientific equipment to institutions of higher education.

S. 2190

At the request of Mr. HUDDLESTON, the name of the Senator from Oklahoma (Mr. BOREN) was added as a cosponsor of S. 2190, a bill to amend the Agriculture and Food Act of 1981 to provide protection for agricultural purchasers of farm products.

S. 2207

At the request of Mr. BRADLEY, the names of the Senator from Kentucky (Mr. FORD), the Senator from Oklahoma (Mr. BOREN), the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Maine (Mr. MITCHELL) were added as cosponsors of S. 2207, a bill to amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes.

SENATE JOINT RESOLUTION 70

At the request of Mr. GARN, the names of the Senator from Illinois (Mr. PERCY), the Senator from Montana (Mr. MELCHER), the Senator from Ohio (Mr. GLENN), and the Senator from Massachusetts (Mr. TSONGAS) were added as cosponsors of Senate Joint Resolution 70, a joint resolution to designate the week beginning April 17, 1983, as "National Building Safety Week."

SENATE JOINT RESOLUTION 161

At the request of Mr. CHAFEE, the name of the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of Senate Joint Resolution 161, a joint resolution to designate the week of April 15, 1984, through April 21, 1984, as "National Child Abuse Prevention Week."

SENATE JOINT RESOLUTION 181

At the request of Mr. BENTSEN, the names of the Senator from Alaska (Mr. MURKOWSKI), the Senator from Illinois (Mr. DIXON), the Senator from Connecticut (Mr. DODD), the Senator from Louisiana (Mr. LONG), and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of Senate Joint Resolution 181, a joint resolution to provide for the awarding of a gold medal to Lady Bird Johnson in recognition of her humanitarian efforts and outstanding contributions to the improvement and beautification of America.

SENATE JOINT RESOLUTION 205

At the request of Mr. GLENN, the names of the Senator from Montana (Mr. MELCHER) and the Senator from Florida (Mr. CHILES) were added as cosponsors of Senate Joint Resolution 205, a joint resolution authorizing and requesting the President to designate the second full week in March of each year as "National Employ the Older Worker Week."

SENATE JOINT RESOLUTION 210

At the request of Mr. TRIBLE, the names of the Senator from Washington (Mr. GORTON), the Senator from Rhode Island (Mr. CHAFEE), and the Senator from Iowa (Mr. JEPSEN) were added as cosponsors of Senate Joint Resolution 210, a joint resolution to designate the period commencing January 1, 1984, and ending December 31, 1984, as the "Year of Excellence in Education."

SENATE JOINT RESOLUTION 213

At the request of Mr. D'AMATO, the names of the Senator from Illinois (Mr. DIXON), the Senator from Arizo-

na (Mr. GOLDWATER), the Senator from Nebraska (Mr. ZORINSKY), the Senator from New York (Mr. MOYNIHAN), the Senator from Oklahoma (Mr. BOREN), the Senator from Georgia (Mr. NUNN), the Senator from Vermont (Mr. STAFFORD), the Senator from Alabama (Mr. HEFLIN), the Senator from Washington (Mr. GORTON), the Senator from Maryland (Mr. SARBANES), the Senator from South Dakota (Mr. ABDNOR), the Senator from Nebraska (Mr. EXON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of Senate Joint Resolution 213, a joint resolution designating 1984 "The Year of the Secretary."

SENATE JOINT RESOLUTION 215

At the request of Mr. PELL, his name was added as a cosponsor of Senate Joint Resolution 215, a joint resolution to designate the week of April 23-27, 1984, as "National Student Leadership Week."

SENATE JOINT RESOLUTION 218

At the request of Mr. BAKER, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of Senate Joint Resolution 218, a joint resolution proposing an amendment to the Constitution of the United States with respect to the offering of prayer in public buildings.

SENATE CONCURRENT RESOLUTION 87

At the request of Mr. BAUCUS, the names of the Senator from Idaho (Mr. SYMMS), the Senator from Montana (Mr. MELCHER), the Senator from Texas (Mr. TOWER), the Senator from South Dakota (Mr. ABDNOR), the Senator from Arkansas (Mr. PRYOR), the Senator from Mississippi (Mr. STENNIS), the Senator from California (Mr. WILSON), the Senator from Florida (Mrs. HAWKINS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Idaho (Mr. MCCLURE), the Senator from South Dakota (Mr. PRESSLER), the Senator from Michigan (Mr. RIEGLE), the Senator from Nebraska (Mr. EXON), the Senator from Oklahoma (Mr. BOREN), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Oklahoma (Mr. NICKLES) were added as cosponsors of Senate Concurrent Resolution 87, a concurrent resolution relating to the dismantling of nontariff trade barriers of the Japanese to the import of beef.

SENATE CONCURRENT RESOLUTION 88

At the request of Mr. CHILES, the names of the Senator from Mississippi (Mr. STENNIS), and the Senator from Louisiana (Mr. LONG) were added as cosponsors of Senate Concurrent Resolution 88, a concurrent resolution expressing the sense of the Congress that the Secretary of State should request the Organization of American States to consider as soon as possible the question of the involvement by the Government of Cuba in drug dealing, smuggling, and trafficking in the Western Hemisphere.

SENATE CONCURRENT RESOLUTION 89

At the request of Mr. CHILES, the names of the Senator from Mississippi (Mr. STENNIS), and the Senator from Louisiana (Mr. LONG) were added as cosponsors of Senate Concurrent Resolution 89, a concurrent resolution urging the President to direct the Permanent Representative of the United States to the United Nations to bring before the United Nations the question of the involvement by the Government of Cuba in drug dealing, smuggling, and trafficking.

SENATE RESOLUTION 287

At the request of Mr. HUDDLESTON, the names of the Senator from Montana (Mr. MELCHER), and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of Senate Resolution 287, a resolution establishing a task force on agricultural credit.

SENATE RESOLUTION 294

At the request of Mr. RIEGLE, the names of the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Iowa (Mr. JEPSEN), the Senator from Maine (Mr. COHEN), the Senator from Wyoming (Mr. SIMPSON), the Senator from Florida (Mr. CHILES), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Oklahoma (Mr. NICKLES), the Senator from Illinois (Mr. DIXON), and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of Senate Resolution 294, a resolution expressing the sense of the Senate that the Government of the Soviet Union should allow Igor V. Ogurtsov to be released from exile and allowed to emigrate to the West without renouncing his views, and for other purposes.

## SENATE RESOLUTION 317—ORIGINAL RESOLUTION AUTHORIZING EXPENDITURES BY THE SELECT COMMITTEE ON INTELLIGENCE

Mr. GOLDWATER, from the Select Committee on Intelligence, reported the following original resolution; which was referred to the Committee on Rules and Administration.

S. RES. 317

*Resolved*, That, in carrying out its powers, duties and functions under S. Res. 400, approved May 19, 1976, in accordance with its jurisdiction under section 3(a) of such resolution, including holding hearings, reporting such hearings and making investigations as authorized by section 5 of such resolution, the Select Committee on Intelligence is authorized from March 1, 1984, through February 28, 1985, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $2,089,000.00, of which amount (1) not to exceed $20,000.00 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1985.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

## SENATE RESOLUTION 318—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 318

*Resolved*, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Commerce, Science, and Transportation is authorized from March 1, 1984, through February 28, 1985, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $3,648,174, of which amount (1) not to exceed $20,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $16,960 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1985.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

## SENATE RESOLUTION 319—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE SPECIAL COMMITTEE ON AGING

Mr. HEINZ, from the Special Committee on Aging, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 319

*Resolved*, That, in carrying out the duties and functions imposed by section 104 of S. Res. 4, Ninety-fifth Congress, agreed to February 4, 1977, and in exercising the authority conferred on it by such section, the Special Committee on Aging is authorized from March 1, 1984 through February 28, 1985, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the special committee under this resolution shall not exceed $1,089,755 of which amount (1) not to exceed $35,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $1,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The special Committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1985.

SEC. 4. Expenses of the special committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

## AMENDMENTS SUBMITTED

## COMPREHENSIVE CRIME CONTROL ACT

### THURMOND (FOR LAXALT) AMENDMENTS NOS. 2678 AND 2679

Mr. THURMOND (for Mr. LAXALT) proposed two amendments to the bill, S. 1762, entitled the "Comprehensive Crime Control Act of 1983," as follows:

AMENDMENT No. 2678

AMENDMENTS TO TITLE I (BAIL) S. 1762

On page 19, lines 15 and 16, delete "the defendant" and insert in lieu thereof "he".

On page 21, line 1, after "section." insert the following:

To the extent practicable, a person charged with violating the condition of his release that he not commit a Federal, State, or local crime during the period of release shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated.

On page 28, delete lines 7 and 8, and insert in lieu thereof the following:

(1) in subdivision (a), by striking out "§ 3146, § 3148, or § 3149" and inserting in lieu thereof "§§ 3142 and

On page 29, line 5, insert "under" before "18".

AMENDMENTS TO TITLE II (SENTENCING) S. 1762

On page 80, line 10, delete "3671" and insert in lieu thereof "3673".

On page 82, beginning with "or" on line 3, delete through line 19, and insert in lieu thereof the following:

"(3) was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is greater than—

"(A) the sentence specified in the applicable guideline to the extent that the sentence includes a greater fine or term of imprisonment or term of supervised release than the maximum established in the guideline, or includes a more limiting condition of probation or supervised release under section 3563 (b)(6) or (b)(11) than the maximum established in the guideline; and

"(B) the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or

"(4) was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is greater than the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure.

On page 83, beginning with "or" on line 3, delete through line 19, and insert in lieu thereof the following:

"(3) was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is less than—

"(A) the sentence specified in the applicable guideline to the extent that the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guideline, or includes a less limiting condition of probation or supervised release under section 3563 (b)(6) or (b)(11) than the minimum established in the guideline; and

"(B) the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or

"(4) was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is less than the sentence specified in a plea agreement, if any, under Rule 11 (e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure;".

On page 84, line 23, delete "c" and insert in lieu thereof "e".

On page 93, delete line 9 through 12, and insert in lieu thereof the following:

(9) by deleting "imposition of sentence is suspended, or disposition is had under 18

On page 96, after line 8 insert the following and reletter subsequent subsections accordingly;

(f) Rule 6(e)(3)(C) is amended by adding the following subdivision:

"(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.".

On page 96, delete lines 11 and 12, and insert in lieu therefore the following:

(1) The item relating to Rule 35 is amended to read as follows:

"35. Correction of Sentence.

"(a) Correction of a sentence on remand.

"(b) Correction of a sentence for changed circumstances.".

On page 97, delete "12" from the beginning of the page and insert "9" in lieu thereof.

On page 97, insert a quotation mark at the beginning of line 4.

On page 121, after line 12, insert the following:

Redesignate subsections in section 4082 accordingly.

On page 124, line 10, delete "3667" and insert in lieu thereof "3669".

On page 124, delete lines 13 through 19, and redesignate subsequent subsections accordingly through page 128.

On page 126, line 8, after "(g)" insert "and redesignating (h) to (g)".

On page 126, lines 13 and 14, delete "3666" and "3667" and insert in lieu thereof "3668" and "3669", respectively.

On page 127, line 14, delete "(4)" and insert in lieu thereof "(3)".

On page 127, line 15, delete "title."." and insert in lieu thereof "title."; and".

On page 127, after line 15, insert the following:

(F) by redesignating paragraphs accordingly.

On page 130, line 24, after "(1)" insert "by adding "and" after paragraph (2) and,".

On page 131, line 15, delete "Board" and insert in lieu thereof "the Board".

On page 131, delete lines 21 through 24, and insert in lieu thereof the following:

fense was committed, pursuant to sentencing guidelines and policy statements issued pursuant to 28 U.S.C. 994(a),";

On page 132, after line 22, insert the following:

SEC. 222A. Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472) is amended by inserting "notwithstanding the provisions of 18 U.S.C. 3559(b)," before the term "if" in paragraphs (i)(1)(B) and (n)(1)(B).

AMENDMENTS TO TITLE III (FORFEITURE)

On page 164, line 4, delete "remove" and insert in lieu thereof "and remove".

AMENDMENTS TO TITLE IV (MENTAL DISEASE OR DEFECT)

On page 178, delete line 8, and insert in lieu thereof the following:

vincing evidence."

(b) The sectional analysis of chapter 1 of title 18, United States Code, is amended to add the following new section 20:

"20. Insanity Defense.".

On page 189, lines 16, 20, 23, 24, and 25, delete "defendant" each time it appears and insert in lieu thereof "person".

On page 190, line 3, delete "release" and insert in lieu thereof "transfer".

On page 190, lines 3, 8, 15, 18, 19, 20, and 25, delete "defendant" each time it appears and insert in lieu thereof "person".

On page 190, line 22, delete "his" and insert in lieu thereof "the".

On page 191, lines 1, 6, 9, and 10, delete "defendant" each time it appears and insert in lieu thereof "person".

On page 201, delete lines 11 through 18, and reletter subsequent subsections accordingly through page 203.

AMENDMENTS TO TITLE V (DRUG ENFORCEMENT AMENDMENTS)

On page 211, lines 6 and 8, delete "I(b)" and insert in lieu thereof "I(c)".

On page 211, lines 7 and 10, delete "II(a)(5)" and insert in lieu thereof "II(a)(4)".

On page 212, after line 15, insert the following new section:

SEC. 505A. Section 202(c) schedule II(a)(4) of the Controlled Substances Act (21 U.S.C. 812(c) schedule II(a)(4)) is amended by adding the following sentence at the end thereof: "The substances described in this paragraph shall include cocaine, ecgonine, their salts, isomers derivatives, and salts of isomers and derivatives.".

On page 215, line 3, delete "201(g)(1)" and insert in lieu thereof "201(g)".

On page 215, line 4, delete "811(g)(1)) is amended to read:" and insert in lieu thereof "811(g)) is amended to add the following new paragraph:".

On page 215, line 5, delete "(g)(1)" and insert in lieu thereof "(3)".

On page 215, delete lines 10 through 14, and redesignate subsequent paragraphs accordingly.

On page 218, delete line 17, and insert in lieu thereof the following:

on a ground specified in section 304(a). Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this subchapter.".

On page 218, line 19, after "by" insert the following:

deleting "or" at the end of subsection (2), by

On page 220, lines 3 and 4, delete "(f)" and insert in lieu thereof "(g)".

On page 220, delete after "by" on line 18 through line 19, and insert in lieu thereof the following:

deleting "and" after paragraph (4), deleting the period and substituting "; and" after paragraph (5), and adding thereto a new paragraph (6) as follows:

On page 220, line 20, delete "(e) Enter" and insert in lieu thereof "(6) enter".

On page 221, line 9, after "by" insert the following:

deleting "or" at the end of subpart (A), by

On page 221, line 11, delete "is".

On page 221, line 12, delete "exclusively." and insert in lieu thereof "exclusively,".

On page 221, delete line 20, and insert in lieu thereof the following:

may by regulation prescribe, except that if a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.".

On page 222, line 7, delete "and".

On page 222, line 12, delete "prescribe."." and insert in lieu thereof "prescribe; and".

On page 222, after line 12, insert the following new paragraph:

"(3) in any case when a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention, instead of any notification or declaration required by paragraph (2) of this subsection.".

On page 222, line 17, delete "V." and insert in lieu thereof "V,".

AMENDMENTS TO TITLE VI (JUSTICE ASSISTANCE)

On page 228, after line 10, delete "TITLE I" and insert in lieu thereof "TITLE I—JUSTICE ASSISTANCE".

On page 228, Part B of the Table of Contents, delete "Sec. 201. Bureau of Justice programs." and insert in lieu thereof "Sec. 201 Establishment of Bureau of Justice Programs.".

On page 228, Part B of tlie Table of Contents, delete "Establishment, duties and functions." and insert in lieu thereof "Duties and functions of Director.".

On page 229, delete everything in "Part G" of the Table of Contents and insert in lieu thereof the following new "Part G":

"PART G—CRIMINAL JUSTICE FACILITIES

"Sec. 701. Establishment of the Bureau of Criminal Justice Facilities.
"Sec. 702. Functions of the Bureau.
"Sec. 703. Grants authorized for the renovation and construction of criminal justice facilities.
"Sec. 704. Allotment.
"Sec. 705. State plans.
"Sec. 706. Basic criteria.
"Sec. 707. Clearinghouse on the construction and modernization of criminal justice facilities.
"Sec. 708. Interest subsidy for criminal justice facility construction bonds.
"Sec. 709. Definitions.

On page 229, Part H of the Table of Contents, delete "rules," in the first line and insert in lieu thereof "rules".

On page 229, delete "PART M—EMERGENCY ASSISTANCE" and insert in lieu thereof "PART M—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE".

On page 230, delete "PART N—TRANSITION--REPEALER" of the Table of Contents and insert in lieu thereof "PART N—TRANSITION".

On page 241, line 7, delete "and".

On page 245, line 6, delete "local" and insert in lieu thereof "and local".

On page 248, line 18, delete "STATE/LOCAL" and insert in lieu thereof "STATE and LOCAL".

On page 255, after line 9, insert (in small caps) the following:

DISTRIBUTION OF FUNDS

On page 262, line 14, after GRANTS" insert (in small caps) AUTHORIZED".

On page 262, delete line 16.

On page 264, line 21, delete "706" and insert in lieu thereof "705".

On page 267, line 23, delete "707" and insert in lieu thereof "706".

On page 268, line 16, delete '708" and insert in lieu thereof "707'.

On page 269, line 5, delete "709" and insert in lieu thereof "708".

On page 270, line 10, delete "710" and insert in lieu thereof "709".

On page 282, after line 7, insert the following (in small caps):

"DEFINITIONS

On page 290, after line 13, insert the following (in small caps):

"AUTHORITY FOR FBI TO TRAIN STATE AND LOCAL CRIMINAL JUSTICE PERSONNEL

On page 300, line 20, after "surplus" insert "real and related personal".

On page 301, line 3, after the word "real" insert "and related personal".

On page 301, line 16, after the word "real" insert "and related personal".

On page 302, line 9, delete "or" and insert in lieu thereof "for".

On page 302, line 25, delete "personal or real" and insert in lieu thereof "real and related personal".

AMENDMENTS TO TITLE X (MISCELLANEOUS VIOLENT CRIME AMENDMENTS)

On page 317, delete line 12, and insert in lieu therof the following:

the receipt of, or as consideration for a promise or ageement to pay, anything of pecuniary value, shall be fined not

On page 317, line 19, after "section" insert "and section 1952B".

On page 318, line 2, delete "of" and insert in lieu thereof "of,".

On page 318, line 3, delete "pay" and insert in lieu thereof "pay,".

On page 318, line 13, delete "kidnapping" and insert in lieu thereof "kidnaping".

On page 319, line 2, delete "murder," and insert in lieu thereof "murder or kidnaping,".

On page 322, line 19, after "five" insert "nor more than ten".

On page 325, line 1, delete "as" and insert in lieu thereof "on".

On page 325, line 12, delete "title" and insert in lieu thereof "section".

On page 326, line 19, insert "INVOLUNTARY" before the word "SODOMY".

On page 327, after line 20, insert the following:

SEC. 1009A. Section 114 of title 18 is amended by deleting "Shall be fined not more than $1,000 or imprisoned not more than seven years, or both" and inserting in lieu thereof "Shall be fined not more than $25,000 and imprisoned not more than twenty years, or both".

On page 329, delete line 2, and insert in lieu thereof the following:

Commission or interstate transmission facilities, as defined in 49 U.S.C. 1671.".

On page 331, after line 5, insert the following:

(f) Table of Chapters is amended to add:
"210. International Extradition..... 3191".

On page 331, line 6, delete "(f)" and insert in lieu thereof "(g)".

On page 334, line 7, delete "court." and insert in lieu thereof "court;".

On page 334, line 8, delete "The" at the beginning of the line and insert in lieu thereof "the", and indent lines 8 and 9 to align with lines 2 and 11.

On page 353, line 7, delete "Except" and insert in lieu thereof "(a) Except".

AMENDMENTS TO TITLE XI (SERIOUS NONVIOLENT OFFENSES)

On page 361, delete line 10, and insert in lieu thereof the following:

Code is amended—

(a) by deleting in the first paragraph "shall be fined not more than $2000 or imprisoned not more than one year, or both" and inserting in lieu thereof "shall be fined not more than $10,000 or imprisoned not more than five years, or both;

(b) by adding a new paragraph as follows:

On page 368, after line 12, delete "entities."." and insert in lieu thereof "entities." then add the following new line:

"511. Forging endorsements or signatures on securities of the United States.".

On page 371, line 16, delete "repealed." and add the following:

repealed, and the section analysis of Chapter 11 for section 216 be amended to read: "216. Repealed.".

On page 373, delete line 5 and all that follows through the item relating to possession of contraband articles after line 10 on page 374, and insert in lieu thereof the following:

SEC. 1109. (a) Section 1791 of title 18, United States Code is amended to read as follows: "1791. Providing or possessing contraband in prison

"(a) OFFENSE.—A person commits an offense if, in violation of a statute, or a regulation, rule, or order issued pursuant thereto—

"(1) he provides, or attempts to provide, to an inmate of a Federal penal or correctional facility—

"(A) a firearm or destructive device;

"(B) any other weapon or object that may be used as a weapon or as a means of facilitating escape;

"(C) a narcotic drug as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

"(D) a controlled substance, other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage;

"(E) United States currency; or

"(F) any other object; or

"(2) being an inmate of a Federal penal or correctional facility, he makes, possesses, procures, or othewise provides himself with, or attempts to make, possess, procure, or otherwise provide himself with, anything described in paragraph (1).

"(b) GRADING.—An offense described in this section is punishable by—

"(1) imprisonment for not more than ten years, a fine of not more than $25,000, or both, if the object is anything set forth in paragraph (1)(A);

"(2) imprisonment for not more than five years, a fine of not more than $10,000, or both, if the object is anything set forth in paragraph (1)(B) or (1)(C);

"(3) imprisonment for not more than one year, a fine of not more than $5,000, or both, if the object is anything set forth in paragraph (1)(D) or (1)(E); and

"(4) imprisonment for not more than six months, a fine of not more than $1,000, or both, if the object is any other object.

"(c) DEFINITIONS.—As used in this section, 'firearm' and 'destructive device' have the meaning given those terms, respectively, in 18 U.S.C. 921(a)(3) and (4).".

(b) Section 1792 of title 18, United States Code, is amended to read as follows:

**"1792. Mutiny and riot prohibited**

"Whoever instigates, connives, willfully attempts to cause, assists, or conspires to cause any mutiny or riot, at any Federal penal or correctional facility, shall be imprisoned not more than ten years or fined not more than $25,000, or both.";

(c) The analysis at the beginning of chapter 87 of title 18, United States Code, is amended to read as follows:

"CHAPTER 87

"Sec.
"1791. Providing or possessing contraband in prison.
"1792. Mutiny and riot prohibited.";

(d) Chapter 301 of title 18, United States Code, is amended by adding at the end thereof the following new section:

**"4012. Summary seizure and forfeiture of prison contraband**

"An officer or employee of the Bureau of Prisons may, pursuant to rules and regulations of the Director of the Bureau of Prisons, summarily seize any object introduced into a Federal penal or correctional facility or possessed by an inmate of such a facility in violation of a rule, regulation or order promulgated by the Director, and such object shall be forfeited to the United States."; and

(e) The analysis at the beginning of chapter 301 of title 18, United States Code, is amended by adding after the item relating to section 4011 the following:

**"4012. Summary seizure and forfeiture of prison contraband.".**

On page 374, line 15, delete "after section 665 a new section 666" and insert in lieu thereof "a new section 667".

On page 374, line 17, delete "666" and insert in lieu thereof "667".

On page 374, line 22, delete "benefit to" and insert in lieu thereof "benefit of".

AMENDMENTS TO TITLE XXI (PROCEDURAL AMENDMENTS)

On page 376, line 11, delete "925(a)" and insert in lieu thereof "952(a)".

On page 376, line 22, delete "fifteenth," and insert in lieu thereof "fifteenth".

On page 380, delete lines 3 through 6, and insert in lieu thereof the following:

(2) again in paragraph (c) by deleting "section 1503" and substituting "sections 1503, 1512, and 1513";

(3) by deleting the "or" at the end of paragraph (f), by redesignating present paragraph "(g)" as "(h)", and by inserting a new paragraph (g) as follows:

On page 380, line 9, insert "or" after the semicolon.

On page 380, delete line 25, and insert in lieu thereof "deleted, and amend section analysis accordingly.".

On page 382, after line 11 and before line 12, delete "'3523. Civil action to restrain witness or victim intimidation." and insert in lieu thereof "'3523. Penalty for wrongful disclosure.".

On page 382, line 15, delete the words "in a official proceeding" and insert in lieu thereof "in an official proceeding concerning an organized criminal activity or other serious offense".

On page 382, at the end of line 23, insert the following:

The Attorney General shall issue guidelines defining the types of cases for which the exercise of authority of the Attorney General contained in this subsection would be appropriate. Before providing protection to any person under this chapter, the Attorney General shall—

"(1) to the extent practicable, obtain and consider information relating to the suitability of the person for inclusion in the program, including the criminal history, if any, and a psychological evaluation of, the person;

"(2) make a written assessment in each case of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided, and the possible risk of danger to persons and property in the community where the person is to be relocated; and

"(3) determine that the need for such protection outweighs the risk of danger to the public.

Neither the United States nor the Attorney General shall be subject to civil liability on account of a decision to provide protection under this chapter.

On page 383, line 23, before "refuse" insert "disclose or".

On page 383, line 24, after "other" insert "matter".

On page 384, line 4, delete the period and insert ", except that the Attorney General shall, upon the request of State or local law enforcement officials, promptly disclose to such officials the identity and location, criminal records, fingerprints, and other relevent information relating to the person relocated or protected when it appears that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence. The Attorney General shall establish an accurate and effective system of records concerning the criminal history of persons provided protection under this chapter in order to provide the information described in this paragraph.".

On page 385, between lines 7 and 8, insert the following:

"(d) ENFORCEMENT OF JUDGMENT IN CIVIL ACTION BY SPECIAL MASTER.—(1) Anytime 120 days after a decision by the Attorney General to deny disclosure of the current identity and location of a person provided protection under this chapter to any person who holds a judicial order or judgment for money or damages entered by a Federal or State court in his favor against the protected person, the person who holds the judicial order or judgment for money or damages shall have standing to petition the United States district court in the district where the petitioner resides for appointment of a special master. The United States district court in the district where the petitioner resides shall have jurisdiction over actions brought under this subsection.

"(2)(A) Upon a determination that—

"(i) the petitioner holds a Federal or State judicial order or judgment; and

"(ii) the Attorney General has declined to disclose to the petitioner the current identity and location of the protected person with respect to whom the order of judgment was entered,

the court shall appoint a special master to act on behalf of the petitioner to enforce the order or judgment.

"(B) The clerk of the court shall promptly furnish the master appointed pursuant to clause (A) with a copy of the order of appointment. The Attorney General shall disclose to the master the current identity and location of such protected person and any other information necessary to enable the master to carry out his duties under this subsection. It is the responsibility of the court to assure that the master proceeds with all reasonable diligence and dispatch to enforce the rights of the petitioner.

"(3) It is the duty of the master to—

"(A) proceed with all reasonable diligence and dispatch to enforce the rights of the petitioner; and

"(B) to carry out his enforcement duties in a manner that minimizes, to the extent practicable, the safety and security of the protected person.

The master may disclose to State or Federal court judges, to the extent necessary to affect the judgment, the new identity or location of the protected person. In no other cases shall the master disclose the new identity or location of the protected person without permission of the Attorney General. Any good faith disclosure made by the master in the performance of his duties under this subsection shall not create civil liability against the United States.

"(4) Upon appointment, the master shall have the power to take any action with respect to the judgment or order which the petititoner could take including the initiation of judicial enforcement actions in any Federal or State court or the assignment of

such enforcement actions to a third party under applicable Federal or State law.

"(5) The costs of the action authorized by this subsection and the compensation to be allowed to a master shall be fixed by the court and shall be apportioned among the parties as follows:

"(A) the petitioner shall be assessed in the amount he would have paid to collect on his judgment in an action not arising under the provisions of this section; and

"(B) the protected person shall be assessed the costs which are normally charged to debtors in similar actions and any other costs which are incurred as a result of an action brought pursuant to this section.

In the event that the costs and compensation to the master are not met by the petitioner or protected person, the court may, in its discretion, enter judgment against the United States for costs and fees reasonably incurred as a result of an action brought pursuant to this section.

"(e) RESOLUTION OF COMPLAINTS OR GRIEVANCES.—The Attorney General shall establish guidelines and procedures for the resolution of complaints or grievances of persons provided protection under this chapter regarding the administration of the program.

On page 385, after line 13, insert the following:

**§ 3523. Penalty for Wrongful Disclosure**

"Whoever, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under section 3521(b)(6) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

On page 387, after line 24, insert a new Part I as follows:

PART I—JURISDICTION OVER CRIMES BY UNITED STATES NATIONALS IN PLACES OUTSIDE THE JURISDICTION OF ANY NATION

SEC. 1210. Section 7 of title 18, United States Code, is amended by adding a new paragraph, as follows:

"(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

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AMENDMENT No. 2679

1. Amendment to Title II, S. 1762.

On page 132, lines 8 through 10, delete "454(b) of the Comprehensive Employment and Training Act of 1973, as added by section 2 of the Act of October 17, 1978, (29 U.S.C. 927(b))" and insert in lieu thereof "425(b) of the Job Training and Partnership Act".

2. Amendment to Title VI, S. 1762.

On page 287, line 12, after the word "this" and before the word "person's" insert "part if such".

3. Amendment to Title X, Part K, "Assaults Upon Federal Officers," to include United States Magistrates in 18 U.S.C. 1114, "Protection of Officers and Employees of the United States."

On page 329, line 14, insert "or any United States magistrate," after "ficer,".

4. Amendments to Labor Racketeering Amendments in Title VIII of S. 1762, to conform to analogous provisions of the Senate-passed labor racketeering bill, S. 336:

On page 306, line 22, delete "and" substitute in lieu thereof "or".

On page 310, line 15, insert ", other than in his capacity as a member of such labor organization," after "capacity".

On page 310, line 23, delete "and" and substitute in lieu thereof "or".

On page 312, line 7 and 8, delete "or employee benefit plan".

On page 313, line 1, delete "1102" and substitute in lieu thereof "802".

On page 313, line 2, delete "1103" and substitute in lieu thereof "803".

On page 313, line 11, delete "1103 and 1104" and substitute in lieu thereof "803 and 804".

5. Amendment adding to Title XII of S. 1762, a new part relating to Department of Justice Internal Operating Guidelines.

At the end of the bill, add the following:

PART J—DEPARTMENT OF JUSTICE INTERNAL OPERATIONS GUIDELINES

SEC. 1211. The Attorney General shall, not later than twelve months after the date of enactment of this Act, provide a detailed report to the Congress concerning—

(1) the extent to which internal operating guidelines promulgated by the Attorney General for the direction of the investigative and prosecutorial activities of the Department of Justice have been relied upon by criminal defendants in courts of the United States as the basis for due process challenges to indictment and prosecution by law enforcement authorities of crimes prohibited by federal statute;

(2) the extent to which courts of the United States have sustained challenges based upon such guidelines in cases wherein it has been alleged that federal investigative agents or prosecutorial personnel have failed to comply with the requirements of such internal operating guidelines, and the extent and nature of such failures to comply as the courts of the United States have found to exist;

(3) the remedial measures taken by the Attorney General to ensure the minimization of such violations of internal operating guidelines by the investigative or prosecutorial personnel of the Department of Justice; and

(4) the advisability of the enactment of legislation that would prohibit criminal defendants in the courts of the United States from relying upon such violations as grounds for the dismissal of indictments, suppression of evidence, or the vacation of judgments of conviction.

6. Amendment to Title XII, Part F, S. 1762, "Witness Security Program Improvements" relating to United States Marshals Service.

On page 385, insert after line 21, the following:

(d) Section 568 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Appropriations"; and

(2) by adding at the end thereof a new subsection to read as follows:

"(b) Without regard to the provisions of sections 3302 and 9701 of title 31 of the United States Code, the United States Marshals Service is authorized, to the extent provided in the Appropriations Act, to credit to its appropriations account all fees, commissions and expenses collected for—

"(1) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

"(2) seizures, levies, and sales associated with judicial orders of execution;

for the purposes of carrying out these activities. Such credited amounts may be carried over from year to year for these purposes.".

7. Amendments to Title III, "Forfeiture."

On page 150, line 19, delete "section 413" and insert in lieu thereof "sections 413 and 414".

On page 162, delete the quotation mark and second period on line 4, and insert after line 4 the following:

" '(p) The provisions of this section shall be liberally construed to effectuate its remedial purposes.'.".

On page 162, insert before line 5 the following:

" 'INVESTMENT OF ILLICIT DRUG PROFITS

'SEC. 414. (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this title or title III punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this title or title III after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

'(b) Whoever violates this section shall be fined not more than [$50,000] or imprisoned not more than [ten] years, or both.

'(c) As used in this section, the term 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

'(d) The provisions of this section shall be liberally construed to effectuate its remedial purposes.'.".[4]

On page 164, delete the quotation mark and second period on line 16, and insert after line 16 the following:

" '(j) In addition to the venue provided for in section 1395 of title 28, United States Code, or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.'.".

On page 165, line 5, delete "item" and insert in lieu thereof "items".

On page 165, delete the item after line five and insert in lieu thereof the following:

" 'Sec. 413 Criminal forfeitures.

'Sec. 414 Investment of illicit drug profits.'.".

On page 165, line 22, delete "subsection (j) of this section" and insert in lieu thereof "section 524(c) of title 28, United States Code".

On page 166, delete line 1 and all that follows through line 6 on page 169, and insert in lieu thereof the following:

"SEC. 310. Section 524 of title 28, United States Code, is amended by adding at the end the following new subsection:

'(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeit-

ure Fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in Appropriations Acts for the following purposes of the Department of Justice:

'(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property; such payments may include payments for contract services and payments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions;

'(B) the payment of awards for information or assistance leading to a civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.), at the discretion of the Attorney General;

'(C) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made; and

'(D) disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice.

'(2) Any award paid from the fund for information concerning a forfeiture, as provided in paragraph (1)(B), shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay an award of $10,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award for such information shall not exceed the lesser of $150,000 or one quarter of the amount realized by the United States from the property forfeited.

'(3) There shall be deposited in the fund all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice remaining after the payment of expenses for forfeiture and sale authorized by law.

'(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

'(5) The Attorney General shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this subsection.

'(6) The provisions of this subsection relating to deposits in the fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

'(7) For fiscal years 1984, 1985, 1986, and 1987, there are authorized to be appropriated such sums as may be necessary for the purposes described in paragraph (1). At the end of each fiscal year, any amount in the fund in excess of the amount appropriated shall be deposited in the General Fund of the Treasury of the United States, except that an amount not to exceed $5,000,000 may be carried forward and available for appropriation in the next fiscal year.

'(8) For the purposes of this subsection, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

'(A) any criminal forfeiture proceeding;

'(B) any civil judicial forfeiture proceeding; or

'(C) any civil administrative forfeiture proceeding conducted by the Department of Justice;

except to the extent that the seizure was effected by a Customs officer or that custody was maintained by the Customs Service in which case the provisions of section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) shall apply.'.".

8. Amendment to Title XII, Part A, "Prosecution of Certain Juveniles as Adults," relating to the use and confidentiality of juvenile records.

On page 378, delete line 12 through line 4 on page 379, and insert in lieu thereof the following:

SEC. 1202. Section 5038 of title 18 of the United States Code is amended to read as follows:

"§ 5038. Use of Juvenile records

"(a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

"(1) inquiries received from another court of law;

"(2) inquiries from an agency preparing a presentence report for another court;

"(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

"(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

"(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

"(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

"(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to his juvenile record.

"(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the government, or others entitled under this section to receive juvenile records.

"(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 841, 952(a), or 955 or 959 of title 21, such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

"(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

"(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony, a crime of violence or an offense described in section 841, 952(a), or 955, or 959 of title 21, the court shall transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications.".

9. Amendment to Title XI, S. 1762, relating to 18 U.S.C. 219.

On page 375, after line 15, insert a new Part J as follows:

PART J—18 U.S.C. 219 AMENDMENT

SEC. 1116. Section 219 of title 18, United States Code, is amended by:

(1) striking out "an officer or employee" and inserting in lieu thereof "a public official"; and

(2) adding at the end thereof the following new paragraph:

"For the purpose of this section: "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government, thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.

10. Amendment to Title VII, S. 1762, "Surplus Federal Property Amendments."

On page 301, at the end of line 2, insert "If the Attorney General determines that any surplus property transferred or conveyed pursuant to an agreement entered into between March 1, 1982, and the enactment of this subsection was suitable for transfer or conveyance under this subsection, the Administrator shall reimburse the transferee for any monetary consideration paid to the United States for such transfer or conveyance."

11. Amendments to Title VI, S. 1762, "Justice Assistance."

On page 253, after line 15, add the following:

"(7) an assurance that the State will take into account the needs and requests of units of general local government in the State and encourage local initiative in the development of programs which meet the objectives of section 501."

On page 257, after line 2, add the following:

"(5) In distributing funds received under this part the State shall make every effort to distribute to units of local government and combinations thereof, the maximum amount of such available funds."

AMENDMENTS TO TITLE VI, JUSTICE ASSISTANCE

12. On page 250, line 9, insert after "ers;" the following:

"(12) with respect to cases involving career criminals and violent crime, expedite the disposition of criminal cases, reform sentencing practices and procedures, and improve court system management.";

On page 250, line 10, strike "(12)" and insert "(13)".

On page 257, strike line 16 through 17 and insert in lieu thereof "within such State giving priority to those jurisdictions with greatest need.".

13. Amendment to Title II, S. 1762, "Sentencing Reform," relating to the collection of criminal fines.

On page 40, between lines 19 and 20, insert the following:

The liability of a defendant for any unexecuted fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.

On page 42, between lines 9 and 10 insert the following: If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

On page 49, line 13, after "defendant" insert ", relative to the burden which alternative punishments would impose".

On page 50, strike out lines 16 through 20 and insert in lieu thereof the following:

"(d) TIME AND METHOD OF PAYMENT.—Payment of a fine is due immediately unless the court, at the time of sentencing—

"(1) requires payment by a date certain; or

"(2) establishes an installment schedule, the specific terms of which shall be fixed by the court.

On page 51, between lines 9 and 10, insert the following:

"(g) RESPONSIBILITY TO PROVIDE CURRENT ADDRESS.—At the time of imposition of the fine, the court shall order the person fined to provide the Attorney General with a current mailing address for the entire period that any part of the fine remains unpaid. Failure to provide the Attorney General with a current address or a change in address shall be punishable as a contempt of court.

"(h) STAY OF FINE PENDING APPEALS.—Unless exceptional circumstances exist, if a sentence to pay a fine is stayed pending appeal, the court granting the stay shall include in such stay—

"(1) a requirement that the defendant, pending appeal, to deposit the entire fine amount, or the amount due under an installment schedule, during the pendency of an appeal, in an escrow account in the registry of the district court, or to give bond for the payment thereof; or

"(2) an order restraining the defendant from transferring or dissipating assets found to be sufficient, if sold, to meet the defendant's fine obligation.

"(i) DELINQUENT FINE.—A fine is delinquent if any portion of such fine is not paid within 30 days of when it is due, including any fines to be paid pursuant to an installment schedule.

"(j) DEFAULT.—A fine is in default if any portion of such fine is more than 90 days delinquent. When a criminal fine is in default, the entire amount is due with 30 days of notification of the default, notwithstanding any installment schedule.

On page 51, strike out line 12 through line 9 on page 52 and insert in lieu thereof the following:

**"§ 3573. Modification or remission of fine**

"(a) PETITION FOR MODIFICATION OR REMISSION.—A defendant who has been sentenced to pay a fine, and who—

"(1) can show a good faith effort to comply with the terms of the sentence and concerning whom the circumstances no longer exist that warranted the imposition of the fine in the amount imposed or payment by the installment schedule, may at any time petition the court for—

"(A) an extension of the installment schedule, not to exceed two years except in case of incarceration or special circumstances; or

"(B) a remission of all or part of the unpaid portion including interest and penalties; or

"(2) has voluntarily made restitution or reparation to the victim of the offense, may at any time petition the court for a remission of the unpaid portion of the fine in an amount not exceeding the amount of such restitution or reparation.

Any petition filed pursuant to this subsection shall be filed in the court in which sentence was originally imposed, unless that court transfers jurisdiction to another court. The petitioner shall notify the Attorney General that the petition has been filed within ten working days after filing. For the purposes of clause (1), unless exceptional circumstances exist, a person may be considered to have made a good faith effort to comply with the terms of the sentence only after payment of a reasonable portion of the fine.

"(b) ORDER OF MODIFICATION OR REMISSION.—If, after the filing of a petition as provided in subsection (a), the court finds that the circumstances warrant relief, the court may enter an appropriate order, in which case it shall provide the Attorney General with a copy of such order.

On page 63, line 18, strike out "and".

On page 63, between lines 18 and 19, insert the following:

"(g) keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision and report thereon to the court placing such person on probation and report to the court any failure of a probationer under his supervision to pay a fine in default within 30 days after notification that it is in default so that the court may determine whether probation should be revoked; and

On page 63, line 19, strike out "(g)" and insert in lieu thereof "(h)".

On page 67, after line 12, strike the item relating to section 3613, and insert in lieu thereof the following:

"3613. Civil remedies for satisfaction of an unpaid fine.

"3614. Resentencing upon failure to pay a fine.

"3615. Criminal default.

On page 68, strike out lines 2 through 19 and insert in lieu thereof the following:

"(a) DISPOSITION OF PAYMENT.—The clerk shall forward each fine payment to the United States Treasury and shall notify the Attorney General of its receipt within 10 working days.

"(b) CERTIFICATION OF IMPOSITION.—If a line exceeding $100 is imposed, modified, or remitted, the sentencing court shall incorporate in the order imposing, remitting, or modifying such fine, and promptly certify to the Attorney General—

"(1) the name of the person fined;

"(2) his current address;

"(3) the docket number of the case;

"(4) the amount of the fine imposed;

"(5) any installment schedule;

"(6) the nature of any modification or remission of the fine or installment schedule; and

"(7) the amount of the fine that is due and unpaid.

On page 68, line 20, strike out "(b)" and insert in lieu thereof "(c)".

On page 68, after line 26, add the following:

"(d) NOTIFICATION OF DELINQUENCY.—Within 10 working days after a fine is determined to be delinquent as provided in section 3572(i), the Attorney General shall notify the person whose fine is delinquent, by certified mail, to inform him that the fine is delinquent.

"(e) NOTIFICATION OF DEFAULT.—Within 10 working days after a fine is determined to be in default as provided in section 3572(j), the Attorney General shall notify the person defaulting, by certified mail, to inform him that the fine is in default and the entire unpaid balance, including interest and penalties, is due within 30 days.

"(f) INTEREST, MONETARY PENALTIES FOR DELINQUENCY, AND DEFAULT.—Upon a determination of willful nonpayment, the court may impose the following interest and monetary penalties:

"(1) INTEREST.—Notwithstanding any other provision of law, interest at the rate of 1 per centum per month, or 12 per centum per year, shall be charged, beginning the 31st day after sentencing on the first day of each month during which any fine balance remains unpaid, including sums to be paid pursuant to an installment schedule.

"(2) MONETARY PENALTIES FOR DELINQUENT FINES.—Notwithstanding any other provision of law, a penalty sum equal to 10 per centum shall be charged for any portion of a criminal fine which has become delinquent. The Attorney General may waive all or part of the penalty for good cause.

On page 69, strike out line 1 and insert in lieu thereof the following:

**"§ 3613. Civil remedies for satisfaction of an unpaid fine**

On page 71, after line 23 and before the subchapter heading insert the following:

**"§ 3614. Resentencing upon failure to pay a fine**

"(a) RESENTENCING.—Subject to the provisions of subsection (b), if a defendant knowingly fails to pay a delinquent fine the court may resentence the defendant to any sentence which might originally have been imposed.

"(b) IMPRISONMENT.—The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

"(1) the defendant willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

"(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

"§ 3615. Criminal default

"Whoever, having been sentenced to pay a fine, willfully fails to pay the fine, shall be fined not more than twice the amount of the unpaid balance of the fine or $10,000, whichever is greater, imprisoned not more than one year, or both.

On page 79, line 2, after the period insert the following: "No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule, not to exceed two years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner.".

On page 133, line 10, strike "and".

On page 134, line 12, strike the period, and insert in lieu thereof "; and".

On page 134, after line 12, insert the following:

"(d) the provisions of sections 227 and 228 shall take effect on the date of enactment.".

On page 138, between lines 15 and 16, insert the following:

SEC. 227. (a)(1) Except as provided in paragraph (2), for each criminal fine for which the unpaid balance exceeds $100 as of the effective date of this Act, the Attorney General shall, within 120 days, notify the person by certified mail of his obligation, within 30 days after notification, to—

(A) pay the fine in full;

(B) specify, and demonstrate compliance with, an installment schedule established by a court before enactment of the amendments made by this Act, specifying the dates on which designated partial payments will be made; or

(C) establish with the concurrence of the Attorney General, a new installment schedule of a duration not exceeding two years, except in special circumstances, and specifying the dates on which designated partial payments will be made.

(2) This subsection shall not apply in cases in which—

(A) the Attorney General believes the likelihood of collection is remote; or

(B) criminal fines have been stayed pending appeal.

(b) The Attorney General shall, within 180 days after the effective date of this Act, declare all fines for which this obligation is unfulfilled to be in criminal default, subject to the civil and criminal remedies established by amendments made by this Act. No interest or monetary penalties shall be charged on any fines subject to this section.

(c) Not later than one year following the effective date of this Act, the Attorney General shall include in the annual crime report steps taken to implement this Act and the progress achieved in criminal fine collection, including collection data for each judicial district.

SEC. 228. (a) Title 18 of the United States Code is amended by adding the following new chapter after chapter 227:

"CHAPTER 228—IMPOSITION, PAYMENT, AND COLLECTION OF FINES

"Sec.
"3591. Imposition of a fine.
"3592. Payment of a fine, delinquency and default.
"3593. Modification or remission of fine.
"3594. Certification and notification.
"3595. Interest, monetary penalties for delinquency, and default.
"3596. Civil remedies for satisfaction of an unpaid fine.
"3597. Resentencing upon failure to pay a fine.
"3598. Statute of limitations.
"3599. Criminal default.

"§ 3591. Imposition of a fine

"(a) FACTORS TO BE CONSIDERED IN IMPOSING A FINE.—The court, in determining whether to impose a fine, the amount of any fine, the time for payment, and the method of payment, shall consider—

"(1) the ability of the defendant to pay the fine in view of the income of the defendant, earning capacity and financial resources, and, if the defendant is an organization, the size of the organization;

"(2) the nature of the burden that payment of the fine will impose on the defendant, and on any person who is financially dependent on the defendant, relative to the burden which alternative punishments would impose;

"(3) any restitution or reparation made by the defendant in connection with the offense and any obligation imposed upon the defendant to make such restitution or reparation;

"(4) if the defendant is an organization, any measure taken by the organization to discipline its employees or agents responsible for the offense or to insure against a recurrence of such an offense; and

"(5) any other pertinent consideration.

"(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

"(1) modified or remitted pursuant to the provisions of section 3592;

"(2) corrected pursuant to the provisions of rule 35; or

"(3) appealed; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

"§ 3592. Payment of a fine, delinquency and default

"(a) TIME AND METHOD OF PAYMENT.—Payment of a fine is due immediately unless the court, at the time of sentencing—

"(1) requires payment by a date certain; or

"(2) establishes an installment schedule, the specific terms of which shall be fixed by the court.

"(b) INDIVIDUAL RESPONSIBILITIES FOR PAYMENT.—If a fine is imposed on an organization, it is the duty of each individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization. If a fine is imposed on an agent or shareholder of an organization, the fine shall not be paid, directly or indirectly, out of the assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

"(c) RESPONSIBILITY TO PROVIDE CURRENT ADDRESS.—At the time of imposition of the fine, the court shall order the person fined to provide the Attorney General with a current mailing address for the entire period that any part of the fine remains unpaid. Failure to provide the Attorney General with a current address or a change in address shall be punishable as a contempt of court.

"(d) STAY OF FINE PENDING APPEAL.—Unless exceptional circumstances exist, if a sentence to pay a fine is stayed pending appeal, the court granting the stay shall include in such stay—

"(1) a requirement that the defendant, pending appeal, to deposit the entire fine amount, or the amount due under an installment schedule, during the pendency of an appeal, in an escrow account in the registry of the district court, or to give bond for the payment thereof; or

"(2) an order restraining the defendant from transferring or dissipating assets found to be sufficient, if sold, to meet the defendant's fine obligation.

"(e) DELINQUENT FINE.—A fine is delinquent if any portion of such fine is not paid within 30 days of when it is due, including any fines to be paid pursuant to an installment schedule.

"(f) DEFAULT.—A fine is in default if any portion of such fine is more than 90 days delinquent. When a criminal fine is in default, the entire amount is due within 30 days of notification of the default, notwithstanding any installment schedule.

"§ 3593. Modification or remission of fine

"(a) PETITION FOR MODIFICATION OR REMISSION.—A person who has been sentenced to pay a fine, and who—

"(1) can show a good faith effort to comply with the terms of the sentence and concerning whom the circumstances no longer exist that warranted the imposition of the fine in the amount imposed or payment by the installment schedule, may at any time petition the court for—

"(A) an extension of the installment schedule, not to exceed two years except in case of incarceration or special circumstances; or

"(B) a remission of all or part of the unpaid portion including interest and penalties; or

"(2) has voluntarily made restitution or reparation to the victim of the offense, may at any time petition the court for a remission of the unpaid portion of the fine in an amount not exceeding the amount of such restitution or reparation.

Any petition filed pursuant to this subsection shall be filed in the court in which sentence was originally imposed, unless that court transfers jurisdiction to another court. The petitioner shall notify the Attorney General that the petition has been filed within ten working days after filing. For the purposes of clause (1), unless exceptional circumstances exist, a person may be considered to have made a good faith effort to comply with the terms of the sentence only after payment of a reasonable portion of the fine.

"(b) ORDER OF MODIFICATION OR REMISSION.—If, after the filing of a petition as provided in subsection (a), the court finds that the circumstances warrant relief, the court may enter an appropriate order, in which case it shall provide the Attorney General with a copy of such order.

"§ 3594. Certification and notification

"(a) DISPOSITION OF PAYMENT.—The clerk shall forward each fine payment to the United States Treasury and shall notify the Attorney General of its receipt within 10 working days.

"(b) CERTIFICATION OF IMPOSITION.—If a fine exceeding $100 is imposed, modified, or remitted, the sentencing court shall incorporate in the order imposing, remitting, and modifying such fine, and promptly certify to the Attorney General—

"(1) the name of the person fined;

"(2) his current address;

"(3) the docket number of the case;

"(4) the amount of the fine imposed;

"(5) any installment schedule;

"(6) the nature of any modification or remission of the fine or installment schedule; and

"(7) the amount of the fine that is due and unpaid.

"(c) RESPONSIBILITY FOR COLLECTION.—The Attorney General shall be responsible for collection of an unpaid fine concerning which a certification has been issued as provided in subsection (a).

"(d) NOTIFICATION OF DELINQUENCY.—Within 10 working days after a fine is determined to be delinquent as provided in section 3592(e), the Attorney General shall notify the person whose fine is delinquent, by certified mail, to inform him that the fine is delinquent.

"(e) NOTIFICATION OF DEFAULT.—Within 10 working days after a fine is determined to be in default as provided in section 3592(f), the Attorney General shall notify the person defaulting, by certified mail, to inform him that the fine is in default and the entire unpaid balance, including interest and penalties, is due within 30 days.

"§ 3595. Interest, monetary penalties for delinquency, and default

"Upon a determination of willful nonpayment, the court may impose the following interest and monetary penalties:

"(1) INTEREST.—Notwithstanding any other provision of law, interest at the rate of 1 per centum per month, or 12 per centum per year, shall be charged, beginning the 31st day after sentencing on the first day of each month during which any fine balance remains unpaid, including sums to be paid pursuant to an installment schedule.

"(2) Monetary penalties for delinquent fines.—Notwithstanding any other provision of law, a penalty sum equal to 10 per centum shall be charged for any portion of a criminal fine which has become delinquent. The Attorney General may waive all or part of the penalty for good cause.

"§ 3596. Civil remedies for satisfaction of an unpaid fine

"(a) LIEN.—A fine imposed as a sentence is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted or set aside, or until it becomes unenforceable pursuant to the provisions of subsection (b). On application of the person fined, the Attorney General shall—

"(1) issue a certificate of release, as described in section 6325 of the Internal Revenue Code, of any lien imposed pursuant to this section, upon his acceptance of a bond described in section 6325(a)(2) of the Internal Revenue Code; or

"(2) issue a certificate of discharge, as described in section 6325 of the Internal Revenue Code, of any part of the person's property subject to a lien imposed pursuant to this section, upon his determination that the fair market value of that part of such property remaining subject to and available to satisfy the lien is at least three times the amount of the fine.

"(b) EXPIRATION OF LIEN.—A lien becomes unenforceable at the time liability to pay a fine expires as provided in section 3598.

"(c) APPLICATION OF OTHER LIEN PROVISIONS.—The provisions of sections 6323, 6331, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331, 6332, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805) and of section 513 of the Act of October 17, 1940 (54 Stat. 1190), apply to a fine and to the lien imposed by subsection (a) as if the liability of the person fined were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this subsection, references in the preceding sections of the Internal Revenue Code of 1954 to 'the Secretary' shall be construed to mean 'the Attorney General,' and references in those sections to 'tax' shall be construed to mean 'fine'.

"(d) EFFECT ON NOTICE OF LIEN.—A notice of the lien imposed by subsection (a) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with 28 U.S.C. 1962, of the judgment under which a fine is imposed shall be considered for all purposes as the filing prescribed by section 6323(f)(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 6323(f)(1)(A)) and by subsection (c).

"(e) ALTERNATIVE ENFORCEMENT.—Notwithstanding any other provision of this section, a judgment imposing a fine may be enforced by execution against the property of the person fined in like manner as judgments in civil cases.

"(f) DISCHARGE OF DEBTS INAPPLICABLE.—No discharge of debts pursuant to a bankruptcy proceeding shall render a lien under this section unenforceable or discharge liability to pay a fine.

"§ 3597. Resentencing upon failure to pay a fine

"(a) RESENTENCING.—Subject to the provisions of subsection (b), if a person knowingly fails to pay a delinquent fine the court may resentence the person to any sentence which might originally have been imposed.

"(b) IMPRISONMENT.—The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

"(1) the person willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

"(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

§ 3598. Statute of limitations

"(a) LIABILITY TO PAY A FINE EXPIRES—

"(1) 20 years after the entry of the judgment;

"(2) upon the death of the person fined.

"(b) The period set forth in subsection (a) may be extended, prior to its expiration, by a written agreement between the person fined and the Attorney General. The running of the period set forth in subsection (a) is suspended during any interval for which the running of the period of limitations for collection of a tax would be suspended pursuant to section 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I) of the Internal Revenue Code of 1954 (26 U.S.C. 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I)), or section 513 of the Act of October 17, 1940 (54 Stat. 1190).

"§ 3599. Criminal default

"Whoever, having been sentenced to pay a fine, willfully fails to pay the fine, shall be fined not more than twice the amount of the unpaid balance of the fine or $10,000, whichever is greater, imprisoned not more than one year, or both.".

(b) Section 3651 of title 18, United States Code, is amended by inserting after "May be required to provide for the support of any persons, for whose support he is legally responsible." the following new paragraph:

"If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.".

(c) Section 3651 of title 18, United States Code, is amended by striking out the last paragraph and inserting in lieu thereof the following:

"The defendant's liability for any unexecuted fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation.".

(d) The second paragraph of section 3655 of title 18, United States Code, is amended to read as follows:

"He shall keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision, and shall report thereon to the court placing such person on probation. He shall report to the court any failure of a probationer under his supervision to pay a fine in default within 30 days after notification that it is in default so that the court may determine whether probation should be revoked.".

(e) Section 4209 of title 18, United States Code, is amended in subsection (a) by striking out the period at the end of the first sentence and inserting in lieu thereof "and, in a case involving a criminal fine that has not already been paid, that the parolee pay or agree to adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense.".

(f) Subsection (b)(1) of section 4214 of title 18, United States Code, is amended by adding after "parole" the following: "or a failure to pay a fine in default within 30 days after notification that it is in default".

(g)(1) Section 3565 of title 18, United States Code, is repealed.

(2) The table of sections for chapter 227 of title 18, United States Code, is amended by striking out the item for section 3565 and inserting in lieu thereof the following:

"3565. Repealed."

(h) Section 3569 of title 18, United States Code, is amended by—

(1) striking out "(a)"; and

(2) striking out subsection (b).

(i) This section shall be repealed on the first day of the first calendar month beginning 24 months after the date of enactment of this Act.

14. Amendment to Title X, Part B, S. 1762, "Solicitation to Commit a Crime of Violence."

On page 320, line 3, delete "crime of violence" and insert in lieu thereof "felony that has as an element the use, attempted use, or threatened use of physical force against the person or property of another".

15. Amendment to Title VI, S. 1762, "Justice Assistance," relating to rural crime.

On page 236, line 23, delete "successful." and insert in lieu thereof "successful;".

On page 236, after line 23, insert the following:

"(6) developing improved strategies for rural areas to better utilize their dispersed resources in combatting crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention."

On page 245, line 13, insert "rural crime," after "quents,".

On page 250, after line 9, insert the following:

"(12) provide training, technical assistance, and programs to assist State and local law enforcement authorities in rural areas in combatting crime, with particular emphasis on violent crime, juvenile delinquency, and crime prevention;".

On page 250, line 10, delete "(12)" and insert in lieu thereof "(13)".

On page 291, line 3, after "criminals." insert "In rural areas such training shall emphasize effective use of regional resources and improving coordination among criminal justice personnel in different areas and in different levels of government.".

16. Amendment relating to the status of Puerto Rico in the Justice Assistance part of S. 1762 (Title VI).

On page 262, line 24, delete "3" and insert in lieu thereof "one and one-half".

On page 262, line 25, delete "the Commonwealth of Puerto Rico,".

On page 263, line 4, delete "97" and insert in lieu thereof "ninety-eight and one-half".

On page 264, line 17, delete "the Commonwealth of Puerto Rico,".

17. Amendment to Title VI, S. 1762, "Justice Assistance."

On page 300, between lines 7 and 8, insert the following:

SEC. 605. (a) Section 1028 of title 18, United States Code, is amended by adding at the end thereof the following:

"(f) To the maximum extent feasible, personal descriptors or identifiers utilized in identification documents, as defined in this section, shall utilize common descriptive terms and formats designed to:

"(1) reduce the redundancy and duplication of identification systems by providing information which can be utilized by the maximum number of authorities; and

"(2) facilitate positive identification of bona fide holders of identification documents.".

(b) The President shall, no later than three years after the date of enactment of this Act, and after consultation with Federal, State, local, and international issuing authorities, and concerned groups, make recommendations to the Congress for the enactment of comprehensive legislation on Federal identification systems. Such legislation shall—

(1) give due consideration to protecting the privacy of persons who are the subject of any identification system;

(2) recommend appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information; and

(3) make recommendations providing for the exchange of personal identification information as authorized by Federal or State law or Executive order of the President or the chief executive officer of any of the several States.

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## HEINZ AMENDMENT NO. 2680

Mr. HEINZ proposed an amendment to the bill, S. 1762, supra, as follows:

On page 387, after line 24, add the following:

PART I—CRIME VICTIM'S ASSISTANCE FUND

SEC. 1210. (a) Part II of title 18, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 239—CRIME VICTIM'S ASSISTANCE FUND

"Sec.
"3801. Establishment of the Crime Victim's Assistance Fund.
"3802. Distribution of fund to State programs.
"3803. Distribution of fund to victim and witness assistance programs.
"3804. Return of funds to Treasury; report to Congress.

**"§ 3801. Establishment of Crime Victim's Assistance Fund**

"(a) There is established in the Treasury of the United States a revolving fund, to be administered by the Attorney General and to be known as the Crime Victim's Assistance Fund. The fund shall be the depository of—

"(1) fines paid by all individuals convicted of Federal offenses in the amount of—

"(A) $10 to $100 for each misdemeanor and $25 to $500 for each felony; and

"(B)(i) an additional surcharge of up to 100 per centum on all Federal fines paid in the courts of the United States; or

"(ii) double any gain by the defendant or loss by the victim in any case where the fine authorized by clause (i) is less than the gain realized by the defendant or the harm suffered by the victim; and

"(2) all forfeitures with the exception of those required by Federal law enforcement agencies.

In imposing a fine under clause (1)(B)(ii) the court shall consider the ability of the defendant to pay. In any case where a fine is not imposed under this section or any other provision of law the court shall state for the record the reasons a fine was not imposed.

"(b)(1) If a fine is imposed under this section or any other provision of law, the sentencing court shall promptly certify to the Attorney General—

"(A) the name of the person fined;

"(B) his last known address;

"(C) the docket number of the case;

"(D) the amount of the fine imposed;

"(E) the time and method of payment specified by the court;

"(F) the nature of any modification or remission of the fine; and

"(G) the amount of the fine that is due and unpaid.

The court shall thereafter promptly certify to the Attorney General the amount of any subsequent payment that the court may receive with respect to, and the nature of any subsequent remission or modification of, a fine concerning which certification has previously been issued.

(2) The Attorney General shall be responsible for collection of an unpaid fine concerning which a certification has been issued as provided in paragraph (1).

"(c)(1) A fine imposed pursuant to the provisions of this section or any other provision of law is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted, or set aside, or until it becomes unenforceable pursuant to the provisions of paragraph (2).

"(2) A lien becomes unenforceable and liability to pay a fine expires—

"(A) twenty years after the entry of the judgment; or

"(B) upon the death of the individual fined.

The period set forth in clause (A) may be extended, prior to its expiration, by a written agreement between the person fined and the Attorney General. The running of the period set forth in clause (A) is suspended during any interval for which the running of the period of limitations for collection of a tax would be suspended pursuant to section 6503(b), 6503(c), 6503(f), or 7508(a)(1)(I) of the Internal Revenue Code of 1954 (26 U.S.C. 6503(b), 6503(c), 6503(g), or 7508(a)(1)(I)), or section 513 of the Act of October 17, 1940, 54 Stat. 1190.

"(3) The provisions of section 6323, other than subsection (f)(4), 6331 through 6343, 6901, 7402, 7403, 7405, 7423 through 7426, 7505(a), 7506, 7508, 7602 through 7605, 7622, 7701, 7805, and 7810 of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331 through 6343, 6901, 7402, 7403, 7405, 7423 through 7426, 7505(a) 7506, 7508, 7602 through 7605, 7609, 7610, 7622, 7701, 7805, and 7810), and section 513 of the Act of October 17, 1940, 54 Stat. 1190, apply to a fine and to the lien imposed by paragraph (1) as if the liability of the person fined were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this subsection, references in the preceding sections of the Internal Revenue Code of 1954 to the Secretary' shall be construed to mean 'the Attorney General,' and references in those sections to 'tax' shall be construed to mean 'fine.'

"(4) A notice of the lien imposed by paragraph (1) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with 28 U.S.C. 1962, of the judgment under which a fine is imposed shall be considered for all purposes as the filing prescribed by section 6323(f)(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 6323(f)(1)(A)) and by paragraph (3).

**"§ 3802. Distribution of fund to State programs**

"(a) Fifty per centum of the funds in the fund established by section 3801 shall be distributed to qualifying State crime victim's assistance funds by the Attorney General.

"(b)(1) In order to qualify for funds under this section, a State shall establish a crime victim's assistance fund to distribute such funds. Such State fund shall provide—

"(A) compensation to all victims of crime within such State; and

"(B) psychological counseling to any crime victim who needs such counseling.

"(2) No State shall receive funds under this section until the crime victim's assistance fund of such State has been operational for a year.

"(c)(1) A State shall receive funds under this section on an annual basis based on the percentage of total compensation awards made by the crime victim's assistance fund of such State during the previous year. No State shall receive more than 10 per centum of total amounts awarded in the previous year from the Crime Victim's Assistance Fund.

"(2) The victim of a crime of exclusive Federal jurisdiction may apply to the convenient State for compensation. States shall be reimbursed dollar for dollar plus actual administrative costs not to exceed 25 per centum of the award for any award made to the victim of a crime of exclusive Federal jurisdiction. Awards made under this para-

graph shall be excluded from the 10 per centum cap provided in paragraph (1).

**"3803. Distribution of fund to victim and witness assistance programs**

"Fifty per centum of the funds collected by the Crime Victim's Assistance Fund shall be used to support victims and witness assistance programs. Fifty per centum of such funds shall be distributed at the discretion of the Attorney General to support Federal activities including—

"(1) training of law enforcement officials;

"(2) technical assistance to States for purpose of this chapter;

"(3) supporting ongoing or established new Federal witness and victims assistance programs;

"(4) improving facilities for victims and witnesses;

"(5) establishing a victim's advocate in the Department of Justice; and

"(6) administration of Crime Victim's Assistance Fund.

**§ 3804. Return of funds to Treasury; report to Congress**

"(a) Any funds deposited into the Crime Victim's Assistance Fund during a fiscal year not paid out during such fiscal year shall be returned to the general fund of the Treasury of the United States.

"(b) The Attorney General shall report to the Congress three years after the date of enactment of this chapter concerning the effectiveness of this chapter and any necessary modifications or other legislative action.".

(b) The table of chapters for part II of title 18, United States Code, is amended by adding the following new item:

"239. Crime Victim's Assistance Fund ..... 3801".

## HATCH AMENDMENT NO. 2681

Mr. HATCH proposed an amendment to bill S. 1762, supra, as follows:

On page 177, strike out line 18 through line 24 on page 204 and insert in lieu thereof the following:

SEC. 401. (a) Chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 20. Insanity defense

"(a) STATE OF MIND.—It shall be a defense to a prosecution under any Federal statute, that the defendant, as a result of mental disease or defect, lacked the state of mind required as an element of the offense charged. Mental disease or defect does not otherwise constitute a defense.

"(b) APPLICATION OF THIS SECTION.—This section applies to prosecutions under any Act of Congress other than—

"(1) an Act of Congress applicable exclusively in the District of Columbia;

"(2) the Canal Zone Code; or

"(3) the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

"§ 21. Determination of the existence of insanity at the time of the offense

"(a) MOTION FOR PRETRIAL PSYCHIATRIC EXAMINATION.—Upon the filing of a notice, as provided in rule 12.2 of the Federal Rules of Criminal Procedure, the court, upon motion of the attorney for the Government, may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court pursuant to the provisions of section 24 (b) and (c).

"(b) SPECIAL VERDICT.—If the issue of insanity is raised by notice as provided in rule 12.2 of the Federal Rules of Criminal Procedure on a motion by the defendant or by the attorney for the Government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a nonjury trial, the court shall find, the defendant—

"(1) guilty;

"(2) not guilty; or

"(3) not guilty only by reason of insanity.

"§ 22. Hospitalization of a person acquitted by reason of insanity

"(a) DETERMINATION OF PRESENT MENTAL CONDITION OF ACQUITTED PERSON.—If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (d) of this section. The court shall order a hearing to determine whether the person is currently suffering from a mental disease or defect and that his release would create a significant risk of bodily injury to another person or serious damage to property of another.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court shall order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 24 (b) and (c).

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 24(d), and shall be conducted not later than forty days after the date of the finding of guilty only by reason of insanity.

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by clear and convincing evidence that the acquitted person is currently suffering from a mental disease or defect and that his release would create a significant risk of bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

"(1) such a State will assume such responsibility; or

"(2) the person's mental condition is such that his release would not create a significant risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of a facility determines that an acquitted person, hospitalized pursuant to subsection (d), has recovered from his mental disease or defect to such an extent that his release would no longer create a significant risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to such person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 24(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of evidence that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a significant risk of bodily injury to another person or serious damage to property of another, the court shall order his immediate discharge.

**"§ 23. Hospitalization of a convicted person suffering from mental disease or defect.**

"(a) MOTION TO DETERMINE PRESENT MENTAL CONDITION OF CONVICTED DEFENDANT.—A defendant found guilty of an offense, or the attorney for the Government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant. Such motion must be supported by substantial information indicating that the defendant may currently be suffering from a mental disease or defect and that he is in need of custody for care or treatment in a suitable facility for such disease or defect. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order a hearing on its own motion if the court deems that there is reasonable cause to believe that the defendant may currently be suffering from a mental disease or defect and that he is in need of custody for care or treatment in a suitable facility.

"(b) PSYCHIATRIC EXAMINATION AND REPORT.—Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted, and that a psychiatric report be filed with the court, pursuant to the provisions of section 24 (b) and (c). In addition to the information required to be included in the psychiatric report pursuant to the provisions of section 24(c), if the report includes an opinion by the examiners that the defendant is currently suffering from a mental disease or defect but that such disease or defect does not require his custody for care or treatment, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best provide the defendant with the kind of treatment needed.

"(c) HEARING.—The hearing shall be conducted pursuant to the provisions of section 24(d).

"(d) DETERMINATION AND DISPOSITION.—If, after the hearing, the court finds by a preponderance of evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to probation or imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence to the maximum term authorized by law for the offense of which the defendant was found guilty.

"(e) DISCHARGE FROM SUITABLE FACILITY.—When the director of the facility determines that the defendant, hospitalized pursuant to subsection (d), has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect

with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing, and may modify the provisional sentence.

"§ 24. General provisions

"(a) DEFINITIONS.—As used in this title—

"(1) 'insanity' means a mental disease or defect of a nature constituting a defense to a Federal criminal prosecution; and

"(2) 'suitable facility' means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant.

"(b) PSYCHIATRIC EXAMINATION.—A psychiatric examination ordered pursuant to this title shall be conducted by a licensed or certified psychiatrist, or a clinical psychologist and a medical doctor, or, if the court finds it appropriate, by additional examiners. Each examiner shall be designated by the court if the examination is ordered under section 21, 22, or 23. For the purposes of an examination pursuant to an order under section 23, the court may commit the person for a reasonable period not exceeding thirty days, in order to conduct such examination, or pursuant to section 21 or 22, the court may commit such person to the custody of the Attorney General for placement in a suitable facility for a reasonable period, but not to exceed forty days. Unless impracticable, the psychiatric examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension not exceeding fifteen days under section 23, or not exceeding twenty days under section 21 or 22, upon a showing of good cause that additional time is necessary to observe and evaluate the defendant.

"(c) PSYCHIATRIC REPORTS.—A psychiatric report ordered pursuant to this title shall be prepared by the examiner designated to conduct the psychiatric examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include—

"(1) the person's history and present symptoms;

"(2) a description of the psychological and medical tests employed and their results;

"(3) the examiner's findings; and

"(4) the examiner's opinions as to diagnosis, prognosis, and—

"(A) if the examination is ordered under section 21, whether the person was insane at the time of the offense charged;

"(B) if the examination is ordered under section 22, whether the person is currently suffering or in the reasonable future is likely to suffer from a mental disease or defect which would create a significant risk of bodily injury to another person or serious damage to property of another; or

"(C) if the examination is ordered under section 23, whether the person is currently suffering or in the reasonable future is likely to suffer from a mental disease or defect for which he is in need of custody in a suitable facility for care or treatment.

"(d) HEARING.—At a hearing ordered pursuant to this title the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to law. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

"(e) PERIODIC REPORT AND INFORMATION REQUIREMENTS FOR SUITABLE FACILITIES.—(1) The director of the facility in which a person is hospitalized pursuant to section 22 or 23, shall prepare annual reports concerning the mental condition of such person, and shall make recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility, and copies of the reports shall be submitted to such other persons as the court may direct.

"(2) The director of the facility in which a person is hospitalized pursuant to section 22, 23, or 24, shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

"(f) ADMISSIBILITY OF A DEFENDANT'S STATEMENT AT TRIAL.—A statement made by the defendant during the course of a psychiatric examination pursuant to section 21 is not admissible as evidence against the accused on the issue of guilt in any criminal proceeding, but is admissible on the issue of whether or not the defendant suffers from a mental disease or defect.

"(g) HABEAS CORPUS UNIMPAIRED.—Nothing contained in section 22 precludes a person who is committed under such section from establishing by writ of habeas corpus the illegality of his detention.

"(h) DISCHARGE FROM SUITABLE FACILITY.—Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsections (e) of either section 22 or 23, counsel for the person or his legal guardian may, during such person's hospitalization, file a motion with the court ordering such commitment for a hearing to determine whether the person should be discharged from such facility. Such motion may be filed at any time except that no such motion may be filed within one hundred and eighty days after a court determines that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

"(i) AUTHORITY AND RESPONSIBILITY OF THE ATTORNEY GENERAL.—(1) Before a person is placed in a suitable facility pursuant to section 22 or 23, the Attorney General shall request the director of each facility under consideration to furnish information describing rehabilitation programs that would be available to such person, and, in making a decision as to the placement of such person, shall consider the extent to which the available programs would meet the needs of such person.

"(2) The Attorney General may contract with a State, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to this custody pursuant to this title.".

(b) The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following:

"20. Insanity defense.
"21. Determination of the existence of insanity at the time of the offense.
"22. Hospitalization of a person acquitted by reason of insanity.
"23. Hospitalization of a convicted person suffering from mental disease or defect.
"24. General provisions.".

## HELMS AMENDMENT NO. 2682

Mr. HELMS proposed an amendment to the bill S. 1762, supra; as follows:

On page 353, after line 24, add the following:

PART P—RACKETEERING IN OBSCENE MATTER

SEC. 1031. Section 1961(1) of title 18, United States Code, is amended—

(1) in clause (A) by inserting after "extortion," the following: "dealing in obscene matter,"; and

(2) in clause (B) by inserting after "section 1343 (relating to wire fraud)," the following: "sections 1461-1465 (relating to obscene matter),".

## NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HELMS. Mr. President, the Committee on Agriculture, Nutrition, and Forestry has scheduled a hearing on S. 1279, the Food Stamp Optional Block Grant Act of 1983.

The hearing will be held on Wednesday, February 1, 1984, at 10 a.m. in room 328-A, Russell Senate Office Building.

Anyone wishing further information, please call the committee staff at 224-2035.

SUBCOMMITTEE ON SOIL AND WATER CONSERVATION

Mr. JEPSEN. Mr. President, the Subcommittee on Soil and Water Conservation, Forestry, and Environment of the Committee on Agriculture, Nutrition, and Forestry has scheduled a hearing on H.R. 4198, the Vermont Wilderness Act of 1983.

The hearing will be held on Wednesday, February 1, 1984, at 10 a.m. in room 562, Dirksen Senate Office Building.

Anyone wishing further information, please call the committee staff at 224-2035.

COMMITTEE ON THE BUDGET

Mr. DOMENICI. Mr. President, the Senate Committee on the Budget will hold hearings on the First Concurrent Budget Resolution for Fiscal Year 1985 on Friday, February 3, 1984 at 9:30 a.m. and at 1:30 p.m. in room 608 of the Dirksen Senate Office Building. The Honorable Donald Regan, Secretary, U.S. Department of the Treasury is scheduled to testify at 9:30 a.m., and the Honorable Martin Feldstein, Chairman, Council of Economic Advisers, is scheduled to testify at 1:30 p.m.

For further information, contact Carolyn McCallum at the Senate Budget Committee at 224-0849.

Mr. President, the Senate Committee on the Budget will hold a hearing on the First Concurrent Budget Resolution for fiscal year 1985 on Monday, February 6, 1984, at 9:30 a.m. in room 608 of the Dirksen Senate Office

Building. The Honorable Caspar W. Weinberger, Secretary of Defense, and Gen. John W. Vessey, Chairman of the Joint Chiefs of Staff, are scheduled to testify.

For further information, contact Carolyn McCallum at the Senate Budget Committee at 224-0849.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in executive session during the session of the Senate on Tuesday, January 31, to receive a briefing on United States and U.S.S.R. military capabilities.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, January 31, at 11 a.m., to hold a business meeting to consider the committee's budget resolution for the second session of the 98th Congress.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, January 31, to hold a hearing on organized crime in the Midwest.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADDITIONAL STATEMENTS

### THE DOMESTIC SHOE INDUSTRY

● Mr. D'AMATO. Mr. President, because of my concern for the well-being of the domestic footwear industry, I have recently become a member of the Senate Footwear Caucus. Today, nearly 10 percent of the total footwear production in the United States takes place in New York State. An estimated 8,400 New Yorkers are directly employed in the manufacture of footwear. This represents a reduction of over 50 percent since 1968. In addition, thousands of other residents in my State are employed in jobs closely related to this important industry.

The major cause for the significant reduction in employment in this area is the flood of foreign imports entering the country. Currently, over 64 percent of the nonrubber footwear in the Nation is made abroad. In 1983 alone, the level of imports increased by an estimated 20 percent. As a result, unemployment in the domestic shoe industry now stands at 14.9 percent.

I am seriously concerned about the prospects faced by the employees of the 80 footwear facilities located in my State. As a member of the footwear caucus, I will work to insure the viability of the domestic footwear industry.●

### THE NEW KING HOLIDAY

● Mr. DOLE. Mr. President, on November 2, 1983, President Reagan signed the Martin Luther King holiday bill into law. The event marked a culmination of 15 years of effort to bestow our Nation's highest honor on both the man who died in Memphis, and his dream, which lives on. The task now is to insure that we celebrate each third Monday in January in a way which will best further the cause of racial equality, harmony, and justice for which Dr. King fought and gave his life. Recently, Mrs. Coretta Scott King sent me her statement on this subject, which I submit for inclusion in the CONGRESSIONAL RECORD. In it, she expresses her hope that the holiday will serve as a focal point for improved race relations and the use of nonviolent means to achieve social and economic progress.

The statement follows:

HOW WE CAN OBSERVE THIS HOLIDAY

(By Coretta Scott King)

Now that the Martin Luther King, Jr. holiday bill has been passed by Congress, and signed into law by the President, it is important to consider the meaning of the holiday and how it can best be observed.

In terms of significance, the King holiday is unique. There is the obvious fact that this will be the only holiday in honor of a Black American. The holiday can be a way to honor the contributions of Black citizens of America and to remind us that racial equality must always be a cornerstone of our democracy.

However, this must not be celebrated as only a "Black holiday." Martin Luther King, Jr. was deeply committed to racial integration. He believed that Americans of all races must learn "to live together as brothers, or we will perish together as fools."

The movement was not just for the liberation of Black people. Martin believed deeply that it was equally important to free white people from the moral burden of forced racial segregation. The Civil Rights Movement itself was a multi-racial endeavor that reflected the interracial solidarity Martin sought for our society.

No other holiday serves as a focal point for encouraging improved race relations. The holiday can help unify America in the spirit of Martin's dream.

The holiday will have special meaning for young people, who will be inspired by the courageous example of a man who began to lead a historic reform movement at the age of 26 and who was awarded the Nobel Peace Prize at age 34. We must begin to convince our young people that you don't have to carry a gun to change history, and Martin's life and work provide the preeminent example that demonstrates this truth.

Young people in particular need nonviolent role models like him. In many ways, the Civil Rights Movement was a youth movement. Young people of all races, many who were jailed, were involved in the struggle, and some gave their lives for the cause. Yet none of the youth trained by Martin and his associates retaliated in violence, including members of some of the toughest gangs of urban ghettos in cities like Chicago and Birmingham. This was a remarkable achievement. It has never been done before; it has not been duplicated since.

For me, the overriding importance of the holiday is that it can help America focus on forging a new commitment to nonviolence. With few exceptions; the history book has gloried in the dubious achievement of the generals and warriors who have supposedly "solved" the great conflicts of American history.

However, in just 13 years of organized nonviolent struggle, Black Americans achieved more genuine freedom than the previous four centuries had produced. This is an impressive testament to the power of nonviolence. The efficacy of the philosophy and strategy of nonviolence is the most important lesson we can draw from the life and work of Martin Luther King, Jr.

From his study of history, he believed that violence always sows the seeds of bitterness, resentment and ultimately more violence. He saw that retaliatory violence was a vicious cycle that carried with it the seeds of its own destruction. He reasoned that the only way to break the cycle of violence was for someone to refuse to retaliate. He read of the historic nonviolent movement for independence led by Gandhi in India, and fused Gandhi's tactics with the religious principles of unconditional love, truth and forgiveness even for one's adversaries that he learned in his Christian training. "Man must evolve for all human conflicts a method that rejects revenge, aggression and retaliation," Martin said. "The foundation of such a method is love."

Until the American Civil Rights Movement, many people believed that nonviolence was something that could only be applied in Eastern cultures like that of India. But Martin saw that nonviolence was at the heart of our Judeo-Christian heritage and was entirely consistent with democratic values.

Today his legacy of nonviolence action for social, political and economic progress is more relevant and desperately needed than ever. The price of violent conflict between individuals, communities and nations has become unbearably high in this nuclear age, and only nonviolent conflict resolution offers a viable alternative.

For this reason the holiday must be substantive as well as symbolic. It must be more than a day of celebration. To many Americans a holiday means a "day of rest." Let this holiday be a day of reflection, a day of teaching nonviolent philosophy and strategy, a day of getting involved in nonviolent action for social and economic progress.

For more than 15 years, The Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta, the official national and international memorial, has observed his birthday with this commitment and has conducted activities around his birthday in many cities. The week-long observance has included a series of educational programs, policy seminars or conferences, action-oriented workshops, strategy sessions

and planning meetings dealing with a wide variety of current issues, from voter registration to full employment, to citizen action for nuclear disarmament. This January, The Center's observance will focus on achieving and implementing the legislative agenda issued by the New Coalition of Conscience at the August 27th March on Washington.

As it chooses its heroes and heroines, a nation intepret its history and shapes its destiny. The commemoration of the life and work of Martin Luther King, Jr. can help this nation realize its true destiny as the global model for democracy, economic and social justice, and as the first nonviolent society in human history.●

## UNWAVERING SUPPORT OF THE AMERICAN LEGION

● Mr. COHEN. Mr. President, on November 5, 1983, the national commander of the American Legion, Keith Kreul of Fennimore, Wis., visited the State of Maine and spoke to an American Legion, Department of Maine banquet that was held in his honor.

Mr. Kreul delivered his remarks just a few days after the tragic truck bombing of our Marines in Beirut and the successful rescue mission of American students in Grenada and he stresses the American Legion's unwavering support for those who have served, and are serving America today in our armed services around the world.

Characterizing the American Legion as "more and more * * * becoming recognized as a voice of main-street America," Mr. Kreul explains the American Legion's support for this country's policies in the Middle East, the Caribbean Basin, and Central America.

At the request of Dan Lambert, Maine State Adjutant of the American Legion, I commend Keith Kreul's statement to the attention of my colleagues in the Senate and I ask that his remarks be printed in the RECORD.

The remarks follow:

REMARKS BY KEITH KREUL, NATIONAL COMMANDER, THE AMERICAN LEGION, DEPARTMENT OF MAINE BANQUET

Thank you Dan Lambert, distinguished guests, ladies and gentlemen, fellow Legionnaires and Auxiliary.

It is truly a pleasure for me to be with you this evening. We've had a wonderful three days here in the Department of Maine and you all certainly have shown some real "Down East" hospitality. You have much to be proud of in this fine state and your contributions to national defense certainly should be listed among them. I am extremely impressed by what I have seen during this all-too-brief visit.

The subject of national defense and national foreign policy is very much with us this evening. The rapid development of events in the world over the past weeks have sailed straight to the very core of every American and they particularly have struck the very core of The American Legion. We all, of course, are deeply saddened by the recent turn of events in Lebanon. As The American Legion indicated to the president immediately after the tragedy, this country must seek out and punish those responsible for the bombing of the Marine headquarters in Beirut. The wholesale slaughter of young men whose only purpose was to bring stability to a small portion of a fragmented society can never be rationalized or explained away. Service to our country is a common bond we share with those young men and we understand what great loyalty and dedication it takes to bravely face antagonists who will resort to sadistic butchery to destabilize the situation in Lebanon.

We also share with them a resolve, a resolve to bring peace and stability to the world and to the people who long for freedom and democracy. We will never support a faintness of heart that would, in the face of adverse circumstances, call for us to turn tail and run. That is why this coming veterans week I am calling on all Americans, led by Legionnaires and Auxiliary, to send letters to our service people now serving in Lebanon and throughout the world. And let them know that we love them, we respect them, and we are fully behind them in their service to this nation.

Immediately after the bombing in Beirut and the invasion of the Caribbean Island of Grenada, I was called to Washington for a private briefing on those situations by key members of the White House staff. Ladies and gentlemen, as we have stated in our resolutions on the Middle East and Lebanon, the restoration of Lebanese soverignty and withdrawal of all foreign troops from Lebanon will contribute to the stability of the entire Middle East. My belief in those resolutions was reinforced by that briefing and anyone who thinks Syria and the PLO will be inspired to pull out if the United States pulls out first is just plain simple-minded. Our troops are there as part of the multinational force to facilitate the withdrawal of other foreign forces, they are not there to cut and run when some barbaric fanatics decide to make tough going even tougher.

My friends, this is a time for The American Legion to lead this nation once again. Some of our traditional concerns have taken on a new meaning here in the 1980s and much to our gratification. The American Legion more and more is becoming recognized as a voice of main-street America. Today, we are being viewed nationally as a professional, well respected organization representing those who put their lives on the line to defend this nation's interests and in support of its policies.

Those interests and policies include Lebanon and the recent situation that developed rapidly on the tiny Caribbean island of Grenada. The president acted wisely and decisively and now that the facts about what was happening on Grenada are coming to light we can see how immediate action by the United States was so necessary. Just think, under the guise of tourism, a sleepy little piece of real estate was swiftly being turned into a Soviet-Cuban military base capable of exporting terrorism and threatening a major choke point for sea traffic. I agree with the president, we got there just in time.

We are at a turning point in this nation. With the events of recent weeks, the citizens of this great land are being awakened to the reality of the threat to this country posed by Soviet and Cuban interference in Central America. A moment ago I spoke of The American Legion being a respected voice in America. As an example of that respect, I was allowed to testify recently before the National Bipartisan Commission on Central America, sometimes known as the Kissinger Commission. We are the only veterans organization to do so and the commission acknowledged the deep concerns The American Legion has for that critical area of the Western Hemisphere. The issues involved cover a broad range of topics, but the bottom line is this: U.S. inability to prevent the emergence of unfriendly regimes in an area so close to our shores would cause grave harm to this nation.

In Grenada we demonstrated our ability to respond quickly to a situation that was hazardous both to our security and to American citizens residing there. The situation is not quite the same in other areas of the Caribbean basin, although certainly no less threatening or harmful.

One of the major contributing factors to this potential harm is an inability on the part of the American people . . . and their elected legislators. Now wait, perhaps inability is too harsh a word. Let's say it's a lack of consensus. What this country lacks is a national consensus—a national will—about what is going on in Central America and what to do about it.

According to some statistics I saw recently, most Americans are very poorly informed of the situation in Central America. Yet, almost 50 percent say the reports they see on television are true and an equal number feel it is right for the U.S. to intervene, however, most don't want to do anything.

And those attitudes are reflected in Congress. They waver from one position to another, offering no sense of unity as to where this country should go.

Well, ladies and gentlemen, The American Legion has told the Kissinger Commission we will help change that. We are going to our strength, to our membership, to help educate and properly inform the citizens of America as to the right course in Central America.

Let me explain how this lack of consensus is so dangerous. It's as simple as pure survival. Indecision is an open invitation to aggression. Indecision indicates weakness, an absence of determination for survival, a lack of willingness to take necessary steps for strong self defense.

The recent turn of events in Grenada has given this country an opportunity to demostrate its resolve. But that moment is in danger of slipping away. We have a golden opportunity available to us. We have the opportunity to prevent any more Grenadas from threatening this hemisphere.

But, when Congress fails to rally and support strong leadership . . . it is our duty to galvanize the populace of this great land and communicate our desire for unity and strength on this crucial issue.

The United States has drawn a line in Central America and we must demonstrate our ability to do what we say in this instance, or suffer humiliation and have our reliability as an ally seriously called into question before the world community.

We agree that the administration is proceeding in the right direction, but it has not been completely adequate. Although economic aid to Central America has accounted for about three-fourths of all U.S. support, it has not been up to the levels needed to counter the economic downturn caused by guerrilla plundering and world recession.

We outlined a course for the commission during our testimony. The American Legion proposed a Marshall plan approach of economic and security aid to the entire Caribbean Basin. The plan would be a compre-

hensive one, addressing economic, social, political and security needs.

It would be a specific program, with designated principles, and explicit goals. It would be a broad, clear, and definite plan that is understandable by our countrymen, our allies in Central America, and, very importantly, our adversaries.

The security aid would act as a shield behind which the endangered nations can protect their people from external threats, like Soviet and Cuban military adventurism. Those countries then could work to rectify social injustice, build democratic institutions and increase economic opportunities.

All countries of the area would be involved in this multilateral effort. It would be cooperative, without the United States dictating, imposing, or directing solutions.

And, the plan would be a long-term one, based on multi-year funding. It would be an indelible commitment to forever rid that area of our hemisphere from Marxist meddling.

Such a plan also would have a morale-building effect on this nation and the nations of the Caribbean Basin. It would be a loud and clear statement that we will not abandon our allies there or ignore a threat to our shores.

History shows us that such a plan is possible only when Congress provides strong bipartisan support for U.S. foreign policy and national security policy.

It is time for The American Legion to take the lead in forming this national consensus by informing our neighbors about the clear and present danger to this nation and by telling them of this key plan to offset that danger.

My friends, if the Communist influences in Central America succeed, the threat to this country would, literally, be only hundreds of miles and a few hours away. Did you know that it takes only 24 hours to drive from the Rio Grande to Nicaragua?

That's less time than it takes to drive from here to Milwaukee.

Did you know that El Salvador is only 1,000 miles from Miami? That's closer than from here to Charleston, West Virginia.

That's why The American Legion has pledged to gather together a groundswell of support and form it into a national consensus that will send a clear message to our leaders that we will not tolerate such clearly anti-democratic activity so close to our borders and that we will actively support the Marshall plan approach to helping our southern neighbors secure freedom and liberty for themselves.

The issue is a critical one, because if we are not safe within our own hemisphere, we will no longer be able to continue the other equally important programs of The American Legion. Our children and youth activities, our veterans affairs programs, the total spectrum of community involvement and service.

So I want you to go to your fellow Legionnaires and neighbors and become properly informed about this vital Central American issue and then help build grass roots support for our Caribbean Basin policy. Inform our senators and representatives about this growing national consensus in favor of a strong and long-term economic plan for Central America.

Begin the effort right here in the pine tree state. Then, with a united foreign policy in place to eliminate the threat from the south, we can actively pursue our mandates to build from within this country, a new Americanism, a new pride in community life, and a better country in which we all can grow and prosper.

We have the strength, we have the determination, to see that this country remains the champion of those everywhere who would seek the blessings of freedom, justice, and democracy. Let's show that it can be done.

Thank you all very much and God bless you.●

## S. 2031—TO LOCATE U.S. EMBASSY AND RESIDENCE OF AMBASSADOR TO ISRAEL IN JERUSALEM

● Mr. D'AMATO. Mr. President, I rise this afternoon to join as a cosponsor of S. 2031, legislation which would require the U.S. Embassy and the residence of the American Ambassador to Israel to be located in the city of Jerusalem, the true capital of Israel.

Historically, Jerusalem has always been the capital of the Jewish people and the focal point of Judaism. Since 1000 B.C., when it was the capital of the Kingdom of David, until the present, no other nation has laid claim to Jerusalem as being its capital. The Jewish people pray three times a day to Jerusalem and believe strongly in Psalm 137: "If I ever forget you, Jerusalem, may my right hand lose its strength."

However, when Israel proclaimed its independence following the termination of the Palestinian mandate by the British in 1948, five Arab nations joined in a war against Israel with the primary intent of abolishing the Jewish State. They did not succeed, although Jordan did succeed in seizing the eastern part of Jerusalem.

On April 5, 1949, Israel and Jordan signed an armistice calling for a cease-fire. This agreement also partitioned the city, giving neither country control of the city until further negotiations could settle the dispute peacefully.

On December 13, 1949 Prime Minister Ben Gurion, in making the proposal that all Israeli Government Ministries move from Tel Aviv to Jerusalem, stated:

> Ever since the establishment of the Provisional Government, our principal care has been the security and economic consolidation of Jerusalem. In the stress of war, when Jerusalem was under seige, we were compelled to establish the seat of Government in Ha-Hirya, Tel Aviv. For the State of Israel, however, there has always been and will always be, the Eternal Jerusalem. Thus it was 3000 years ago and thus it will be, we believe, till the end of time.

From that point on, Jerusalem has officially been the capital of Israel, 2 weeks later, Israel's democratically elected parliament, the Knesset, convened there for the first time. Subsequently, all Government ministries have been located there. In April of 1950, however, Jordan annexed the eastern part of Jerusalem and, although Pakistan was the only nation to recognize this annexation, controversy began over who was really in control of Jerusalem.

Under Jordanian rule, the city was markedly divided with barbed wire fences and concrete walls. The Jordanian Government denied Jews access to the holy places; 58 synagogues were either destroyed or severely damaged. In addition, legislation was passed which restricted ownership or possession of land by Christians within the walled city.

In 1967, Israel was again faced with hostilities with Egypt and Syria which were intent on abolishing the State of Israel. Israel requested that Jordan remain neutral, promising in return that Israel would not take action against them. One day later, however, Jordan attacked the western part of Jerusalem. This conflict, known as "the Six Day War," ended with Israel gaining control of the whole of Jerusalem.

With the unification of Jerusalem, Israeli rule was extended to the eastern part of the city. This unification put an end to the repressive religious practices of the Jordanian Government. The "Protection of Holy Places Law" was immediately passed by the Knesset. This law guarantees the protection of the holy places of all religions and the freedom of access to them by all.

As an article in the London Daily Telegraph on June 25, 1967, stated:

> There is no essential incompatibility between these different needs, Jewish political possession of Jerusalem and absolute freedom to it by Moslems and Christians—these have been declared principals of the State of Israel.

Today, 34 years after Jerusalem was officially proclaimed the capital of Israel and 16 years after it was united, the United States, by retaining its diplomatic headquarters in Tel Aviv, still refuses to treat it as the capital of Israel.

To this day, American officials are denied certain diplomatic activities solely due to the fact that they take place in the eastern part of the city, which the United States refuses to acknowledge as part of Israel. This is no way to maintain relations with a friend and ally. The exchange of diplomatic envoys is the primary method of acknowledging one another's existence and of conducting political and commercial negotiations.

What can be said of the quality of diplomatic relations with a country whose capital does not exist in our eyes?

It has always been the right of a country to choose the city in which all diplomatic missions are located. When Brazil moved its capital to Brazilia, the diplomatic corps of all countries followed. And when the Dutch Government requested that The Hague be

the diplomatic capital, rather than Amsterdam, Holland's official capital, nations agreed to situate their Embassies there. Although the United States does not recognize East Germany's claim to Berlin as its capital, the U.S. Embassy is nevertheless located in East Berlin.

So why does the United States not have its Embassy in Jerusalem, that country's capital, as is the wish of the Isareli Government, when we so strongly support their democratic way of life? Why do we bow to the wishes of all other countries in the placement of diplomatic envoys, yet refuse to grant Israel this freedom of choice?

I believe that the United States should allow Israel this fundamental right of choosing its own capital and adhere to that right by relocating the U.S. Embassy there. In doing this, the United States will demonstrate its commitment to Israel, a free and independent nation. The present location of the U.S. Embassy in Tel Aviv serves only to reject Israel's legitimate claim to sovereignty over the whole of Jerusalem.

Mr. President, the time has come for the United States to show its full support for the State of Israel by locating our Embassy in Jerusalem, the Israeli capital.●

## STRENGTHENING CHILD SUPPORT ENFORCEMENT

● Mr. MITCHELL. Mr. President, I rise today in support of S. 2207, legislation designed to strengthen the Federal child support enforcement statue, which I have agreed to cosponsor. I commend my distinguished colleague from New Jersey, Senator BRADLEY, for introducting this bill which was passed by the House unanimously on November 16. It underscores the need for concrete action to insure that both parents, living apart, are fulfilling their financial obligation toward their children.

There is compelling evidence showing that many parents, legally required by court or administrative order to make child support payments, are ignoring their obligation. The Census Bureau's figures reveal that in 1981, 8.4 million women were raising children alone in this country. Of that number, 4 million women had established a legal right to child support. And yet, 53 percent of them received either partial payment or no payment at all, with lost child support payments totaling $4 billion—a staggering amount.

The result of such inaction on the part of noncustodial parents has been to force custodial parents, the vast majority of whom are women, into poverty. Fully 30 percent of the 8.4 million women raising children on their own live below the poverty level. And it is estimated that 80 percent of the cases on the aid to families with dependent children (AFDC) program seek assistance because of inadequate or nonexistent child support.

Clearly, then, the failure of some to fulfill their legal support obligation must be borne in part by American taxpayers in the form of welfare payments or publicly financed collection efforts.

It is also evident that such delinquency in obligations is contributing to the feminization of poverty. In 1981, more than 42 percent of poor families were maintained by women. Families headed by a woman experience a poverty rate that is six times that of male-headed households. Women encounter discrimination in the workplace, in arranging for child care, and in pensions. They suffer materially from lost child support, and so do their children who are least able to fend for themselves.

Congress enacted the current child support enforcement program in 1975 in an effort to improve the payment and collection of child support obligations. However, compliance with such obligations has declined since 1978 and it has become clear that more stringent methods of enforcement are necessary to make delinquent parents live up to their responsibility toward their children.

The legislation just introduced in the Senate has a number of important provisions. It requires the States to institute mandatory wage withholding whenever there is 1 month of arrearage in child support payments. It also requires the States to make reasonable efforts to expedite and improve compliance with and enforcement of legal support obligations. States must withhold State income tax refunds from noncustodial parents who are delinquent in their support payments in AFDC cases, and can do so at their option in non-AFDC cases. Further, individuals with a practice of delinquency will be required to post bond or some other guarantee to secure payment of past due child support. An important provision changes the incentive formula which currently pays States on the basis of collections made for AFDC families. The new provision rewards States on behalf of both AFDC and non-AFDC cases, thus giving new incentives for collecting support for families not receiving welfare payments. Finally, the bill provides $15 million a year for demonstration grants so States can experiment with improved methods of collection in interstate cases, clearly one of the most important and troublesome areas of child support delinquency.

In my own State of Maine, the enforcement program uses the full complement of seven enforcement techniques, including attachment and garnishment, currently in use, in whole or in part, by other States. Total child support collections have been increasing yearly, and the collections per dollar of total administrative expenditures was at 2.84 in 1982, just under the national average. Of the 32,000 families nationally removed from the AFDC rolls in 1982 as a result of child support collections, fully 1,000 were in Maine.

While there are many virtues to the legislation, I nonetheless am concerned about several items which it either does not address or addresses insufficiently.

First, the issue of visitation has been raised by many parents who do not have custody of their children. Their grievance is the arbitrary denial of visitation by the former spouse. Feeling extreme frustration, they cease making child support payments altogether, contributing to the economic hardship of the custodial parent and the children.

While both parents have legal responsibilities to provide for their children, they equally have rights to see and spend time with them. The act of denying visitation is reprehensible conduct, conduct that simply cannot be condoned. At the same time, however, frustration of visitation rights does not absolve the noncustodial parent of his or her legal obligation for support.

The problems presented by visitation can be vexing indeed. But the solutions to those problems appear beyond the scope of this legislation. I would therefore hope that the States will address this subject in greater detail, through the State commissions on child support enforcement legislation created by this legislation, and devise ways in which to insure visitation rights.

Second, the imposition of joint custody has been advocated by some as a standard for custody disputes. This may in a number of cases be a desirable means of resolving questions of access to children by both spouses. However, the concept is not universally endorsed and is one which is under the sovereignty of State law. I would similarly hope that the State commissions would examine the feasibility of establishing joint custody and look at the impact which joint custody would have on child support collections. My understanding is that States presently having joint custody enjoy fewer collection problems and less relitigation on custody matters.

Third, collection of child support payments in interstate cases is perhaps the most troublesome and confounding problem facing custodial parents. While the legislation adds incentive for such cases and provides funding for demonstration grants on methods to improve interstate collection, I hope the State commissions will examine the nature of the problem in ex-

tensive detail and recommend legislative changes, if appropriate.

Other amendments to this bill may be desirable. For instance, there should be expedited administrative or judicial review mechanisms at the State level to speed up disputes over levels of child support payments. It should be made clear that there can be no discharge in bankruptcy of child support obligations assigned to a State for collection purposes by applicants for non-AFDC services. States should with the aid of Federal assistance maintain clearinghouses or similar management systems through which child support payments would be paid. And AFDC mothers receiving child support payments from their former spouses, but indirectly through State agencies, should be advised of the contributions being made by those former spouses.

I am hopeful that the amendments to the Child Support Enforcement Act will have a salutary effect on collections and that more noncustodial parents will, as a result of stronger enforcement measures, undertake to fulfill their legal and moral responsibilities to their children on a voluntary and timely basis. That obligation rests squarely on their shoulders and should be borne by them, not by American taxpayers. The health and welfare of their children is too vital a personal as well as a national resource to ignore.●

## COSPONSORSHIP OF S. 2050—RELATING TO SALE AND RELOCATION OF PROFESSIONAL SPORTS FRANCHISES

● Mr. D'AMATO. Mr. President, I rise today to cosponsor S. 2050, a bill which would protect communities from the sale and relocation of professional sports franchises by giving all potential purchasers who would keep the team in its original city or locality the right of first refusal to buy and operate the team.

While I am generally hesitant to interfere in the smooth operation of the marketplace, I believe that sports franchises are a unique commodity for a number of reasons. Foremost among those is the fact that the Federal Government has embodied in statute an exemption from the antitrust laws for our national pastime, major league baseball. That antitrust exemption was granted because of the unique nature of sports: Teams that enter a league together are competitors on the field, but business associates at the turnstile.

Thus, we have already taken action which specifically recognizes a status for sports teams different from all other enterprises. S. 2050, therefore, which also accepts the premise that sports enterprises are significant for reasons other than their economic contributions, is not exceptional. There exists a clear legal precedent for treating sports teams differently from other businesses.

Additionally, I take this action because, like many New Yorkers, I have always been a sports fan. If the owner of a team were prevented by this bill from receiving the fair value of the team, I would not support it. But this bill allows only the right of first refusal, not a reduced price, to any consortium that will keep the team in the city where it has been located. I think that this is a moderate approach to the problem and one which I would urge my fellow Senators to adopt.●

## ACCEPTANCE OF APPOINTMENT AS JUDGE OF U.S. BANKRUPTCY COURT

● Mr. DIXON. Mr. President, I ask that correspondence from the White House to Judge Edward B. Toles, U.S. Bankruptcy Judge for the Northern District of Illinois, indicating acceptance of his letter as a notice of agreement required by 5 U.S.C. 8331(22), be printed in the RECORD in its entirety.

The correspondence follows:

THE WHITE HOUSE,
*Washington, January 10, 1984.*

Hon. EDWARD B. TOLES,
*U.S. Bankruptcy Judge, Northern District of Illinois, 219 South Dearborn Street, Chicago, Ill.*

DEAR JUDGE TOLES: Thank you for your recent letter to the President informing him that you are willing to accept an appointment as a judge of a United States Bankruptcy court established under Section 201 of the Bankruptcy Reform Act of 1978. Your letter has been accepted as a notice of agreement required by 5 U.S.C. 8331(22)(A). We appreciate your attention to this matter.

Sincerely,

FRED F. FIELDING,
*Counsel to the President.*●

## COSPONSORING THE LINE ITEM VETO, S. 1921

● Mr. D'AMATO. Mr. President, I rise today to cosponsor and to lend my firm support to S. 1921, legislation introduced by my distinguished colleague from Georgia, to provide a Presidential line item veto.

As the President pointed out in the state of the Union address, America is healthy and well on the road to prosperity. However, continued economic progress is threatened by overly large Federal budget deficits. The President stated, quite correctly, that how deficits are reduced is as important as the actual reduction. There is little difference between financing increased Government spending through the issuance of new debt or by the imposition of higher taxes. Both methods are equally damaging to the continued vibrance of the economy. Deficit financing and increased taxes both redirect private funds to the Federal Government. The result of either action is that the pool of investment capital is depleted and industrial expansion is stifled.

The root cause of mammoth Federal budget deficits is runaway Government spending. Since fiscal year 1965, Federal spending has increased at an annual average rate of 11.2 percent. Since that time, the deficit has grown from $1.2 billion to $194.5 billion. Continued efforts to reduce the deficit through higher taxes have failed.

The Federal budget is a disaster in need of drastic action. Giving the President line item veto authority would be an important first step toward getting control of Government spending. This would allow the President to reject specific appropriations without vetoing an entire piece of legislation as we must now do. Under S. 1921, however, Congress would still have the power to overrule any veto by a two-thirds vote.

Currently, Congress adds pork barrel programs to important legislation with virtual impunity. The President often hesitates to veto an entire bill which includes wasteful programs for fear of destroying the vital underlying legislation. The line item veto, therefore, would allow the Chief Executive to eliminate waste without destroying critical policy initiatives.

At this time, 43 Governors have line item veto authority over State budgets. Many of these States are required by statute to annually balance their books. I can think of no greater tool we can give the President to control wasteful Government spending than the line item veto. It has been proven effective at the State and local levels and now should be implemented by the Federal Government.

Mr. President, I urge my colleagues on both sides of the aisle to lend their support to S. 1921.●

## SENIOR CENTER WEEK

● Mr. ABDNOR. Mr. President, I am pleased to cosponsor the joint resolution to designate the week of May 6-12, 1984, as "Senior Center Week."

More than 8,000 senior centers across our Nation provide older Americans the opportunity for social interaction and continued involvement in their communities, in addition to making available vital nutrition and counseling services. These centers are helping to facilitate a higher quality of life for our senior citizens.

In my own State of South Dakota, 243 senior centers serve the needs of elderly individuals, many of whom reside in small, rural communities. The Federal Government, through the Older Americans Act, assists these community-based facilities in providing access not only to federally funded

programs, but also to locally sponsored services.

Mr. President, it is only fitting, that during the month of May, which has historically been designated "Older Americans Month," we should honor our senior citizens and these community organizations which exist to serve their needs by designating the week of May 6, "Senior Center Week." I wish to commend my distinguished colleagues from Pennsylvania and Ohio, Mr. HEINZ and Mr. GLENN, for initiating this important resolution.●

## NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS

● Mr. STEVENS. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD this notice of a Senate employee who proposes to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 which would permit Mr. William N. LaForge of the staff of Senator COCHRAN, to participate in a program sponsored by the European Community's visitors program in Western Europe from January 9 to February 9, 1984.

The committee has determined that participation by Mr. LaForge in the program in Western Europe, at the expense of the European Community's visitors program, to discuss trade agreement programs and customs matters in which the interests of the European Community are involved, is in the interest of the Senate and the United States.●

## YEAR OF THE BIBLE

● Mr. ARMSTRONG. Mr. President, Congress declared, and the President proclaimed 1983 as the "Year of the Bible." Far from being a routine gesture by Congress, this resolution, which encouraged Americans to voluntarily study and apply the teachings of the Holy Scriptures, launched truly remarkable events that encouraged millions to read and study the Bible.

It would be impossible to list all of the events held in 1983 to honor the Bible as the Word of God. But I thought my colleagues would want the enclosed initial report summarizing the activities of the Year of the Bible. To mention just a few highlights:

Four million Americans responded to nationally advertised offers of free material highlighting key Biblical principles.

Year of the Bible activities were held in every State of the Union. More than 25 States and 500 cities issued their own Year of the Bible proclamations. More than 2,000 cities sponsored prayer breakfasts, special ecumenical services, seminars, parades, discussion groups, and other events. For example, plans are complete to distribute a free Bible to each home in Kentucky and Hawaii. In Oklahoma, 2,600 volunteer hours coordinated 40 Year of the Bible activities. Fort Lauderdale, Fla., attracted 20,000 to its Year of the Bible rally. In Minnesota, a Year of the Bible celebration at the Cathedral of St. Paul attracted 1,000 worshippers. Some 25,000 Bibles were distributed to homes in Carrollton, Tex.

Yugoslavia, Korea, and the Republic of China issued their own Year of the Bible resolutions.

Seven million pieces of literature were requested by, and sent to churches, synagogues, and religious organizations throughout the United States.

Sales of Bibles and Biblical literature increased between 15 and 40 percent. Nonprofit Bible societies reported their distribution of material increased as much as 100 percent.

These statistics show that 1983 was, truly, the Year of the Bible. Perhaps more indicative of the personal impact that this special year has had are the personal anecdotes. A schoolteacher in New York took the year off to raise $7,000 to buy Bibles for those who work in downtown Manhattan. A Washington, D.C., lawyer said the Year of the Bible resolution gave him the courage to hold a neighborhood Bible study. An unemployed heavy equipment operator said the Year of the Bible had encouraged him to read the Scriptures, and has given me hope and a reason to live.

It was a remarkable year, a year which truly honored the Word of God. Since this resolution passed the Senate unanimously, I am grateful for my colleagues help in making 1983 the Year of the Bible. Perhaps my colleagues will join the New Mexico Year of the Bible Committee, and read the Bible more in 1984.

I ask that the initial report of the Year of the Bible be printed at this point in the RECORD.

The report follows:

YEAR OF THE BIBLE—IMPACT REPORT

I. ADVISORY BOARD; NATIONAL COMMITTEE; NATIONAL SPONSORS

After the Presidential signing of the Joint Resolution of Congress, one of the first actions was the enlistment of broad national support from religious and business leaders from across the country. The list (attachment 1) identifies those who agreed to publicly endorse the legislation which designated 1983 as the year of the Bible. By years end, 448 leaders from every field were serving on these three Committees. These people have contributed significantly to the success of this program by developing strategies and policies, generating financial support, requesting proclamations from Governors and Mayors, and using their influence to inform their constituencies of the Year of the Bible.

The National Committee met on *four* different occasions to determine policy and hear reports of Year of the Bible activities, twice in Washington, D.C., once in Dallas, and once in Chicago. These historic gatherings of leading Christians and Jews were characterized by cooperation and enthusiasm, covering a broad spectrum of views from many differing persuasions, yet in one accord: "the Bible is good for America and we will encourage all to read it." (For minutes of these meetings see attachment 2.)

II. GOVERNOR'S PROCLAMATIONS

Very soon after President Reagan made public his Proclamation designating 1983 as the Year of the Bible at the February 3, 1983 Congressional Prayer Breakfast, governors began issuing State Proclamations similar to the President's. Many proclamations were issued at the request of private citizens of the state, or at the urging of legislative bodies.

At least 25 Governors, have issued Year of the Bible proclamations: Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Missouri, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, and Wyoming.

Probably others have done so without our knowledge and efforts are being made to locate such proclamations.

III. CITY AND COUNTY PROCLAMATIONS

In a further effort to strengthen the impact and influence of the Year of the Bible, local citizens were encouraged to approach their mayor and request a year of the Bible Proclamation.

Some states took this challenge very seriously and requested that each Mayor issue such a Proclamation. For example, Florida had 152 Mayors make Proclamations, California divided along Congressional district lines, creating Year of the Bible Committees in each district.

Over 500 Proclamations have been verified, but probably twice that number exist across the country.

IV. NATIONAL OVERVIEW

Probably the most dramatic national effort was sponsored by the Arthur S. DeMoss Foundation in celebration of the Year of the Bible. Nancy DeMoss, serving on the National Committee, developed a national media campaign utilizing TV spots and print media to distribute a book especially created to celebrate the Year of the Bible, *Power for Living*. The campaign was designed for 100% exposure across the country and has already generated nearly 4 million responses. Each respondent is being mailed a free copy of *Power for Living* and a Gospel of John, from the New Testament.

State Directors in over 40 states actively promoted Year of the Bible activities.

At least 300 City Coordinators generated activity in over 2,000 communities throughout America (attachment 3).

Two direct mailings to every church, synagogue, and religious organization created requests for over *seven million* pieces of Year of the Bible literature.

Six thousand billboard papers, 12,000 posters, and 100,000 postcards were distributed by the *Back to the Bible Ministry*, each promoting the Year of the Bible.

The cover story of December 27, 1982 *Newseeek*, "The Bible in America", made note of the Year of the Bible.

Senator Bill Armstrong was featured on the Phil Donahue show in a debate over the constitutionality of the Year of the Bible.

"The Year of the Bible" was the theme of two major national conventions in 1983: National Religious Broadcasters and Christian Booksellers Association. "The Year of the Bible" also presented exhibits at several other national and regional conventions:

National Association of Evangelicals Convention.

American Booksellers Association Convention.

Texas Sunday School Association Convention.

Greater Los Angeles Sunday School Association Convention.

Campus Crusade for Christ Staff Training.

Detroit Sunday School Association Convention.

Assemblies of God National Convention.

Fellowship of Christian Companies.

Southern Baptist National Convention.

Full Gospel Businessmen's Fellowship International.

Edwards Baking Company of Atlanta, Georgia distributed 3,780,000 pies nationally with the Year of the Bible logo imprinted on the pie pans.

The Greater American Race featured a Year of the Bible antique car entry. The race covered 2,700 miles from Buena Park, California to Indianapolis, Indiana from May 21 to 27, 1983.

*Reader's Digest* placed a full page ad in over 15 million issues during the months of October and November.

*Guidesposts Magazine* featured a four month series on "How the Bible Came to Us" for its seven million monthly readers.

Many other national publications featured Year of the Bible articles or advertisements: *Worldwide Challenge, Foursquare World, Advance, Pentecostal Evangel, Command, Christ for the Nations, Catholic Library World, Timeless Insights, The Daily Walk, Religious Broadcasting, New Covenant, The Sower, Good News Magazine, The Presbyterian Journal, Evangel News Digest, Charisma, The Christian Courier, Missionettes Memos, Bookstore Journal, A.D. Magazine, Vision, Young Ambassador, Today's Single, Rock Church Proclaims, Floodtide, Christianity Today, Prison Ministry, Christian Times Magazine.*

The Christian Booksellers Association and Standard Publishing offered $5,000.00 in prizes for the best Year of the Bible display by a bookstore.

The International Evangelism Association distributed 100,000 "Year of the Bible Devotional Guide" booklets to be given to Bible buyers in religious bookstores.

The Walk Through the Bible Organization developed, printed, and distributed 50,000 "Year of the Bible Official Reading Guides" based on 20 beloved passages of the Bible.

The NBC and ABC television networks approved the George Washington Year of the Bible telespot for national placement.

Over seven million pieces of Year of the Bible publicity materials (newsletters, posters, bumper stickers, worship bulletins, TV and radio spots, lapel pins and buttons, etc.) have been distributed by the Planning and Media Office in Nashville, Tennessee.

Every church, synagogue, and ministry (350,000 total) received two mailings announcing the Year of the Bible and encouraging involvement.

Many businesses and ministries have used the Year of the Bible logo on their postage metering machines.

Many other businesses have also produced Year of the Bible momentos and products.

The International Prison Ministry is placing a Bible display of free New Testaments in each of the 6,000 prisons and jails across the country.

The National Coaches Committee for the Year of the Bible encouraged 30 seconds of silent prayer for the year of the Bible and the nation during the last 45 major college and professional football games of the season.

Bible sales companies have reported increases of between 15 and 40 percent.

The non-profit Bible distribution societies indicated increases of up to 100% over previous years.

Several national Bible sales and distribution campaigns have emerged as a result of the Year of the Bible, including:

The Christian Broadcasting Network has developed "The Book" campaign to sell 2-5 million Living Bibles in the non-religious marketplace.

The Christian Heritage Readers Club developed "Project 10 Million" to distribute 10 million *The Way Home* New Testaments through displays in local businesses, churches, and hospitals.

Maranatha Campus Ministries took advantage of the year of the Bible to distribute Bibles to 300,000 international students on 100 college campuses.

Many Year of the Bible committee members have appeard on hundreds of television, radio, and committee programs. Col. Glenn Jones, Executive Director, had 84 speaking engagements in twenty states, reaching an estimated 3 million persons with news of the Year of the Bible.

More than 500 newspapers are known to have featured stories on the Year of the Bible.

### V. INTERNATIONAL ACTIVITY

At the request of the U.S. Forces Command in Korea, Col. Jones traveled for one week in Korea, speaking primarily to servicemen and their families on eight military installations. In addition, he appeared on their "Today Show" to explain the purposes of the Year of the Bible to the Korean viewing audience.

The Republic of China celebrated the Year of the Bible concurrently with the United States. Col. Jones traveled to Taipai to be the Keynote Speaker for their final rally on December 30, 1983 in the Sun Yet Sen Memorial Hall.

By newsprint (attachment 4) we also learned that Yugoslavia celebrated the Year of the Bible during 1983.

### VI. STATE ACTIVITY

Examples of activities by various states follow. While every state did have some activity, (attachment 3) some states took an active role in promoting the Bible in unique ways. We've synopsized a few examples, but have presented the Oklahoma report (attachment 5) *en toto* to show a sample of true grass roots support for the Year of the Bible.

#### *California*

Mr. Robert Woods, Chairman for the California State Committee for the Year of the Bible, developed a Statewide Committee and initiated resolutions in both legislative houses which resulted in a Gubernatorial Year of the Bible Proclamation.

California was divided into 17 districts with District Coordinators. Each district held at least one major Year of the Bible event. Approximately 100 Mayors throughout the state signed Year of the Bible Proclamations.

U.S. Congressman Carlos Morehead was the guest of honor at an event in Los Angeles on November 20, 1983.

An essay contest, "What the Bible Means to Me", was held throughout the state.

Public service radio spots were run in all of the major markets.

TV spots were aired in San Francisco, Sacramento, Uricca, Bakersfield, Los Angeles, Santa Barbara.

Press releases went to every major newspaper. Several radio and TV talk shows have run 15-20 minutes Year of the Bible segments.

#### *Georgia*

At the request of Year of the Bible Regional Coordinator Darrell Chatraw, Governor Joe Frank Brown issued a Year of the Bible Proclamation soon after the Presidential Proclamation.

Georgia State Director, Rooks Boynton, then began a coordinated thrust to affect the entire state.

At least 30 year of the Bible Proclamations were issued by Mayors and County Commissioners.

Radio spots were sent to approximately 145 stations for public service air time.

At least 46 newspapers carried Year of the Bible articles, and UPI and AP carried the Georgia story of the Year of the Bible, throughout the Southeast.

In recognition of the Year of the Bible, Bibles were presented to Governor Harris, the Georgia legislators and other state officials. Bibles were also presented to the Justices of the U.S. Supreme Court.

State Director Boynton spoke frequently to religious, civic, radio and TV audiences, reaching at least 200,000 people personally.

A special presentation of the Year of the Bible Proclamation was made by Mr. Fred Davidson, President of the university of Georgia, to 84,000 fans at the university of Georgia vs. Auburn football game.

"Atlanta A Live" and Jimmy Swaggart TV programs featured the Year of the Bible National, Regional, and State Directors at various times during the year.

#### *Florida*

Mr. Lon Smith served as the State Director and worked as a catalyst to organize much of the Year of the Bible work in the state of Florida.

At the request of Year of the Bible supporters, the Governor issued a Year of the Bible Proclamation, as did at least 152 Mayors.

Florida and Ft. Lauderdale committees sponsored a Year of the Bible parade and a Year of the Bible rally which attracted some 20,000 people. United States Congressman Clay Shaw presented a greeting from President Reagan.

A Year of the Bible anniversary parade and rally are already being planned for 1984 and following years.

Many churches and organizations are involved in Bible distribution. A single church in Coral Ridge has ordered 150,000 scriptures for distribution in their area.

At least 15 newspapers carried Year of the Bible articles and 45 radio stations made local announcements or provided public service time for Year of the Bible spots. At least four television interviews brought attention to the Year of the Bible on a state level.

*Hawaii*

The Year of the Bible efforts in Hawaii were greatly enhanced by the Youth With A Mission workers who organized the Hawaii state committee and the Year of the Bible promotional efforts.

The Governor responded to the committees request with a Year of the Bible Proclamation, encouraging Bible reading and application in the Year of the Bible.

A state-wide media campaign using radio, TV, and newspapers reached an estimated 70% of the population with the news of the Year of the Bible.

A brochure entitled "The History of the Bible in Hawaii" was mailed to every home in the state.

Plans are now being made for a state wide distribution program to take place in the spring of 1984.

25th anniversary incorporated year of the bible.

In 350,000 homes every mayor has proclaimed the year of the bible. Offer every homeowner a bible—most aggressive bible distribution.

*Kentucky*

State Representative Tom Riner, serving as the State Director for the Year of the Bible, reported the following Year of the Bible highlights in Kentucky.

Governor John Brown, Jr. signed an official Year of the Bible Proclamation and agreed to serve as the Honorary Chairman for the Kentucky Committee for the Year of the Bible.

The Year of the Bible sponsored a Year of the Bible display at the Kentucky State Fair. More than 500,000 passed by the booth and 3000 signed a petition encouraging the citizens of Kentucky to read their Bibles.

Ten thousand Year of the Bible bumper stickers were distributed throughout the state.

Fifty-one Mayors in the state of Kentucky issued Year of the Bible Proclamations.

More than 25,000 New Testaments were mailed to each home in Louisville.

A plan to distribute Scripture portions to the 1.2 million households will be completed in 1984.

The Louisville Courier-Journal newspaper, with 385,000 circulation across the state carried ¼ page Year of the Bible advertisements on four different dates.

In an effort to meet special needs of the poor 100 food baskets were distributed at Thanksgiving and a similar plan is being expanded for Christmas and for 1984.

A 14'×48' billboard promoting the Year of the Bible was placed on Interstate 65 in Louisville.

Six hundred Year of the Bible plaques with the Ten Commandments and Presidential Proclamation were distributed to the public school system for placement in school libraries.

Several radio stations aired public service spots for the Year of the Bible.

*Minnesota*

Mankato, Minnesota responded quickly to the President's Year of the Bible Proclamation by calling some 5,000 residents in the community to ask if they were familiar with the Proclamation. Several Bible study groups were formed by interested people.

Miss Loretta Grizaitis of the National Committee, requested and received Proclamations from both the Governor and the Mayor of Minneapolis.

Miss Grizaitis also was the catalyst for forming a local interfaith committee which promoted the Year of the Bible in the Twin Cities with strong Catholic involvement and a television talk-show panel.

The Cathedral of St. Paul held a Year of the Bible celebration service for about 1,000 worshippers.

Seventy-five billboards encouraging Bible reading and recognizing the Year of the Bible are being posted in December in the Twin Cities and another 20 are being offered for smaller metropolitan areas.

*New Mexico*

Mr. Ron Griffith serving as the State Director for New Mexico, initiated the Governor's Year of the Bible Proclamation which was featured in the two major papers in New Mexico.

Nine Mayors have issued Year of the Bible Proclamations and a special Mayors Prayer Breakfast in Carlsbad for 600, brought the Year of the Bible to the attention of everyone in attendance.

At least eight newspaper articles have appeared, and four television interviews have publicized the Year of the Bible.

Radio spots were distributed to 54 radio stations for public service time.

About 25 billboards will be posted to remind everyone of the Year of the Bible.

Many churches have taken advantage of the Year of the Bible to promote Bible reading, study, and application from the pulpit and with worship bulletins. Other individual ministries have emphasized the Year of the Bible on a broad basis.

Bible displays have been placed throughout the state.

The New Mexico Year of the Bible Committee has ongoing plans to "Read it More in '84"! Bible distribution and reading and study guides will be distributed.

*Texas*

The state of Texas, home of the National Offices, wishes to report the following highlights for the Year of the Bible in 1983.

Governor Mark White proclaimed 1983 as the Year of the Bible, encouraging all Texans "to read the 'Good Book' not only during this special observance, but to make Scripture reading a part of their daily lives."

Mayor Starke Taylor of Dallas signed a Year of the Bible Proclamation and challenged all Dallas County Mayors to do the same, with 18 Mayors responding. Mayor Taylor also hosted a Year of the Bible Celebration Banquet for more than 200 prominent citizens of Dallas.

The Dallas JayCees have designated the Year of the Bible as their annual project, and placed a 14'×48' billboard on Central Expressway. Several churches in the Dallas-Ft. Worth Metroplex honored the Year of the Bible with special Year of the Bible worship services.

Twenty-five thousand New Testaments were distributed in Carrollton and Farmers Branch by the local Year of the Bible Committee with 700 people requesting Bible Study information.

Citizens of several other Texas cities requested and received Year of the Bible Proclamations from their mayors including Nacogdoches, Chireno, and Burleson, for a total of 26 Mayor Proclamations.

The Mayor of Waco, Jim Mathis, presented the Waco Year of the Bible Proclamation to Waco Chairman Bob Lilly, with good coverage by local TV stations and the newspaper. TV spots, radio spots, billboards, and worship services have produced wide awareness in Waco.

The Bauman Company in El Paso placed ten Year of the Bible public service billboards.

Twelve billboards were posted in East Texas, and the Lufkin TV station, KTRE, ran the Year of the Bible public service spot over 100 times; 10 articles or ads were printed in the Nacogdoches Daily Sentinel Newspaper; a Year of the Bible display was featured the week of July 4, 1983 at University Mall.

The Houston Committee for the Year of the Bible systematically contacted every school, church, newspaper, social service business, professional organization, radio, and TV station in their area.

The Kiwanis Club of South Amarillo sponsored a Bible Reading Marathon which was televised from November 18 through 22 for 90 hours, featuring Senator John Tower, Senator Lloyd Bentsen, Dr. W. A. Criswell, Coach Tom Landry, Roger Staubach, and local personalities.

Mrs. Mary Ann Hollitick used the Year of the Bible in conjunction with the National Day of Prayer and the Ministerial Alliance in Tyler. Media exposure was given through TV, radio and newspapers.

Rev. Elmer Franks of Devine, Texas informed the national office that the Mayor signed a Year of the Bible Proclamation, and that all surrounding communities were informed of the Year of the Bible through radio spots, newspaper articles, bumper stickers, and a Year of the Bible parade float.

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ATTACHMENT 1

THE NATIONAL COMMITTEE FOR THE YEAR OF THE BIBLE

Honorary Chairman, The Honorable Ronald Reagan, President of the United States.

Honorary Co-chairman, The Honorable William L. Armstrong, United States Senate and The Honorable Carols J. Moorhead, United States House of Representatives.

Chairman, *Dr. William R. Bright, President, Campus Crusade for Christ International.

Vice-Chairmen, *Dr. Gerson D. Cohen, Chancellor, The Jewish Theological Seminary of America; *His Eminence John Cardinal Krol, Senior Prelate, Roman Catholic Archdiocese of Philadelphia; and *Dr. Thomas F. Zimmerman, General Superintendent, The General Council of the Assemblies of God.

Executive Director, Colonel Glenn A. Jones.

Dr. William Ackerman, International Director, World Home Bible League.

*Ben Armstrong, Ph.D., Executive Director, National Religious Broadcasters.

The Most Reverend Juan Arzube, Auxilliary Bishop, Roman Catholic Archdiocese of Los Angeles.

Mr. Jim Bakker, President, PTL Television Network.

*Ms. Alice E. Ball, General Secretary, The American Bible Society.

Mr. William B. Ball, Esq., Attorney, Harrisburg, Pennsylvania.

*Dr. William S. Banowsky, President, The University of Oklahoma.

Dr. Paul Benjamin, Director, National Church Growth Research Center.

The Reverend Kenneth E. Bennett, National Action Seminar Coordinator, Christian Churches/Churches of Christ.

Dr. Eugene R. Bertermann, Associate Director, Lutheran Bible Translators.

Mr. Morton C. Blackwell, President, Leadership Institute.

*Dr. James M. Boice, Pastor, Tenth Presbyterian Church, Philadelphia.

The Reverend Juan Boonstra, Speaker, "The Back to God Hour".

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Mrs. Rexella Van Impe, National television Hostess.

Dr. C. Peter Wagner, Educator and author, School of World Mission, Fuller Theological Seminary.

Mr. Edmund F. Wagner, President, American Bible Society.

Mr. Robert Walker, Editor, Christian Life.

Dr. Ralph E. Walls, Dentist, Indianapolis.

The Reverend Dolphus Weary, Executive Director. The Mendenhall Ministers.

Mr. Bob Weiner, Director, Maranatha Campus Ministries.

Dr. Armand Weiss, President, Associations International, Washington, D.C.

Dr. Howard A. White, President, Pepperdine University.

Mr. Bruce M. Wilkinson, President Walk Thru the Bible Ministries, Inc.

Bishop J. Floyd Williams, Traveling Speaker, Pentecostal Fellowship of North America.

Bishop Smallwood Williams, Presiding Bishop, Bible Way Church.

Mr. George Wilson, Executive Vice-President, Billy Graham Evangelistic Association.

Dr. David K. Winter, President, Westmont College.

Dr. Ralph Winter, Director, U.S. Center for World Mission.

Dr. Sherwood Wirt, Author.

Mr. Marshall Wolke, President, United Synagogue of America.

The Reverend William E. Yaeger, Senior Minister, First Baptist Church, Modesto, California.

Dr. Billy Zeoli, President, Gospel Films, Inc.

Miss Norma Zimmer, Singer and author.

Rabbi Sheldon Zimmerman, Central Synagogue, New York.

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STATE REPORT ON 1983 YEAR OF THE BIBLE ACTIVITIES

1. Do you have a State Proclamation? Yes.

2. How many City Proclamations do you have? Estimate 60.

3. List your major Year of the Bible activities/events (include locations) such as exhibits/displays, parades/rallies, Bible-reading marathons, Bible distributions, dinner parties/banquets, telephone blitz, etc.:

ATTACHMENT 2

1983 YEAR OF THE BIBLE—OKLAHOMA INTERFAITH COMMITTEE, BETHANY, OKLA.

[Dec. 19, 1983]

| Dated and activity/event (Location) | People reached press release |
|---|---|
| April 27, 1983: | |
| (1) Governor Nigh sings proclaimation declaring 1983 to be the Year of the Bible. (State Capitol, Oklahoma City, Okla.) | 500,000 |
| (2) Governor Nigh signs proclaimation declaring May 5 as the Oklahoma Day of Prayer (coincide with National Day of Prayer). (State Capitol, Oklahoma City, Okla.) | 500,000 |
| (3) State Interfaith Committee appointed by Governor Nigh Col. Robert D. Bob Anderson, Chairman; Rabbi Charles Shalman, Jewish-Vice-Chairman; Father John Petusky, Catholic-Vice Chairman; Committee consist of 43 individuals from 11 cities and towns, plus Tinker AFB | 500,000 |
| May 1983: (4) Year of the Bible March Coordinator: Rev. Billy Joe Clegg. (Shawnee to Meeker.) | x 100,000 |
| May 5, 1983: (5) Many events acknowledging the National/State Day of Prayer, Mayor Coats, Okla. City signed proclaimation Coordinator: Mrs. Glen (Linda) Vance. (Oklahoma City, Yukon.) | 500,000 |
| June to December 1983: (6) A 90 page booklet was developed, "Introduction to the Bible," with 17 study lessons on old and new testament, including President and Governor proclamations, Oklahoma Inter-faith Committee members names, bumper stickers, lapel buttons and membership card for those donating $15 to become honorary members of the Oklahoma Inter-faith Committee. Coordinators: Drs. W. R. Corvin, Floyd M. Shealy. (State wide.) | Over 330 |
| June to July 1983: (7) 53 individuals to be county chairman for the Year of the Bible. (Out of 77 counties) (Have 12 city chairman) | 1,000,000. |
| October to December 1983: (8) YMCA Year of the Bible lobby display of various translation of the Bible. Vice President for student affairs at Oklahoma State University promoting The Year of the Bible, Coordinator: Dr. Bob Kamm. (Stillwater, Oklahoma.) | 1,000 |
| October 4 to December 6, 1983: (9) 2 special courses offered at Oklahoma Baptist University commenorating the Year of the Bible "Introduction to the Bible" Coordinator: Dr. Bob Agee, President OBU. (Shawnee.) | 5,000 |
| August to December 1983: | |
| (10) (a) Articles placed in Oklahoma State Educators newspaper Coordinator: Dr. Leonard Bates. ((a) All State teachers.) | |
| (b) Many teachers had bible displays during school open house. ((b) Mustang, Oklahoma City, Edmond.) | |
| (c) Many teachers request for more information on the Year of the Bible. ((c) More than 12 towns.) | |

1983 YEAR OF THE BIBLE—OKLAHOMA INTERFAITH COMMITTEE, BETHANY, OKLA.—Continued

[Dec. 19, 1983]

| Dated and activity/event (Location) | People reached press release |
|---|---|
| June 1983: | |
| (11) Kentucky poster with Presidential proclamation and 10 commandments was accepted by Tulsa Kiwanis to distribute to Tulsa Schools. School Superintendent has approved. (Tulsa.) | (2) |
| (12) Ordered copies of "Communicating a Christian World View in the Classroom," by Dr. Robert Simonds, and distributed to educators on Oklahoma Interfaith Committee. Coordinator: Helen Anderson. (State Superintendent, O.U., O.S.U., O.C.C., O.B.U., O.R.U.) | |
| (13) Year of the Bible booth at Christian Businessman's Show Sold bumper stickers, buttons, posters. Showed 60 s George Washington telespot. Showed 60 s Oklahoma telespot. (Oklahoma City.) | 15,000 |
| (14) Have 20 newspapers which have agreed to print 15 to 20 verses of scripture—daily in newspapers. Coordinators: Ron Griffeth, Doc Brinkley | 1,500,000 |
| (15) Adopted the National Year of Bible Committee Bible study guide. Ordered 600 copies and distributed to 20 counties for a concerted 30 day study | 1,000 |
| (16) A complete transcribing of the Bible was done in Tulsa, Oklahoma with over 300 people participating. The completed Bible will be leather bound and presented to President Reagan as "The Tulsa Contribution of the Year of the Bible" Coordinator: Mrs. Lee (Gladys) Harrington. (Tulsa.) | |
| November 1983: (17) Countywide Year of the Bible Ralley. Coordinator: Sam Langley. (Adair County.) | 5,000 |
| October to November 1983: | |
| (18) Over 36,000 scriptures were ordered and distributed to 7 counties that had scripture distribution programs. (Major, Muskogee, McCurtain, Johnston, Beaver, Hughes, Oklahoma.) | 100,000 |
| (19) Nov. 14 to 18 declared as week of the Bible with daily Bible Study—Special Sunday services—Booth at County Fair and Mayor signing proclamation. Coordinator: Rev. Arthur Cunningham. (Enid.) | 250,000 |
| Dec. 9, 10, 1983: (20) Linda Haley, of Shawnee, Okla., after reading about "The Year of the Bible was inspired to write a play which she entitled "The Book." The play was based on Luke 1–4:20. The play was directed by Carl Corrick and sponsored by the Zeta Gamma Sorority, a Chapter of Episolon Sigma Alpha and the Central Okla. Arts and Crafts Show. This outstanding production gave excellent honor to the Year of the Bible. (Shawnee.) | 300 |
| November 12, 1983: (21) An outdoor public reading of the Gospels was held in a shopping center in Oklahoma City. Coordinator: Dr. James Taylor. (Oklahoma City.) | 300 |
| December 1983: (22) Over 200 churches were contacted to have a special day for "The Year of the Bible at Years End". Coordinator: Rabbi Charles Shalman. (Throughout State.) | 10,000 |

[1] 50 to 100,000 marched.
[2] All schools.

4. Publicity Activities (newspaper articles, radio, T.V., billboards, etc.)

| Date and activity event (Location) | People reached press release |
|---|---|
| A. May 1983: Sent press release with picture of Governor signing Proclamation to all State newspapers. 15 to 20 towns printed.) | 1,500,000 |
| B. May 1983: 30 min. television interview with Bob Anderson and Tony Cavener telling about the Year of the Bible—goals, programs, and activities. Coordinator: Allen Brown and Angela Margessy. (Oklahoma City, channel 14.) | 10,000 |
| C. June to December 1983: Developed a 60 s tape announcement and sent to 200 radio stations in Oklahoma. Coordinator: Tony Cavener, Radio Station KJIL. (Statewide.) | 1,000,000 |
| D. June to December 1983: Developed 2 tapes (60 s and 30 s) used for television. Coordinator: Allen Brown, channel 14, Oklahoma City, delivered to 10 TV stations in Oklahoma. (Tulsa, Oklahoma City.) | 1,000,000 |
| E. October to December 1983: Weekly articles in newspaper "What the Bible Means to Me" written by laymen. (Stillwater.) | 50,000 |
| F. December 1983: Billboards received from National Committee placed in several towns and cities. (Enid, Stillwater, Shawnee, Oklahoma City.) | 100,000 |

5. Volunteers:

A. It is estimated the 43 members of the state Interfaith Committees contributed 820 hours.

B. The 53 County Chairmen contributed approximately—1,271 hours.

C. The 12 City Chairmen contributed an estimated—120 hours.

D. Volunteers at office, fairs, etc.—414 hours.

Total Volunteer hours—2,626 hours.

6. Oklahoma will continue the organization and activities in 1984 with a goal to: "Read it More in 1984". Specific goals are:

(a) Encourage people to read, study and apply the Holy Scriptures to our every day lives.

(b) Encourage daily prayer.

(c) Dedicate one day as the Oklahoma Day of Prayer.

(d) Expand the newspaper scripture publication program.

(e) Place billboards at key locations in state.

(f) Hold neighborhood Bible read-a-thons.

(g) Encourage people to pledge to read the entire Bible in 1984.

(h) Encourage and support scripture distribution programs.

(i) Encourage and support public school teachers to bring a biblical basis back to the classroom.

ATTACHMENT 3

NUMBER OF COMMUNITIES ORDERING YEAR OF THE BIBLE RESOURCES

| | |
|---|---|
| Alabama | 29 |
| Alaska | 7 |
| Arizona | 19 |
| Arkansas | 22 |
| California | 182 |
| Colorado | 27 |
| Connecticut | 31 |
| Delaware | 7 |
| Florida | 61 |
| Georgia | 41 |
| Hawaii | 6 |
| Idaho | 8 |
| Illinois | 96 |
| Indiana | 71 |
| Iowa | 35 |
| Kansas | 42 |
| Kentucky | 23 |
| Louisiana | 22 |
| Maine | 13 |
| Maryland | 39 |
| Massachusetts | 40 |
| Michigan | 88 |
| Minnesota | 39 |
| Mississippi | 20 |
| Missouri | 48 |
| Montana | 9 |
| Nebraska | 29 |
| Nevada | 4 |
| New Hampshire | 13 |
| New Jersey | 59 |
| New Mexico | 10 |
| New York | 108 |
| North Carolina | 42 |
| North Dakota | 16 |
| Ohio | 110 |
| Oklahoma | 52 |
| Oregon | 20 |
| Pennsylvania | 169 |
| Rhode Island | 5 |
| South Carolina | 30 |
| South Dakota | 12 |
| Tennessee | 29 |
| Texas | 100 |
| Utah | 3 |
| Vermont | 4 |
| Virginia | 53 |
| Washington | 44 |
| West Virginia | 19 |
| Wisconsin | 44 |
| Wyoming | 7 |
| Washington, D.C. | 1 |
| Foreign | 11 |
| Total | 2,019 |

ATTACHMENT 4

15,000 BIBLES DISTRIBUTED FREE!

The Year of the Bible Proclamation by our own President, Ronald Reagan, has stirred the hearts of many Bible believing Americans. But few have tangibly acted on this opportunity as has the local church at Chrisian Retreat.

In the past 60 days, Christian Retreat Laymembers have distributed over 15,000 special edition New Testaments to the local public through an innovative program of "Take-on-Free" display racks.

Imprinted with a familiar photograph of our President, dozens of Bible display racks have been located through a tri-county area: in banks, department stores, doctor's offices, hospitals, rest homes, laundromats, prison compounds and wherever there is general public, with an invitation to reach for a free Bible during this Year of the Bible.

The special edition New Testament displays the "Blessings" logo of Christian Retreat, the Tabernacle and a brief explanation of the Ministry. Special pages inside contain the entire proclamation delivered by President Reagan as well as a section of the Plan of Salvation, a commitment prayer and exhortation to find a good local church.

Two months ago the idea was presented to the Sunday morning congregation at Christian Retreat. A $50 contribution would sponsor a rack of 100 Bibles. Each sponsorer would be given the rack of Bibles to place wherever he could get permission to do so.

Hands were raised in response to the appeal and in minutes over 15,000 Bibles were sponsored. The Bibles were prayed over before going out, and exciting testimonies already are coming in!

Christian Retreat is freely giving the Word of God, believing that it will not go forth void. You also can participate. The opportunity is now . . . . in this Year of the Bible. If you or your Church would like to get involved, write to Phil Derstine at Christian Rereat for further information.

YOGOSLAV YEAR OF THE BIBLE

Martha Edwards, our dear missionary to Yugoslavia, reports she has received news that the Year of the Bible is also being celebrated as the 50th Jubilee Year of the Bible in Yugoslavia.

Yugoslav friends and relatives living anywhere may send a copy to their loved ones by writing to Gospel Missions for Yugoslavia, P.O. Box 2832, Pheonix City. AL 36867. The complete cost and delivery of a Servo-Croatian or Slovene Bible is $10. Please make checks payable to G.M.Y. and receive the blessing of a lifetime!●

## UNIVERSAL TELEPHONE SERVICE

● Mr. HOLLINGS. Mr. President, last week, the Senate voted to table S. 1660, the Universal Telephone Preservation Act. But that does not mean we have laid to rest the issue of universal telephone service.

As this Congress and the American people venture into the vast uncertainties divestiture and increased competition will bring to our Nation's telecommunications industry, we must be forever mindful of our duty as legislators to protect the public interest and, in particular, universal telephone service.

While our Nation stands to benefit greatly during this new era of competition, there is also the obvious need for vigorous congressional oversight.

This Nation not only has the world's greatest and most extensive telephone system, but it also has the most universally affordable one. Access to telephone service is far more a necessity than a luxury, and it is imperative that Congress insure that all Americans are offered a reasonable opportunity to use this service.

And there is absolutely no doubt in my mind that this Congress has met and will continue to meet this goal. People who believe that Congress acts only by passing legislation do not understand this body. In this case, we have accomplished our aim not by making law, but rather by pressing our own resolve on the Federal Communications Commission and forcing it to act. Just look at what has happened. When the FCC decided to impose on the telephone customers of this Nation end-user charges of about $8 a month by 1990, it became clear that Congress would have to intervene on behalf of the public. And we did. The Commerce Committee acted quickly to hold hearings and move legislation. I voted to send S. 1660 to the Senate floor. And had the FCC not dramatically changed its position and adopted a 1½-year moratorium on these charges and a $4 cap until 1990, we would have gotten it through the full Senate.

But the fact is the FCC did adopt its own moratorium and $4 cap. In addition, it resolved the ENFIA situation, providing the opportunity for long distance service competition to flourish. This action brought the Commission in line with our own aims. Congress has had its way.

Such is the preemptive power of the legislative branch. Faced with the certainty that this body would take swift action to preserve universally affordable telephone service, the FCC had no choice but to see it our way. Do you think that the Reagan administration's Commission adopted the moratorium and $4 cap out of sheer beneficence? Do you really believe it acted out of a great concern for all the telephone users of this Nation who might not be able to afford the higher charges? Of course not. The Commissioners acted because they knew that if they did not, we would.

Some people now ask, "But what if the FCC suddenly reverses its moratorium?" I, for one, am satisfied that this will not happen. We have the written personal assurance from Chairman Fowler to this effect. Others ask, however, "What if the leadership of the Commission changes, and thus brings about a change in policy?" My answer to that is that if such a case were to arise, I have no doubt that this or any Congress would spring into action faster than ever before.

And so I now direct my comments to the FCC Commissioners, and I give them this warning: If you do not insure a gradual phasein of end-user charges when the moratorium expires, Congress will act. If you back off of your commitment to provide further assistance to rural telephone companies and their customers, Congress will act. If you fail to guarantee that the poor of our Nation always have access to telephone service they can afford, Congress will act. And if you lift the $4 cap on end-user charges without first conducting a complete and thorough review to insure that such action will not jeopardize universal telephone service, Congress will act.

Congress will act because, as representatives of the people, we are deeply aware of the harmful consequences of higher local charges and we will pull out all the stops in order to maintain a telephone system with basic services that everyone can afford. I know this is true, because I will personally lead the charge.●

## EXEMPTION OF BLENDED CREDIT FROM CARGO PREFERENCE

● Mr. BOSCHWITZ. Mr. President, my concerns about the negative consequences of applying cargo preference to the blended credit program are well known. I was understandably pleased when I received a letter from Gary D. Myers of the Fertilizer Institute. It enclosed a copy of a "Friend of the Court" brief filed in support of the decision made by USDA and DOT to exempt blended credit from the cargo preference requirements. Eighteen agricultural organizations joined together in this effort.

So that my colleagues may see it, I am asking that the letter, the brief, and DOT's decision of July 27, 1983 be printed in the RECORD.

The information follows:

THE FERTILIZER INSTITUTE,
*Washington, D.C., December 19, 1983.*

Hon. RUDOLPH E. BOSCHWITZ,
*Hart Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR BOSCHWITZ: On December 14, 1983, the agricultural organizations listed below filed a "Friend of the Court" brief, in support of the USDA and DOT decision to exempt farm commodities, shipped under USDA's blended credit program from the 50 percent U.S. flag vessel rate requirement in the 1954 Cargo Preference Act. On October 14, 1983, the Seafarers International Union and the Transportation Institute filed a suit in the U.S. District Court against the Administration's decision.

It is our belief that a severe impact on American agricultural exports will result if the Court rules in favor of the plaintiffs. The dramatically increased shipping costs associated with U.S. flag carriage of farm commodities under the blended credit program would seriously curtail the shipment of these commodities and thus thwart the objective of the program of increasing U.S. agricultural exports. Therefore, we believe blanket imposition of the Cargo Preference Act of 1954 would hurt rather than assist the purposes of the blended credit program while doing little, if anything, to further the maritime industry.

Enclosed is a copy of the "Friend of the Court" brief and a copy of DOT's July 27, 1983 decision.

Sincerely,

GARY D. MYERS.

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[In the U.S. District Court for the District of Columbia]

CIVIL ACTION NO. 83-3048—AMICUS CURIAE BRIEF

Transportation Institute, 923 15th Street, N.W., Washington, D.C. 20005 (202) 347-2590; and Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO, 5201 Auth Way, Camp Springs, Maryland 20746 (301) 899-0675; plaintiffs.

Elizabeth H. Dole, in her capacity as Secretary of Transportation; United States Department of Transportation, Nassif Building, Room 10200, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-1111; H. E. Shear, in his capacity as Administrator, Maritime Administration; Maritime Administration, U.S. Department of Transportation, Nassif Building, Room 7216, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-5823; and John R. Block, in his capacity as Secretary of Agriculture, U.S. Department of Agriculture, Administration Building, Room 200A, 12th Street and Jefferson Drive, S.W., Washington, D.C. 20250 (202) 447-3631; defendants.

AMICUS CURIAE BRIEF

The agriculture organizations listed below hereby file this brief as Amicus Curiae in support of the government's answer to plaintiff's complaint in the above-captioned action. These agricultural organizations include:

The Fertilizer Institute; National Council of Farmer Cooperatives; National Cotton Council; Florida Phosphate Council; Grain Sorghum Producers Association; National Broiler Council; American Soybean Association; National Grain Trade Council; National Association of Wheat Growers; National Grange; National Corn Growers Association; Rice Millers' Association; National Forest Products Association; National Soybean Processors Association; National Sunflower Association; North American Export Grain Association; Terminal Elevator Grain Merchants Association; and Protein Grain Products International.

The foregoing agricultural organizations support the government's answer which supports and confirms the decision of the Secretary of Transportation to hold in abeyance discretionary cargo preference requirements authorized by the Cargo Preference Act of 1954 as amended, 46 U.S.C. § 1241(b) ("the Act"). That decision will have no impact on plaintiffs' interests while having a dramatic negative impact upon the Agriculture Department's agricultural export "blended credit" program under Public Resolution 17, 46 U.S.C. § 1241-1 ("P.R. 17").

The agricultural organizations listed have a significant interest in the outcome of this litigation. The increased shipping costs associated with U.S. flag carriage of commodities under the "blended credit" program would seriously curtail if not end the

"blended credit" program. Thus imposition by the Secretary of the U.S. flag requirement would thwart the Congressional objective of the "blended credit" program of increasing U.S. agricultural exports. Therefore, blanket imposition of the Cargo Preference Act would hurt significantly rather than assist the "blended credit" program while still not accomplishing the Congressional objectives of the Cargo Preference Act of 1954.

We support defendant's answer to plaintiff's complaint in this action and feel that no long recitation of facts or law is necessary for this court's disposition of plaintiff's complaint.

First, reviewing court's must be guided by the construction given a statute by an agency charged with its execution unless there are compelling indications that it is wrong. *Pension Benefit Guarantee Corporation* v. *Ouimet Corporation*, (D.C. Mass. 1979), 479 F. Supp. 945, aff'd, 630 F. 2d 4, cert. den., 101 Sup. Ct. 1356, 450 U.S. 914, 67 L. Ed. 2nd 339. We feel that plaintiff has presented no compelling factual or legal arguments which undercut the Secretary of Transportation's decision.

In this case, the issue presented is whether the Secretary of Transportation has the authority to suspend the operation of the cargo preference program established by the Cargo Preference Act of 1954. The Secretary's decision was based upon the conclusion that imposition of the cargo preference program, in conjunction with the United States Department of Agriculture's "blended credit" program, will frustrate the Congressional purposes and interests of both programs.

When determining whether the Secretary concerned properly exercised the authority to suspend a certain program, this court must consider not merely whether the Secretary had a rational basis for believing that enforcement of a program would disserve Congress' purposes and policies but also, whether having those policies in mind and considering the consequences to be expected, it was reasonable to discontinue it. *Browner Building, Inc.* v. *Shehyn*, 143 U.S. App. D.C. 125,130, 442 F.2D 847,852 (1971), *Commonwealth of Pennsylvania et al.* v. *Lynn*, 501 F.2d 848,862 (1974).

While the question of permissive statutory language versus mandatory language in a statute does not necessarily indicate Congress' intent to bestow or withhold discretion to suspend a program in its entirety, logic and precedent require more. *Minor* v. *Mechanics' Bank*, 26 U.S. (1 Pet.) 46, 64, 7L. Ed. 47 (1828). Whether Congress gave the Secretary the discretion here claimed is preeminently a question of intent. We feel that the Act and P.R. 17 clearly afford the Secretary such discretion.

The Cargo Preference Act obviously gives the Secretary discretion in that it requires in pertinent part that agencies take such steps "as may be necessary and practical" to obtain the specified U.S. flag carriage. Moreover, P.R. 17's application to the "blended credit" program also leaves significant discretion to the Secretary. P.R. 17 is discussed in a 1965 opinion of the Attorney General (42 Op. A.G. 301), which states in its last paragraph:

"Such agencies are not required by the Resolution, however, to provide in all loans that such products shall be carried exclusively in vessels of the United States, *but only if it is feasible to do so . . .*" (Emphasis added).

The foregoing expression of Congressional intent and the Attorney General's analysis clearly give to the Secretary flexibility in the administration of the Cargo Preference Program and the "blended credit" program. Nevertheless, the real issue, as stated above, is whether the Secretary has the discretion, *or indeed the obligation*, to suspend the cargo preference program's operations when there is adequate reason to believe that they are not serving Congress' purpose of enhancing the export of agricultural commodities or supporting the U.S. Maritime industry.

When the Secretary has evidence sufficient that a particular agricultural commodity export program has come into conflict with a program designed to increase U.S. flag carriage, but the Secretary has concluded that enforcing the cargo preference requirements will be doing a disservice to both programs, it would be unreasonable to conclude that enforcement is a requirement of the laws relevant to these particular circumstances.

Plaintiff's here suggest that the only course open to the Secretary is the familiar one of continuing to administer the programs as well as can be accomplished. However, if enforcing the cargo preference program is indeed disserving Congressional policy with regard to the cargo preference program and the "blended credit" program, the enforcement of the cargo preference program would implicate the Secretary in a massive frustration of the policies which are the bases of the programs.

The Secretary's sound decision based on the discretion which is afforded in The Cargo Preference Act recognized that the "blended credit" program stimulates $1.75 billion in agricultural exports and that applying cargo preference to these exports would destroy the program. However, not only would such action destroy the export program, but in so doing it would, at best, do nothing to assist the cargo preference program. We believe that a court should be reluctant to conclude that Congress forbade the Secretary to withhold commitments of so vast a magnitude when the Secretary has good reason to believe that the exercise of authority would be contrary to the purposes for which Congress authorized her to act.

Moreover, even if the court is unclear as to whether the Cargo Preference Act gives the Secretary the discretion we support here, the court should endeavor to give statutory language that meaning that nurtures the policies underlying legislation when circumstances not plainly covered by the term of a statute are subsumed by the underlying policies to which Congress was committed. *United States* v. *Sisson*, 399 U.S. 267, 297-298, 90 Sup. Ct. 2117, 2133, 26 L. Ed. 2d 608 (1970).

We are aware that the Secretary of Transportation is obliged to follow the policies imposed by legislation and regulations, and that action taken without consideration of them, or in conflict with them, will not stand. *Shannon* v. *United States Department of Housing and Urban Development*, 436 F.2d 809 (3d Cir. 1970); *Garrett* v. *City of Hantramck*, 335 F. Supp. 16, 26 (E.D. Mich. 1971). Nevertheless, the Secretary also has the responsibility to administer the programs and activities related to the Cargo Preference Program and the "blended credit" program in a manner affirmatively to further the policies of the United States respecting those programs. See *Otero* v. *New York City Housing Authority*, 484 F.2d 1122, 1133-1134 (2d Cir. 1973).

Requiring that agricultural products exported under the "blended credit" program be shipped under the Cargo Preference Program would surely thwart the interest in Congress in establishing those programs, *Commonwealth of Pennsylvania et al.* v. *James T. Lynn, Secretary of Housing and Urban Development et al.*

For the foregoing reasons, the Fertilizer Institute and its companion agricultural organizations support defendant's answer in this litigation and request that this court dismiss plaintiffs' complaint.

(Respectfully submitted, by Lawrence M. Farrell—McKenna, Conner & Cuneo; 1575 Eye Street, NW., Washington, D.C. Attorney's for The Amicus Curiae.

I hereby certify that the following Motion for Leave to File an Amicus Curiae Brief and the Amicus Curiae Brief were mailed to:

John W. Angus, III, Esq., Preston, Thorgrimson, Ellis & Holman, 1735 New York Avenue, NW., Suite 500, Washington, D.C., Attorneys for Plaintiff, Transportation Institute.

Richard Kirschner, Esq., Kirschner, Weinberg, Dempsey, Walters & Willig, 1100 Seventeenth Street, NW., Suite 800, Washington, D.C, and James M. Aliman, Esq., Schulman & Abarbanel, 358 Fifth Avenue, New York, N.Y., Attorneys for Plaintiff, Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO

On this 14th day of December, 1983.●

## MR. SCOUT MAN

● Mr. CHILES. Mr. President, at a time when daily reports of juvenile crime, violence and drug-related activities are so common place and are given so much media attention, it is indeed refreshing and encouraging to hear and read accounts of individual courage and excellence on the part of young men and women in our country. These personal achievements, whether scholastic, professional, or personal illustrate that basic values of self-respect, patriotism, and justice are not absent in our society.

What we hear about even less frequently, however, are media accounts of the individuals who play key roles in shaping the attitudes and values of young men and women. These individuals are the true unsung heroes, ones who devote time and energy, offer instruction and encouragement, and ones whose only rewards, in most cases, come by standing alongside and watching proudly as a young person develops into a mature young man and woman, encompassing important values that one day will make the difference in his or her life.

Such a counselor, adviser, and friend to many young men is W. A. "Bill" Walker of Palatka, Fla. Bill, who is known as Mr. Scout Man around Palatka, has earned his nickname by turning out 86 Eagle Scouts during his 33-year service as Scoutmaster. As a former Boy Scout myself, I know the rigid requirements necessary to earn the Eagle Scout designation. An Eagle Scout must exemplify qualities of discipline and leadership, qualities which are learned through both group expe-

riences and individual challenges. I know first-hand the importance a Scoutmaster can make in challenging young men to achieve their best. Bill Walker has devoted time and energy to work with young men in his community, and his personal investment has resulted in significant rewards for both the community and our country.

I was extremely pleased that the local Palatka newspaper chose to seek out Bill Walker and focus much-deserved attention on his work and his accomplishments over the years. Too many times, for all the bad news we have to cope with, we fail to recognize and appreciate the more positive activities in our community and, more importantly, the men and women who have such an important, positive influence on our youth today.

I congratulate Bill Walker on the work he has done with young men in Palatka, and I share the article on Bill Walker with my colleagues in the Senate.

The article follows:

MR. SCOUT MAN

(By Jack Harper)

PALATKA.—He is known as "Mr. Scout Man" in Palatka because he has turned out 86 Eagle Scouts in a 33-year career as Scoutmaster.

But W. A. "Bill" Walker, looking at the plaques on the wall over his desk at Gem City Cleaners with the names of his 86 Eagles on them, does not remember the numbers.

He recalls the boys, what they have become, and what Boy Scouting means to them and to him.

"The Boy Scouts of America is one of the few organizations still standing up for duty, God and country. That basic principle has never changed and I hope it never does," Walker said as he tried to put the faces to all those names.

He guessed that he got his nickname years ago when he had just moved his cleaning business into its new quarters at 1210 St. Johns Avenue.

He was out trimming the shrubbery when a young boy, crippled with polio, hobbled from across the street, and asked:

"Mr. Scout Man, can I be a Boy Scout?"

That boy was Caca Smith, who later became one of Walker's Eagle Scouts. He is now owner-manager of Plantsmiths Florist and Garden Center, former Palatka Junior Chamber of Commerce president and active in civic affairs.

The nickname stuck.

Walker has been the only scoutmaster ever for Troop 62, sponsored by the St. James Methodist Church of Palatka. The troop was organized in September 1950.

"His record of 86 Eagle Scouts, the highest honor a Boy Scout can obtain, is the best in the 16-county North Florida Council and one of the highest—if not the highest—in Florida," David Davies, field director for Boy Scouts North Florida Council, said.

Walker was given the council's Silver Beaver Award for outstanding service to Scouting in January 1958, and throughout the years he has collected many local honors for his Scout work.

Dressed in his Scout uniform, with a chest full of decorations set off by his rugged square-jawed face, he is an impressive sight, especially to young Scouts.

Walker does not talk much about himself, but he will quickly tell you about his Scouts.

Army Lt. Asa Kelley, 1962 Eagle Scout, was in Vietnam when his sergeant told him a cable was broken and a road-clearing machine was out of action, Walker said.

When he found there was no replacement cable, Kelley took eight men and spliced the cable himself, tying it with a knot right out of the Boy Scout Manual, Walker said.

Kelley said the cable was still holding when he left Vietnam, Walker said.

He also said that Tommy Harper, a 1961 Eagle, was working as a carpenter during construction of Rodman Dam in the 1960s when a landslide occurred, burying one of the workers. Harper helped dig the man out, then breathed life into him with mouth-to-mouth resuscitation he had learned in earning his lifesaving badge in the Scouts.

Just last year, Jamie Sheehan, one of Walker's current crop of Scouts, was in the principal's office at Palatka High School when a girl student was brought in choking on a piece of ice.

"Sheehan jumped up and struck her on the back (the first step in the lifesaving section of the Scout manual) and the ice popped out," Walker said.

Walker said Scouting teaches leadership that stays with a boy all his life.

"They elect their own officers. They really run it. They know who is working and who isn't," he said.

A Boy Scout himself, Walker remembers a 1927 summer camp at Camp Francis near Interlachen. Ross Allen, reptile expert from Silver Spring, was one of the Scout leaders.

"Hogs broke into our tent that year," Walker recalled. "They ate mine and Glenn Stephens' food supply." Stephens owns a bookkeeping service in Palatka now.

Walker said when he became a Scoutmaster 33 years ago, he thought at the time he would do it for only a year or so.

"Now they tell me I'll retire when the troop has graduated 100 Eagle Scouts. Maybe I will," he said.

Why so many Eagle Scouts?

"We have good boys and we challenge them," Walker said.

He said Troop 62 did not lower its standards a few years back when the national Boy Scout organization dropped pioneering (knot-tying skills), cooking and camping merit badges in order to attract and keep boys from urban areas in Scouting.

"We kept the rigid requirements because the boys wanted them," Walker said.●

## SOVIET TREATY VIOLATIONS

● Mr. SYMMS. Mr. President, I ask that a Department of Defense document dated November 5, 1962, entitled "Soviet Treaty Violations," be printed in the RECORD. This document will be useful to all Senators preparing for the special secret session of the Senate on Wednesday to consider Soviet SALT violations. It shows that the Soviets violated over 50 treaties, mostly nonaggression pacts, between 1917 and 1962. In light of the President's recent report on seven Soviet violations of SALT and other arms control treaties, we need to keep in mind the diplomatic history of Soviet compliance with treaties. This was originally placed in the RECORD by the late Senator Russell of Georgia in 1962.

The article follows:

[ALERT No. 5—Soviet Treaty Violations, published by Armed Forces Information and Education, Department of Defense, Nov. 5, 1962]

SOVIET TREATY VIOLATIONS

Officials of the Soviet Union, from the 1917 Bolshevik revolution onward through 45 years of Communist rule, have established an undisputed reputation for breaking their most solemn pledges.

The Soviet regime's consistent viewpoint on the relative unimportance of promises is not restricted to its dealings with other countries, but extends with equal force to its relationships with the Russian people and the various minority groups which comprise the U.S.S.R.

Only 3 days after the November 7, 1917, revolution placed it in power, the Communist regime abolished freedom of the press as a privilege too dangerous to be entrusted to the people. The people were promised however, that the decree would be rescinded just "as soon as the new regime took root." This 45-year-old promise notwithstanding, the order still applies today.

Other instances in which the Soviet Republic has broken faith with its own people are legion. The revolution of 1917 was carried out in the name of democracy, and ever since "democracy" has been one of the most frequently used words in the Communist lexicon. But while the Communists have capitalized on the word, they have radically altered its definition—from "government by the people" to "government for the good of the workers." Since the Communists keep for themselves the right to determine what is "good" for the workers, the Soviet definition of democracy in fact has become "government by Communists."

After 1917, the Russian people wanted not only democracy but its specific institutions: a constitution, a parliament, elections, a secret ballot, trade unions, etc. They were given all these things, but in name only.

The Soviet Constitution is an interesting document to read. However, it is violated or ignored by the regime as a matter of course. The Soviet parliament meets regularly, but it possesses neither power nor function. Elections are held every 4 years, but the single-slate ballot gives the voters no choice. A secret ballot is provided, but its purpose is to identify dissenters rather than protect them. Trade unions flourish, but only to make the worker more subservient to his employer, the state.

A RECORD OF BROKEN PROMISES

That promises mean next to nothing to the Communist official mind has been admitted by Soviet leaders:

V. I. Lenin—

"Promises are like pie crust, made to be broken."

"It would be mad and criminal to tie one's hand by entering into an agreement of any permanence with anybody."

J. V. Stalin—

"Words have no relation to actions—otherwise what kind of diplomacy is it?

"Words are one thing, actions another. Good words are a mask for concealment of bad deeds. Sincere diplomacy is no more possible than dry water or wooden iron."

G. E. Zinoviev (first head of the Communist International)—

"We are willing to sign an unfavorable peace—it would only mean that we should put no trust whatever in the piece of paper we should sign."

The Soviet Communist regime has entered into hundreds of international agreements. The following list shows how well the Soviet leaders keep their promises when it no longer appears to be in their interest to do so.

THE AGREEMENT

May 7, 1920: Soviet regime signs treaty with independent Georgian Republic, pledging no interference in Georgia's internal affairs.

March 16, 1921: In trade agreement with Britain, Soviet Union pledges not to engage in propaganda in that country.

June 5, 1922: Soviet Union concludes, friendship agreement with Czechoslovakia.

December 12, 1943: U.S.S.R. and Czech government-in-exile sign treaty of friendship and mutual assistance.

December 17, 1925: U.S.S.R. signs nonaggression and neutrality pact with Turkey.

August 31, 1926: Soviet Union concludes nonaggression pact with Afghanistan.

September 28, 1926: Soviet Union makes nonaggression pact with Lithuania, later extending this agreement through 1945.

September 27, 1928: Soviet Union adheres to Kellogg-Briand pact for renunciation of war.

January 21, 1932: U.S.S.R. agrees to nonaggression pact with Finland.

February 5, 1932: Soviet Union signs nonaggression pact with Latvia.

May 4, 1932: Soviet Union pledges nonaggression in agreement with Estonia.

July 25, 1932: Soviet Union signs nonaggression pact with Poland.

May 5, 1934: U.S.S.R.-Poland extend nonagression pact for 10 years.

June 9, 1934: U.S.S.R. recognizes Rumania, guarantees her sovereignty.

September 15, 1934: U.S.S.R. enters League of Nations, pledging thereby "the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another."

August 21, 1937: Soviet Union signs nonagression pact with Republic of China.

July 30, 1941: U.S.S.R. concludes agreement with Polish Government-in-exile, pledging mutual aid and cooperation.

September 24, 1941: Soviet Union pledges adherence to Atlantic Charter, which provides that agreeing countries seek no aggrandisement, that the countries desire no territorial changes not made in accord with freely expressed wishes of the people concerned, and that they respect the right of all peoples to choose their own form of government.

January 29, 1942: Soviet Union with Iran and Britain, signs treaty of alliance, providing for military use of Iranian territory only until end of military operations against Germany.

February 4-11, 1945: At Yalta Conference, U.S.S.R. agrees on various postwar measures, including adoption of a resolution that the liberated peoples of Europe should have the opportunity to solve their economic problems by democratic means.

February 11, 1945: U.S.S.R. at Yalta Conference agrees to declaration that Polish provisional government "shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot."

April 11, 1945: U.S.S.R. signs 20-year treaty of friendship, mutual aid, and cooperation with Yugoslavia.

June 14-18, 1945: President Truman and Premier Stalin agree, in an exchange of letters, to "free access by air, road, and rail from Frankfort and Bremen for U.S. forces."

July 17 to August 2, 1945: At Potsdam Conference, U.S.S.R. agrees that there should be uniform treatment of the German people throughout Germany.

August 14, 1945: The Soviet Union enters into treaty with Republic of China, containing these pledges: "Each high contracting party undertakes not to conclude any alliance and not to take any part in any coalition directed against the other high contracting party * * *. The treaty comes into force immediately * * * and shall remain in force for a term of 30 years."

March 10, 1947: Council of Foreign Ministers, meeting in Moscow, agrees that all German prisoners of war should be repatriated by December 31, 1948.

May 4 and June 20, 1949: Four-power agreements of New York and Paris guarantee United States, British, French, and Soviet joint control of Berlin, all access routes to and from the city, and freedom of movement within the city.

July 27, 1953: Military armistice established between United Nations command and opposing Communist forces, assisted by U.S.S.R., of China and North Korea. Armistice agreement pledges signers to "cease introduction into Korea of reinforcing military personnel."

January 14, 1956: U.S.S.R. signs agreement with Yugoslavia, pledging $110 million in credits for industrial construction.

August 4, 1956: U.S.S.R. pledges an additional grant of $175 million, bringing total to $285 million.

October 19, 1956: U.S.S.R.-Japanese joint declaration pledges the Soviet Union to refrain from interference in Japan's internal affairs.

THE RESULT

February 11 and 12, 1921: Soviet troops invade Georgia, in step leading to absorption of republic into U.S.S.R.

May 26, 1927: Britain ends agreement because of Soviet violations, including failure to stop propaganda as promised.

June 29, 1945: U.S.S.R. compelled Czechoslovakia to cede Carpatho-Ukraine to the Soviet Union.

February 25, 1948: Czechoslovak Government forced to accept Communist ultimatum, as Soviet Union completes arrangements to force country into its satellite empire. Ultimatum compels appointment of a cabinet of Moscow followers and climaxes Soviet postwar drive to absorb once-independent Czechoslovakia.

March 20, 1945: U.S.S.R. denounces this pact, begins campaign to secure control of Black Sea straits.

June 14, 1946: U.S.S.R. forces Afghanistan to cede border territory of Kushka.

June 15, 1940: Soviet troops invade Lithuania.

August 3, 1940: Lithuania is annexed by Soviet Union.

Soviet Union violates this pledge by 1939-40 invasions of Poland, Lithuania, Latvia, Estonia, Rumania, and Finland.

November 30, 1939: Soviet military forces invade Finland.

June 16, 1940: Soviet troops invade Latvia.

August 5, 1940: Latvia is forcibly incorporated in the U.S.S.R.

June 16, 1940: Soviet military forces invade and occupy Estonia.

August 6, 1940: Estonia is annexed by U.S.S.R.

September 17, 1939: Soviet troops invade Poland.

September 29, 1939: U.S.S.R. signs agreement with Nazi Germany to partition Poland.

June 27, 1940: Soviet army invades Rumanian provinces of Bessarabia and Northern Bukovina. Soviet occupation of these areas completed in 4 days.

August 23, 1939: U.S.S.R. makes treaty with Nazi Germany, termed "a joint conspiracy" to deprive Poland, Estonia, Latvia, Lithuania, Finland, and Rumania of their independence and territorial integrity.

October 2, 1949: U.S.S.R. breaks relations with Republic of China, after recognizing Communist Chinese regime it helped to gain power.

April 25, 1943: U.S.S.R. breaks relations with Polish Government-in-exile on pretext of Polish request for Red Cross investigation of Katyn Forest massacre.

Against these promises stands the Soviet Union's record of occupation and domination of Rumania, Estonia, Latvia, Lithuania, Czechoslovakia, Tennu Tuva, Afghanistan territory, Hungary, East Germany, Albania, Bulgaria, Poland, North Korea, Mongolia.

Soviet Union refused to withdraw its troops from Iran at the end of World War II.

In violation of this agreement stands the U.S.S.R.'s record of domination in Bulgaria, Rumania, Poland, East Germany, Hungary, and Czechoslovakia, and other countries which were forced into postwar roles as satellites of the Soviet Union.

January 5, 1947: Soviet Union refuses to participate in meeting with Britain and United States to secure compliance with the 1945 agreement pledging free elections in Poland.

January 19, 1947: Communist-controlled fraudulent election carried out under conditions of Soviet military occupation.

September 29, 1949: Soviet Union denounces this agreement.

April 1, 1948 to May 12, 1949: The Soviet Union imposes the Berlin blockade by severing all land and water routes between Berlin and West Germany. Western Allies supply Berlin by airlift. March 1962: Soviet Union harasses flights by Allied airplanes between Berlin and West Germany.

East Germany today continues to be a rigidly controlled Soviet satellite. Its people have been denied free elections, isolated from the people of West Germany, and victimized by the same kind of regimentation, police rule, and economic restrictions imposed on the peoples of all the Soviet bloc states in Europe.

February 14, 1950: These pledges were broken when the U.S.S.R. made a new agreement with the Communist Chinese regime it had helped create. The Soviets did not even bother to change the basic wording. The new treaty also pledges: "Both, high contracting parties undertake not to conclude any alliance against the other high contracting party and not to take part in any coalition or actions or measures directed against the other high contracting * * *. The present treaty will be valid for 30 years.

August 3, 1955: Soviet regime furnishes West German Red Cross with data on the health and whereabouts of only 20 of the approximately 14,000 Germans known to be still held in the U.S.S.R.

September 20, 1955: U.S.S.R. unilaterally transfers Soviet control over all access routes to and from Berlin to East German regime.

August 13, 1961: Construction of Berlin wall completely prohibits free passage from the Soviet sector to the Western sectors.

July 11, 1965: U.N. command details long list of armistice agreement violations by Communist parties.

May 6, 1957: U.N. command, in another of series of official complaints, charges that Communists have sent troops in Korea's demilitarized zone six times in period of less than 4 months.

May 26, 1958: Yugoslav sources disclose that the Soviet Union has postponed for 5 years the grant to Yugoslavia amounting to $285 million. This represented an attempt to retaliate against Yugoslavia for its refusal to accept the Soviet Communist Party's ideological leadership.

1958: During the weeks preceding Japanese elections of May 22, Soviet radio beams propaganda at Japan violently opposing the reelection of Premier Kishus government.

1959-60: U.S.S.R. threatens Japan with the possibility of nuclear war if Japan ratifies United States-Japan security treaty, signed January 19, 1960.●

## HUMAN RIGHTS IN EL SALVADOR

● Mr. LAUTENBERG. Mr. President, I am pleased to join Senator DODD in cosponsoring S. 2218, a bill to extend the requirement that the administration certify progress on human rights in El Salvador as a condition of U.S. military assistance. The Congress approved this extension late last year without a dissenting vote, but the President vetoed it while the Congress was in recess. As we continue to review U.S. policy in this vital region, we must insure that there is no erosion of U.S. support for human rights in Central America.

Serious human rights violations are continuing and even worsening in El Salvador. The Department of State reported to Congress on January 16, 1984, that "continued abuse of human rights remains a central problem" in El Salvador and that there was "a significant increase in death squad activity in 1983." The Roman Catholic Archdiocese of San Salvador reported 5,142 death squad murders in 1983 and over 38,000 civilian murders since 1979. The American Civil Liberties Union and Americas Watch jointly announced January 16, 1984, that El Salvador "is still a human rights disaster area."

These are the facts, Mr. President, that have prompted the Congress to continually express its concern for human rights in El Salvador and to condition U.S. military assistance on progress. The Congress almost certainly will consider conditions for continued military assistance to El Salvador later this year. But reinstating the simple requirement that the President certify the success or failure of the El Salvador Government in the human rights area is a step we should take now.

The Kissinger Commission report released earlier this month recommended that military aid to El Salvador, "should, through legislation requiring periodic reports, be made contingent upon demonstrated progress on human rights, an end to death squad activity and the movement toward free elections." The Commission recognized that the stability and friendship we seek in Central America cannot be attained without stronger protection of basic human rights.

The Congress should move quickly to support this recommendation. Bringing S. 2218 to quick approval by the Senate would be a most important step. I urge my colleagues to join in this bipartisan effort to insure that our commitment to the basic rights of people everywhere is clear to the world.●

## THE "MILITARY MIND"

● Mr. GOLDWATER. Mr. President, in the February issue of Army, a publication by the Association of the U.S. Army, is an excellent paper written by Lt. Gen. Edward M. Flanagan, Jr., USA (Ret.), entitled, "The Military Mind."

There is a popular saying to that, "War Is Too Important To Be Left to the Generals." I would like to remind the citizens of this Nation that when we have left war to the civilians, we have lost both of them, Korea and Vietnam. The question comes then, What is the military mind? Is it a mind aimed only at battle, a mind aimed only at the destruction of people and property. No, it is not. The military mind probably, in its development, has had more to do with people, how to treat people, take care of people, and protect people than any other facet that might make up the many sided problems of war.

It has always been popular to downgrade the man in uniform. Yet, today, the man in uniform is the most highly regarded individual of all the different groups we have, including the U.S. Congress.

It is going to be a year when the military budgets will be attacked, a year where the man in uniform will be attacked; and, for that reason alone, I am inserting this piece in the RECORD, hoping that my colleagues will read it.

I will admit that I am prejudiced. I spent my formative years in a military school, then I devoted 37 years to service in the Reserve and the Regular Establishment and the National Guard. I will maintain I guess to my grave, an interest and respect and devotion to the men who serve their country.

I ask that the article be printed at this point in my remarks, in the hope that my colleagues will read it and, possibly, improve their opinion of what a man's mind goes through when he puts on the uniform of his country.

The article follows:

THE "MILITARY MIND"

On one of the major network news shows recently, the science reporter was talking about the future of computers on the battlefield and was reminded, he said, of the old adage that "war is too important to be left to the generals." He added, with a knowing and supercilious smile, that war may now be too important to be left to the computers.

The implication which the American listening public presumably is supposed to draw from those two perceptive and astute statements is that if war cannot be left to the generals or to the computers it must, of necessity and by default, be left to someone or something else. But to whom else? The science reporter did not say.

Therefore, the supposedly great unwashed, uncaring, unread and dim-witted American public can only assume when we are asked to think about it—which is not often—that wars must be left either to the brilliant, world-traveled newsreaders of the great networks, those overpaid, supremely confident men and the beautiful, smiling, impeccably turned out young women, or to our duly elected politicians.

Let's assume further for a moment that the newsreaders of the night and morning news are not yet skillful and powerful enough to shape and report the news so adroitly and craftily that they are in a position to declare wars, raise armies, establish budgets for the military forces, lead them in battle, develop and implement foreign policy and create strategy for the accomplishment of the military's objectives. It must be then, by a process of elimination and some free-wheeling deduction, that the newsreaders want our wars to be left to the politicians.

Consider for a moment what the politicians have accomplished in only my generation's wars. The Eastern bloc of Europe is under the domination of the USSR—thanks to the politicians, not the generals; North and South Korea, once an ethnic entity, are now sealed from one another by a fortified, tunneled-under, mine-studded, powerfully defended DMZ—thanks to the politicians, not the generals; the Middle East is a seething cauldron of entangled nationalities, vicious guerrilla warfare, unconscionable devastation and desolation—thanks to the politicians, not the generals; and Vietnam, Cambodia, Laos are under the control of a ruthless, merciless dictatorship—thanks to the politicians, not the generals.

Who put strangling limitations, positively designed to thwart our objectives, on the way our most recent wars—the Korean and Vietnamese—have been fought? The politicians, not the generals. The generals could have achieved our rightful if undeclared goals both in Korea and in Vietnam if they had not been shackled by politicians with impossibly restrictive measures. Who ordered the Marine guards at their headquarters in Beirut not to put clips in their weapons?

Generals do not set foreign policy; politicians do. Generals do not start wars; politicians do. Generals know from firsthand knowledge the horrors of war as only a few politicians do. Generals know their forces' capabilities and limitations and want to operate within them to achieve the goals established for them by properly constituted authority. They do not, however, want to do battle handcuffed.

Very properly, our Founding Fathers were afraid of "the man on horseback" syndrome

and provided that the commander in chief of the military forces of the country be a civilian, duly elected by the people. Even Gens. Ulysses S. Grant and Dwight D. Eisenhower shed their uniforms, rank and military identity when they were elected to the commander-in-chief position. So, in a sense, an elected politician must always be the senior general of the armed forces, theoretically thwarting any attempt by the military forces to take over the reins of the U.S. government either from the back of a horse or the turret of a tank.

All of which leads to these questions: what is it about military leaders, particularly the generals, that causes a liberal (I use that adjective in both its senses) portion of the newsreaders, the columnists, the punsters, the college professors, to think that generals come equipped with tunnel vision, with minds straitjacketed, with an undeviating and inflexible way of thinking about issues and problems and ideas? Why is a so-called military mind so disparaged and ridiculed? ("Don't leave wars to generals—they can't handle them.")

Is there such a thing as a military mind? If so, how does it operate? What guides it? How did it develop? Is it good or bad? Should it be nurtured and trained? Or, if there is one, should it be expunged from the brains of our armed forces' leaders and be replaced by a civilian-like brain? To answer these questions is a fairly large order.

From the vantage point of more than five years' working in a civilian enterprise with constant exposure to the civilian mind, after having served 39 years in a military environment, I feel qualified to guess at some answers. Let's tackle, first of all, the subject of the "military mind" and try to identify some of the fundamentals which may contribute to the maturation of the military mind—if there is such a thing:

First of all, we all know that the military establishment is linked together essentially by a chain of command. The entire military structure is a pyramid, based on individuals who are in turn formed into squads, platoons, companies and so forth up the chain. Each unit has one commander and each member of each unit knows who that commander is. There is no equivocation or quibbling: the captain runs the company, the lieutenant colonel runs the battalion, the colonel runs the brigade, right up the line to the ultimate authority, the commander in chief. There are no dualleaders, no troikas, no command by committee, no voting on decisions.

Each man knows for whom he works and from whom he takes orders—from the squad leader to the chief of staff he knows who is his next higher boss. So the chain of command not only exists in the military establishment, it works. This is one of the first manifestations of a military organization, and that fact is drummed into our still "civilianized" brains from the first day of recruit training or the first day at West Point or the first day of ROTC or Officer Candidate School. That is the first salient feature of the military—an operating chain of command.

Next, there is a fairly well-defined staff system in military units. (The staffs in the Pentagon and those of some of the four-star commands do not have a similar rigidity and permanence.) But at battalion, brigade, division, corps and Army levels there is a staff system developed around the four basic functions which must be controlled in order to make units operational: personnel, intelligence, operations and supply. There is also, of course, an organic special staff, but it varies depending on the unit's level and mission. But, basically, every unit, no matter its level (including the company), must have some sort of a staff to discharge the four primary staff functions.

The third permanent and easily recognizable increment in a military organization is the sometimes cursed and often abused efficiency report system. However, in spite of the deficiencies in the application of the system—inflation the most obvious and reocurring—an officer's OER file, especially after he has been on active duty a few years, is a fairly accurate and legitimate record of his worth, potential and idiosyncrasies. He is graded on many things, but probably the most important is his ability to accomplish a mission.

The fourth easily identifiable and obvious element of a military establishment is the fact that the higher up the ladder of the chain a man of woman goes the more the responsibilities and the more his or her privileges and salary. In the military, we all know that RHIP (rank has its privileges), we know the pecking order, we know the salary structure, we know that given due time and splendid efficiency reports our days in the sun will eventually come (sooner, through below-the-zone promotions) so that we may enjoy the heavier and heavier responsibilities, the inherent headaches and problems, and occasionally the privileges associated therewith. Only the Peter Principle can stop us. And the fact that we wear uniforms makes it fairly easy to sort out the pecking order.

The uniform tells us many things—rank, branch, battles, qualifications and careers—by reading the ribbons and badges. In civilian life, the president and the newest salesman may look and dress alike.

The fifth increment of the military establishment which sets it apart from the civilian environment is the military's inherent sense of orderliness. The military has a penchant for making and observing deadlines; for requiring neatness, operability and serviceability of installations and equipment through regular and frequent inspections; for checking a unit's combat readiness with tests of all sorts; for developing and adhering to schedules—training, budget, personnel or other; and for solving problems by use of the staff study format—or in combat, the estimate of the situation.

What's the problem or mission? What are the facts? What are the possible courses of action? Which is better or best? Why? Recommend. Make a decision.

The sixth increment is the military's propensity for operating within and enforcing rules, regulations and orders. Only in the military do we function constantly under orders—to schools, new posts, new jobs, overseas assignments, to the field, the range, the Pentagon, to Grenada, and finally back to the cluttered, disorganized, undisciplined outside world. One's whole life in the military is ordered and orderly, and one accepts this scheme of things not only as the norm, but also as the desirable and preferred way of life—or gets out. But the "lifers" understand, adjust, prosper, prevail and serve their country.

The final character-building block in the military structure—at least for this discussion—is the relatively short length of most officers' and NCOs' assignments. An officer rarely stays more than three years in one slot, unless he is a doctor or other uncommon specialist, before he moves on or up to another assignment.

Thus, he does not have to wait interminably for the retirement or death of someone above him to unblock a better position. Frequent moves are not altogether advantageous, but at least there is little job stagnation so common in civilian firms and enterprises, especially at the middle and lower levels of management and operations.

These are the basics, the framework, around which the military establishment conducts it business, whether it be training or fighting. The structure is admittedly fairly rigid, formed as it is around a chain of command, a clear-cut staff organization, an OER system, and RHIP and RHI-responsibilities syndrome, a healthy respect for mission accomplishments and a developed habit of logical thought processes, frequent job changes, good order in all things, military discipline and "Yes, sir" and "I'll try, sir."

But do those elements over the years necessarily develop and mold into permanency a "military mind"? Before answering that question, it might be enlightening to compare the military's modus operandi with some civilian ways of conducting business.

While I was on active duty, and above all having witnessed the miracles of American productivity, inventiveness and ability to gear up rapidly to supply our own forces and those of our Allies with the prodigious quantities of equipment which fueled our fighting forces during World War II, I came to believe that American manufacturers and businessmen were masters of management, leadership, improvisation, execution and cost-whittling efficiency. Perhaps they are; they certainly were during World War II. But the course of recent events in our economy seems to indicate that they are no longer the unparalleled water-walking geniuses I had once envisioned.

One has only to review and analyze our trade deficit and the efficiency, productivity and quality control of the Orientals and some Europeans to learn otherwise. Or maybe we have just priced ourselves out of the market. In any event, the great American lead in productivity and inventiveness seems to be falling behind other nations in some areas like automobiles, textiles, electronics and nuclear power.

I cannot report in any detail the way IBM, AT&T or Union Carbide handle their enormously complex and far-flung enterprises. Obviously, they must be fairly efficient. But I can report, with some degree of accuracy, on what I have observed during the five-plus years since I retired from active duty. These observations derive from close association with one firm where I work, from observations of other firms, from reading reports on U.S. productivity and on limited research into the workings of other relatively small firms and businesses.

I am convinced that the points I am about to make are not unique to small, professionally oriented firms (lawyers, doctors, dentists, CPAs). Some of these points apply to all firms, some to a few firms and, I suppose, all to some firms—whether they sell services or manufacture goods:

First of all, many firms are managed by a board of directors, a committee in itself, which reports to partners, another committee. And the board often turns to a committee for solutions to various continuing management matters. Thus, there are standing committees for profit-sharing fund, for public relations, hiring of professionals, finances, salaries, for ethics and conflicts of interest. And to hire a new professional (associate) requires the approval of all partners.

In addition, when something unusual comes up, the board of directors appoints an ad hoc committee to look into such things as whether or not the firm should open an office in another city, how it should expand and redecorate the office buildings, what associates it should bring on board.

I am not necessarily knocking committees as such, especially if they are used to study a problem, come up with a recommendation and then have the board make a decision. But that does not always happen in the civilian environment; often the committee either fails to make a report because it could not come to a definite conclusion, or it never got around to it, or the board does not take the final step and make the decision, or the directors could not agree.

That does not happen in the military; that is the first difference: the military uses a chain of command and some civilian firms use a committee system.

Second, success in civilian organizations is invariably measured by the bottom line. And, in a firm of professionals, success is measured even more pointedly by comparing a professional's fee income to his cost to the firm and determining his profit or loss. This is an important number. When you think about that for a moment, it gives a military man some pause.

The third major difference is the lack of a prescribed system for reporting on a professional member's efficiency, potential and personality. Thus, inevitably, a member's success is measured, for the most part, on his financial contribution to the firm. But because of the lack of a formal ER system, rumors, idle chatter and assorted insignificant incidentals have a way of becoming imbedded in a senior's mind about one of the subordinates.

Thus, it may take a long time to weed out the inefficient or, conversely, based on snap judgments and one-shot deficiencies, it may take only a short a time to fire a good man before he has been given a fair chance to prove himself.

Another difference centers around the fact that over the years professional firms usually have grown slowly from a couple of founders to some 20, 30, 40 or more professionals plus an expanded staff. Because of this slow but steady growth, each professional brought on board considers himself an operational unit with his own billing procedures, collection techniques and method of operating. Initially, there usually was only a shadowy organization with very limited sectionalization, absolutely no chain of command, and little but sometimes benevolent guidance and control from the top.

Typical firms of this sort were essentially X numbers of professionals each with his own rolltop desk operating within his own sphere of clients. Professionals of this sort and managers at middle levels are similar in character and outlook to a group of brand new brigadier generals—feisty, intelligent, cocky, ambitious and somewhat undisciplined. In short, many of these expanded forms had no organizational frameworks.

Difference number five is a lack of constraint on operational procedures. For example, as a firm produced more and more dollars and the bottom line showed a regular profit, the board would add higher and higher salaries and benefits and perks to the professionals that would make any general or admiral in today's military establishment green with envy.

These perks include leased cars, total medical, dental and ocular benefits for the professionals and their families, payment of club dues, home phone bills, newspaper and magazine subscriptions, entertainment expenses and sundry other allowances.

As a result, when times get hard, it is very difficult to cut back. The philosophy among the young partners and associates of many of these firms is typical of today's young professionals: "We want it all, right now. We're not willing to wait."

So they lease Corvettes, Mercedes, Lincolns and Cadillacs. And the champagne taste carries over into houses, schools for their children and vacations. Their attitude is: "Let mother pick up the tab."

In sum, such organizations on close examination and analysis have many organizational and operational deficiencies. Among them are an absence of a clearly defined organization, the lack of a proper budget and/or the failure to be guided by it, the nonexistence of a chain of command and the scarcity of any system for really separating the efficient professionals and managers from the ineffectual.

Admittedly, my observations focus on a small group of professional firms and businesses, loosely organized into business enterprises. But these firms do, in my view, provide a microcosm against which I can compare the military environment.

In all fairness, I must, however, recognize these facts:

The firm with which I am associated has been successful by any standard of measurement in the good times under the kindly leadership of its founder; in the recession of the past couple of years, however, it has had to tighten severely its budgetary belt, get organized, check on professional productivity, client development and case loads, and institute some more up-to-date methods to improve the efficiency of its billing, bookkeeping and accounting procedures.

There are many firms, industries and companies throughout the United States that use efficiency or merit reports of one sort or another, have a chain of command, quality control, discipline, clear-cut organizations, distinct goals, a source of direction, a recognizable strategy, motivated employees and sound equipment and technology investing policies and that are such models of efficiency that they are included in best-selling books like "In Search of Excellence: Lessons from America's Best Run Companies," by Thomas J. Peters and Robert H. Waterman Jr.

The goal of any civilian firm is, naturally, profit; the goal of any military organization is mission accomplishment.

And so we come to the heart of the matter: is there such a thing as a military mind? I say yes. Is it advantageous and desirable? By all means. And I add in the same breath, thank God there is such a thing as a military mind. A military mind is formed through custom, training, education and observation. It is developed within a framework of a clear-cut, closely organized structure with a recognizable, operating chain of command.

One incident of the operation of the chain of command comes to mind. When I was commanding the 1st Infantry Division, we flew to Europe on "Reforger III" from Ft. Riley, Kan. For some obscure reason, when we left Riley, I had the troops wearing their helmet camouflage covers with the desert colors showing. When I got to Germany, the VII Corps commander under whom we were operating rather good-naturedly, but pointedly, suggested that in the green forests of Germany it might be more appropriate to have the green side of the camouflage covers out.

So, at my command and staff meeting that night, I put out the order that by next morning's 0700 troop formation, I wanted the helmet covers turned over with the green side out. And by 0700 the next morning, the mission was accomplished, and some 17,000 "Big Red Oners" were in the proper uniform. Such a chore could never have been accomplished by a committee; they might still be debating the wisdom of such a move.

A military mind is taught to honor suspense dates and deadlines and to answer all the mail—in as short a time as possible. A military mind learns to do the hard job first, to be in command, to assume its rightful responsibilities, to avoid shirking its duties, to feel responsibility for its unit or staff section.

A military man with a military mind thrives on precedent, unit esprit, camaraderie. He believes that his mission transcends in importantance any civilian's, that he is trained to protect the country, that he is the insurance without which we cannot survive as the nation we have come to be.

The military mind is trained to be honest, to honor its word and signiture, to believe in its oath of office, to know that advancement is based on efficiency, not family background, color or religion.

The military mind is taught to be on duty 24 hours a day. It is also taught that all of these attributes, characteristics, fundamentals have their greatest application in combat. The military mind is not lazy; it does not put off until next week; it establishes priorities and does not waffle its ideals.

Thus, in answer to my original questions: there is such a thing as a military mind; it may be rigid, but it is trained for the ultimate purpose of success in combat as measured by mission accomplishment at the least cost in men and equipment. And if that is bad, if we would rather have our wars entrusted to civilians, God help us.

As Sir William Butler once said: "The nation that will insist on drawing a broad line between the fighting man and the thinking man is likely to find its fighting done by fools and its thinking done by cowards."

After I finished this article, I sent it, somewhat innocently, to one of the members of my firm's board of directors for his comments. I had expected that he might take umbrage at what I had written. For one thing, I recognized that comparing the military establishment to small professional firms was perhaps comparing elephants to mice. The comments of the member of the board to whom I sent the article were so well taken that, in the interest of objectivity, I asked him if I might include his comments as a counterpoint to my thesis. He agreed readily. Here are his comments—only slightly edited to eliminate his name, the name of the firm, and to spell out a reference to "an island paradise."

PERSONAL AND CONFIDENTIAL

Memo to: General Flanagan
From:
Date: 3 October, 1983
In re: Your proposed article "The Military Mind"

DEAR FLY: I have read and reread your draft. My initial inclination was to provide comment on style, organization and so forth, but I realized that your publisher will accomplish that more capably than I. Having shirked that responsibility (a defect of the civilian mind?), I will style myself as

critic and, without taking umbrage, will mount a defense.

First my qualifications: while serving only three years on active duty in the military, I rose from the rank UCUI-1 to lieutenant (junior grade), crossed the International Dateline innumerable times, metamorphosed from a poliwog to a shellback on one fateful day at the Equator, and received an early release to return to graduate school.

Operationally, I served with distinction as an admiral's aide, eyeball to eyeball, martini to martini, in the San Diego Naval Station Officers' Club, and can take credit for personally slaughtering not less than 32 (innocent?) civilians at Cap Lay by virtue of my substantially greater firepower in June, 1967. I wrote efficiency reports for senior operational commanders and, in more than a few instances, decided which would make flag rank.

I was a student of the "military mind," and labored under its strengths and weaknesses, contributed to its inefficiency and have marveled at its successes. I have led men in combat and have been shot at, and in a high-tech sense, have engaged the enemy hand to hand.

In general, I spent 30 years in the military (spread out over three), and a millenium under constant, hostile fire in this godforsaken island paradise (an allusion to his current island abode). I will thus not hesitate to criticize your article. Whether it be constructive or not is for you to decide.

While I agree with its basic tenets, empathize with the frustrations you have incurred at your current "duty station," and appreciate the efficiencies extant in the military experience, I do not believe that the benefits derive from the "military mind," any more than the deficiencies accrue from some civilian psyche. Military men and women have minds, civilian individuals have minds, but neither biologically nor functionally does the Army or General Motors, or indeed our firm, have a mind.

Each has its own organization, methodology, means, motivation and general trademark, but no animism of more than one has a mind. Therefore, if you are speaking of the military mind as the collective wisdom of the individuals—recruit through general officer—I think the personification misses its mark. While the collective reaps the rewards or suffers the ignominy, the genesis of all thought is still between the ears of individuals.

Wounded metaphors aside, I agree completely that the military organizational system is far more efficient than most civilian counterparts. I share your appreciation of the chain of command, staff specialization, efficiency reports, punctuality, regulatory authority and well-shined shoes. However, this more or less well-oiled machinery is derivative of the military's charter rather than the specialized brainpower of its cognoscenti. The strength of the military is based upon its clearly defined ends, the existence of which make the selection of means straightforward.

Taking the high ground on Mount Suribachi required thousands of casualties and the utilization of tons of ammunition, but such a goal was clear, singular and, given the collective will of many, attainable.

Placing a man on the moon in this century, an act requiring the utmost in technological skill and commitment of time and money, was accomplished because the goal was real, concrete and, given the requisite commitment, attainable. Conversely, democratizing South Vietnam, reducing the federal deficit, and organizing this firm have proved to be more difficult-perhaps impossible—tasks.

The reason lies not in either the mind of the individual military officer or civilian, nor even their collective methodology. Rather, it is a derivative of a broad disparity between goals and the means of achieving same. In Vietnam, what we really wanted was to maintain the free world's hegemony, but we chose not to admit that. For decades politicians have been elected while they railed against budget deficits and an expanding national debt; but they have delivered an increasingly expensive potpourri of social benefits and military expenditures.

As a nation we have sent out our cat to kill mice and then kicked him for having left a dead and bloody rat on the front porch.

You are quite right in identifying this firm as a microcosm. But no degree of reorganization, scheduling, desk-clearing or shoe polishing will save this small world. Rather, we, like our national analog, must establish goals; goals which are real and attainable; goals which reflect the will of the majority rather than a consensus serving no one; goals which are worthy of our best efforts.

The military does not earn money—it spends it. Civilian politicians do not earn for our country the gross national product—they reallocate it. To some degree each professional in this firm is both producer and consumer. In the past there has been little correlation between what one produces and what one consumes, and we have come to a point where neither the hegemony of the original leadership nor the unbridled cravings of the masses can be served.

Our goals are as grand as our next paycheck, as admirable as a silver Corvette and as worthwhile as a seat on the Town Council. Nationally and locally, civilian and soldier, "Qu'ils mangent de la brioche." (Literally, "Let them eat sweet rolls." Allegedly, this is the correct version of Marie Antoinette's famous and off-repeated line; it was not, "Let them eat cake.")

These end the director's comments. My rebuttal to his rebuttal is that notwithstanding the fact that the military has clearly defined goals it does not necessarily follow that that is what makes the military efficient or, for that matter, any civilian firm efficient. I go back to the basic features of a military organization to explain its efficiency, and to explain the development of the "military mind."

And, I daresay, that any of the 40 or so best-run firms in the United States case studied by Messrs. Peters and Waterman also uses many of the military's operational devices and methods to achieve its successes.

Two closing arguments:

First, in the 14 October, 1983, issue of National Review, Jeffrey Hart comments on a book entitled The Hidden-Hand Presidency: Eisenhower as Leader, by Fred I. Greenstein. Mr. Hart says that first of all Gen. Eisenhower was a great President, and he rates him among the top two—right after George Washington. Mr. Greenstein says that today historians would rate President Eisenhower "in the top ten, if not the top five of all of our Presidents." Mr. Greenstein's book then examines President Eisenhower's management of the Presidency.

Jeffrey Hart says that President Eisenhower "was formidably intelligent." We are not surprised to learn that Gen. Eisenhower "rose to service-wide visibility because he graduated first in a class of 275 officers in 1926 in the Army's elite Command and General Staff School." And, despite the legendary syntax—in fact, everyone knew what he was really saying—"his confidential writings display geometric precision in stating the basic considerations shaping a problem, deducing their implications, and weighing the costs and benefits of alternative possible responses."

Gen. Eisenhower was astonished, for example, when, in the wake of Tet, President Lyndon Johnson halted the bombing of North Vietnam without any quid pro quo from the other side, and President Eisenhower's written analysis of that mistake "allows us to view policymaking through his clear—often icily clear—mental lens."

Second, in the 31 October, 1983, issue of Fortune magazine, there appears an article about William Marriott Jr., the entrepreneur who is vastly expanding the Marriott chain to include the building of a $350 million Marriott Marquis Hotel in New York's Times Square. The article says that "the (Marriott) Co. became one of the industry's most efficient by applying a tightly centralized system of policies, procedures and controls to the slightest operational detail. . . . The more the system works like the Army, the better."

As they say in the law courts, "I rest my case."

## MODEL OAS GENERAL ASSEMBLY

● Mr. CHILES. Mr. President, shortly before the holiday recess, I had the pleasure of meeting with students from Father Lopez High School in Daytona Beach, Fla. The students were in Washington to participate in the Organization of American States Second Annual Model OAS General Assembly for High Schools.

The Model OAS General Assembly is the only simulated proceeding of a regional internation institution to take place at the headquarters of the organization itself. Participation in the Model Assembly is, in the words of our Ambassador to the OAS, "a unique opportunity for young people to learn through realistic session at OAS headquarters how the organization functions."

Students participating in the Model Assembly come away with an appreciation for the institutional framework in which member nations attempt to settle their differences. In this age of increasing international tension and increased resorting to arms instead of the negotiating table, what could be more important than promoting diplomacy and communication, rather than isolationism and arms buildup?

Participating in the Model Assembly is an honor, and no easy task. Each school wishing to send a delegation to the Model Assembly selects as its representatives students with outstanding academic and debate skills. Each team is assigned an OAS member nation whose role they will assume in Washington. Many months prior to the actual competition, the selected students must learn the details of the adopted nation's political, economic,

and social climate, as well as the complex international politics between all member nations. As every Member of Congress knows, that's no easy assignment. Equally dedicated is their school sponsor, who spends many hours coaching and advising the team.

Mr. President, every Senator who represents young constituents participating in the Model Assembly should be proud of such students. Participating in the Assembly is the mark of future voters concerned about issues vital to this Nation and its southern neighbors. I am especially proud of the students from Father Lopez High School. Not only did they travel almost 1,000 miles to represent their school, they also captured the national debating championship. In addition to the team debating championship, Bryan Sperber, the team leader, and Adel Aslani-Far, received two of the five individual awards for debate.

The students assumed the role of Honduras, and negotiated with the student delegation representing Nicaragua, persuading it to accept a four-point peace plan. Their peace plan called for withdrawal of all foreign troops and military advisers from Central America, with that action subject to international verification; a pledge not to interfere in the internal affairs of other nations in the region; a reduction of arms in each Central American country; and a pledge to establish democratic institutions in Central America.

I would like to commend Bryan and Adel, as well as Julio Castro, John Byington, Kathy Freeman, Scott Groeshner, Nina Rasdota, Michael Reedich, Michael Sicard, Daniel Sprague, and William Wang. Special recognition goes to Rev. John Hurley, who coached the students in Florida, and accompanied them to Washington. All of them have my heartiest congratulations.●

## APPROPRIATIONS STATUS REPORT

● Mr. DOMENICI. Mr. President, I believe it would be useful as we return from recess to bring up to date the tables on fiscal year 1984 appropriation actions that I have inserted in the RECORD over the past several months. I ask to have printed in the RECORD at the conclusion of my remarks two summary tables showing Appropriations Committee spending and credit activities through the end of the 1st session of the 98th Congress.

The first summary table shows spending actions; that is, outlays from prior-year budget authority and other actions completed in prior years; the regular appropriation bills, the further continuing resolution, and the omnibus supplemental which were enacted during the first session; possible later requirements; and adjustments to keep mandatory programs at the levels assumed in the budget resolution.

Compared to the section 302(a) "crosswalk" allocation to the Appropriations Committee under the fiscal year 1984 budget resolution, adjusted for the release of reserve fund items, at this point the committee is under its crosswalk allocation by $9.6 billion in budget authority and right on its crosswalk allocation in outlays.

The second summary table shows credit actions that were contained in the regular appropriation bills, the further continuing resolution, and the omnibus supplemental which were enacted during the first session, and possible later requirements. At this point the Appropriations Committee has approved $0.8 billion less in new direct loan obligations and $1.4 billion less in new primary loan guarantee commitments than the budget resolution assumed.

Mr. President, I would like to commend the chairman of the Appropriations Committee, my distinguished colleague, Senator HATFIELD, for the committee's efforts last year. The committee has adhered to the congressional budget plan and that is indeed good news.

The tables follow:

SPENDING ACTIVITIES—SUMMARY OF SENATE APPROPRIATIONS ACTION TO DATE FOR FISCAL YEAR 1984 [1] AS OF JAN. 26, 1984

[In billions of dollars]

| Appropriations subcommittee | President's request | | Senate 302(b) allocation [2] | | Current status [3] | | Current status over(+)/under(−) President's request | | Current status over(+)/under(−) 302(b) allocation | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Budget authority | Outlays | Budget authority | Outlays | Budget authority | Outlays | Budget authority | Outlays | Budget authority | Outlays |
| Agriculture | 34.5 | 22.2 | 35.6 | 23.1 | 35.4 | 23.3 | 0.9 | 1.1 | −0.2 | 0.3 |
| Commerce | 10.1 | 11.2 | 10.9 | 11.4 | 10.7 | 11.4 | .6 | .2 | −.2 | 0 |
| Defense | 261.0 | 229.3 | 254.2 | 227.9 | 250.8 | 226.6 | −10.2 | −2.7 | −3.4 | −1.3 |
| District of Columbia | 0.6 | .6 | .6 | .6 | .6 | .6 | 0 | 0 | 0 | 0 |
| Energy-water | 14.8 | 14.8 | 14.9 | 14.7 | 14.5 | 14.6 | −.3 | −.2 | −.4 | −.1 |
| Foreign operations | 11.7 | 9.6 | 12.1 | 9.8 | 12.1 | 9.8 | .4 | .1 | 0 | 0 |
| HUD-independent | 50.0 | 58.2 | 57.8 | 58.2 | 56.4 | 59.5 | 6.4 | 1.3 | −1.3 | 1.2 |
| Interior | 6.6 | 8.3 | 8.3 | 9.3 | 8.6 | 9.4 | 1.9 | 1.1 | .3 | .1 |
| Labor-HHS | 95.7 | 105.3 | 109.0 | 110.5 | 106.7 | 110.4 | 11.0 | 5.1 | −2.3 | −.1 |
| Legislative branch | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 0 | 0 | 0 | 0 |
| Military construction | 8.7 | 7.3 | 7.3 | 7.1 | 7.1 | 7.1 | −1.6 | −.2 | −.2 | 0 |
| Transportation | 10.9 | 25.0 | 10.9 | 25.4 | 10.9 | 25.4 | 0 | .4 | 0 | 0 |
| Treasury | 11.5 | 11.3 | 11.9 | 11.8 | 11.9 | 11.9 | .5 | .6 | 0 | .1 |
| Subtotal | 517.6 | 504.6 | 535.0 | 511.3 | 527.2 | 511.5 | 9.6 | 6.8 | −7.7 | .2 |
| Unassigned to subcommittee | .9 | .9 | 2.9 | 1.3 | 1.0 | 1.1 | .1 | .2 | −1.9 | −.2 |
| Total | 518.5 | 505.6 | 537.9 | 512.6 | 528.2 | 512.6 | 9.7 | 7.0 | −9.6 | 0.0 |

[1] Includes all appropriation bills enacted in the 1st session of the 98th Congress and other prior actions.
[2] Includes reserve fund allocations made on Sept. 14 and Oct. 27, 1983.
[3] Excludes in the "current status" column $8,464,000,000 in budget authority for the IMF (no outlays) assumed to be enacted in fiscal year 1983 in the President's request and in the budget resolution, but not enacted until fiscal year 1984 by the Congress.

Note.—Details may not add to totals due to rounding.

CREDIT ACTIVITIES—SUMMARY OF SENATE APPROPRIATIONS ACTION TO DATE FOR FISCAL YEAR 1984 [1] AS OF JAN. 26, 1984

[In billions of dollars]

| Appropriations subcommittees | Current status | | Budget resolution assumptions | | Current status over (+)/under (−) resolution | |
|---|---|---|---|---|---|---|
| | Direct loans | Primary loan guarantees | Direct loans | Primary loan guarantees | Direct loans | Primary loan guarantees |
| Agriculture | 11.2 | 7.6 | 11.4 | 8.8 | −0.2 | −1.2 |
| Commerce-Justice | 1.6 | 3.6 | 1.7 | 3.8 | −.1 | −.2 |
| District of Columbia | .1 | | .1 | | | |
| Energy-Water | .1 | .2 | .1 | .2 | | |
| Foreign Operations | 6.5 | 14.7 | 6.9 | 14.5 | −.4 | +.2 |

CREDIT ACTIVITIES—SUMMARY OF SENATE APPROPRIATIONS ACTION TO DATE FOR FISCAL YEAR 1984 [1] AS OF JAN. 26, 1984—Continued

[In billions of dollars]

| Appropriations subcommittees | Current status | | Budget resolution assumptions | | Current status over (+)/under (−) resolution | |
|---|---|---|---|---|---|---|
| | Direct loans | Primary loan guarantees | Direct loans | Primary loan guarantees | Direct loans | Primary loan guarantees |
| HUD-Independent [2] | 2.2 | 65.8 | 2.2 | 65.8 | | |
| Interior | ([3]) | ([3]) | ([3]) | ([3]) | | |
| Labor-HHS | .7 | 6.9 | .7 | 6.9 | | |
| Transportation | ([3]) | ([3]) | ([3]) | .2 | | −.2 |
| Not allocated to subcommittee | | | ([3]) | .1 | | −.1 |
| Total | 22.4 | 98.8 | 23.2 | 100.2 | −.8 | −1.4 |

[1] Includes all appropriation bills enacted in the 1st session of the 98th Congress and other prior actions.
[2] The budget resolution assumes $68,200,000,000 in new secondary loan guarantee commitments in the HUD-Independent Agencies subcommittee. The HUD-Independent Agencies appropriation bill for fiscal year 1984 provided the same amount.
[3] Less than $50,000,000.

Note.—Details may not add to totals due to rounding.●

## FLORIDA RECIPIENTS OF THE AMERICAN FARMER DEGREE

● Mr. CHILES. Mr. President, it is with a great deal of pleasure that I submit the following list of recipients from Florida of the American Farmer Degree of the Future Farmers of America. This degree is particularly significant because it is the highest honor that can be bestowed upon an FFA member.

For years, FFA has been helping young men and women improve their leadership capabilities and prepare them for careers in agriculture and related fields. FFA boasts many distinguished alumni including Congressmen DON FUQUA and BILL NELSON of the Florida congressional delegation.

In the years to come, agriculture will continue to play an extremely important role in the economic life of our country. We will continue to look toward FFA to provide the leadership in this critical area and to help train managers and producers who will insure our agricultural system remains the most productive and efficient in the world. The young men and women listed below are such future leaders and producers and I want to congratulate them all on this honor.

The list follows:

1983 AMERICAN FARMER LIST—STATE OF FLORIDA

Brian Banks, Myakka Star Route, Parrish 33564 (Manatee High CH) (Manatee High HS).

Judy Beauchamp, Box 231, Bronson 32621 (Bronson CH) (Bronson HS).

Samuel Bertha, II, Rt. 1, Box 119, Bunnell 32010 (Bunnell CH) (Flagler-Palm Coast HS).

Murray Bertine, Rt. 6, Box 220, Dunnellon 32630 (Crystal River CH) (Crystal River HS).

Edward Biss, Jr., Box 794, Trenton 32693 (Trenton CH) (Trenton HS).

Glenda Brown, 5201 Sawyer Road, Sarasota 33583 (Sarasota Vo-Ag CH) (Riverview HS).

Kenneth Crews, Rt. 1, Box 686, Sanderson 32087 (Baker County CH) (Baker County HS).

Charles Duggar, 202 Hall Street, Marianna 32446 (Marianna CH) (Marianna HS).

Deborah Goodwin, Box 602, Lake Panasoffkee 33538 (South Sumter CH) (South Sumter HS).

Judy Kahelin, Rt. 4, Box 159, Dover 33527 (Plant City Senior CH) (Plant City Senior HS).

James Knight III, 815 S.E. 9th Ct., Okeechobee 33472 (Okeechobee Brahman CH) (Okeechobee HS).

Patrick Martin, 1001 South Tenth St., Haines City 33844 (Haines City CH) (Haines City Senior High HS).

J. Michael McGinnis, 3347 Kingswood Dr., Sarasota 33582 (Sarasota Vo-Ag CH) (Riverview HS).

Daniel Olson, Rt. 1, Box 203, Clermont 32711 (Groveland Senior CH) (Groveland HS).

Terry Porter, Rt. 4, Box 2195, Plant City 33566 (Plant City Senior CH) (Plant City Senior HS).

Jimmie Rogers, 4519 Grenoble Drive, Orlando 32807 (Orlando-Colonial CH) (Colonial HS).

Herman Sanchez, Jr., Box 1296, Cross City 32628 (Trenton CH) (Trenton HS).

William Shaw, Rt. 2, Box 170, Mayo 32066 (Lafayette Senior CH) (Lafayette HS).

O. Scott Stoutamire, Rt. 1, Box 70A, Hosford 32334 (Liberty County CH) (Liberty County HS).

Jed Weeks, Rt. 2, Box 202-C, Wauchula 33873 (Hardee Senior CH) (Hardee HS).

Earl Ziebarth III, Rt. 2, Box 85, Pierson 32080 (Pierson-Taylor Senior CH) (T. Dewitt Taylor Jr.-Sr. HS).

Total Participants this State—21.●

## CONCLUSION OF MORNING BUSINESS

Mr. STEVENS. Mr. President, if there is not further morning business, I would ask that morning business be closed.

The PRESIDING OFFICER. Morning business is closed.

## ORDERS FOR TOMORROW

ORDER FOR RECESS UNTIL 9:30 A.M.

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF SENATOR MITCHELL

Mr. STEVENS. Mr. President, I ask unanimous consent that, following the time for the leaders under the standing order, there be a special order for the Senator from Maine (Mr. MITCHELL) for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR BYRD TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that, following the time allocated to the distinguished Senator from Maine for a special order, there be a special order for my good friend from West Virginia, the distinguished Democratic leader (Mr. BYRD), for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the Senator.

## PROGRAM

Mr. STEVENS. Mr. President, let me state for the information of Senators that tomorrow we will convene at 9:30 a.m. After the time of the two leaders, there will be special orders for Senator MITCHELL and Senator BYRD.

It will be the intention of the leadership and the manager of the bill that we would be back on the bill—it is the pending business—at approximately 10 a.m. tomorrow, or slightly before that. It is my understanding that in all probability there will be no votes before 11 a.m., but that order has not been entered. There is just the indication that, that will be the case.

Mr. President, we do anticipate votes throughout the remainder of the day, however, and Senators should be on notice of that. The distinguished Senator from South Carolina, the manager of the bill, wished to proceed this evening but was asked, because of the weather and other circumstances, not to proceed this evening.

There are other pending amendments to be considered in the morning.

Does my good friend from West Virginia have any other matter to take up this evening?

Mr. BYRD. Mr. President, I thank the distinguished acting majority leader. I have nothing.

## RECESS UNTIL 9:30 A.M. TOMORROW, TUESDAY, JANUARY 31, 1984

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with the previous order.

There being no objection, the Senate, at 5:08 p.m., recessed until tomorrow, Tuesday, January 31, 1984, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate January 30, 1984:

### The Judiciary

James Harvie Wilkinson III, of Virginia, to be U.S. circuit judge for the fourth circuit, vice John D. Butzner, Jr., retired.

Pauline Newman, of Pennsylvania, to be U.S. circuit judge for the Federal circuit vice Philip Nichols, Jr., retired.

John R. Hargrove, of Maryland, to be U.S. district judge for the district of Maryland, vice Shirley B. Jones, resigned.

Bruce D. Beaudin, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for a term of 15 years, vice John D. Fauntleroy, retired.

### Department of Justice

Robert C. Bonner, of California, to be U.S. attorney for the central district of California for the term of 4 years vice Stephen S. Trott, resigned.

### Federal Council on the Aging

The following-named persons to be members of the Federal Council on the Aging for the terms indicated:

For a term expiring June 5, 1985:

Ingrid Azvedo, of California, vice Charles J. Fahey, term expired.

For terms expiring June 5, 1986:

Nelda Ann Lambert Barton, of Kentucky (reappointment).

Edna Bogosian, of Massachusetts (reappointment).

James N. Broder, of Maine (reappointment).

Tony Guglielmo, of Connecticut (reappointment).

Frances Lamont, of South Dakota (reappointment).

### Foreign Service

The following-named career members of the Senior Foreign Service of the U.S. Information Agency for promotion in the Senior Foreign Service to the class indicated:

Career members of the Senior Foreign Service of the United States of America, class of Minister-Counselor:

Eugene J. Friedman, of Ohio.
Leonard L. Lefkow, of Washington.
Lynn H. Noah, of Pennsylvania.
Marlin W. Remick, of Virginia.
Christopher W. S. Ross, of California.

The following-named career members of the Foreign Service of the U.S. Information Agency for promotion into the Senior Foreign Service to the class indicated:

Career members of the Senior Foreign Service of the United States of America, class of Counselor:

Jeffrey Robert Biggs, of the District of Columbia.
Philip C. Brown, of Maryland.
Alan L. Gilbert, of Ohio.
John Philip Harrod, of New Hampshire.
Leon Lederer II, of Virginia.
Donald E. Mathes, of Missouri.
Marilyn McAfee, of Florida.
John M. Reid, of Virginia.
Elton Stepherson, Jr., of California.
Michael Mamoru Yaki, of California.

### Senior Foreign Service

The following-named career members of the Senior Foreign Service of the Agency for International Development for promotion in the Senior Foreign Service to the classes indicated:

Career members of the Senior Foreign Service of the United States of America, class of Career Minister:

Philip Birnbaum, of Maryland.
Irvin D. Coker, of Maryland.
Donor M. Lion, of Virginia.
Leonard Yaeger, of the District of Columbia.

Career members of the Senior Foreign Service of the United States of America, class of Minister-Counselor:

Dennis P. Barrett, of Washington.
Martin Victor Dagata, of Maryland.
Robert Halligan, of Virginia.
Harlan Haines Hobgood, of Virginia.
Mary C. Kilgour, of Virginia.
Emerson Melaven, of Vermont.
Richard Charles Meyer, of the District of Columbia.
Arthur Mudge, of New Hampshire.
James A. Norris, of California.
Lois C. Richards, of Washington.
John A. Sanbrailo, of California.

The following-named career members of the Foreign Service of the Agency for International Development for promotion into the Senior Foreign Service to the class indicated, and also for the other appointments indicated herewith:

Career members of the Senior Foreign Service of the United States of America, class of Minister-Counselor, and Consular Officers and Secretaries in the Diplomatic Service of the United States of America:

William Anthony Sigler, of Virginia.
Gerald H. Zarr, of Maine.

Career members of the Senior Foreign Service of the United States of America, class of Counselor, and Consular Officers and Secretaries in the Diplomatic Service of the United States of America:

John S. Balis, of Virginia.
Janet C. Ballantyne, of California.
John Stuart Blackton, of California.
Terrence J. Brown, of Virginia.
George Carner, of California.
Richard A. Cobb, of Florida.
Harold S. Daveler, of Pennsylvania.
Garber A. Davidson, Jr., of Maryland.
James Patrick Donnelly, of Florida.
B. Loc Eckersley, of Pennsylvania.
Stanley D. Handleman, of the District of Columbia.
Lawrence R. Hausman, of California.
Pamela B. Hussey, of California.
Michael Richard Jordan, of Virginia.
James Dellar Kraus, of Virginia.
Owen J. Lustig, of Indiana.
Roderick Fraser MacDonald, of Virginia.
Mark S. Matthews, of Florida.
William A. Meeks, of Virginia.
Ronald Lemoin Nicholson, of Virginia.
Carol A. Peasley, of California.
Richard J. Peters, of California.
John Daniel Pielemeier, of Indiana.
Robert S. Queener, of Maryland.
John Edward Roberts, of Colorado.
Steven William Sinding, of New Jersey.
Jesse L. Snyder, of California.
Thomas W. Stukel, of Virginia.
Charles E. Vann, of Florida.
Ronald Allen Witherell, of Connecticut.

### In the Air Force

The following officers for appointment in the U.S. Air Force to the grade of brigadier general under the provisions of section 624, title 10 of the United States Code:

Col. Jimmie V. Adams, [redacted], Regular Air Force.
Col. Joseph W. Ashy, [redacted], Regular Air Force.
Col. Loring R. Astorino, [redacted], Regular Air Force.
Col. Robert H. Baxter, [redacted], Regular Air Force.
Col. Malcolm F. Bolton, Jr., [redacted], Regular Air Force.
Col. Charles G. Boyd, [redacted], Regular Air Force.
Col. Stuart R. Boyd, [redacted], Regular Air Force.
Col. Edward R. Bracken, [redacted], Regular Air Force.
Col. Denis M. Brown, [redacted], Regular Air Force.
Col. George L. Butler, [redacted], Regular Air Force.
Col. Harold N. Campbell, [redacted], Regular Air Force.
Col. Richard E. Carr, [redacted], Regular Air Force.
Col. David M. Cornell, [redacted], Regular Air Force.
Col. Hugh L. Cox III, [redacted], Regular Air Force.
Col. Richard L. Craft, [redacted], Regular Air Force.
Col. Philip M. Drew, [redacted], Regular Air Force.
Col. David B. Englund, [redacted], Regular Air Force.
Col. Larry D. Fortner, [redacted], Regular Air Force.
Col. James E. Freytag, [redacted], Regular Air Force.
Col. Richard B. Goetze, Jr., [redacted], Regular Air Force.
Col. Frank S. Goodell, [redacted], Regular Air Force.
Col. Richard E. Hearne, [redacted], Regular Air Force.
Col. William L. Hiner, [redacted], Regular Air Force.
Col. Frank B. Horton III, [redacted], Regular Air Force.
Col. John E. Jaquish, [redacted], Regular Air Force.
Col. Frank J. Kelly, Jr., [redacted], Regular Air Force.
Col. Robert H. Ludwig, [redacted], Regular Air Force.
Col. Joel M. McKean, [redacted], Regular Air Force.
Col. Raymond V. McMillan, [redacted], Regular Air Force.
Col. Eric B. Nelson, [redacted], Regular Air Force.
Col. Keithe E. Nelson, [redacted], Regular Air Force, Judge Advocate.
Col. Donald A. Rigg, [redacted], Regular Air Force.

Col. Martin J. Ryan, Jr., [redacted], Regular Air Force.
Col. John P. Schoeppner, Jr., [redacted], Regular Air Force.
Col. John Serur, [redacted], Regular Air Force.
Col. Garryl C. Sipple, [redacted], Regular Air Force.
Col. Donald D. Smith, [redacted], Regular Air Force.
Col. Donald Snyder, [redacted], Regular Air Force.
Col. Dale C. Tabor, [redacted], Regular Air Force.
Col. Earl S. Van Inwegen, [redacted], Regular Air Force.
Col. Henry Viccellio, Jr., [redacted], Regular Air Force.
Col. Charles A. Vickery, [redacted], Regular Air Force.
Col. Frank E. Willis, [redacted], Regular Air Force.
Col. Charles P. Winters, [redacted], Regular Air Force.
Col. Mark J. Worrick, [redacted], Regular Air Force.

IN THE NAVY

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

*To be vice admiral*

Rear Adm. Robert F. Dunn, [redacted], U.S. Navy.