SENATE—*Friday, October 10, 1986*

(Legislative day of Monday, October 6, 1986)

The Senate met at 10 a.m., on the expiration of the recess, 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.

God of Abraham, Isaac, and Israel, it seems providential that the Senate has faced its painful, difficult duty during Rosh Hashana—a time of penitence and dedication to the reign of freedom, justice, and peace—in anticipation of Yom Kippur, Day of Atonement. Thank you Merciful Father, for faithful public servants who honored their stewardship with such sober, reverent demeanor. Having fulfilled their heavy responsibility, may each Senator find rest in the assurance that he acted on obedience to conscience and may each be renewed for the business confronting the Senate these final days. Infuse this place with your wisdom, peace, and love that the 99th Senate may adjourn without regrets and with satisfaction of a job well done.

Lord of history, be with President Reagan as he meets with General Secretary Gorbachev. Guide these two world leaders to understanding, reconciliation, and friendship which will bless all the peoples of the Earth. In the name of the Prince of Peace, we pray. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE of Kansas, is now recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND of South Carolina.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each followed by special orders for Senator HAWKINS, Senator PROXMIRE, and Senator BAUCUS for not to exceed 5 minutes each; and morning business not to extend beyond the hour of 11 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

Following morning business, there are a couple of things we would hope to do today. One is to take action on the drug bill. There are a number of options available. I am not certain any of them are good, but there are a number of options available.

Second, we would like to complete action today on reconciliation. I am not certain how near we are to working out the final two or three differences in an enormous package. But, there are still two or three differences where the views are strongly held on both sides, and I am not certain. The last information I had was that Senator PACKWOOD and Senator LONG had sent another offer over to the House Ways and Means Committee. That was late last evening. As far as I know there has been no report. But if we can do that today, it would certainly be helpful. I hope we can complete our work by Wednesday evening of next week.

I have been visiting some with Senator BIDEN on some way to deal with certain provisions in the drug bill. We hope to convene a meeting later today with Senator THURMOND, Senator BIDEN, Senators on each side of the aisle who played the primary roles in the drugs legislation, Senator HAWKINS, Senator CHILES, and others to see if we can work out some agreement to take action on the drug bill.

TRIBUTE TO SENATOR RUSSELL B. LONG

Mr. DOLE. Mr. President, those of us who have been around the Senate for any length of time know that friendships here are built on special ground. Party affiliation has very little to do with it. It is more a matter of mutual interest, trust, and respect, and we know that as a very select group of American citizens we bear a special responsibility. We rely as friends on those who understand and respect that responsibility.

So it is an honor and a joy for me to call RUSSELL LONG a friend—one of my best friends in the Senate. And his retirement from this body after 38 years of service will create a void that will be hard if not impossible to fill—for me, the people of Louisiana, and for the Nation.

RUSSELL LONG learned politics at the knee of his father and his uncle. So I learned what I know about the Senate and what makes it and its Members run by sitting next to RUSSELL in the Finance Committee.

His knowledge of U.S. tax law is unparalleled. His mastery of Senate rules and procedures legendary. But perhaps his most unique ability is an uncanny sense of what it takes to get something done, and when to do it. It is a form of art—one many of us strive for, but few achieve.

That night back in 1980, when Howard Baker called to tell me I would be chairman of the Finance Committee in January, I said, "That's great, but who's going to tell RUSSELL."

The transition was not an easy one for either of us. But it was made smoother by RUSSELL's accessibility and affability. It also helped that both of us appreciate how important it is to have a sense of humor. I tend to favor one-liners, and RUSSELL tends to favor down-home Louisiana anecdotes. Whatever the style, both of us, I think, understand that while what we do here in the Senate is very serious—it is dangerous to take ourselves too seriously.

When he announced his retirement, RUSSELL said, "Every Senator should decide for himself at what point he thinks he should retire. After 36 years here I've made that decision."

I do not disagree with Senator LONG's contention, though I do regret his decision. The Senate has changed in many ways over the years RUSSELL LONG has served here. But it has not changed so much that we cannot recognize and revere a man as special as RUSSELL LONG.

NICARAGUA

Mr. DOLE. Mr. President, I want to add to some previous comments I made yesterday about the Americans now being held captive by the Sandinistas.

First, in all the hullabaloo about the incident—and the phony Sandinista charges of "CIA involvement" continue to dominate the headlines—the press is giving scant mention to one important fact. If the House leadership had not stonewalled and stalled for months and months on the Contra aid package that both bodies passed in identical form long ago, then official American aid would long since have been going to the Contras.

Private efforts like those in which Mr. Hasenfus was directly involved would not be going on at all. I thought our system was supposed to be one where the majority rules. In this case, the majority in both Houses, a bipartisan majority in both Houses, has

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spoken and spoken in favor of giving the Contras aid.

□ 1010

I believe it is about time that the willful minority—and again that is a bipartisan minority—who happen to be the ones who control the flow of work, particularly in the House, stand aside and let the majority prevail. I find the same people as I watch television at night condemning America and our credibility in Nicaragua are the same ones who have been stonewalling aid to the Contras. You cannot have it both ways. We voted in the Senate two or three times. They voted in the House, And we are still waiting for official aid to the freedom fighters in Nicaragua.

The other point I want to make is this: The headlines are screaming about this one American. It is unfortunate. He is there. About this one American who is trying to help the Contras. But so far I have not seen a word in the papers or heard anything at all on television about what I understand are hundreds of private Americans down in Nicaragua right now helping the Sandinistas.

I do not know what that tells you. It tells me something. If one American helps somebody who wants their freedom, that is headlines. It is not positive; it is negative. But what of all those who are down there helping Daniel Ortega? I do not question the right of these private citizens to do what they are doing, nor do I challenge their motivation—that is up to them. But there seems to be so much hue and cry about Mr. Hasenfus, people raising the Neutrality Act and who knows what else, that maybe it is time we focus some attention on the broader question of Americans, private Americans, involved down there on either side or on both sides.

If we are going to focus on those who are helping the Contras, let us focus on those who are helping the Sandinistas. I asked that this question be raised this morning in the Foreign Relations Committee briefing on the Hasenfus case and I intend to pursue it directly with the administration in the days ahead.

There is almost a frenzy, a panic, in the media to build some gigantic story out of the fact that private American citizens were helping those who want freedom in Nicaragua. I did not know that wanting freedom was such a bad thing.

But I do not see any effort by anyone in the media who is taking a look at what is happening on the other side, or is questioning why Congress has not acted and why we have not helped the Contras.

As I said earlier, had we done what the Congress, in a bipartisan majority said we should do months and months ago, this story would not be on the front page. There would not be any story.

So if anyone is at fault for the predicament we find some of these hapless Americans in, with now two having lost their lives, it is not the administration. The larger question, I believe, if we are going to have an examination of what Americans are doing in Nicaragua, is let us examine both sides, and let us do what we can to free the American who is held captive now by the Sandinistas.

I watched him on television last night. I am not certain be was telling the truth. When you are paraded around by Sandinista goons what are you supposed to tell the American people? He said he worked for the CIA. Did he? I do not know. Maybe we ought to find out.

But if we do that, I think we also, in fairness to the American people who watch the news, who do not believe it all but who watch it and read it, who know there is a liberal tilt to most of it, maybe we ought to hear the other side, too.

RECOGNITION OF MINORITY LEADER

The PRESIDENT pro tempore. The able and distinguished democratic leader, Senator ROBERT BYRD, of West Virginia, is recognized.

Mr. BYRD. I thank the Chair.

THE ADMINISTRATION'S "BORROW AND SPEND" ECONOMIC PROGRAM

Mr. BYRD. Mr. President, this administration's "borrow and spend" economic program has created a veneer of prosperity at a great cost to our future. With President Reagan as the architect, we are building a shining city on a hill that has all the permanence and soundness of the storefronts for a cowboy movie.

For its entire 5 years, this administration's economic program has been controversial. As the economy has become increasingly weak over the last 2 years, the administration has been left with fewer and fewer economic success stories. Now it seems reduced to saying, "Well, at least we have managed to avoid a recession." With each day's economic news, even that feat seems more in doubt.

Back in 1981, we were told that adoption of the administration's supply side program would unleash an unprecedented boom in our economy. Savings and investment would soar, jobs would become plentiful, unemployment would shrink, output and productivity would turn robust, and Government revenues would come pouring in and wipe out the deficit.

As the economy has moved up and down over the last 5 years, so have evaluations of the administration's program. For the first year-and-a-half of the administration's program, the economy took a nose dive steeper than any recession since the Great Depression. Then, for the next 18 months, the economy staged a strong recovery going in to the elections of 1984.

It has now become apparent that the steep upward climb of 1983 and the first half of 1984 did not indicate that the administration's Economic Program would fulfill its long-term promises. Those 18 months of strong growth represented only a rebound which was steep on the upside only because the preceeding recession had been so steep on the downside.

We now have 2 more years of experience by which to judge the legacy of Reaganomics. Although we have avoided recession these last 2 years, all the key indicators of the economy's basic health—employment, real income, GNP, productivity, industrial production, savings, and investment—have stagnated or declined. We must also confront key indicators of the economy's basic sickness: First, uncontrolled trade deficits; second, foreign borrowing; third, an explosion of private and public debt; and, fourth, recent sharp declines in the measures of investor and consumer confidence.

During this administration, the economy has performed even more poorly than it did during the 1970's. The economy was jolted by two recessions and two oil shocks during the decade of the 1970's and turned in a lackluster 2.8-percent average annual growth in real GNP. For the last 2 years, we have not had a recession or major shock to the economy, but we have managed only a 2.5-percent rate of growth. For the 5 years of this administration, we have averaged only 2.2 percent growth.

Employment gains have also been sluggish during this administration. During the 1970's, we were expanding jobs by an average of 2.4 percent annually. If that rate had been maintained throughout this administration, we would have created 14.2 million additional jobs by now. That is 44 percent more than the 9.9 million jobs that have actually been added during the Reagan term.

Our standard of living depends directly on raising our productivity. Unfortunately, during this administration, the rate of increase in productivity has fallen short of the abysmal 1.3-percent rate of the 1970's. The last 2 years have seen a scant 0.8-percent rate of increase in our productivity, less than 1 percent.

With the slowdown in both jobs and productivity, there has been a squeeze on real income growth. Real after tax income of American families grew by 3.3 percent a year during the 1970's. If that rate had been maintained during this administration, American families

would be taking home an additonal $38 billion in income this year. That would be an additonal $430 per American family.

When the administration's supply side program began, the most glowing promises were reserved for savings and investment. Unfortunately, the performances of both savings and investment have been more dismal than anything else. Investment in plant and equipment has grown at half the rate of the 1970's. For manufacturing and mining alone, such investment is actually lower today than it was when this administration took office. Those two sectors would be spending 21 percent more on plant and equipment today if they had increased their spending at the same rate they did in the 1970's.

The large tax cuts granted to corporations and high-income people have not boosted savings as promised. Corporations have spent their tax cuts primarily on mergers, stock buy-backs, dividends, and bonuses for top management. Meanwhile, households are saving much less than they did 5 years ago and the percentage of their income saved has hit the lowest level since the hoarding spree at the outbreak of the Korean war.

Despite the poor health of the economy, Americans have increased both private and public purchases by 20 percent over the last 5 years. That far exceeds the 12-percent growth in national production and income. An unprecedented expansion in debt has permitted families, businesses, and government to increase purchases much more than their incomes, profits, and tax revenues would otherwise permit.

In the last 2 years, the real debt burden of the Federal Government has grown at a 13-percent rate and the private sector has almost kept pace. Nonfarm businesses have added to their real debt load at an 11-percent rate and the burden for households has been compounding at a 9-percent rate.

Just as these individual sectors have been borrowing and spending beyond their means, the Nation as a whole has been spending much faster than it has increased production and income. This shows up in the explosion in the trade deficit and foreign debt. When this administration took office, the Nation was running a modest surplus in its current account, the broadest measure of payments and receipts for trade in goods and services. This year we are expected to run a current account deficit of roughly $130 billion. In the last 6 years, our exports have dropped. To finance our huge surge in imports, we have been forced to sell more than $600 billion in domestic assets.

All this borrowing and spending might be justified if the Nation had chosen to invest heavily to raise our future standard of living. Sadly, the fact is that, the exact opposite has occurred. As I noted earlier, businesses have actually slowed their investment in plant and equipment during this period. Just as important, we have lagged in our investment in education and training. In the last 5 years, we have cut Federal support for retraining programs in half and aid to education by 16 percent, in real terms.

One of Aesop's best-known fables contrasts the grasshopper and the ant. The grasshopper lived for the moment and put nothing away for the future. Meanwhile, the ant carefully stored away food for the winter. We all know who survived the winter and lived to prosper.

Mr. President, this administration has promoted the grasshopper's economic policy for the Nation. We must make a permanent sacrifice of tens of billions of dollars a year just to service our new foreign debts. Instead of strengthening our capacity to pay those debts, we have cut back our investments in people and equipment. We shall pay dearly for this shortsighted policy in coming years. We all know who survived the winter and lived to survive.

Mr. President, I yield the floor.

Mr. PROXMIRE. Mr. President, I congratulate the Democratic leader for his fine speech on the economy, made in spite of a very painful cold.

It is true we have suffered lower growth, less real wages, less full-time employment, poor productivity, as the Senator has so well said, a full-fledged farm depression, more debt—Federal, corporate, and private, personal—than we have ever had in our history, at every level.

Mr. President, we have a miserable trade balance, an almost ruined textile industry, as the Presiding Officer knows better than anybody in the Senate, and a totally ruined shoe industry.

So, Mr. President, I think the Democratic leader made an excellent speech this morning, right on target. I think he is completely right and the facts are undeniable.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 5 minutes.

STAR WARS—THE ROAD TO NOWHERE

Mr. PROXMIRE. The President's latest proposal on star wars in his speech at the United Nations on September 22 would provide for 5 years of research within the limits of the Anti-Ballistic Missile Treaty. It would then provide for 2 years of superpower negotiations about how to share the results of that SDI research between the superpowers and then 6 months' notice before canceling restraints against production of the star wars hardware and its deployment. If this sounds like a reasonable proposition, it is because you have not been following the pronouncement of star wars officials. The President is offering nothing. He gives the illusion of making a concession to the Soviets by slowing the star wars timetable. Is he? No way. The timetable for star wars announced by the President is not slower than the present star wars timetable. It is much faster.

When will star wars, in fact, be ready for deployment? The best informed and also one of the most optimistic experts on star wars is the man who is directing the project, Gen. James Nathanson. He has said that we could not deploy star wars until 1996. The 1996 estimate is almost surely very optimistic. Here we have the most technologically complex military project in history. It will also be far and away the most expensive. An impressive array of experts tell us the computer software necessary to operate this project as a coherent and successful defense is impossible. Scientific and military experts consistently tell the Senate Appropriations Committee that the cost of building and deploying the hardware will exceed $1 trillion and will take 10 years or more to produce and move into orbit after research is completed 10 years from now.

So what does this mean? This means that if—and it's a very big if, indeed—if research has been completed successfully 10 years or so from now and if the impressive majority of scientific experts are wrong when they say the software problem for such an immense and complex scientific project is insoluble, the star wars project might go ahead as early as 1996. But that is less than half the problem. A much bigger part of the problem is whether the Congress that is in office 10 years from now will be willing to spend $100 billion a year in 1986 dollars on a project the President had said we will share with the Soviet Union.

Just think of it, Mr. President, this means that the President and the Congress we elect in 1988 must support full funding of star wars as the cost continues to increase sharply in each successive year. It means the President and the Congress elected in 1992 must also have the same prostar wars commitment. And it means the President who moves into the oval office in 1996 and the Congress must also continue to favor full funding. And the cost goes on.

The President and Congress elected in the year 2000 must also accept the $100 billion annual cost. Keep in mind that the Congress has not given the

President anything like the increased funding for star wars he has called for. This year, for example, the President called for an 80-percent increase in funding. What will he get? About 10 percent, if he's lucky. But the President has to date been asking for $4 or $5 billion. How will Congress react when he needs and calls for $100 billion?

And, Mr. President, this never ends. Former Defense Secretary Harold Brown is today probably the outstanding independent expert in this field. He served as director of the Livermore Lab. He is a world-class physicist. And, of course, he was Secretary of Defense for 4 years. What does this expert tell us of the continuing cost of star wars for maintenance and modernization once it is deployed? Brown has told us that the cost would be $100 billion each and every year in 1986 dollars in perpetuity. That is right—forever.

Mr. President, one of the phoniest aspects of the administration's position is that the Soviets would agree to a big quid pro quo in return for being able to share the star wars technology. The obstacles to this country in building, deploying and successfully operating a star wars system are immense. In the judgment of many experts they are insuperable. The obstacles for the Soviets taking advantage of the star wars technology are much greater.

This country could painfully afford to spend $1 trillion for a star wars system even though that system has about 1 chance in 10 of succeeding. The Soviets could not. This country could afford to spend $100 billion a year to modernize and maintain such a system. The Soviets could not. This country is at least 30 years ahead of the Soviet Union in computer fabrication, operation, and maintenance. Even if we gave the Soviets our star wars computer technology, they could not maintain and operate it.

So what would they do if we proceeded with our star wars missile defense? The answer is simple. They would have no choice. They would build up their offensive missiles to overcome it. That is a sure thing. Why a sure thing? Because the credibility of their deterrent would be at stake. Their status as a superpower would be on the line. They would have no choice except to reject star wars and go sled length for an offensive capability that would penetrate it, underfly it, overwhelm it, spoof it.

Would they succeed? The odds are overwhelming that they would. Most of our independent experts believe star wars could not work. But Mr. President, we would never know. No President of the United States would be able to rely on a system that could never be tested under actual combat conditions, a system that had so little support in the independent, scientific community.

So, what would be this country's response to the predictable Soviet offensive nuclear build up? That's easy. We would match it or surpass it. So star wars would do one thing for sure. It would make effective nuclear arms control impossible. The Soviets would never accept an arms control agreement that would limit or reduce the credibility of their offensive deterrent once we begin to construct and deploy an antimissile system designed to nullify that deterrent. And this is precisely what star wars is designed to do.

So, Mr. President we have a choice. We can spend $1 trillion to build and deploy star wars and $100 billion every year in perpetuity to modernize and maintain it and we will kill arms control in the process. Or we can stop the star wars project and rely on two things to keep the peace: First, a credible American nuclear deterrent—that has kept the peace for 40 years. And, second, a steady progress in arms control that would make the deterrent as stable and invulnerable as possible; arms control that would continue to take every step to prevent the prospect of accidental war and arms control that would limit as much as possible the spread of nuclear weapons.

THE MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, the myth of the day is that Senators control their political campaigns. A few years ago, a campaign for a U.S. Senate seat in essence reflected the views and personalities of the candidates.

These campaigns were "seat-of-the-pants" affairs. A candidate who was well known in the State or district could gather a few friends and mount a serious campaign. To win, you went out and pressed the flesh. Money was important, but it was seldom an insurmountable obstacle. Hard work, and a good pair of shoes, were more important.

What about today's campaigns? You might as well compare Thomas Edison to American Telephone & Telegraph Co., better known as AT&T. Mr. Edison was an entrepreneur while AT&T is a giant corporation, as are many of today's campaigns.

The candidate is surrounded not by a few friends, but by a horde of campaign consultants. These consultants advise the candidate on what to say, how to smile, and where to go. They design the campaign commercials and raise the money to get those commercials broadcast.

Raising money becomes the most important function of the campaign. Without money, first of all, those campaign consultants rapidly lose their enthusiasm. Then media "buys" disappear. Finally, the candidate is left adrift and must resort to a desperation move—going out and meeting the voters. The campaign, at least among the smart money set, has become a joke.

Today's smart campaigns seem to want to hide the candidate. All that money is spent not to identify the candidate but to sell him or her. Hard work becomes less important, cute television more so.

The ultimate danger to this trend is not that voters will be deceived and elect "brand X" candidates. The ultimate danger is that political debate, which literally involves life and death issues, will be debased beyond repair. Down that road lurk demagoguery and demagogues.

Mr. President, there are some hopeful signs that this trend toward corporate campaigns may be cresting. Money, how it's raised and spent, what it buys, and what is sold to raise it has become an issue in a number of campaigns. The voters may well decisively reject this new approach. That would be a happy day for this country.

□ 1030

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRASSLEY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1040

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.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, no Senator seeks recognition at this point. I ask unanimous consent that I may speak out of order.

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

GOVERNMENT CREDIBILITY

Mr. BYRD. Mr. President, State Department spokesman and Assistant Secretary of State for Public Affairs Bernard Kalb resigned Wednesday with an eloquent dissent to the administration's disinformation program.

The administration is right about our national disgust for the likes of Qadhafi, but it is wrong in assuming that anything goes. It is wrong in assuming that the American people share the discouraging view that a good end justifies any means.

Playing fast and loose with the truth is a dangerous course for the officials of any government based on trust. Qadhafi is a gnat in comparison to the importance of the faith of our people in their government. Once a lie is discovered, can the words of the perpetrator ever be heard again without skepticism?

I regret that the administration did not better evaluate the consequences of misleading the press in terms of future credibility. At this point in our history, when trust in elected officials is already at a low point, the problem need not be exacerbated. The greatest mistake we who believe in a democratic government can make is to lose sight of the fundamental pillars of our way of life because of the heat of the moment. Certain trust cannot be violated without serious and far-reaching costs.

The Washington Post's October 8 edition reports the crash of an aircraft, shot down in Nicaragua. On the same page that the Post reports charges of CIA involvement by the Nicaraguan Government and assertions by the wife of an American survivor that her husband worked for the CIA, the Post reports a denial of any CIA involvement by the administration. Coming on the heels of the disinformation campaign, can anybody read these accounts with any confidence in the denial? This is not the first time that the Reagan administration has applied its own standard of truth. David Stockman "cooked" the numbers, destroyed the integrity of the budget process, gave us the magic asterisks, and gave us the deficits bleeding our Nation's future. The contrast between word and deed is, I fear, deepening within this administration. Saying that a summit is not a summit, that a deal is not a deal, that a swap is not a swap, serves to reinforce the perception that the truth to this White House is only what the administration thinks it ought to be on any given day.

Words have meaning. When they lose their integrity, they lose their meaning and are no longer believed. When there is no longer faith in the integrity of the leadership of a nation the essential bond that binds that nation together is lost.

Those of us who have been in politics for a long time certainly understand the art of putting the best face on a case. But, when the administration foolishly compromises its credibility and the international credibility of our country by deliberate means, it damages us all and it does the citizens of this Nation a grave disservice.

I urge that a closer look be taken at the consequences of promulgating "disinformation" by those at the White House who make public pronouncements. The resignation of Mr. Bernard Kalb in protest on October 8 should drive home a hard lesson. Trust once lost is a hard commodity to regain, and the loss of that trust will have ramifications for Mr. Reagan, his successor, and indeed, for all public officials.

It has taken years for us to recover from the national trauma of Watergate. Those of us who hold public trust should not make the egregious mistake of deliberately misleading the people. No cause excuses that violation. No end justifies that means.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the resignation announcement by State Department spokesman Bernard Kalb on Wednesday, October 8, 1986.

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

RESIGNATION ANNOUNCEMENT BY STATE DEPARTMENT SPOKESMAN BERNARD KALB

BERNARD KALB. I'm a little later than usual, but sometimes these things do happen. I just want to share some thoughts with you against the background of what Chuck said about an hour or so ago.

Much to my surprise, and perhaps to a lot of other people, I've been in this job as spokesman and as Assistant Secretary of State for Public Affairs for almost two years, a journalist-turned-spokesman. The guidelines that go with the job were set forth by Secretary Shultz: No lies, no misleading, to be as forthcoming as possible within security constraints. I've sought to abide by those guidelines. I've sought to expand the frontiers of official disclosure; that is, by handling (?) a newsman's requirements in the building to try to get out as much information as possible.

You may have felt at times that I was offering you more calories than vitamins. But I did not, in keeping with the Secretary's credo and my own credo, I did not throw in any artificial additives. But now a controversy has swirled up around a question of credibility. According to a published report, there was a memo forwarded by the National Security Advisor that talks about what is called in this report a disinformation program. I take it you've read it in the newspapers.

So you face a choice—as an American, as a spokesman, as a journalist—whether to allow one's self to be absorbed in the ranks of silence, whether to vanish into unopposed acquiescence, or to enter a modest dissent. In taking this action, I want to emphasize that I am not dissenting from Secretary Shultz, a man of integrity, a man of credibility. Rather, I am dissenting from the reported disinformation program.

I'm concerned about the impact of any such program on the credibility of the United States. Faith in the word of America is the pulse beat of our democracy. Anything that hurts America's credibility hurts America. And then, on a much, much, much lower level, there's the question of my own credibility, both as a spokesman and a journalist—a spokesman for a couple of years, a journalist for more years than I want to remember. In fact, I sometimes privately thought of myself as a journalist masquerading as a spokesman. In any case, I do not want my own credibility to be caught up, to be subsumed in this controversy.

It seems that in the last few days the controversy has dropped off, or so it seems. I even read a story about Western Europe apparently shrugging off the story. The controversy may vanish, but when you are sitting alone, it does not go away. And so I have taken this step of stepping down.

A couple of other things I'd like to say at this point. I want to say that I remain grateful to Secretary Shultz for having offered me the honor, a couple of years ago, of serving our country. It has been a rare, it has been a precious experience to have had the opportunity to be with him as he sought to advance America's interests, to make the world safer for us all. To me, he is a monument of credibility, integrity, courage, strength. And I've encountered these same qualities with my other colleagues here in the State Department.

I'd like to take a moment, too, to thank the Secretary for the kind words he said about me that Chuck shared with you a little while ago.

And a final word, if I may, that my best wishes go to the President and the Secretary as they get ready for Iceland, that they succeed in their continuing efforts to advance the cause of peace.

That's about what I have to say.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, seeing that no other Senator wishes recognition, I wish to speak on another subject, out of order.

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

Mr. BYRD. I thank the Chair.

□ 1050

PRAYER AND THE SENATE

Mr. BYRD. Mr. President, as the 99th Congress draws to a close, I want to express my appreciation to our Chaplain, Dr. Halverson, for his contributions to our daily work here in the Senate.

Some people do not understand the Senate Chaplain's place in and significance to the Senate's life. The prayers that initiate each day's meeting of the Senate have a long history, however, and are, I believe, a vital part of the Senate's heritage, tradition, and atmosphere.

Chancellor Otto von Bismarck once remarked that, "Anybody who loves sausage or the law should never watch either being made."

That epigram is quite realistic, and perhaps as a result of that truth, we have our daily invocation by the Chaplain or by a guest minister.

During the Constitutional Convention nearly 200 years ago, divisions, wrangles, disputes, animosities, and quarrels hit such a peak that, at times, the very existence of the new American Republic seemed threatened.

At that point, Benjamin Franklin, who was the oldest member of that gathering, stood to his feet one day and addressed the chair in which sat Gen. George Washington, the future first President of the Republic.

Franklin said to Washington and to the illustrious gathering about him:

Sir, I have lived a long time. And the longer I live, the more convincing proofs I see that God still governs in the affairs of men. If a sparrow cannot fall to the ground without our Father's notice, is it possible that we could build an empire without our Father's aid? I believe the sacred writings, sir, which say, "except the Lord build the house, they labor in vain that build it.

Except the Lord keep the city, the watchman waketh but in vain."

Franklin went on to say:

I move you, sir, that henceforth we begin our deliberations with prayer, else we shall succeed no better than did the builders of Babel.

So that wise gathering heeded the admonition of that wise man, Benjamin Franklin, and henceforth there was prayer at the beginning of each day's deliberations.

The result was that out of the convention evolved the greatest document of its kind that was written, the Constitution of the United States.

Upon the closure of that convention, Dr. Franklin was approached by a lady who, coming up to him, said, "Dr. Franklin, what have you given us?" His response, "A Republic, Madam, if you can keep it."

Well, a part of keeping that Republic, Mr. President, is our remembrance of the Divine Being who watches over this Nation, who watches over it and guides it. We must not forget that the people who founded this Republic and those who founded the colonies before it, who hewed the forests before that, and who carried—from the shores of the Atlantic Ocean across the Alleghenies, across the prairies, to the great Pacific—an axe, a bag of seed, a rifle, and a Bible believed in an omnipotent God who would guide their footsteps and favor their undertakings.

Those founders of this Republic believed in a higher power. Some were Catholics, some were Jews, some were Methodists, Presbyterians, Episcopalians, Baptists, Lutherans, Quakers, men and women of all denominations and descriptions, but whatever their denominational faiths, their beliefs in God were unshakeable.

That was the kind of faith that built this great Nation. That is the kind of faith that, in Dr. Franklin's words, "will preserve this Republic."

We find that spiritual awareness running like a long, unbroken thread throughout the history of our country, as President after President, from George Washington to Ronald Reagan, have referred to a divine providence, all of them in their inaugural addresses.

Wise, experienced man that he was, Franklin saw his colleagues becoming swamped in regional pettiness and lost in legal trivia. Franklin realized that many in the Constitutional Convention were losing sight of the importance of giving our country a philosophical foundation and a framework based on an eternal perspective. The daily prayer that Franklin suggested was intended to shed the light of the divinity on the mundane job of writing a constitution, paragraph by paragraph and article by article. Thus, Franklin reminded his colleagues of the sacred work that they were about.

The process of legislating today is not much more attractive perhaps than when Bismarck made his observation or when Franklin made his suggestion. But I believe that we have proved Franklin correct every day by beginning our deliberations with prayer.

Too often, like our predecessors in the Constitutional Convention, we can become bogged down in the intricacies of our work. Parliamentary procedures, quorum calls, amendments, concurrent resolutions, joint resolutions, simple resolutions, everything that we do here has a purpose. But sometimes even Senators can lose sight of the great goals toward which we are laboring in our legislating, bill by bill, amendment by amendment, hearing by hearing, and conference by conference. The Chaplain's prayer helps keep our eyes focussed and our hearts tuned to a much clearer frequency, and to help us to be steadier in our larger purposes.

We need only again to turn to the inscription over this door back of me and fronting the Presiding Officer. Over that door are the words "In God we Trust."

In God we trust. This kind of Biblical perspective on life allows our daily concerns in this Chamber to assume more realistic proportions and helps us not to lose sight of the vast forest while we are tangled in the legislative underbrush.

Mr. President, I am a firm believer in the principle of the separation of church and state. Around the world, we witness the catastrophes wrought by sectarian bitterness, particularly when one sect subverts the power of the state to its own advantage. The arm of the state should never be an appendage of one sect or another.

But though I believe in the separation of church and state, I do not believe in the exclusion of God from our national life, or the divorce of religious and eternal principle from the legislative process. Indeed, like Benjamin Franklin, I believe that no nation can fully succeed without divine involvement in its affairs or in the lives of its people. Throughout our history, eternal inspiration has played a decisive role in American life. That is appropriate, and that should be a matter of gratitude and a cause for thanksgiving by all Americans.

Again, then, I thank Dr. Halverson for his sincere labors to remind us each day of our responsibility to God and to cast our work together in the Senate in the light of God's judgment. The prism of Biblical faith changes man's view of truth, legislative or otherwise. In their invocations, Dr. Halverson and those guests who are invited here from time to time stand before us to keep our minds set on the high calling that is ours, and they help us to steer this Nation aright. For that service, I and all of our colleagues are grateful.

The Lord is my shepherd; I shall not want.

He maketh me to lie down in green pastures: he leadeth me beside the still waters.

He restoreth my soul: he leadeth me in the paths of righteousness for his name's sake.

Yea, though I walk through the valley of the shadow of death, I will fear no evil: for thou art with me; thy rod and thy staff they comfort me.

Thou preparest a table before me in the presence of mine enemies: thou anointest my head with oil; my cup runneth over.

Surely goodness and mercy shall follow me all the days of my life: and I will dwell in the house of the Lord forever.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will 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.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business with statements therein limited to 5 minutes each.

The Senator from South Carolina.

ORDER VITIATING SPECIAL ORDERS FOR SENATOR HAWKINS AND SENATOR BAUCUS

Mr. THURMOND. Mr. President, I understand the two special orders, one by Senator HAWKINS and one by Senator BAUCUS, have been canceled.

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

Mr. INOUYE. 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.

□ 1120

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

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

THE SENATE CHAPLAIN

Mr. GRASSLEY. Mr. President, I had the opportunity while I was presiding over the Senate to listen to the statement of the Senate Democratic leader on the role of the Chaplain in the U.S. Senate, and a dissertation on the spiritual foundation of our Nation.

I want to compliment the Senate Democratic leader for that statement. Hopefully in the process of my complimenting him and bringing the atten-

tion of other Members to the statement, it will be read by those who could not hear it and also, hopefully, even people beyond the Senate paying considerable attention to it. I think it is very important and very worth noting when a person as important in the leadership of the country as the Senate Democratic leader states those standards and reminds all of us as to the heritage of our country. I want to particularly compliment him for that role he just played, and also to say that I very much agree with his statement and only wish that I had had the opportunity to be here on the floor and to expand on it at that particular time.

LOWER COLORADO WATER SUPPLY ACT

Mr. JOHNSTON. Mr. President, H.R. 5028, the Lower Colorado Water Supply Act, is an excellent piece of water legislation. It is necessary because the city of Needles, CA, and various individuals will soon lose their Colorado River water supplies as a result of full operation of the central Arizona project. The bill would authorize the Bureau of Reclamation to drill wells near the All-American and Coachella Canals—which are connected to the Colorado River—for purposes of tapping a large aquifer that has developed from canal seepage and natural ground water. Water from the aquifer would be placed into the canals, thus allowing the city of Needles and other beneficiaries to make equivalent withdrawals from the Colorado River.

Mr. President, this bill should satisfy even the harshest critics of the Reclamation Program. The authorization is for the relatively small sum of $1.8 million. The portion of this cost not allocated to Federal beneficiaries is reimbursable with full interest. Under the provisions of an amendment to be offered by Senator METZENBAUM, the bill will also require operation and maintenance expenses to be paid on a current basis and require the city of Needles and other incorporated entities to provide 20 percent up-front cost shares.

I think that this legislation is demonstrably in the public interest and urge its passage.

TRIBUTE TO SENATOR PAUL LAXALT

Mr. HECHT. Mr. President, the adjournment of the 99th Congress brings to a close the Senate career of PAUL LAXALT. I am sorry to say he is leaving this great body, Mr. President, because in the over 20 years of our friendship, PAUL LAXALT has been a true friend and adviser and I will miss his presence greatly.

As Nevada's favorite son, Mr. President, PAUL LAXALT has proven that the spirit of the West is transplantable to this body. He lent that spirit to the Reagan revolution which has brought about a strong and revitalized economy, renewed worldwide respect, and peace and prosperity at home. He has accepted the call of his President in difficult international situations, and has successfully led his party to increased prosperity and stature.

While PAUL has served his country above and beyond the call, Mr. President, his first and foremost commitment has always been to Nevada. PAUL LAXALT has shown the world that Nevada is one of our most beautiful States and has contributed greatly to making Nevada one of America's fastest growing. I attribute these facts to the very presence of PAUL LAXALT as a Member of the U.S. Senate, but even more to his stature as a truly American leader in the tradition of our greatest statesmen.

We of this body, Mr. President, will miss PAUL LAXALT. His record is a legacy for us all to serve by. In the near future, Mr. President, I have an inclination that PAUL LAXALT will once again accept the call to leadership of this great Nation. We send him off with all best wishes.

TRIBUTE TO SENATOR BARRY GOLDWATER

Mr. HECHT. Mr. President, the 99th Congress could not come to a close without acknowledging the brilliant and distinguished career of my good friend from Arizona, Senator BARRY GOLDWATER. In 1963, Mr. President, it was BARRY GOLDWATER who's call to conscience instilled in me what it was to be a conservative. He extolled the virtues of why America must have a strong defense and defend her borders from aggression, why we must exercise fiscal restraint at the Federal level to keep America prosperous, and why we must fight tyranny in the form of communism wherever it rears its ugly head. He is known to us and the Nation as "Mr. Conservative" and no more fitting label could be applied to what he stands for and the way he has served in public life.

Mr. President, BARRY GOLDWATER is a man of wisdom and uncanny commonsense. He is one of our most respected and inspirational Members who I am sure will go down in the history books as one of this bodies greatest and most valued Senators. BARRY GOLDWATER will be missed as an honest and sure voice, Mr. President, and while we regret his departure, we wish him all the very best for the future.

THE CLAIBORNE IMPEACHMENT TRIAL

Mr. DECONCINI. Mr. President, an impeachment trial is a rare event, thankfully. Our corps of Federal judges on the whole are a marvelous collection of people who exhibit the combination of intelligence, fairness, and integrity. It is a sad day for them and for the country when we are made aware that a Federal judge has so conducted himself that a jury finds beyond a reasonable doubt that the judge is guilty of a felony. Our duty in the legislative branch, first to bring articles of impeachment and then to conduct a trial, must follow if the convicted individual has not resigned.

Having observed Judge Harry Claiborne over a number of days during hearings of the Special Impeachment Committee that received evidence, and having observed the various witnesses before that committee and reviewed the written record of events related to Judge Clairborne's activities, I concluded that Harry Claiborne violated his high position of public trust and must be removed from office.

The evidence that he violated the criminal tax laws is overwhelming. Let me briefly summarize some of the factors that led me to this conclusion.

I will begin with tax year 1980. This was the year that Claiborne changed from his accountant and friend of 30 years, Mr. Joseph Wright, to Jerry Watson of Creative Tax Planning. For the second straight year, Claiborne engaged in what may be described as surreptitious cash transactions by cashing a large check at a local casino rather than depositing it in his bank.

For the taxable year 1980, Claiborne substantially understated his taxable income. He failed to recognize a $214,812 capital gain, and failed to report $87,912 in legal fee income. This was in addition to his salary as a Federal judge, $54,000, and his investment income of $2,751. On this income well in excess of $300,000, Claiborne paid a total tax of $1,103. His tax liability, had it been paid as required by law, would have been $97,864. It is inconceivable to me that this would not have raised questions in Claiborne's mind.

Other factors on this return are also most troubling. The errors that were made just happened to be on forms that are not ordinarily reviewed by the IRS in their automatic data verification. The offsetting of ordinary income against supposed capital losses on schedule D defies belief. The attempt to take a capital loss of $250,000 on a sale that never occurred is preposterous. The wholesale miscalculation of the sale of his home—all errors being in his favor, naturally—simply adds to list factors that make me believe that Claiborne knowingly and willfully winked at obvious errors on

his tax return that redounded to his benefit.

Claiborne was also convicted by a jury for willful violation of the tax laws as they related to his 1979 return. In short, the evidence is that Claiborne again underreported his income from legal fees by about one-half. Claiborne received approximately $44,000 in legal fees from his former legal associates. He reported a little over $22,000 of this to his accountant. Contrary to his long held practice of cashing checks received for legal work, he cashed 8 of the 14 checks he received in 1979, at local casinos.

The total amount of legal fee income in 1979 is variously reported by Claiborne. In a letter of circa March 1, 1979, to his account, Claiborne claimed legal fee income of $45,371; in a letter Claiborne claims to have sent to Wright on April 11, but which Wright has no knowledge of, Claiborne claims income of $41,073; on his May 15, judicial ethics disclosure form he listed income of $23,050; and finally, on his tax return he listed income of $22,332. Four different figures within 100 days. The net result was that Claiborne underreported his income by approximately $18,000.

Claiborne was convicted for his violations of the tax law for 1979 and 1980, but these years only appear to be a part of a much larger pattern of underpayment of his taxes. In 1978, he was required to pay a tax deficiency of approximately $75,000 on his 1977 return; we have discussed his underreporting in 1979 and 1980; but yet again in 1981, as a result of his claim of a tax loss carryforward from 1980, he offset, illegally, $40,000 in ordinary income against this capital loss, as well as taking the $3,000 deduction he would have been entitled to if the underlying transaction has not been fraudulent. It certainly appears that Claiborne engaged in a long-term pattern of tax evasion and misrepresentation.

Mr. President, throughout the proceedings, I have been troubled by what I sense is an evasion by Judge Claiborne of the issues for which he is being tried. As the chairman of the House Managers stated during his presentation, Judge Claiborne wants us to try everybody but Harry Claiborne. His testimony before the full Senate is devoid of any comment of explanation concerning his 1980 return; it does not try to explain how he justified his payment of just over $1,000 in taxes in 1980 when every indicator pointed toward payment of a higher amount. Indeed, just weeks before he filed his return he had written a check to the IRS for over $20,000 when he assumed his liability to the Government for that year would be about $43,000 in total. His testimony doesn't explain why, when in 1979, his accountant, Joseph Wright, asked him for checks for $16,000 and $4,000 to pay his 1979 tax liability and make his quarterly payment of estimated taxes for 1980, he instead gave Wright checks for $8,000 and $2,500.

One excuse we did hear from the judge was that he was overworked. Now, I can sympathize with many Federal judges I know who do put in long and strenuous hours, but the statistical record reflects that Harry Claiborne didn't even match the average productivity of his brethren. For example, in 1979, Claiborne disposed of 185 cases, the national norm was 325; in 1980, Claiborne disposed of 303 cases while his brethren averaged 349; it was the same again in 1981 with Claiborne at 245 and the national average being 384; and again in 1982 with the national average being 409, for Claiborne it was 351. I realize that statistics don't always truly reflect workload, but a multiyear sampling like this certainly might lead one to conclude that Claiborne wasn't quite the dynamo of judicial activity that he portrays.

Finally, I would like to express my overall concern about Judge Claiborne's fitness and integrity to serve on the Federal bench. Symptomatic of this general concern are the actions taken by Judge Claiborne in the *Matter of the Sealed Affidavit; U.S.* v. *Joseph Agosto; U.S.* v. *the United States District Court for the District of Nevada,* 600 F.2d 1256 (1979). This was a case in which Judge Claiborne unsealed and released to Oscar Goodman, a 131-page master affidavit describing an ongoing Federal investigation of substantial proportion. A similar affidavit had been sealed by another Federal judge until a later date "to avoid disrupting the nationwide investigation of which the Las Vegas investigation was a part." In so releasing these documents, I believe Judge Claiborne exercised extremely poor judgment. I say this with the greatest of understatement. In looking back upon the seeds of the distrust with which the Las Vegas strike force viewed Judge Claiborne, this event may well have been the catalyst to later aggressive behavior on their part. It is clear that the strike force concluded that the judge, by releasing this information, had not merely engaged in poor judicial judgment, but possibly in actions a good deal more sinister in their import.

Mr. President, I would like to conclude by praising Senators MATHIAS and SARBANES for the diligence and fairness with which they conducted the committee of 12 that received evidence in this case. Every effort was made to give Judge Claiborne the greatest possible latitude in seeking evidence and witnesses. At all times these gentlemen, as chairman and cochairman, exhibited the highest values associated with due process and the rights of the individual. The same can also be said for the other members of the committee. The high level of discussion and interest in the rights of the individual and fair play carried over to the closed Senate debates and I congratulate my colleagues for their professionalism.

Finally, I would be remiss if I didn't heap particular praise on the Senate Legal Counsel's office so ably headed by Michael Davidson. Mr. Davidson was thoroughly professional at all times, under the most trying of circumstances, and battling legal issues for which no precedents existed. At all times he has been a credit to the legal profession and to the Senate. He was ably assisted by Ken Benjamin, Nancy Bradshaw, Morgan Frankel, Sarah Fox-Jones, and Barbara Thoreson. We appreciate their dedicated public service and that of the staff of the Rules Committee.

I also want to thank Bob Feidler, counsel to the Senate Judiciary Committee, who has worked closely with me on this matter, and two outstanding legal interns with the committee, Brad Kerby and Doug Drury, for all their assistance.

TRIBUTE TO SENATOR GARY HART

Mr. HATFIELD. Mr. President, as we wind down the 99th Congress, our range of emotions is somewhat limited. We have been worn to weariness by long days filled with elation, frustration and sometimes resignation. But despite our numbness, we still are aware of the impending loss of six retiring Senators, including the senior Senator from Colorado.

GARY HART came to the U.S. Senate with an established record as a creative thinker equally at home discussing local issues or debating global policy. He has honed a keen knowledge of politics from the grassroots level on up to the national level. In his two terms, GARY has gained the respect of the Members of this Chamber and gained national prominence because of his commitment to finding solutions to difficult problems.

Despite our placements with respect to the center aisle, GARY and I often have found ourselves in agreement regarding matters of military and foreign policy. GARY has long spoken out for the need to gain agreement with the Soviet Union to curb the nuclear arms race. His critiques of our conventional defense system have shed new light on the argument that "more is not necessarily better" when it comes to weaponry; he has challenged us to rethink our military policy.

For the past 17 years the United States has had a moratorium on production of lethal nerve gas weapons. GARY and I have worked side-by-side to deny the administration the option

of replacing our existing stockpile. Together we shared the belief that these terrible weapons should never again be used on mankind. I will miss a trusted ally in this cause.

I doubt that GARY is foresaking politics to pursue a career as a full-time mystery writer. As he leaves the U.S. Senate and follows a new path, I am hopeful that my friend and colleague will find personal satisfaction and success, and I wish him all the best.

RETIREMENT OF SENATOR BARRY GOLDWATER

Mr. HATFIELD. Mr. President, I do not look forward to adjournment because it will mark the close of the distinguished Senate careers of a number of my colleagues and friends. One such friend is the Senator from Arizona, Senator BARRY GOLDWATER. Known as a Senator who is truly "one of a kind," he has been one who has never lost perspective or taken himself too seriously during the time I have known him.

My relationship with Senator GOLDWATER began in 1964 when I was a delegate to the Republican National Convention. At the time I was Governor of the State of Oregon. Although I went to the convention as a committed Rockefeller delegate, I left as a supporter of the Goldwater/Miller ticket.

During the many weeks of campaigning for the Goldwater/Miller ticket, I was frequently asked if I had changed my political views? People found it difficult to reconcile my positions on the issues of the day with my strong support for BARRY GOLDWATER. No, Mr. President, I had not changed my views. My support for BARRY GOLDWATER in 1964 was not based on his adhering to my political philosophy or on my adopting his philosophy. My support was on the basis of his strong character and personal integrity and devotion to the decentralization of Government, which transcended our political differences.

Throughout our service together in the Senate, my deep respect for the distinguished Senator from Arizona has remained constant. In characteristic fashion, Senator GOLDWATER has always been fair and forthright. Although our differences on issues at times have been very strong, he has not allowed those differences to rupture our relationship.

Mr. President, the Senator's high degree of integrity, strong convictions and dedication to public service over the years have been the backbone of his successful political career. His willingness to hold firm to his convictions of what America should be, at home and abroad, has been a powerful example to us all. The retirement of the Senator from Arizona will be a loss to the Senate and to the Nation.

TRIBUTE TO SENATOR THOMAS EAGLETON

Mr. BOREN. Mr. President, when THOMAS EAGLETON first began his political career as circuit attorney in St. Louis, he was often referred to as Missouri's "boy wonder." During 30 years of public service, Missouri's "boy wonder" has evolved into an outstanding legislator whose service to his State and our Nation will not be forgotten. The end of the 99th session of Congress will signify the end of Senator EAGLETON's third and final term in this body and we wish him well in his future endeavors.

Senator EAGLETON has earned the respect of his colleagues through his consistent dedication to the people of Missouri and to his country. The vast knowledge which he has brought to a variety of issues has contributed to his legislative success. He is that rare breed of politician who is willing to do what he believes is right rather than what is politically popular or personally advantageous at the time.

A man of indominatable spirit, THOMAS EAGLETON is recognized as one of the most effective Senators in floor debate. His ability to bring clarity and insightfulness to even the most complex issues is respected by Democrats and Republicans alike.

Senator EAGLETON has played a key role in the enactment of several pieces of significant legislation in the past 15 years. During his years as a member of the Labor and Appropriations Committees, TOM EAGLETON has led the way in providing improved services to our Nation's elderly. He was a primary figure in establishing the National Institute on Aging and for expanding the services available to the elderly under the Older Americans Act.

Senator EAGLETON's concern for the U.S. involvement abroad has prompted him to take an active role in a wide-range of foreign policy issues. THOMAS EAGLETON has worked with determination to establish limits on the President's war-making powers. In 1973 he led the successful campaign to cut off funds for the United States bombing of Cambodia. In 1974 Senator EAGLETON was instrumental in the passage of the Turkish arms embargo after Turkey used American-supplied weapons in its invasion of Cyprus. As a member of the Senate Foreign Relations Committee, Senator EAGLETON has remained actively concerned over United States foreign policy, with particular regard for our role in the conflict in Lebanon.

THOMAS EAGLETON is a man of enormous personal courage and public dedication. His notable abilities and perserverance as a legislator have earned him both the respect and the admiration of his colleagues. His popularity in his home State of Missouri has never been challenged. I join with the other Senators and Members of Congress in expressing our deep appreciation to Senator THOMAS EAGLETON for his outstanding service to our country.

TRIBUTE TO SENATOR BARRY GOLDWATER.

Mr. BOREN. Mr. President, when the 99th Congress adjourns it will mean that this body must say farewell to one of its most esteemed and senior Members, Senator BARRY GOLDWATER of Arizona. His contributions to our Nation as a Senator will be sorely missed.

Senator GOLDWATER is a man of principle and of the utmost integrity. His personal political philosophy, which includes a staunch belief in the free enterprise system and in individual freedom over Government regulation, has made its mark on our Nation. He has worked diligently to preserve our Nation's military strength.

I have been honored that he has been the principal coauthor with me of campaign finance reform legislation to limit the amount of political action committee money going into Federal election campaigns. His support of this much-needed reform will be missed next year when we renew our battle to gain enactment of this change in our campaign laws.

As chairman of the Senate Armed Services Committee, this year Senator GOLDWATER has accomplished what would have earlier been termed an impossible task—the most comprehensive reorganization of the Department of Defense in DOD history.

When asked recently by a newspaper reporter what I would term the greatest success of the 99th Congress, I cited Senator GOLDWATER'S Pentagon reorganization bill. This legislation, which Senator GOLDWATER pursued with a single-minded purpose, will do much to eliminate the parochial views of the separate branches of the armed services that presently often impede interservice cooperation and the giving of coherent military advice to the President. It does so by granting more authority to the Chairman of the Joint Chiefs of Staff and other major Pentagon entities who are charged with coordinating the operations of the separate services.

Senator GOLDWATER has also served this body and his Nation for 4 years as chairman of the Senate Select Committee on Intelligence, where he took an active role in the important congressional oversight responsibilities of U.S. intelligence activities.

As a member of the Senate Small Business Committee, Senator GOLDWATER has propounded his staunch belief in the free enterprise system and his feeling that our economy is better off with less Government regulation of private business. He has said

that unless overburdensome Government regulation is stopped, "This country will face a full-fledged economic collapse of its free institutions."

During his service as chairman of the Commerce Subcommittee on Communications in 1981, Senator GOLDWATER successfully gained passage of legislation to deregulate the telecommunications industry. Later, in 1984, he won passage of a bill to establish a national policy for cable television.

Senator GOLDWATER has supported a constitutional amendment to require a balanced Federal budget and has continually recognized the importance of our Nation's energy independence to our overall national security, opposing a windfall profits tax and supporting deregulation of oil.

Senator GOLDWATER started his political career while managing his family's department store in Phoenix when he was elected to the Phoenix City Council in 1949. In 1952, he defeated Senate Majority Leader Ernest W. McFarland to take his seat in the U.S. Senate, interrupting his Senate service only once, between 1964–68 to run for President of the United States on the Republican ticket in 1964.

He is a graduate of Staunton Military Academy and attended the University of Arizona. He served in the U.S. Army Reserves and Air Force Reserves for 37 years, attaining the rank of major general USAFR.

Senator GOLDWATER has served his country and this body at great personal sacrifice. I first met Senator GOLDWATER while I was still a college student and had the privilege of introducing him to a forum at Yale University. Since then I have been privileged to count him as a personal friend. His encouragement has meant a great deal to me. His example of absolute integrity and devotion to principle has exerted a substantial influence upon countless young people who aspired to be public servants in the highest and best sense.

Within the U.S. Senate as an institution, BARRY GOLDWATER has himself been an institution. His hard-working ways, unfailing support of his political philosophy and principles, and his honest, no-nonsense remarks about the direction our country should be taking can never be replaced.

I have no doubt that Senator GOLDWATER will continue to make contributions to our country in his new role in the private sector. I join all my colleagues in this body in thanking Senator GOLDWATER for his service to his State, his Nation, and to the U.S. Senate.

□ 1200

DEATH OF BILL TESINSKI

Mr. MELCHER. Mr. President, this evening in Great Falls, MT, there will be the funeral services for Bill Tesinski who is 38 years of age and met a very tragic and untimely death a few days ago.

Bill Tesinski was a mechanic at the City Motors in Great Falls for some 19 years, half of his life, and of late he has been an amateur photographer of some note. Over the past weekend Bill was involved in attempting to take some pictures in Yellowstone National Park. No one witnessed his death. It occurred because of a grizzly bear. Bill was not attempting to take pictures of grizzly bears. He was attempting to take pictures of elk when this accident, this tragic accident occurred.

He had been missing from home for a couple days and it was unexplained. He was thought to be taking pictures in other areas of Montana.

The remains of Bill Tesinski were found by park rangers in Yellowstone near Canyon when they became aware of the presence of a female grizzly who had returned to the area, having spent most of the summer in that particular area with her two cubs. The grizzly had been removed from there by the park rangers to a considerable distance to the eastern edge of Yellowstone National Park. So when she was collared with a signaling device, that was picked up by the park rangers monitoring the signaling devices and the park rangers went there just to see where she was. They found the grizzly or saw the grizzly bear from a distance and it was dragging off something and upon coming closer they found that it was the remains of Bill Tesinski.

The grizzly bear was shot and killed then as is the management practice of the park rangers in Yellowstone when it happens to be a grizzly that attacks a human being.

□ 1210

I talked to the family to offer my condolences.

RESOLUTION URGING GRIZZLY BEAR STUDY

I am now submitting in the Senate today a sense-of-the-Senate resolution that I believe might help avoid tragedies like this in the future.

Mr. President, all of us in the country and perhaps throughout the world want to protect this endangered species, the grizzly bear. But we also want to alleviate the conflict between grizzly and man.

The sense-of-the-Senate resolution that I am submitting today merely instructs the Secretary of the Interior, using both Federal and private wildlife biologists, to institute an investigative study in one or more experimental programs in managing grizzly bears in the Yellowstone National Park with a set of goals.

The first and most primary goal is to avoid the conflict between man and grizzly bears. I would hope that we can have enlightened management of grizzly bears and avoid such tragedies as befell the Tesinski families. To his parents and to his daughters, Shantal Lee Tesinski and Monique Marie Plant, I offer my heartfelt condolences.

The resolution is as follows:

Resolved, That it is the sense of the Senate that the Secretary of Interior using federal and private wildlife biologists shall institute an investigative study and one or more experimental projects in managing grizzly bears in Yellowstone National Park with these goals:

1. Avoiding conflict between man and grizzly bears.
2. Assuring stability of the numbers of the Yellowstone Park grizzly aggregation.
3. Documenting the nutritional needs of grizzlies necessary for normal reproduction.
4. Determining whether the effects of eco-center management would contribute to alleviate conflict and secure grizzly nutrition.

Mr. MELCHER. Mr. President, I ask unanimous consent that an article by Bert Lindler of the Great Falls Tribune staff be printed in the RECORD.

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

[From the Great Falls Tribune, Oct. 8, 1986]

MISSING GREAT FALLS MAN DEAD IN PARK

(By Bert Lindler)

A Great Falls wildlife photographer missing since Saturday evening in Yellowstone National Park was found dead Tuesday morning by rangers who killed a grizzly bear standing near his partially consumed body.

Park officials were withholding the man's name pending notification of next-of-kin.

Yellowstone rangers noticed the man's car parked along the road between Canyon and Lake both Saturday and Sunday.

When the car was still there late Sunday night, rangers ran a license check to see if they could find out why the car hadn't been moved.

Monday afternoon rangers were able to contact friends and relatives who told them the man had left Great Falls Friday and expected to return Saturday evening. They thought he had been taking pictures in the Crazy Mountains and had reported him missing there.

A hasty search was begun Monday evening while a major search was planned for Tuesday. At 7 a.m. Tuesday rangers aided by a helicopter, search dogs and horses were preparing for the search.

Meanwhile, rangers with a radio receiver picked up the signal of Bear No. 59, a radio-collared sow grizzly whose signal had been noticed in the area the day before. The grizzly has been in the Canyon area most of the summer, where she grazed in meadows along the roadside with her two cubs.

Although hundreds of tourists watched her, she is never known to have shown any form of aggression other than normal defense of her cubs, said Dan Sholly, the park's chief ranger.

Two rangers went to check on Bear 59 as preparations for the search continued. They found her standing above and dragging what appeared to be a body.

When they notified search leaders, other rangers armed with rifles came and killed the bear, Sholly said. An autopsy showed that the bear had consumed parts of a human body.

A camera with a zoom lens was on a tripod that had been knocked over. The film in the

camera is being developed and may help determine what happened, Sholly said.

An autopsy is being performed on the man's body, he said.

The body was found at 7:40 a.m. near Otter Creek about one-half mile from the Grand Loop Road between Canyon and Lake.

Bear No. 59 was first trapped as a subadult in 1980 at the employee's trailer park near Canyon. She was trapped again in 1981 and twice more in 1984.

On Sept. 4 she and her two cubs were trapped near Canyon and moved to the eastern boundary of the park because they had been feeding on garbage. Ten days later she had returned to the Canyon area without her cubs.

She was seen along the roadsides in the area as recently as Friday, Sholly said.

This summer when hundreds of people were watching the bear and her cubs along the roadsides, rangers kept the crowds away from the bears, Sholly said.

"We don't care to have people and bears in close proximity to each other," Sholly said, but the park didn't want to chase off either the bear or the bystanders.

Mr. MELCHER. Mr. President, the name of the deceased in this article is Bill Tesinski. He is survived by his father, John Tesinski, his mother, Terri Knott Madler, and his daughters, Shantal Lee Tesinski and Monique Marie Plant.

Mr. President, I thank the Chair, I suggest the absence of the quorum.

The assistant legislative clerk proceeded to call the roll.

□ 1300

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

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

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate to my colleagues who may be listening in their offices or in conferences that we know there are probably a dozen or more meetings going on between the House Members and Senators. I also know that there are some Senators on each side who have commitments outside Washington, DC today or late today. They would like to know precisely what may happen.

The only problem is I cannot tell them precisely what may happen. We had hoped by now to have the reconciliation measure before the Senate, and act on it today. I was advised not long ago that it is probably not going to happen today because there is still a rather firm area of disagreement between the Senate Finance Committee, bipartisan I might add, and the House Ways and Means Committee. We have gone as far as to call Don Regan in Iceland yesterday afternoon. He spoke with me, Senator LONG, and Senator PACKWOOD.

□ 1340

We have not seen any resolution of that.

The other area that is certainly of concern to every Member, and we want to act on it, is the drug enforcement bill. There is a bipartisan agreement on this side except for one provision, the death penalty in certain extreme cases. There are meetings going on as I speak concerning some way to resolve that issue so we do not hang up that very importance piece of legislation.

There is some possibility we might be able to take some action on that today.

I hope to be in a position to indicate to my colleagues within the hour whether that is going to happen.

Finally, there is the brief extension of the continuing resolution. Again, reflecting the views of the President, he does not wish to sign another extension of a continuing resolution, not even for 1 day or 2 days, unless he can be assured that we are making some progress on the overall continuing resolution.

I know the House passed an additional continuing resolution that would extend through Wednesday midnight. I must say at this point we have no plans to take that up. There will be a meeting at 5 o'clock of the conferees of the Appropriations Committee of the House and the Senate. If they can give us some reading at 6 or 7 o'clock that they are about to wrap up the big continuing resolution, we might then be able to address the short term. I would hope we could do that on a voice vote.

I regret that we are not in a position to tell Members that we are finished for the day. I would guess there is a 50-50 chance we may be, but I would not want any Member leaving and missing a vote, or suggesting that we had not been candid. I just do not know.

There are a number of Senators talking to House Members and other Senators to see whether they can bring their matters to the attention of the Senate yet this afternoon. I just cannot be any more explicit than that. If somebody has to go, just go, but he might miss a vote or two.

Mr. DIXON. If the leader will yield, does he anticipate any votes tomorrow?

Mr. DOLE. I do not anticipate any votes tomorrow. There will not be a Monday session.

Mr. BYRD. Does the majority leader anticipate a session tomorrow?

Mr. DOLE. There could be a pro forma session if we file cloture on the House message on the drug bill. We would come in for that either tomorrow or Monday, but I think it might be better to come in tomorrow for a brief moment so that the cloture motion could be acted upon by Tuesday.

Mr. BYRD. Do I hear the majority leader saying if there are any rollcall votes this afternoon they will be in relation to the drug bill in all likelihood?

Mr. DOLE. I think I am prepared to say that. I understand there is very little hope of having the reconciliation matter before us today.

Mr. BYRD. And, further, that we should know within the hour?

Mr. DOLE. I would hope so. I know the distinguished Senator from Delaware is on the floor. He has been meeting with a number of Senators. I know that the staff on each side, the Republican and Democratic staff members, worked up until 10 or 11 o'clock last night and worked again this morning. They have now completed a bipartisan amendment which we can offer to the House message. The whole area of disagreement in the whole amendment is the death penalty. I do not know how that will be resolved at this point.

Mr. BYRD. I thank the majority leader.

Mr. DOLE. 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.

□ 1400

Mr. ROCKFELLER. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GOLDWATER). Without ojection, it is so ordered.

UNITED AGAINST DRUGS

Mr. ROCKEFELLER. Mr. President, based on recent events, the American people have the right to question just how committed the Congress is to enacting major antidrug legislation. The fact that the Senate and the House of Representatives have yet to reach an agreement on a final package at this very late date sends a disturbing message to the public—namely, that we may allow election year politics or individual agendas to get in the way of acting on what we have all recognized as one of the Nation's most serious problems, drug abuse.

As someone who has been actively involved in writing the Senate's drug legislation, I know what enormously hard work and leadership have gone into working out a bipartisan approach to the drug problem. Twelve days ago, a sound, ambitious, thoughtful bill was passed by the Senate—thanks to the willingness of Members on both sides of the aisle to make concessions, reach agreements on numerous issues, and refrain from insisting on controversial or divisive proposals. I

thought that we had succeeded in doing what we had intended to do to initiate a major war on our Nation's drug problem.

But then, we got signals from our colleagues in the House of Representatives that they would not accept our bill nor participate in a conference to hammer out a final package. Most troubling is the condition placed by the House and supported by some of our colleagues in the Senate—that the death penalty must be included in its drug legislation.

Thus, Mr. President we are at an impasse. For reasons which I respect, some of our Senate colleagues have indicated that they will filibuster the drug bill if it contains the death penalty. I support capital punishment—only under, however, the most stringent circumstances sanctioned by the Supreme Court. But I do not believe that the proposed federally-mandated death penalty should determine the fate of the drug bill. In my view, we will do a major disservice to the American people if we let this single, tremendously divisive issue prevent us from conducting the war on drugs that we have declared and promised in these recent months. The irony is that the death penalty is already legal and used in many States across the country. However, the resources, the programs, and the mandate to fight drugs are not yet in place—that is what our legislation intends to do—and they will not be until we pass a comprehensive drug bill.

Mr. President, there is a great deal at stake. We have the opportunity to pass legislation to eradicate drugs in other countries, to stop traffickers and smugglers at our borders, to take swift and harsh action against these and other drug-related criminals, to educate our citizens about the dangers of drugs, and to provide treatment to help children and individuals recover from their dangerous use of drugs. Now is the time to take historic action against drug abuse. To delay any longer runs the risk of losing the momentum and bipartisan support needed to achieve this critical objective. If we permit the death penalty issue or political posturing to block the passage of an anti-drug bill, I believe we would perform a grave injustice, and would deserve the American people's cynical reaction to any further claims we might make about wanting to do something to end the drug crisis. I urge my colleagues in the Senate and the House to join together and mount a united front against drugs.

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. HARKIN. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

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

EUGENE HASENFUS AND THE DOWNING OF THE C-123

Mr. HARKIN. Mr. President, as more news of the Hasenfus mission unfolds, it is becoming apparent to this Senator that the Reagan administration is playing an elaborate and dangerous game of hide and seek.

It is a game of hide and seek with the truth;

It is a game of hide and seek with the law; and

It is a game of hide and seek with the American people.

Yesterday, the distinguished Senator from Minnesota, the chairman of the Senate Intelligence Committee, challenged the White House to disclose what it knows about the Hasenfus mission. I join him in making that challenge.

It is time that this administration step out of the closet and come clean about whatever role it may have had in the Hasenfus incident.

Before beginning the third in a series of questions—this is the third day I wish to pose some questions about this issue—I want to send a single and simple message to the Nicaraguans: "Two wrongs don't make a right."

I ask the government in Managua to adhere to international law and permit the U.S. consul in Managua to visit Mr. Hasenfus.

The Nicaraguans should obey international law. That law provides that our Embassy in Nicaragua ought to have access to Mr. Hasenfus in the most expedient and forthright manner. The Nicaraguans should obey the law, even though this administration has not necessarily obeyed international law in the past.

Furthermore, I am appalled by the manner in which the Nicaraguans presented the coffins carrying the two dead Americans to the American Embassy in Managua. Reports have it that the two bodies were incinerated or cremated and then delivered on a cattle truck and dumped in front of the door of the Embassy in Managua.

Mr. President, this administration's refusal to respect the rules of civilized behavior by continuing to support a war that kills of thousands of Nicaraguans does not in any way excuse the Sandinistas from violating acceptable laws of behavior.

While I do not condone or in any way sanction what those Americans were doing in carrying out their covert war against the Government of Nicaragua, nonetheless, two wrongs do not make a right; and the Nicaraguan Government's reported action in handling the coffins of the two dead Americans violates what I consider to be the norms of civilized behavior.

On Wednesday and Thursday, I asked a series of questions regarding what assistance, if any, the U.S. Government provided the Hasenfus flight. Since my statement, Eugene Hasenfus has stated that his supply flights were directly supervised by members of the Central Intelligence Agency in El Salvador.

In response to the question of whether any Defense Department or U.S. Government employee assisted Hasenfus in loading his C-123 cargo plan, Hasenfus responded: "Two Cuban naturalized Americans that work for the CIA did most of the coordination for the flights and oversaw all of our housing, transportation, also refueling and flight plans."

Hasenfus identified the naturalized Cubans as Max Gomez and Ramon Medina.

Furthermore, Hasenfus claims that the entire operation at Illopango, consisting of 24-26 employees, is a "company"—or CIA—operation.

Is this truth or fiction, Mr. President?

I believe the American people ought to have a right to know; the administration should come forward and give us the facts concerning the CIA operations at Illopango.

Hasenfus and his two flight companions, Wallace Sawyer and William Cooper, all had Salvadoran Air Force ID cards identifying them as U.S. military advisers. It is my understanding that the U.S. Embassy in San Salvador reviews all such cards before they are granted to Americans.

Was our Embassy in San Salvador involved in any way with Mr. Hasenfus, his associates, and the other Americans flying arms supply missions for the Contras? Was the U.S. military group in San Salvador aware of these supply flights, and did the milgroup assist these flights? It is one thing to know about them, which obviously would not be a violation of the law. It is quite another thing if they helped them in any way to load or refuel. That would be a violation of the law.

Who financed the Hasenfus mission? An October 9 Newsday story charges that the Hasenfus flight had been paid for by Saudi Arabian funds. Cost of the cargo, salaries of the crew, and the chartering and equipping of the plane was less than $250,000, according to U.S. defense source. Is this truth or fiction? Were the Saudis involved or were they not?

The man who organized the flight, and who established the connections between the Saudis and the Contras was retired Air Force Maj. Gen. Richard Secord. Secord, an adviser to Secretary of Defense Weinberger until he

retired in May 1983, was the administration's chief pointman for the sale of AWACS to Saudi Arabia in 1981.

The person, who allegedly connected Secord to the Contras, however, was Col. Oliver North. North was also involved in the AWACS sale and has since been charged with being the administration's pointman for coordinating private U.S. support for the Contras.

Colonel North now works for the National Security Council.

Mr. President, is the Newsday piece accurate? If so, was the U.S. Government aware of secret Saudi support for the Contras, and did it provide advice or support for this arrangement?

Or, perhaps, are we chasing the wrong rabbit? Does the CIA really know about this? Maybe they do but perhaps the CIA has not been involved. Maybe they have not broken any laws. Has the White House done an end run around the Agency and gone through the National Security Council and through Colonel North and to retired Gen. Richard Secord in arranging these flights? The administration has to come clean on this.

The Hasenfus missions raises another series of questions regarding the complicity of our allies in the region.

An October 9, Baltimore Sun story reports that three to five flights take off every week from a restricted part of the air base at Illopango, El Salvador's main air base. The ID tags worn by Hasenfus were signed by Gen. Rafael Bustillo, head of the Salvadoran Air Force. Documents recovered from the Hasenfus flight show the registry numbers of five Contras supply planes based at Illopango.

President Duarte and the Salvadoran military have issued strong denials to these charges. But they apparently are concerned enough about operations at Illopango to have ordered Salvadoran Treasury Police to hold for 2 hours an Associated Press reporter and her Salvadoran photographer for taking unauthorized pictures of the airbase.

Hasenfus' charges about Salvadoran involvement—fact or fiction, Mr. President?

Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article that appeared in the October 9 Baltimore Sun, entitled "Salvadoran Role in Supplying 'Contras' Starts to Come Into the Open."

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

SALVADORAN ROLE IN SUPPLYING "CONTRAS" STARTS TO COME INTO THE OPEN

(By Chris Norton)

SAN SALVADOR, EL SALVADOR—El Salvador's position as a transfer point for supplies to U.S.-backed "Contras" has long been an open secret, say informed sources here.

President Jose Napoleon Duarte, however, adamantly denied yesterday that a C-123 twin-engine cargo plane shot down over Nicaragua had taken off from El Salvador. "We have no information on that. I have asked the [armed forces] high command, and they say no." President Duarte said.

Still two of the Americans killed in the crash allegedly were carrying cards giving them access to a restricted part of San Salvador's Ilopango air base, which is used by both the Salvadoran air force and civilian planes.

Ilopango personnel say that three to five flights take off every week from a restricted part of the air base used by the Americans. These flights are believed to be used to supply the U.S.-backed Nicaraguan contra forces.

U.S. government officials deny that the plane was theirs and say that the plane belonged to the private contra-aid group called the United States Council for World Freedom, headed by retired U.S. Maj. Gen. John K. Singlaub. One of the Americans who died, however, also carried a business card from the State Department's Humanitarian Aid Office in Washington, which had been a channel for funds for the contras.

Informed sources say that the Salvadoran air force has given the contras the use of several warehouses to store shipments before they are reloaded onto smaller planes bound for the contras. These sources say that permission to use the warehouses was given by the head of the Salvadoran air force, Gen. Rafael Bustillo, the powerful rightist commander closely linked to the contra effort.

Sources say that the rebels have used Ilopango at least since 1984, and probably earlier, to ship supplies to ex-Sandinista contra leader Eden Pastora, who was based in Costa Rica. Bombing raids in 1984 against Nicaragua also were believed to have originated at Ilopango.

CIA supplies to Mr. Pastora, however, were cut off when he resisted merging his forces with the main CIA-supported contra force, the Nicaraguan Democratic Force (FDN), claiming that they were controlled by former officials of ousted dictator Anastasio Somoza's National Guard.

Late in 1985, contra flights out of Ilopango reportedly picked up again after the Honduran government restricted contra shipments through its territory in what many observers say was an attempt to extract more U.S. aid.

On April 24, 1985, five European and U.S. mercenaries were captured in Costa Rico trying to link up with the FDN contras. U.S. citizen Steven P. Carr said that he was brought from Miami to Ilopango on a large DC-3 cargo plane loaded with weapons for the rebels.

The Salvadoran government officially denies aid to the contras. It is not known whether the aid is official government policy or merely carried out on the private initiative of General Bustillo.

Although President Duarte is commander-in-chief of the armed forces, top military officers such as General Bustillo have wide leeway to operate in areas related to national security.

On June 14, Panamanian authorities seized a large shipment of weapons originating in East Germany. At first the destination was a mystery, but the bill of lading revealed that the cargo—2,000 AK automatic rifles, 1,500 anti-tank rockets and 38 four-wheel-drive military trucks—was bound for the Salvadoran military. The real destination of the AK assault rifles was believed to be the contras, because the Salvadoran army uses the U.S. made M16 rather than the Eastern bloc-style AK rifle, which is the contras' standard weapon.

□ 1420

Mr. HARKIN. Mr. President, the President and his advisers again are straining their credibility if they want us to believe all of the denials. Furthermore, I find it even more incredible that some of my colleagues are being asked to swallow the charge that Congress, because of its failure to approve the Contra funding, is responsible for this fiasco.

We are being assailed that since we did not fund the Contras we brought this on ourselves. I find that hard to believe.

As I remarked yesterday, Mr. President, in the words of Lewis Carroll, this story is getting curiouser and curiouser as we go along.

Mr. KERRY. Mr. President, will the Senator yield?

Mr. HARKIN. I am delighted to yield to my colleague.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to congratulate my colleague and really call to the attention of the Senate the service that he is performing in continuing to ask what are very serious questions about this particular flight.

I think most of us who have been following the situation in Central America understand that this administration has made it very clear about how grateful they are to these private groups that have been literally circumventing the U.S. Congress, and it is clear that they could not do so if it were not for that encouragement.

I wonder if my colleague shares with me the belief that there are many, many unanswered questions which raise serious questions in and of themselves about this administration's willingness to adhere to the law, about the whole question of whether or not the constitutional process of the Congress having stated an intent and having it abused, that subversion does not represent a fundamental breach of trust and faith with respect to that relationship?

Mr. HARKIN. I thank my colleague from Massachusetts. I think he is quite right to point out that what good does it do us to pass the Boland amendment or laws restricting the CIA if in fact the White House will do an end run, through the National Security Council or other agencies to support the Contras.

So, you wonder just how many "i's" do we have to dot, how many "t's" do we have to cross, just how specific we have to be in instructing the administration what our policy ought to be.

The Boland amendment which restricts the kind of aid that can be provided the Contras, has been skirted. It looks like an end run has been done. As the Senator from Massachusetts has pointed out, trying to find the truth of this is like chasing the cheshire cat. It is there for a minute and then it is gone. There are all kinds of shady things going on with this administration's policy.

As the distinguished Senator from Vermont has said, perhaps a lot of these things are going on with a "wink and a nod" from the administration. I find that not in keeping with the constitutional processes of government.

Mr. KERRY. I share my colleague's feeling. I know that we learned today that Mr. Hasenfus apparently was receiving some $3,000 a month or so per mission that was placed in a bank account.

I think we could answer a lot of the questions if the administration were to help us in getting that bank record and trying to determine where that money came from and who is paying this money.

This Senator certainly finds it no small coincidence that three former employees of the CIA are flying a plane which was formerly contracted with the CIA which is dealing with a couple of people who are formerly the CIA, all simultaneously coming together in this one mission that winds up with the first prisoner of war of this conflict in Central America.

I think that when the Congress of the United States says we do not want direct or indirect assistance that that law ought to be upheld. I think the administration ought to be held accountable on this and I hope we are going to continue to ask those questions.

Mr. HARKIN. I would appreciate my colleague's response on this observation. I know the Senator from Massachusetts, myself, and most of our colleagues in this body have been very supportive of Napoleon Duarte of El Salvador, of his efforts to bring democracy to El Salvador, in trying to return that country to its feet.

We all have the highest respect for President Duarte, and it appears now we may be putting him in a very difficult situation.

In fact, if the U.S. Government were not involved in refueling and resupplying and helping the aircraft that fly out of Ilopango, then the Salvadorans must be responsible. That puts the El Salvadoran Government in a very difficult position with their Central American neighbors.

So it seems now we have the worst of both possible worlds. There is shadiness about the truth of U.S. involvement, and there is the question of Salvadoran involvement in this operation.

Does the Senator from Massachusetts have any observations on this matter?

Mr. KERRY. Again I think it just raises the question of what is happening here. Everybody is denying that they have anything to do with this aircraft. Yet this aircraft has a lot of weapons in it. It turns out that in the wallet of one of the dead crewmen is the name on a business card of a Mr. Robert Owen. We know that Mr. Robert Owen is involved with the Humanitarian Assistance Program. He has connections to Mr. Oliver North at the National Security Council. That is a well-known fact as a matter of public record. And the question is why is somebody who is transporting those weapons carrying that business card? What are the connections? Is there in fact through that wink and the nod the carrying out by these individuals of almost a tacit Government program? Even though it is obviously not directly Government, it is with such clear approval and such permissiveness that it becomes quasi-governmental.

I think these are questions which Congress, if it cares about the laws that it passes and if it cares about the separation of powers and the appropriate treatment of the Constitution, that has to be answered.

Mr. HARKIN. Let me ask the Senator another followup question. Perhaps we are chasing the wrong rabbit here. Perhaps the Central Intelligence Agency is being painted with a brush with which they ought not to be painted. Perhaps the CIA has in fact adhered to the law.

Does the Senator think that it could be possible that the Hasenfus and similar operations could be run out of the White House, through the National Security Council, by people like Colonel Norton and retired General Second; that the NSC could be doing an end run around the CIA. Maybe we ought to be looking at the National Security Council, and not the Central Intelligence Agency.

Mr. KERRY. This Senator has made it very clear as a matter of public record and reiterated again today that I think the pertinent individuals from the National Security Council ought to be brought before us. The Foreign Relations Committee is conducting an investigation and I hope the chairman of that committee will in fact, in his effort, which I think is a genuine and clear one to try to get the answers, call the appropriate people before us, put them under oath, and take the appropriate testimony. I am confident if we do that, we can lift a cloud.

I think the Senator has a point. I think it may be that these groups have been operating in conjunction with the approval of the administration and that the CIA has had former employees conceivably just part of that network because they are there and available, but again, we do not know the answers to these things. I do not know the answers. I know the Senator does not.

The Senator sat in on a long classified briefing today. While it helped in some respects and cleared up certain things, it raised a lot of other questions.

I think again before the CIA is put in the position of managing $100 million of lethal assistance and before we go into this whole new phase of our policy in Central America, we ought to lift the cloud. The CIA ought to be cleared of any wrongdoing if in fact it can be so that we do not proceed into this next phase with a sense of mistrust about the willingness of the CIA to in fact carry out our restrictions with respect to 20 kilometers from any action and no military personnel being involved in the line of fire.

I wonder why is it that we, Congress, have been willing to set a restriction on the military's ability to come into harm's way and yet we are willing to take other Americans and put them in harm's way. I mean what is the difference? It seems to me that it is clear that America one way or another is getting involved dangerously in this conflict and that the American people have made it clear that they do not want it, they do not want it in surrogate subgroups that are somehow supposedly volunteer efforts.

What average American can go out and get an airplane, fly it out of Miami, land it in Illopango Air Base in El Salvador, pick up a crew, fly over to Honduras, get some weapons, fly it down without someone in the United States Government or the CIA, or some kind of winking, saying, "Yes, there goes that flight. We know what that is doing. That is resupplying the Contras."

□ 1430

Now, if that is not approval, if that is not condoning it, if that is not saying we like that—let me tell you something: If the United States Government did not allow it, if that plane were flying down there to supply the Nicaraguans, do not think for an instant that it would have been allowed to land at one of those places or that it would have gotten off the ground. So it is clear that this represents a policy effort to circumvent the law of this country.

I think we have a responsibility to understand how that happens and who has been responsible for it. I thank my colleague for a chance to discuss this.

Mr. HARKIN. I thank my colleague.

I end on this note by saying the more I read about this and the more I hear about it and the more I look into it, it becomes almost more and more apparent to this Senator that we have got some people down at the White House, perhaps in the National Securi-

ty Council, who have been watching too many Rambo movies. And, quite frankly, they are unprofessionals, they do not know how to handle things like this. And what they are doing is they are giving not only our country a bad name, I think they are giving the professionals in the Central Intelligence Agency and in other areas a bad name. They are painting them with their brush. And it is better to leave it to them rather than these so-called Rambo-types in the White House who are trying to carry this thing out.

I thank the Chair. I yield the floor. 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. KERRY. 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.

□ 1520

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

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order.

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

Mr. BYRD. Mr. President, I take the floor at this time because no other Senators are seeking recognition. I will be happy to yield the floor at any time there is business to be transacted.

I am hoping that we can very soon indicate to our colleagues whether or not there will be rollcall votes this afternoon. Meanwhile, I would like to address my remarks at this time, briefly, to one of our departing Members.

SENATOR CHARLES McC. MATHIAS

Mr. BYRD. Mr. President, in saying farewell to Senator CHARLES "MAC" MATHIAS, this Chamber says goodbye to a member of a family that is steeped in a wealth of political history. His great-grandfather, for example, was a State senator who ran on Abraham Lincoln's ticket in 1860, and his grandfather was a State senator who campaigned with Theodore Roosevelt for the Bull Moose ticket.

But in saying farewell to Senator MATHIAS, this Chamber says goodbye to a Senator who himself is personally steeped in a wealth of political accomplishments and history.

Mr. MATHIAS was first elected to the Senate in 1968 after having served four terms in the U.S. House of Representatives.

As a Senator, MAC MATHIAS has served on the Senate Judiciary and Foreign Relations Committees, as well as on the Aeronautical and Space Sciences Committee, the Joint Committee on the Library, the Government Affairs Committee, and the District of Columbia Committee.

He has been the chairman of the Joint Committee on Printing, the Committee on Rules and Administration, the Judiciary Subcommittee on Criminal Justice, the Subcommittee on Governmental Efficiency, and the District of Columbia Committee. While on the Foreign Relations Committee, he served as chairman of the Subcommittee on International Economic Policy.

Senator MATHIAS has been a forceful advocate of election law reform and copyright protection laws. As a proponent of a long-range energy policy, he has encouraged science and industry to develop new sources of energy. He was one of the original architects of the war powers resolution.

He has been involved deeply as Rules Committee chairman in assuring that the Senate as an institution functions properly and efficiently so that this great body can conduct and complete the vital work American voters send us here to do. All of us owe him a debt of gratitude for his tireless efforts in this respect.

But it will be for his accomplishments in the fields of human and civil rights that Senator MATHIAS will be long remembered and because of which he will occupy an important place in American history. The legislation he proposed resulted in the historic Civil Rights Act of 1964—which we now know propelled the cause of social and political equality for blacks, and freedom and democracy for all Americans.

Because of his effective work for the betterment of all Americans, Senate majority leader, Mike Mansfield, once called Senator MATHIAS "The conscience of the Senate." No one disputed that well-earned label.

Because of his successful work on behalf of the people of his beloved State of Maryland, and for all Americans, Parade magazine, February 15, 1977, rated him as "one of the most industrious, intelligent, and brilliant legislators" in the Nation. No one disputed that, either.

Senator MATHIAS' social conscience has occasionally put him at odds with Members of his own political party, including Presidents of his own party. But Senator MATHIAS has never been at odds with the people of Maryland who have appreciated him as much as he loves them.

In his 1974 election, he received 57 percent of the vote. This was the highest voting percentage that a Member of his party received in a Senate race that year.

In his 1980 election, Senator MATHIAS received the largest number of votes any elected official has ever received in the history of his State.

I have personally appreciated and highly regarded the Senator from Maryland. As I have said before, on August 11, 1986, in the CONGRESSIONAL RECORD, this great Senator and outstanding American has been one of the "most cooperative, most decent, most principled Members of the Senate." He has shown that grace, integrity, objectivity, reason, and statesmanship are integral parts of his character and how much those attributes on the part of a Senator can contribute to this body. For these and other reasons, I have always regarded his friendship as one of the most valuable intangible rewards of my own service in the Senate.

□ 1530

Now Senator MATHIAS leaves us. His departure from the affairs of our Nation creates a deficit in leadership and wisdom that will be difficult to correct, fulfill, and replace. But his accomplishments will forever be a part of the history of this Chamber and of American history.

I understand that he will probably retire to his restored, 200 year-old farm, "Bullskin." I am sure that he will be happy there. For one thing, the farm is so close to the great State of West Virginia that I am sure it is beautiful, comfortable, and very, very pleasant. And as a citation he received from Washington College upon receiving an honorary doctor of law degree noted:

> He [Senator Mathias] is a man of many parts, comfortable in Washington, yet happiest on his Appalachian farm where he raises sheep and other animals.

His gain will certainly be our loss because we lose a Member who has contributed mightily to the good of this Chamber and the well-being of the United States. He will be fondly remembered for the effective, hard-worker that he is, and for the kind spirited person that he is and always will be. I will personally miss him here, as will many other Senators.

Mr. President, I was saying only yesterday to another Senator as I spoke of Senator MATHIAS, and I said this with the greatest of care and very measured thought. Senator MATHIAS is a Senator—this is what I said yesterday to another Senator—he is a Senator who very well could have been one of those who sat in the first Congress of the United States in those first 2 years of the Senate's history. I said he very well could have been one as I have pictured him, a gentleman, wise, analytical, careful, thoughtful, forward looking, a man of vision, he could

have sat among our illustrious forebears in that Constitutional Convention in 1787.

I can easily see in my imagination a Senator MATHIAS among those men of that day. That is the way I feel about MAC MATHIAS.

We cannot help but to extend our fond and sincere hopes for happiness and contentment, so richly deserved, to MAC and his wife Ann, and my good wife Erma and I extend to MAC and to Ann our good wishes for a very happy, satisfactory, retirement and along with these words go our good wishes for these things: work for your hands, a straight path for your feet, a coin for your purse, a song in your treetop at morning, sunshine on your windowpane at evening, soft rains for your garden, a hand of friendship on your latchstring, happiness in your hearts, love at your fireside and God's blessing always.

The PRESIDING OFFICER (Mr. MATHIAS). Under the rules and the precedents of the Senate, it is impossible for the Chair to respond, but if it were otherwise, he would.

The Senator from Ohio.

Mr. GLENN. Mr. President, I wish to associate myself in spades with those remarks of our distinguished minority leader of the Senate.

In looking at those leaving I know of no one who will leave a bigger gap as a Senator here than MAC MATHIAS. He is not a showboat. He is not out here all the time trying to just pick up on what may be the next press release. He is one of the most thoughtful Senators we have and in that respect he will be sorely missed.

I certainly do wish to associate myself with that eloquent speech by the distinguished minority leader.

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.

□ 1550

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. PACKWOOD addressed the Chair.

The PRESIDING OFFICER (Mr. HECHT). The Senator from Oregon.

BILL DIEFENDERFER, CHIEF OF STAFF, COMMITTEE ON FINANCE

Mr. PACKWOOD. Mr. President, it is seldom in life that one has the opportunity to view from a distance, let alone work closely with, pure genius. It has been my pleasure to work with such a man. That is Bill Diefenderfer, chief of staff of the Senate Committee on Finance.

I first met Bill Diefenderfer in May of 1979 just after I had become ranking member of the Senate Commerce Committee. He came to work as minority counsel for the committee. It was one of those lucky events that happens to you only occasionally in life. Bill and I stayed together for almost 4 years through 1983 when Bill left the Commerce Committee for what I'm sure he thought would be a long stint in private life.

When I had the good fortune, however, to be elected chairman of the Finance Committee, I asked Bill to return as chief of staff. He willingly left private life, but came back only with the promise that he would "see the tax reform bill through." Little did he know what kind of a promise he was undertaking. It wasn't going to be a year and the usual tax bill. It turned out to be a year and three-quarters and the most extraordinary tax bill passed since the Internal Revenue Code was adopted in 1913. It was passed in large measure due to Bill Diefenderfer's leadership. His intellectual capacity is matchless. His political intuition is unrivaled. His wisdom is without peer. And my friendship for him is eternal. Not in my lifetime will I again know his equal. When he leaves, the Government will have lost an extraordinary servant. Hopefully, his departure will be temporary and he will return again soon. I would welcome him back anyplace, anytime, and under any circumstances.

ARMS CONTROL AND THE SUMMIT

Mr. BYRD. Mr. President, I congratulate the distinguished managers of the Department of Defense authorization bill for fiscal year 1987, for achieving an acceptable compromise with the House on the range of arms control and strategic systems provisions in that bill. In particular, I congratulate the statesmanship of the House leadership in reaching an accommodation with the President on the matter of the SALT II no-undercut policy, and, furthermore, the very significant achievement which has been accomplished—a major breakthrough on the issue of nuclear testing. The distinguished Senator from Georgia, [Mr. NUNN] is to be congratulated for his efforts and creativity in bringing about this result, as is the distinguished Senator from Virginia [Mr. WARNER].

Mr. President, for the first time since President Reagan took office, the administration has agreed to request Senate advice and consent on the ratification of the two nuclear testing treaties which were signed, but have languished since the mid-1970's. Furthermore, and of great importance, the administration has agreed to propose formal negotiations with the Soviets on the matter of a comprehensive nuclear testing ban when those two testing treaties have been ratified, as is likely they will be. This finally puts the administration or record supporting a policy which was promoted by every President since Mr. Eisenhower.

This action will serve to undercut the Soviet propaganda campaign, which has been underway for some 13 months, on the subject of a nuclear testing moratorium. It will serve to put the Soviets on the defensive, to test the willingness of Mr. Gorbachev to engage in real arms control.

On the matter of cutting through the central strategic system sublimits of the SALT II Treaty, I believe there is a strong consensus in both Chambers that the United States should not be the first to break through those limits. Therefore, the fact that this conference agreement on the DOD bill does not bind the administration to adhere to those limits—but urges him to do so—I believe it would be a great mistake for the administration to scuttle the key terms of that agreement. It would hand Mr. Gorbachev a pretext for breaking through those ceilings, and it would run against American national security interests. This legislation also contains a study which I added as an amendment on the floor which requires a detailed assessment by the Joint Chiefs of Staff as to the military impacts of breaking through those ceilings. I expect that this study will be comprehensive, and will be of help in determining the detailed impacts of such a breakthrough on our security.

Mr. President, there are many other features of the armed services bill which can be commended here. The SDI compromise, amounting to about 15 percent real growth over last year, seems to me to be a fair compromise. The Midgetman system will go to a full-scale development in fiscal year 1987. The agreement retains a provision I offered, as well, to cap the B-1B Bomber Program at 100 aircraft and to pursue the Stealth bomber with dispatch.

I believe the action by the conferees and by the leadership in both Chambers today is very commendable, is in the national interest, and will help the President at the summit. All Americans can unite behind these provisions, and behind their President in Iceland. We all wish him well in his discussions with Mr. Gorbachev.

DEPARTMENT OF LABOR EXECUTIVE LEVEL CONFORMING AMENDMENTS

Mr. PACKWOOD. Mr. President, I would first like to turn to Calendar No. 977, S. 2864.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2864) to provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3271

(Purpose: To make a modification with respect to Assistant Secretaries to make a technical correction)

Mr. PACKWOOD. Mr. President, I send a technical amendment to the desk on behalf of Senator HATCH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD], for Mr. HATCH, proposes an amendment numbered 3271.

Mr. PACKWOOD. 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:

In the amendment to section 5315 of title 5, United States Code, made by section 2(b)(2), strike "(9)" and insert "(10)".

In section 2(e), strike out "Act" and insert "section".

Mr. PACKWOOD. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3271) was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2864) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2864

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This act may be cited as the "Department of Labor Executive Level Conforming Amendments of 1986".

SEC. 2. (a)(1) Section 1 of the Act of April 17, 1946 (60 Stat. 91; 29 U.S.C. 552), as amended, is amended by striking out "Under" wherever it appears in such section and inserting in lieu thereof "Deputy".

(2) Section 5313 of title 5, United States Code, is amended by inserting at the end thereof:

"Deputy Secretary of Labor.".

(3) Section 5314 of title 5, United States Code, is amended by striking:

"Under Secretary of Labor.".

(4) Any reference to the Under Secretary of Labor in any law, rule, regulation, certificate, directive, or other document in force on the date of enactment of this Act shall be deemed to refer and apply to the Deputy Secretary of Labor.

(b)(1) Section 2 of the Act of April 17, 1946 (60 Stat. 91; 29 U.S.C. 553), as amended, is amended by striking out "five" in the first sentence of such section and inserting in lieu thereof "nine".

(2) Section 5315 of title 5, United States Code, is amended by striking:

"Assistant Secretaries of Labor (5)." and substituting therefor:

"Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for veterans' Employment and Training.".

(3) Any reference in any law, regulation, certificate, directive, or other document to the Assistant Secretary of Labor for Veterans' Employment in force on the date of enactment of this Act shall be deemed to be a reference to the Assistant Secretary of Labor for Veterans' Employment and Training.

(c)(1) Section 3 of Reorganization Plan No. 6 of 1950 is repealed.

(2) Section 5316 of title 5, United States Code, is amended by striking:

"Assistant Secretary of Labor for Administration.".

(d) Section 5316 of title 5, United States Code, is amended by striking:

"Assistant Secretary of Labor for Veterans' Employment.".

(e) Subsection (c) of this section shall become effective on the day upon which the individual who is the incumbent of the position abolished by such subsection, as of the date of enactment, ceases to hold the position.

(f)(1) The incumbent in the position of Under Secretary of Labor on the date of enactment of this Act may serve as Deputy Secretary of Labor at the pleasure of the President after such date and the amendments made by subsection (a)(2) shall apply to such incumbent.

(2) The incumbent in the position of Assistant Secretary of Labor for Veterans' Employment on the date of enactment of this Act may serve as Assistant Secretary of Labor for Veterans' Employment and Training at the pleasure of the President after such date and the amendments made by subsection (b)(2) shall apply to such incumbent.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar 1019, H.R. 5495, the NASA Authorization Act.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3272

(Purpose: To make an amendment in the nature of a substitute)

Mr. PACKWOOD. Mr. President, I send an amendment to the desk on behalf of Senator GORTON in the nature of a substitute, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD], for Mr. GORTON, Mr. DANFORTH, Mr. RIEGLE, Mr. PRESSLER, and Mr. HOLLINGS, proposes an amendment numbered 3272 in the nature of a substitute.

Mr. PACKWOOD. 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 text of the amendment is printed in today's RECORD under "Amendments Submitted."

□ 1610

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment in the nature of a substitute (3272) was agreed to.

Mr. GORTON. Mr. President, today I offer for consideration H.R. 5495, as an amendment in the nature of a substitute. This bill authorizes appropriations for the National Aeronautics and Space Administration [NASA] for research and development; space flight, control, and data communications; construction of facilities; and research and program management; and for other purposes in fiscal year 1987.

Mr. President, this bill reflects a coordinated effort on the part of the Committee on Commerce, Science, and Transportation and the House Committee on Science and Technology. Furthermore, it represents an authorization which, I believe, incorporates the best elements of S. 2714, fiscal year 1987 the NASA authorization bill that the Senate Commerce Committee reported on August 14 and H.R. 5495, the fiscal year 1987 NASA authorization bill that the House passed on September 25. Moreover, this bill authorizes the funding that addresses NASA's post-*Challenger* budget requirements and provides the policy direction that should enable our Civil Aeronautics and Space Program to move to the front once again among space-faring nations.

The Commerce Committee's bill and this bill before us are the products of considerable preparation and deliberation on the part of several of our colleagues. Accordingly, I wish to express

my appreciation to the chairman of the Commerce Committee, Senator DANFORTH; the ranking Democrat on the Commerce Committee, Senator HOLLINGS; the ranking Democrat on the Subcommittee on Science, Technology, and Space, Senator RIEGLE; and Senator PRESSLER, for their roles and effort in preparing this legislation.

Mr. President, at no other time in the history of our Space Program has funding for NASA been more crucial than it is now. Without the availability of the shuttle until, at least, early 1988, and with the untimely accidents of two of our major expendable launch vehicle systems this year, our Space Program has been faced with the grim reality of being unable to gain access to space. Yet, this is no reason for any of us to give up; NASA has brought in new leadership and is in the process of restoring the shuttle to flight readiness. NASA cannot do the job, however, without adequate support from Congress, and this is where we can contribute to this space recovery plan.

This authorization bill gives NASA the resources to make the necessary changes to the shuttle system and to continue the ongoing scientific and technological programs which will use the shuttle once it is flight-ready. Even though we will not be able to fly for another 18 months at the earliest, there still remain many other programs and activities which, if properly funded, will yield productive and meaningful scientific and technological returns. Consequently, these programs take on an even greater significance during the shuttle downtime.

This bill, which I offer on behalf of Senators DANFORTH, HOLLINGS, RIEGLE, and PRESSLER, authorizes $8.598 billion, a funding level that is consistent with NASA's revised fiscal year 1987 budget request of $7.966 billion and the Commerce Committee's authorization of $7.795 billion. The funding levels of this bill, the Commerce Committee's bill, and the administration's revised fiscal year 1987 budget request are quite similar, with the exception of three items, which I will describe below.

The first of these three items is an authorization for continued funding for the Advanced Communications Technology Satellite [ACTS] Program, which the administration has annually opposed and has excluded from the fiscal year 1987 budget request. The Commerce Committee bill authorizes $85 million for ACTS and the bill before us authorizes $80 million. Since the ACTS Program was initiated in fiscal year 1985, Congress has supported this program as a critical element in our Nation's efforts to stay in the forefront of the development of Communications technologies. Therefore, consistent with prior years' actions, the Commerce Committee included the ACTS Program in its fiscal year 1987 NASA authorization bill, and funding for the ACTS programs is included in this bill that has been developed with the House Science and Technology Committee.

The second of these additional authorizations in $272 million for the purpose of replacing the space shuttle *Challenger* and other associated equipment lost in the *Challenger* accident. The Commerce Committee had authorized the construction of this orbiter on the conditions that the President make such a recommendation and that the funding for the replacement is made available in addition to that provided in the committee bill. The purpose of this second condition was to ensure that NASA's other programs were not raided to support this replacement activity. Now, the President has requested additional budget authority of $272 million to replace the orbiter and associated equipment lost in the accident. Also, the Senate has approved in the fiscal year 1987 continuing resolution appropriations bill the appropriation of $2.96 billion from Department of Defense [DOD] funds for the replacement of the *Challenger* and other equipment lost in the accident.

Mr. President, I would like to make it clear that we do not pretend to have the authority in the NASA authorization bill to authorize appropriations for DOD. The purpose of this authorization, nevertheless, is to indicate support for the replacement orbiter and to endorse the Senate-approved plan to appropriate DOD funds for the replacement orbiter.

Mr. President, the third additional authorization that accounts for the difference between this bill's authorization and that of the Commerce Committee and the administration's revised budget request is $531 million, which represents the amount of shuttle services payments that DOD is scheduled to pay NASA in fiscal year 1987. The Senate Appropriations Committee, however, has deleted this payment from the fiscal year 1987 DOD appropriations bill and has made available these funds in the HUD-Independent Agencies Subcommittee appropriations bill.

By way of background, under the terms of a current agreement between NASA and the Department of Defense [DOD], DOD annually pays to NASA a predetermined reimbursement for shuttle services. The scheduled fiscal year 1987 reimbursement to NASA is $531 million. Due to the fact, however, that the shuttle will not fly until 1988, at the earliest, and that DOD already has made payments to NASA sufficient to support 10 future DOD shuttle flights, the Senate Appropriations Committee has deleted from its fiscal year 1987 DOD appropriations bill this reimbursement of $531 million.

I should point out that there is no disagreement among NASA, DOD, or OMB that this reimbursement is obviated due to the downtime of the shuttle and due to the credit balance that DOD has already established with NASA for the 10 future shuttle missions. After the accident, however, NASA, DOD, and OMB agreed that DOD should still make the payment in fiscal year 1987 as the most effective way to support our national space recovery plan. Furthermore, NASA, DOD, and OMB agreed that NASA would credit DOD in the fiscal year 1988 budget process for this fiscal year 1987 payment.

Mr. President, I would like to remind my colleagues that on August 7, after the Armed Services Committee had excluded this shuttle services payment from the DOD authorization bill, the Senate voted to restore this payment to the DOD authorization bill. Therefore, there should be no doubt as to the will of the Senate that NASA should receive these payments.

Now, an agreement has been reached between the HUD-Independent Agencies Appropriations Subcommittee and the Defense Appropriations Subcommittee, whereby the Defense Appropriations Subcommittee has agreed to pay for the replacement of the space shuttle *Challenger* and the HUD-Independent Agencies Subcommittee has agreed to compensate NASA for the shuttle services payments that the DOD Appropriations Subcommittee has deleted from its bill. Therefore, the purpose of this additional authorization of $531 million is to authorize these critical funds that the Appropriations Committee has agreed to provide, yet through a different subcommittee bill.

Mr. President, I cannot overstate the importance of this reimbursement to NASA. It represents almost 7 percent of NASA's total budget. As evidenced by the August 7 amendment to the DOD authorization bill, the Senate has already recorded its support for NASA's receipt of this reimbursement. Now, circumstances have placed this reimbursement on a different playing field, and the authorization of this reimbursement must be approved once again to permit NASA to address the post-accident requirements and to give our Space Program a chance to get back on track. Without this reimbursement, NASA will have to delay even further the flight-readiness of the shuttle, a delay which could have serious implications not only for our Civil Space Program but also for our national security.

Mr. President, I should point out that with the exception of the $272 million authorization for the replacement orbiter and the $531 million authorization to compensate for the anticipated loss in DOD shuttle services

payments, the funding in this bill before us is almost identical to that of the Commerce Committee's bill. The $272 million authorization is identical to the President's request and plays a critical role in our national space recovery plan. The $531 million authorization is consistent with the actions of the Appropriations Committee and, likewise, is critical to NASA and our Nation's space recovery plan.

Now I will briefly mention some of the major programs funded in this fiscal year 1987 NASA authorization bill.

This bill authorizes $515 million for space transportation capability development which supports, among other things, NASA's Spacelab Program, the orbital maneuvering vehicle, and the development of alternative upper stage options for NASA's planetary programs. This bill provides $410 million for the Space Station Program, an authorization which is identical to the administration's request. This funding will keep the Space Station Program on schedule so that actual development may begin in fiscal year 1987 and so that the program will continue to enjoy strong international and commercial support.

In this bill, NASA's space science programs are authorized at a funding level of $978 million. This funding level maintains the scientific teams which are critical to the eventual success of the scientific missions that were scheduled for launch in 1986 and whose launch will be delayed for as much as 2 or 3 years. This bill also maintains the administration's budget request in space science research and analysis, which provides an important lifeline between NASA's space science programs and our universities and colleges.

Also, space applications is authorized at a level of $552 million. These programs support critical research and development in advanced communications technologies, the observation and study of the Earth and its surrounding environment, and the development of new and better materials and products through space-based processing. Included in this authorization is a new start for the ocean topography experiment [Topex], a joint program with the French to study the circulation of the world's oceans.

The authorization in this bill provides $376 million for NASA's aeronautical research and technology programs, which is identical to the administration's budget request. Our support of these programs is critical to maintaining a competitive U.S. position in the global arenas of aeronautical technology and sales.

Funding for the second new start in this authorization bill is provided in transatmospheric research and technology. This program is NASA's contribution to the joint NASA/DOD Program, the National Aerospace Plane Program, which, if successful, could revolutionize our ability to enter space and transport passengers around the globe. This authorization of $40 million, which is $5 million below the budget request, enables NASA to conduct on schedule its technology analysis in new propulsion systems and in advanced materials, both of which are critical to the success of this program.

This bill's authorization for NASA's space flight, control, and data communications programs is $3,096 million, a funding level which is $27 million more than the budget request. These programs support, among other things, the operations of our Space Shuttle Program and will also provide the primary support for the recovery of our shuttle launch capability. I should point out that at this time, NASA is unable, understandably, to define precisely all of the costs associated with this effort. There may eventually be more, but this authorization bill supports NASA's space recovery requirements that have been currently identified.

Mr. President, as we all know, NASA is studying various options to improve the shuttle's solid rocket motors [SRM]. This study effort has followed two tracks—one is to redesign the SRM by using the existing hardware and the other is to upgrade the SRM by creating an entirely new design. This bill requires the NASA Administrator, upon completion of this study effort, to report back to Congress in March 1987 with a decision on whether NASA intends to redesign the existing SRM or to upgrade the SRM with an entirely new design. If the decision is to redesign the existing SRM, the Administrator is required to issue an RFP for a second source. If the decision is to upgrade the SRM to an entirely new design, the Administrator is required to issue an RFP for a single source for this upgraded design, with the understanding that a second source for this upgraded design would be considered in the future after the upgraded design is tested and found valid.

The purpose of this provision is for NASA to determine if a second source for the shuttle's SRM provides certain economic efficiencies or, otherwise, is in the national interests. This provision does not force NASA to establish a second source; it simply requests NASA to consider the feasibility of establishing a second source for future SRM's.

I would like to mention another provision of this bill which has been carefully worked out with the House Science and Technology Committee, and that provision refers to the role of the shuttle. This provision reaffirms the shuttle as the primary launch system for manned missions and missions needing the unique capabilities of their shuttle. It also states that the shuttle shall be available for the launch of foreign and commercial payloads that do not necessarily require the unique capabilities of the shuttle.

As we all know, the administration announced on August 15 that the shuttle would no longer launch foreign and commercial payloads that are not shuttle unique or that are not associated with overriding national security or foreign policy interests. The intent of this administration announcement is, among other things, to creat a more favorable environment for a viable U.S. commercial expendable launch vehicle [ELV] industry, a goal that I also share. I am concerned, however, that by prohibiting the shuttle from launching these foreign and commercial payloads, just to narrow the competition, we could unintentionally drive some of these payloads into the arms of our foreign competitors, whose own launch systems are subsidized and thereby hold an economic advantage over any U.S. commercial launch system.

The purpose of this provision in this bill is to ensure that, in the face of growing international competition in the world launch market, the shuttle will be available in case a U.S. domestic ELV industry is unable to compete effectively or is otherwise unable to provide a launch for a particular payload. While I support the creation of a viable U.S. ELV industry, I believe that, especially in the formative years of this industry, the United States should not "place all of its eggs in one basket" in terms of relying solely on this new industry to compete with foreign launch systems.

Mr. President, due to the *Challenger* accident, we are now experiencing the worst-case scenario of having relied on a national launch capability with a single point-of-failure. Due to this single-launch-system policy, we have an incredibly long list of payloads whose launches are being delayed from 2 to 3 years. We cannot afford ever again to become solely dependent on a single launch system and risk being unable to gain access to space. Accordingly, this bill recognizes the importance of a mixed fleet of space shuttles and ELV's and also recognizes that some Government payloads are better served by an ELV launch than by a shuttle launch. Furthermore, this bill requires the NASA Administrator to report to Congress a plan on intends to use ELV's and how its use of ELVs can be carried out in a manner that fosters the development of a competitive domestic ELV industry.

Mr. President, this bill also reestablishes a White House National Aeronautics and Space Council, one form of which existed from 1958 to 1973. The interest in reestablishing this Council has grown out of the frustra-

tion that Congress has experienced this year as the administration's senior interagency group [SIG] on space deliberated on a space recovery plan. The Congress has been ill-informed throughout the year as to the options and considerations being discussed by the SIG. Therefore, to create better communication between Congress and the administration regarding space policy issues, the Commerce Committee approved the reestablishment of the National Aeronautics and Space Council.

In reestablishing this Council, this bill would designate the Vice President as Chairman of the Council. The rest of the NASC would be composed of the NASA Administrator; the Secretaries of Defense, State, Commerce, and Transportation; and the Director of Central Intelligence. The purpose of reestablishing the NASC is to elevate space policy issues on the national agenda and to provide for a more timely and appropriate resolution of aeronautical and space policy issues.

This bill would also direct the NASA Administrator to review the report of the National Commission on Space and provide to the relevant committees of Congress a long-range implementation plan, including a specific agenda for the next 5 years. At a time when we are looking for specific direction for our Space Program, such a plan would be an immeasurable assistance to the Congress as we attempt to restore our once unchallenged Space Program to its position of preeminence.

This bill also includes technical amendments to the Land Remote Sensing Commercialization Act of 1984, Public Law 98-365. The amendments clarify the intent of some of the act's provisions and define relationships between Federal agencies, remote sensing data users, and private system operators as responsibility for the Federal Government's Landsat system is transferred to private hands.

The most significant of these technical amendments allows system operators to provide free or discounted data for research purposes, as opposed to commercial purposes. The act's requirement that data be disseminated on a nondiscriminatory basis prohibited such distinction between research and commercial users of data, and inhibited the availability of data for researchers. The amendment will encourage development of new data applications without threatening the commercial viability of private remote sensing systems.

This substitute bill includes authorization for the atmospheric and satellite programs of the National Oceanic and Atmospheric Administration [NOAA]. These programs include the public warning and forecast activities of the National Weather Service; atmospheric and hydrological research; and procurement, operation, and data management of NOAA's weather satellite systems. The Commerce Committee reported S. 2708, which authorizes the same programs, and the funding levels authorized in the substitute bill are those provided by the Senate Appropriations Committee. I remind my colleagues that full authorization has been provided for the National Climate Program, Public Law 99-272, and commercialization of NOAA's land remote sensing satellite, Landsat, system (Public Law 99-62), and this bill does not authorize those programs.

Section 27 of this bill creates the position of NOAA chief scientist, to be appointed by the President and confirmed by the Senate. I am happy to include this provision at the request of Senators WEICKER and HOLLINGS, as I was an original cosponsor of their bill to create this position.

Finally, Mr. President, as our colleagues consider this bill and any other funding bill related to our Space Program, I would like to mention one other element of our Space Program that often goes unnoticed. That element is public opinion. In the wake of the *Challenger* accident, it is easy to lose sight of the many successes of NASA and the contributions made by our Space Program to the well-being and standard of living of all Americans. Also, it is easy to assume that public support for our Nation's space endeavors has diminished. It is, therefore, reassuring to see reflected in a recent national public opinion survey a broad and strong statement of support from the American people on behalf of U.S. space activities, including manned space exploration.

The public opinion poll was conducted by Market Opinion Research in early August, after the Rogers Commission had completed its report and before the President recommended the replacement of the orbiter. Rather than a waning of public support and enthusiasm, the poll found an overall increase in public support when compared with the results of an earlier survey taken in January, before the *Challenger* accident. Some key highlights from the poll include:

85 percent support building a new shuttle and pressing ahead with the civilian space program;

89 percent support resuming Shuttle flight operations, knowing that there will always be risks associated with manned space flight;

69 percent support proceeding with the NASA space station program;

52 percent disagree that space program expenditures should be cut, and responses to three different questions demonstrated more than 56 percent support significant increases in the NASA budget; and

83 percent support the policy of encouraging private industry to provide space services.

Mr. President, I ask unanimous consent that the executive summary of this opinion survey that provides further detail on the range of issues addressed and the public's responses be printed in the RECORD.

Mr. President, the needs of our Space Program are immediate, crucial, and vast. This authorization bill provides a funding level which will meet NASA's post-accident requirements and needs as we know them today, but to authorize any less would be tantamount to advocating a second-class Space Program. Our Space Program is at a crucial juncture, and to shortchange NASA at the time of its most urgent need should not even be an option to consider. Therefore, I urge my colleagues to support this authorization bill for NASA. Our civilian Space Program has recorded a rich history of unprecedented achievements, and there is no reason why we should expect any less from our Space Program of the future.

I ask my colleagues to approve by unanimous consent the bill before us, H.R. 5495, an amendment in the nature of a substitute. If we take a minute to reflect on the importance of our Space Program over the past 28 years and beyond, we will all recognize that we have no option other than to provide our continued support for our Space Program through passage of this important legislation.

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

SUMMARY OF MARKET OPINION RESEARCH SURVEY OF AMERICAN ATTITUDES TOWARD THE SPACE PROGRAM

In August, 1986 Market Opinion Research conducted a telephone survey of 1200 adult Americans to investigate their attitudes toward the space program and related issues. This brief summary presents the key findings from the August survey. The findings are also compared with the results of an earlier study of American attitudes toward space conducted in January, 1986.

These two surveys—one conducted prior to the Shuttle Challenger accident and the other conducted prior to President Reagan's announcement of his decision to build a replacement shuttle—represent a unique perspective on American attitudes toward the space program.

(Overall, the U.S. public strongly supports the American space program and wants it to move ahead.)

The public was given a number of different opportunities to register approval for the program—by stating whether they approved (agreement = 70 percent) of the civilian space program, whether the civilian space program should be continued (76 percent) and whether it should be expanded (57 percent). Now that the Rogers Commission has finished its work, the public was asked, can the space program proceed? Nearly three quarters of the public want the program to proceed. Americans believe that manned flight should be resumed (89 percent), since experts state that there will always be some risks associated with space shuttle flights. Eighty five percent (85 per-

cent) of the American people believe there should be a replacement shuttle and astronauts and certain key civilians should travel on the shuttle (76 percent agree).

These findings are consistent with the results of polls conducted by the television networks and the national news organizations that have also confirmed an increase in public support for the space program (from 63 percent before the accident to 70 percent today). The initial, post-accident wave of emotional support appears to have receded to today's level of a 7-percent-plus increase in support over early Janaury.

(The U.S. public views the space shuttle as a key element in achieving payoffs from the space program.)

Americans overwhelmingly agree with the statement that obtaining benefits for medicine, industry and science requires a replacement shuttle for the Challenger (79 percent). They also agree with the statements that a replacement shuttle is needed to avoid abandoning the benefits that are attainable from the investment in the space program to date (73 percent); and that we should avoid wasting money in the long run by saving money now and limiting the program with three shuttles (67 percent). The public agrees that without the replacement shuttle, U.S. space capabilities would be crippled (63 percent); and without a replacement, the U.S. will "fall further behind the Soviet Union" (58 percent). A plurality of the public believes in a balanced program.

(The American public favors the space station as a long term U.S. space goal.)

The American public supports a number of different long term goals for the space program. A majority of the public agrees that a U.S. mission to Mars should be a goal for the civilian space program (56 percent); and a majority agree that a joint U.S.-Soviet Union manned mission to Mars should be a goal of the space program (58 percent). An even stronger majority (78 percent) believe that a manned earth orbiting space station and unmanned exploration of the planets should be a goal of the U.S. space program.

(Support for NASA's new space station program has increased since January, 1986.)

Americans favor NASA's new space station program by a margin of sixty-nine percent (69 percent) to fifteen percent (15 percent) today as compared with fifty-eight percent (58 percent) to twenty-five percent (25 percent) before the Challenger accident. Three out of four men (76 percent) approve of the space station. Two out of three women (63 percent) approve of the government's plans. Support from men has increased eleven percent (11 percent) and from women to fifteen percent (15 percent). At the same time, a larger number of men than women state that they are aware of other countries that are planning or currently operating a manned space station. Twice as many men as women state that they are aware of such foreign activity.

(Americans support increasing funding for NASA's civilian space program.)

Far more Americans disagree (52 percent) than agree (34 percent) with the statement that expenditures for America's civilian space program should be cut back. A solid majority (60 percent) believes that the U.S. government should spend "whatever is necessary to maintain U.S. leadership in space."

When asked whether NASA's spending on the space program should be increased from seven-tenths of one percent of the annual federal budget to about one percent of the total federal government's budget to maintain U.S. leadership in space following the Challenger accident, a strong majority (59 percent) outnumbers those who disagree by more than two to one. When the cost of this small percentage increase is explained to be about two billion dollars a year, more in the current and next several years, a strong majority still outnumbers those who disagree by a significant margin (56 percent to 30 percent).

CHIEF SCIENTIST AMENDMENT TO H.R. 5495

Mr. HOLLINGS. Mr. President, I am pleased that an amendment has been included in H.R. 5495, the NASA authorization bill, that would create within the National Oceanic and Atmospheric Administration [NOAA] the position of Chief Scientist. This new post will take the place of the current Associate Administrator position.

Mr. President, I know my colleagues are aware of the major role I played in the establishment of NOAA back in 1970. Since that time, I have followed the agency's progress with great interest. I have worked to develop its program and budgets through my work on the Commerce and Appropriations Committees. And I remain committed to the goals and ideals that led to the formation of the agency 16 years ago. This is why today I am keenly interested in the replacement of the Associate Administrator position in NOAA with that of a Chief Scientist.

It simply makes good sense to require that someone in NOAA's upper management have direct scientific experience relevant to the agency's work. NOAA has numerous scientific responsibilities vital to the national interest—natural resource conservation, weather forecasting and public warning, aviation and marine safety, the national geodetic network, and oceanic and atmospheric research and services. To successfully accomplish these various missions, NOAA has a vast array of scientific expertise in a number of areas. The Chief Scientist's job will be to coordinate NOAA's internal talent and act as liaison to the scientific community outside of NOAA. In addition, the Chief Scientist will be the principal scientific adviser to the NOAA Administrator.

I think this change is a good idea and urge my colleagues to join with me in support of H.R. 5495 and the establishment of the post of the Chief Scientist in NOAA.

Mr. RIEGLE. Mr. President, I strongly endorse H.R. 5495, as amended, and ask my colleagues to do the same.

H.R. 5495, as amended, represents the best effort on the part of the Senate and the House to draft a bill that addresses the short-, mid-, and long-term programmatic and policy requirements of the Civilian Space Program. This bill is an improvement over the committee-reported legislation, and all Members of the House Science and Technology Committee and the Senate Committee on Commerce, Science, and Transportation should be complimented for their contributions to this legislation. The final bill combines the comprehensive policy provisions of the House with the necessary budget decisions of the Senate. The end result is a bill that should do much to put NASA back on track.

I am especially pleased that the final bill includes most of the initiatives originally included in the Civilian Space Program Restoration Act, H.R. 5495, a bill I introduced with the other distinguished Democratic Members of the Subcommittee on Science, Technology, and Space—Senators HOLLINGS, GORE, and ROCKEFELLER. In particular, I am pleased that the fiscal year 1987 NASA authorization bill before the Senate makes 10 critical decisions.

First, it authorizes $272 million for a new orbiter as requested by the President. These funds were not included in the committee-reported measure, despite the fact the hearing record strongly justified funding of an orbiter, and I am pleased they are included in this bill.

Second, this measure authorizes an additional $531 million to accommodate the Senate-passed fiscal year 1987 HUD-Independent Agencies Appropriations bill assumption concerning the importance of the DOD reimbursables to NASA corrective activities. In particular, these moneys will help ensure timely resolution of the shuttle fixes and the review of all critical items on the shuttle.

These two items combined, the orbiter and reimbursables, represent the basic budgetary difference between the Senate Commerce Committee-reported authorization of $7.795 billion and the bill before the Members today which is at $8.598 billion.

Third, the bill fully funds the fiscal year 1987 budget request for space station, $410 million, to maintain the competitive posture of the Nation and to initiate the next logical step in space.

Fourth, the bill reestablishes the National Aeronautics and Space Council in the White House—a Riegle/Hollings initiative in the Senate—and puts space policymaking in the right hands and at the right level. The Council is the key policy provision included in this bill, and I believe it could do more for the future of the Civilian Space Program than any other provision included in the bill.

Fifth, it requires NASA to include a separate line item for safety in the budget submission—a Gore initiative—and highlights the overall importance of safety, reliability, and quality assurance to the space program.

Sixth, it requires NASA to submit an implementation plan for the recommendations of the National Commission on Space, the Paine Commission, and to assist the Congress in develop-

ing a blueprint for the Civilian Space Program.

Seventh, H.R. 5495 includes technical amendments to the Land Remote-Sensing Commercialization Act that should clarify any confusion about the use of experimental data.

Eighth, it emphasizes the importance of future technology development activities by increasing the advanced space research and technology development account above the fiscal year 1987 budget request.

Ninth, it establishes a practical process with reasonable criteria for second sourcing redesigned solid rocket motors or competing upgraded solid rocket motors to ensure competition, quality control, technical integrity, and adequate base of production.

Tenth, and finally, the bill states that NASA must do its best to honor existing launch service agreements and that foreign and commercial communications satellites should not be totally banned from the shuttle. Where it is impossible to accommodate these payloads with existing agreements on the shuttle, I believe every effort must be made to encourage these payloads to fly on domestic ELV's. I realize these statements do not conform totally with the current White House position, but I am reluctant to say foreign and commercial communications satellites may "never" fly on the shuttle. Already, there exists a shuttle-related industry of users, upper stage manufacturers, and payload processors whose prior investments cannot be totally ignored. The use of the shuttle as a "secondary" commercial launch service is a concept that should not be perceived as inimical to a domestic ELV industry. Rather, it should be seen as an insurance policy to retain the leadership of the U.S. in launch service markets and as an important tool of U.S. foreign policy.

For the next 5 years, I fully realize there are limited flight opportunities on the shuttle. I also realize there is a consensus the shuttle should never again be treated as a commercial airliner and that future flight rates will be more conservative in order to ensure safety, reliability, and quality control. Therefore, in the short term, the number of flight opportunities for foreign and commercial communications satellites is minimal. However, space policy must be visionary, not shortsighted. The shortsightedness of trying to make the shuttle fully operational had devastating consequences. Let's not let our shortsightedness concerning launch policy jeopardize U.S. technological leadership in space or the U.S. share of the launch services market.

To ensure such a visionary policy, the National Aeronautics and Space Council must be reestablished, and it will be if H.R. 5495 is signed into law. It's interesting to note there are some persons in the administration who equate the Council with a renunciation of the current space policymaking apparatus, and there are some Members of Congress who equate the Council with an endorsement of the current executive branch space policymaking procedures. Personally, I see reestablishment of the Council as a statement of two critical facts: First, our space program is critical to the economic well-being and national security of the United States; and second, space policy formulation should be done at the highest level of Government. I also believe the Council will provide for a more open policymaking environment and that the creation of the user adivsory group will help the private sector and Federal Government retain the viable partnership that has been a key element of the space program. In addition, the Council will provide the best possible forum for the comprehensive discussion of the future launch requirements of the U.S. Government—civil and military—and the Council will ensure the formulation of a comprehensive advanced technology development plan to meet those future requirements. The Nation's space program needs the Council, and I hope that the fiscal year 1987 NASA authorization bill will reestablish this much needed policymaking mechanism.

Mr. President, let me indicate that there were several House provisions we are unable to accommodate in the fiscal year 1987 NASA authorization bill due to time constraints, jurisdictional problems or other legislative obstacles. In particular, I would like to address the House patent law provisions for inventions made in outer space. This is an issue the Senate must address, and I would like to indicate that I intend to introduce legislation on this matter at the start of the next session of Congress. Hopefully, the House and Senate will be able to enact legislation early next year in this area that will clarify the applicability of U.S. patent law provisions to activities in outer space and facilitate activities on the future space station.

In closing, let me say that overall H.R. 5495 is a blend of the House and Senate provisions and an excellent piece of legislation. The $8.6 billion provided in this measure reflects NASA's fiscal year 1986 level of activity and the minimum requirements of the Civilian Space Program. It is still uncertain in the appropriations process as to where funding for a new orbiter and reimbursables will be included. But it is certain that NASA requires a total of $8.6 billion in fiscal year 1987 to put the Civilian Space Program back on track.

Mr. President, this has not been an easy year for NASA or the space program. The shuttle disaster was an incomprehensible loss. However, the bill before you today, H.R. 5495 as amended, and the policy and budgetary provisions of this legislation represent an important step in restoring NASA and the space program to its former stature.

I urge my colleagues to support this measure, and I urge my colleagues to continue to support our Civilian Space Program. The dreams of Dick Scobee, Mike Smith, Judy Resnik, Ellison Onizuka, Gregory Jarvis, Ronald McNair, and Christa McAuliffe must not be forgotten because they are our dreams and our children's dreams.

Mr. GORE. Mr. President, I rise in support of this legislation. As my colleagues are well aware, this has been a difficult year for the Space Program. The *Challenger* accident and the resulting disclosures have shown that the Space Program was not in the fine condition we all believed. We have a need to fulfill, and that is to put NASA back on the footing it was during the 1960's.

This authorization bill begins us in that direction.

It gives the agency enough of a boost beyond the administration request so that they have a realistic chance of implementing the recommendations of the Rogers Commission.

It calls for the restoration of our national space council, and independent policy body that would wrest control of the Space Program from the White House, and avoid the torpor and indecision we experienced this summer.

Lastly, I call on NASA to report to Congress every year on the level of commitment to quality assurance, which has been in such a disastrous, yet untraceable, decline since the days of Apollo.

This legislation is a good compromise, and it deserves our support.

NOAA

Mr. HOLLINGS. Mr. President, sections 22 through 26 of this amendment to H.R. 5495 contain fiscal year authorizations for the atmospheric and satellite programs of the National Oceanic and Atmospheric Administration. These funding levels are consistent with Senate and House appropriations actions for NOAA programs.

Among the important matters covered by these five sections are the NOAA share of the tri-agency next-generation weather radar program known as NEXRAD, procurement of advanced systems for meteorological data processing and communications, continued research on localized severe weather, and the Program for Regional Observing and Forecasting Services. In addition, the authorizations permit NOAA to maintain its existing system of polar-orbiting and geostationary weather satellites. These kinds of activities form the backbone of NOAA's

operational meteorology and atmospheric research.

On July 16 of this year, the Senate passed my STORM resolution [S. Con. Res. 137], which is aimed at helping Americans safeguard their lives and property from the effects of violent weather. The resolution's prime objective is a comprehensive program of operations and research to bring about major improvements in the forecasting and warning of tornadoes, flash floods, hail storms, and other severe storms that occur in a localized area. The resolution also focuses on the need to keep up NOAA's hurricane prediction capability, especially by means of the geostationary satellites and hurricane reconnaissance flights.

The modest authorization levels provided in this amendment are a step toward the fulfillment of the goals embodied in the STORM resolution. There is little doubt that we must do all we can to maintain an effective warning and forecast capacity for hurricanes and localized severe weather like tornadoes. In South Carolina, we have had ample experience with both types of weather. I urge my colleagues to work with me now and in the future to ensure the continued existence of such a capacity.

CHIEF SCIENTIST FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. WEICKER. Mr. President, I rise in support of section 27 of S. 2714, which would designate the Associate Administrator of the National Oceanic and Atmospheric Administration [NOAA] as Chief Scientist.

The appointment of a Chief Scientist to replace the Associate Administrator's position will assure that NOAA has the benefit of having someone in upper management with direct scientific experience relevant to the agency's activities. The Chief Scientist would act as the principal scientific adviser to the Administrator, and would be required to have experience in oceanic, atmospheric, or other scientific disciplines important to NOAA's missions. It only makes sense that creating a Chief Scientist position will strengthen the agency's scientific direction.

Mr. President, this language is supported by the administration. I am pleased at the inclusion of this section in the bill, so that NOAA can continue as the principal agency within the Federal Government for the administration of the Nation's civilian marine and atmospheric programs.

Mr. ROCKEFELLER. Mr. President, I am pleased that the House and Senate have a common version of the NASA authorization bill ready for final approval. For members of the authorizing committees, the problems posed by the *Challenger* disaster have been exceptionally difficult. The budgetary consequences of the accident, along with the grounding of the shuttle for at least 2 years, are clearly enormous. Virtually the entire NASA budget is affected by these developments in some way, and it may take years for us to fully understand the ramifications.

The legislation before us begins the process of reassessing the needs of the Space Program in the wake of the accident. In most major respects, the bill resembles the proposal I supported in the Commerce Committee. The authorization levels, overall, are more realistic than those reported by the committee: they explicitly provide for the procurement of a fourth orbiter and address the issue of DOD reimbursements to NASA—amounting to over half a billion dollars in fiscal 1987—for future military missions on the shuttle.

But beyond the multitude of technical and managerial problems confronting NASA, *Challenger* exposed a pervasive lack of direction in the Civilian Space Program. The Shuttle Program had become almost an end in itself, rather than a means of achieving the goals of space exploration. Under considerable pressure to hold down costs, NASA was striving to reach a flight rate—by the end of this decade—that produced greater efficiencies in the operation of the shuttle. But the spirit and focus that had guided the agency through the Apollo period and other triumphs was missing.

Solving this problem is clearly a long-term proposition, well beyond the scope of this authorization bill. But it should be a central responsibility for us, who serve on the authorizing committee, to decide what it is we want the Space Program to accomplish. I'd like to see an ambitious blueprint: I'm intrigued, for example, by the vision of the future described in the Paine Commission report. The Commission proposes a fascinating sequence of activities—progressing from present plans to develop a space station to manned outposts on the Moon and Mars in the next century. It's exciting to think that during our lifetimes we might see people living and working in space for extended periods of time. And it's the kind of agenda that could inspire our youth and generate new interest in math, science, engineering and other fields on which our technological advancement depends.

The gains to our society from space exploration are potentially enormous. The zero-gravity conditions in space provide an ideal laboratory for certain kinds of scientific inquiry: processes can be studied which accelerate the development of new medicines and new materials. Technology developed for the Space Program can also have important applications on this planet: scientists are looking, for example, at whether remote-sensing technology developed by NASA can be helpful in predicting the spread of malaria and other epidemics in underdeveloped countries. If we have the foresight to make a strong enough commitment to the Space Program, I'm convinced that we can greatly expand our knowledge of the universe, advance our technological development, and make discoveries that could substantially improve the quality of life here on Earth.

The danger is that our commitment of resources to space exploration won't come close to matching the level of our aspirations. The Paine Commission, for example, recommended an immediate tripling of NASA's expenditures on technological research, to parallel the kind of effort made during the Apollo period. But our present struggle in the Congress is to prevent cuts in NASA's budget. This authorization allows for an increase in NASA's R&D budget, but—apart from space station research—not on the scale proposed by the Commission.

This bill, as I have indicated, starts the process of rebuilding the Civilian Space Program, It does not address all major policy issues, nor settle the fundamental question of the program's priorities. But if viewed as a beginning, and a response to some of the problems posed by the shuttle accident, the effort is commendable, and deserves the support of the full Senate.

Mr. DANFORTH. Mr. President, I rise in support of H.R. 5495, the fiscal year 1987 NASA authorization bill that is presented as an amendment in the nature of a substitute. I also am pleased that this bill has been developed in cooperation with the House Science Technology Committee. Furthermore, it is encouraging to note that the funding levels and the other provisions of this bill are, by and large, acceptable to the House Science and Technology Committee.

Due to the January 28 accident of the space shuttle *Challenger,* our Space Program is faced with the difficult task of reconstituting our national space launch capability, as well as that of modifying missions and activities to reflect the results of the accident. NASA has made a strong start in undertaking this task. NASA has made considerable progress in redesigning the shuttle's solid rocket motors and in establishing the management and leadership that is especially critical during this recovery period.

However, we should not overlook the fact that Congress has certain responsibilities during this recovery period, and providing NASA with the necessary resources is unquestionably, one of our most important responsibilities. This authorization bill will fulfill that responsibility and help get our space program back on track.

This bill's authorization of $8.598 billion supports, among other things, the redesign of the shuttle's solid

rocket motor and the other changes required to improve the safety and performance, as identified in the post-accident examination of the space shuttle system. Also, this authorization provides continued support for the Space Station Program, which will ultimately enable many grander opportunities for space exploration and development. This bill's space station authorization of $410 million will allow NASA to initiate the development of the space station in fiscal year 1987, a milestone which, in and of itself, should enhance the international and commercial participation in this program.

In addition, I am pleased that this bill authorizes $40 million for a new start for the National Aerospace Plane Program, which would revolutionize our ability to deliver payloads to orbit and eventually transport passengers from one end of the globe to the other. Also, this authorization provides $376 million for NASA's Aeronautical Research and Technology Programs, the purpose of which is to conduct the aeronautical research that is too risky and whose payoffs are too distant for the commercial aviation industry to undertake. This authorization for aeronautical research and technology should help maintain the technological base for the United States to remain competitive in the global arena of aeronautical sales and technology.

Mr. President, since the shuttle is not expected to resume flying until, at the earliest, the first quarter of 1988, many of our space science initiatives are being delayed for several years. Regrettably, what was to have been our "Year of Space Science," with the shuttle launch of the Hubble Space Telescope and the planetary missions—Galileo and Ulysses, has now evolved into a year in which NASA has had to refocus its space science and applications efforts and resources.

Yet, NASA's Space Science and Applications Programs still engage in meaningful and productive work during this shuttle recovery period. Therefore, I am pleased that this bill authorizes $1,534.6 million for NASA's Space Science and Applications Programs and provides the administration's request in the Research and Analysis Programs and in other Space Science and Applications Programs which have a direct link to the space science and applications programs of our universities and colleges.

Without restating the elements of this bill which the Chairman of the Subcommittee on Science, Technology, and Space, Senator GORTON, has already mentioned, I believe that it is important to note that this bill responds to NASA's revised budget requirements that reflect the effects of the *Challenger* accident, as we know them today. Admittedly, these revised fiscal year 1987 requirements may change as NASA defines more precisely the actions needed to recover from the accident; yet, for the time being, this bill will enable NASA to address adequately the necessary fixes required to restore our space launch capability.

Mr. President, I also would like to comment on the authorization in this bill to restore $531 million in Department of Defense [DOD] shuttle services payments that have been deleted by the Defense Appropriations Subcommittee in its fiscal year 1987 DOD appropriations bill. I feel compelled to remind our colleagues how on August 7, after the Armed Services Committee had deleted from its fiscal year 1987 DOD authorization bill these payments to NASA, the full Senate restored that funding.

Now, the issue of this payment has shifted from the defense authorization and appropriations subcommittees to the committees that fund NASA. The Appropriations Committee has agreed that the Defense Appropriations Subcommittee provide funding to replace the *Challenger* and that the HUD-Independent Agencies Appropriations Subcommittee make available in its funding for NASA the DOD shuttle services payments of $531 million. This $531 million authorization in the bill before us is consistent with the actions of the HUD-Independent Agencies Appropriations Subcommittee and, more importantly, authorizes funding for NASA that is nothing short of critical. If these funds are not made available to NASA, it will be tantamount to imposing on NASA an across-the-board reduction of almost 7 percent. If we are serious about having anything more than a second-class space program, we will approve this bill and the restoration of these DOD shuttle services payments to NASA.

I should point out, also, that the intent of this amendment is not to allow NASA to renege on an obligation. After the *Challenger* accident, NASA, OMB, and DOD all agreed that the most effective way to recover from the shuttle accident is for DOD to honor this fiscal year 1987 payment to NASA and for NASA to "credit" DOD in the fiscal year 1988 budget process. I believe that this makes perfectly good sense. NASA should not be forced to endure yet another hardship by absorbing on such short notice the loss of this anticipated revenue.

Mr. President, as we all know, on September 9, the President submitted a formal budget request of $272 million for a replacement orbiter. This authorization bill acknowledges that request and, in a manner that is consistent with the Commerce Committee's authorization bill, provides a specific authorization of $272 million to replace the *Challenger.*The restoration of our shuttle fleet to four orbiters is absolutely critical if our space launch capability is to provide anything more than a marginal capability.

Mr. President, finally, I call to the attention of the U.S. Senate the efforts of students of Gladden Elementary School in Belton, MO, on behalf of our space program.

These young students worked for many months collecting pennies to help replace the space shuttle *Challenger.* As a result, they have presented to the President of the United States $759.78—the sum of the thousands of pennies contributed by schoolmates and fellow Belton citizens.

I am proud of the Gladden Elementary students and commend them for the fine job they have done.

Mr. President, I would like to take this opportunity to commend the chairman of the Subcommittee on Science, Technology, and Space, Senator GORTON; the ranking democrat of the Commerce Committee, Senator HOLLINGS; the ranking Democrat of the Science, Technology, and Space Subcommittee, Senator RIEGLE; and Senator PRESSLER for their diligence and cooperation in developing the Commerce Committee's bill and the revised bill before us. The committee and the House Science and Technology Committee have worked extremely hard to blend together the most reasonable elements of each bill. I believe that this bill provides NASA the necessary authorization to address the problems identified with the *Challenger* accident. It also ensures that NASA's other aeronautical and space programs have the support necessary to achieve the same measure of success that the Nation and the world have come to expect from NASA. I urge my colleagues to accept this bill as an affirmation of our continued support for the future of our Space Program.

Mr. HOLLINGS. Mr. President, I support passage of the fiscal year 1987 NASA authorization bill, H.R. 5495, and I ask my colleagues to do the same.

Mr. President, the bill before the Senate today is the result of several weeks of informal negotiations between House and Senate Members and represents a concerted effort to pass a NASA authorization in a most critical year for the civilian space program. The bill is not perfect. But considering the events of the past year and the ramifications of the shuttle disaster, it is a best effort to put the civilian space program back on track.

H.R. 5495, as amended, tries to respond to NASA's needs—fiscal, programmatic and policy needs—in a pragmatic and responsible manner. The bill also tries to lay a firm foundation for future civilian space activities by reestablishing the National Aeronautics and Space Council and by re-

questing an implementation plan for the recommendations of the National Commission on Space—the Paine Commission.

Mr. President, the events of January 28 will not easily be forgotten by this Member, the families of the *Challenger* crew, NASA, or the Nation. It was a tragedy of the worst type—an avoidable tragedy! As a result of this tragedy, we realized that there were many lessons to be learned. First, and perhaps most importantly, was the fact that safety, quality control and reliability must constantly be the hallmarks of the manned space program. Second, the success of any major program is an open line of communications between all players, at all levels. Never again can we have a breakdown of communications such as that which occurred on January 27-28, 1986. Third, competition is a key element in maintaining the overall technical performance and quality of critical shuttle components. Sole source contracts must be carefully scrutinized, and where possible, second sourcing should be pursued. Fourth, the shuttle is and always will be a research and development vehicle. It was never intended to be a commercial airliner, and its treatment as such led to unrealistic schedules and phenomenal launch pressures. Finally, it must be recognized that assured access to space is critical to the economic and national security of the country. Never again can the Congress endorse an administration policy that lets budget presssures force reliance upon a sole launch system, especially a man-rated system.

I am pleased to say that H.R. 5495, as amended, tries to address each of these lessons in one way or another. It places a proper emphasis on safety, and it highlights the need for a higher level space policymaking forum—the National Aeronautics and Space Council. It also includes a reporting requirement as to the feasibility of using expendable launch vehicles (ELVs) for Government payloads and establishes a sensible procedure for second sourcing redesigned solid rocket boosters or competing upgraded solid rocket boosters. The bill also provides an adequate level of funding for anomaly resolution activities and the review of all critical items on the shuttle. The bill is a best effort to add a sense of realism to the goals and objectives of the Nation's space program without displacing the agency's ability to dream.

Mr. President, H.R. 5495, as amended, is not a cure-all. But it does represent a concerted effort on the part of the members of the House Science and Technology Committee and the Senate Commerce Committee to deal with a most complex set of issues at a most critical moment in the history of the civilian space program. At this juncture, there is a real and apparent need to meet the requirements of NASA and the civilian space program, to manifest the resolve to maintain U.S. technological leadership in space.

H.R. 5495, as amended, is a first step in that direction, and it is a step that must be taken.

Mr. HOLLINGS. Would the chairman of the Subcommittee on Science, Technology and Space yield for a question concerning section 11 of the fiscal year 1987 NASA Authorization bill?

Mr. GORTON. I am glad to yield to the ranking member of the Senate Commerce Committee.

Mr. HOLLINGS. Am I correct to say the bill before the Senate today instructs NASA to initiate a request for proposal for a second source producer of solid rocket motors or, and I emphasize the word "or," a request for proposal for an open competition for an upgraded version of the solid rocket motors once the Administrator has determined which course of action will be pursued to fix the shuttle?

Mr. GORTON. The Senator is correct.

Mr. HOLLINGS. Am I also correct to say that the bill has established criteria for the selection of the second source manufacturer of redesigned solid rocket motors, as well as for the manufacturer of upgraded solid rocket motors?

Mr. GORTON. Once again, the Senator is correct in his interpretation of the language. The bill indicates that the Competition in Contracting Act should be referenced for the selection criteria. In particular, section 2304(b)(1) of title 10 of the United States Code is applicable in the case of second sourcing, and section 2304(a)(1) of title 10 of the United States Code is applicable in the case of a competition for an upgraded solid rocket motor.

Mr. HOLLINGS. There is language in subsection (B) of section 11 that indicates the Administrator of NASA may not sign or extend a production contract for a follow-on solid rocket motor, be that a redesigned version or an upgraded version, until he has issued a request for proposal for either the redesigned solid rocket motor or the upgraded solid rocket motor. In addition, subsection (f) of section 11 indicates that if the administrator intends to sign or extend such a follow-on contract, he must notify the Congress of his intentions and then wait 30 days during which either House of Congress is in session.

Am I correct to assume that this language was included to ensure the creation of a competitive procurement process for solid rocket motors?

Mr. GORTON. The Senator is correct. Once the Administrator has thoroughly assessed the proposed solid rocket booster fix and submitted his findings to the Congress according to the reporting requirement found in subsection (a) of section 11, it is my understanding a competitive selection process will be initiated.

Mr. HOLLINGS. At the same time, am I correct to assume that if the Administrator finds that additional solid rocket motors are required and there is still no alternative source, he can enter into an extension of Buy II with the current manufacturer so that the shuttle fleet is not adversely affected?

Mr. GORTON. It is clear that in the case of either a second source of the redesigned solid rocket motor or an upgrade of the motor, there could be a period when the current manufacturer is the only possible supplier of solid rocket motors. In such a situation, the Administrator may extend or sign a new production contract with the encumbent pursuant to the conditions found in subsection (f)—that is, the notification of Congress of the planned procurement and then a 30-day waiting period.

Mr. HOLLINGS. I thank the chairman, I just wanted to be perfectly clear about the gap filler provisions and to be sure that they did not provide a vehicle whereby the intent of section 11 was diluted.

Finally, Mr. President, for those Members who have not had time to read the General Accounting Office report "Space Shuttle: NASA's Procurement of Solid Rocket Boosters," I would like to read a statement from that report so they will understand why I feel so strongly about second sourcing:

> When the Government becomes dependent on a sole source of supply for a critical subsystem on a large and long-term program such as the shuttle, the contractor may not have the incentive to identify and correct problems in areas such as quality control and safety. The Government does not have maximum leverage to ensure correction of problems. The chance of winning a Government contract or the threat of losing it provides a key incentive for greater efficiency and effectiveness.

I think the chairman of the subcommittee will agree, it is the intention of our committee to reestablish safety, reliability, and quality as the hallmarks of NASA. Hopefully, section 11 of the fiscal year 1987 NASA Authorization is another step in that direction. I thank the subcommittee chairman for yielding and for his discussion of this issue.

Mr. HEFLIN. I rise in support of the fiscal year 1987 NASA authorization bill that is being considered today in the Senate.

Mr. President, as we all know, these are difficult times because of the excessive Federal deficits and the budgetary pressures that exist for all programs. Each and every committee as well as each and every member has been called upon to do their fair share to reduce the Federal deficit and to get our economy back on track.

With this thought in mind, the Subcommittee on Science, Technology, and Space has an even greater burden to bear—that of the tragic and numbing loss of the space shuttle *Challenger.* The loss of the *Challenger* is still fresh in our minds and still weighs heavily on our hearts. Yet in the aftermath of mourning, the Nation's Space Program, much like the firebird, must and will go ever onward to reach new plateaus and new horizons in the eternal quest for the understanding of our cosmos and our place in it. With the recent release of the space shuttle manifest and the beautiful vision of the space shuttle *Atlantis* from the launching pad at Kennedy Space Center, NASA appears to be heading in the right direction.

I must note that I am most pleased that the Subcommittee on Science, Technology, and Space of the Senate Commerce Committee was able to draft a bill that complies with the deficit reduction program while simultaneously protecting the civilian Space Program and our techological leadership in space in light of the *Challenger* accident. I salute my good friend, Senator GORTON, the chairman of the Subcommittee on Science, Technology, and Space, and the ranking member of this subcommittee, Senator RIEGLE, for another job well done.

I also salute my good friend, the ranking member of the full committee, Senator HOLLINGS, for the invaluable input he has made to this bill. His knowledge of the appropriations, budget and authorization process, combined with his knowledge of our civilian Space Program, helped immensely with the formulation of this authorization bill being recommended for NASA in fiscal year 1987. Mr. President, in April 1985, I made a statement which appears in the RECORD. In that statement, I indicated that:

> The United States must vigorously pursue several space and technology areas if we are to remain strong economically and technologically. Our investment in these areas is an investment in the future of humanity's possibilities. We must continue to push frontiers of space and technology, expanding humanity's horizon for the benefit of all.

Mr. President, this is indeed what we need to do and the fiscal year 1987 NASA authorization bill is a step in the right direction.

Let me give you an idea of what I mean.

First, the bill before us today, despite extreme budget pressures, provides strong support for the space station—a permanently manned facility which would fly in low Earth orbit. This program should do much to help with the development of material science, biotechnology, electronic and chemical engineering advances, as well as provide valuable information that will improve manufacturing processes and the quality of life here on Earth.

The bill authorizes $400 million for the space station for fiscal year 1987. While this is $10 million below NASA's budget request, the Appropriations Committee in its HUD and Independent Agencies appropriations bill, through which NASA is funded, has fully funded the Space Station Program. I commend the Appropriations Committee for this action.

Second, the bill recognizes the importance of the Materials Processing Program, a program which I am pleased to say several universities in my State are intimately involved. This program fully funds the fiscal year 1987 NASA budget request of $43.9 million. While I am in total agreement with the sponsors that this is still not enough and that more support is required if the United States is to be competitive with the Europeans and the Japanese in this critical area. I think the bill correctly establishes the priority nature of activity by granting the fiscal year 1987 request.

Also, I completely agree with the committee in its approval of NASA's programmatic decision to use the shuttle down time to modernize its microgravity related equipment. This will effectively utilize this resource to enable a more productive materials processing in space program. When shuttle flights resume, this effective use of resources should enable a more productive and reliable materials processing in space program and should facilitate the technological and commercial development of space.

Third, once again, the bill correctly prioritizes NASA's activities. It also points to the basic reality that the research of today represents the discoveries and break-throughs of tomorrow and that the United States must train its university students if we are to be competitive in future world markets.

This is one of the reasons that I have cosponsored a bill introduced by my distinguished colleague from Texas, Senator BENTSEN, which would establish a Space Grant College Program. The program will provide financial and other assistance for space-related projects administered by a space grant university. Senator BENTSEN's bill will establish a system that will coordinate the national needs and the research efforts of our colleges and universities related to space. Undoubtedly, the Senate will not have time to take up the space grant college bill in this Congress. However, it is my hope that the 100th Congress will consider and pass the space grant college legislation.

Fourth, the bill is able to significantly reduce NASA's fiscal year 1987 budget request in an equitable manner but without terminating any of the major programmatic activities. In this manner, the United States will be able to continue to push the frontiers of space and to expand our knowledge of the universe. In a like manner, we will be able to continue to support necessary space applications experiments that represent the commercial markets of tomorrow.

Fifth and finally, the bill is able to provide funding for the only 1986 new start included in NASA's budget request—the orbital maneuvering vehicle [OMV]. This initiative is critical to the development of space infrastructure which is required to do space science experiments and commercial space activities in low Earth orbit. the OMV will also be used to reboost the Hubble Space Telescope, one of NASA's most exciting.

Mr. President, this bill helps pave the way to the future while at the same time, helping to reduce the Federal deficit. It is a bill that I am pleased to support and a bill that I urge my colleagues to likewise support.

Thank you, Mr. President.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. PACKWOOD. I move to reconsider the vote.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that Calendar No. 1012, S. 2714, the companion bill, be indefinitely postponed.

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

REVISION OF BOUNDARIES OF OLYMPIC NATIONAL PARK AND OLYMPIC NATIONAL FOREST

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Senate turn to consideration of Calendar No. 1033, S. 2351, dealing with the Olympic Forest.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. There is no objection, Mr. President.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

> A bill (S. 2351) to revise the boundaries of Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to

strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. (a) The boundary of Olympic National Park, Washington, is hereby revised to include within the park—

(1) all submerged lands and waters of Lake Ozette, Washington, and the Ozette River, Washington;

(2) all surveyed and unsurveyed islands lying off the coast of the State of Washington in the Pacific Ocean between latitudes 48 degrees 23 minutes North and 47 degrees 38 minutes North;

(3) those lands between mean high tide and the lowest low tide beginning in section 22, Township 24 North, Range 13 West Willamette Meridian, at the common boundary between the Olympic National Park and the Quinault Indian Reservation, to section 18, Township 32 North, range 15 West Willamette Meridian, at the common boundary between the Olympic National Park and the Makah Indian Reservation, except those lands directly adjacent to and west of the Hoh, Ozette, and Quillayute Indian Reservations: *Provided*, That such lands as are identified in this paragraph shall continue to be open to fishing and to the taking of shellfish in conformity with the laws and regulations of the State of Washington; and

(4) approximately nine thousand six hundred and thirty-eight acres, and to exclude from the park approximately three thousand three hundred and fifty-two acres, as generally depicted on the maps entitled "Boundary Modifications, Olympic National Forest and Olympic National Park", numbered 149/60,030A, sheets 1 through 9, and dated September 1986, which shall be on file and available for public inspection in the office of the National Park Service, United States Department of the Interior.

(b) The boundary of Olympic National Forest, Washington, is hereby revised to include in the national forest approximately three thousand three hundred and fifty-two acres and to exclude from the national forest approximately nine thousand three hundred and twenty-four acres, as generally depicted on the maps entitled "Boundary Modifications, Olympic National Forest and Olympic National Park", numbered 149/60,030A, sheets 1 through 10, and dated September 1986, which shall be on file and available for public inspection in the office of the Forest Service, United States Department of Agriculture.

(c) Section 3 of the Washington State Wilderness Act of 1984 (Public Law 98-339, Act of July 3, 1984, 98 Stat. 301) is amended—

(1) by striking subsection (2) and inserting in lieu thereof the following new subsection:

"(2) certain lands in the Olympic National Forest, Washington, which comprise approximately forty four thousand four hundred and seventy-four acres, as generally depicted on a map entitled 'Buckhorn Wilderness—Revised', numbered 98-339-3(2), sheets 1 and 2, and dated September 1986, and which shall be known as the Buckhorn Wilderness;";

(2) by striking subsection (13) and inserting in lieu thereof the following new subsection:

"(13) certain lands in the Olympic National Forest, Washington, which comprise approximately thirteen thousand and fifteen acres, as generally depicted on a map entitled 'Mount Skokomish Wilderness—Revised', numbered 98-339-3(13) and dated September 1986, and which shall be known as the 'Mount Skokomish Wilderness—Revised', dated September 1986, and which shall be known as the Mount Skokomish Wilderness;"; and

(3) by striking subsection (19) and inserting in lieu thereof the following new subsection:

"(19) certain lands in the Olympic National Forest, Washington, which comprise approximately sixteen thousand six hundred and eighty-two acres, as generally depicted on a map entitled 'The Brothers Wilderness—Revised', numbered 98-339-3(19) and dated September 1986, and which shall be known as the 'Brothers Wilderness; '.".

SEC. 2. (a) Federal lands, waters, and interests therein formerly within the boundary of Olympic National Forest which are included within the boundary of Olympic National Park pursuant to section 1 of this Act are, subject to valid existing rights, hereby transferred to the administrative jurisdiction of the Secretary of the Interior for administration as part of the park, and shall be subject to all the laws and regulations applicable to the park: *Provided further*, That within section 15, Township 15 North, Range 9 West Willamette Meridian, and within an area extending not more than one mile north of such section, nothing herein shall be construed to limit or otherwise modify the authority of the Secretary of Agriculture to design and construct a forest logging road east of the park boundary: *Provided, however*, That the Secretary of Agriculture shall not construct the road as close as practically possible to the park boundary but not more than five hundred feet east of the divide. Following construction, the Secretary of the Interior is hereby authorized and directed to redescribe and relocate the boundary of the park along the eastern clearing limits of the road.

(b) Federal lands, waters, and interests therein formerly within the boundary of Olympic Park which are excluded therefrom pursuant to section 1 of this Act are, subject to valid existing rights, hereby transferred to the administrative jurisdiction of the Secretary of Agriculture for administration as part of Olympic National Forest, and shall be subject to all the laws and regulations applicable to the National Forest System: *Provided*, That any lands deleted from the park and included within the Buckhorn Wilderness, Mount Skokomish Wilderness, or the Brothers Wilderness pursuant to this Act shall be managed in accordance with the provisions of the Washington State Wilderness Act of 1984 (Public Law 98-339, Act of July 3, 1984, 98 Stat. 301).

SEC. 3. (a) The Secretary of the Interior is authorized to acquire by donation, purchase with donated or appropriated funds, exchange, bequest or otherwise any non-Federal lands, waters, and interests therein included within the boundary of Olympic National Park pursuant to section 1 of this Act: *Provided*, That any lands, waters, or interests therein owned by the State of Washington or any political subdivision thereof may be acquired only by donation or exchange.

(b) For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903, as amended; 16 U.S.C. 4601-9), the boundary of the Olympic National Forest, as modified pursuant to section 1 of this Act, shall be treated as if it was the boundary of that national forest on January 1, 1965.

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, except that the total amounts authorized to be appropriated for the purpose of acquisition of lands, waters, and interests therein pursuant to this Act shall not exceed $1,000,000.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

Mr. EVANS. Mr. President, I urge passage of S. 2351, a bill I introduced with Senator GORTON to revise the boundaries of the Olympic National Park in Washington State. The bill incorporates the recommendations of the National Park Service and the National Forest Service for modification of their common boundaries. The bill also authorizes two minor additions to the park as recommended by the National Park Service. Finally, the bill incorporates a number of changes to the National Park which came as a result of a hearing held before the Senate Energy and Natural Resources Committee in June of this year, namely, including the tidelands and islands offshore of the Olympic National Park coastal strip.

The Olympic National Forest and the Olympic National Park share many common boundaries. A high degree of cooperation has existed between these Federal land management jurisdictions on a variety of programs. But some of the existing boundaries separating park and forest have created problems for both agencies in fulfilling their respective missions. These are found in selected areas where existing boundaries do not follow natural topographic features and hydrographic divides.

Established earlier in the century, many of the boundaries are drawn on township and section lines which do not always meet logical resource management needs or serve the best interests of the public. Existing straight line boundaries do not protect complete watersheds. The upper portions of some park watersheds lie outside park boundaries thus allowing land uses that could affect the visual integrity within drainages. In other places, the existing park boundary effectively blocks access to portions of the Olympic National Forest since logging roads cannot be built through the park.

Mr. President, the S. 2351 incorporates the joint recommendations of the National Park Service and the U.S. Forest Service to modify further their common boundaries. The bill will include within the park 9,324 acres and will transfer to the National Forest 3,352 acres formerly within the boundaries of the park. Furthermore, the bill will include within the National Park several miles of islands offshore and the tidelands along the coastal strip. Finally, the bill includes within the park the submerged lands under Lake Ozette and the Ozette River,

thereby completing the national park coastal strip all the way to the Pacific Ocean.

Mr. President, I have visited scores of the ocean beaches, hiked virtually every river valley, and climbed most of the Olympic Mountains during the last 45 years. Each visit is a return pilgrimage to a mountain paradise only gently touched by human hands. Vivid technicolor memories recall, instantly, the serenity and savagery of wilderness mountains.

The national park which dominates the Olympic Peninsula has preserved a wilderness land virtually untouched by human habitation. In an increasingly technological and crowded world it is essential that we preserve these windows to the past. Our great grandchildren who may explore the stars must know their heritage and what their world was like before humans came.

Our responsibility to future generations requires our continued vigilance on issues of management of our national parks. This bill will help resolve some of these issues for the Olympic National Park. I hope that the Senate will pass this bill.

Mr. GORTON. Mr. President, I am proud to join my distinguished colleague from my State in sponsoring this legislation to revise the boundaries of the Olympic National Park and the Olympic National Forest in Washington. All of the proposed changes will correct nonsensical straight lines, following section and township lines, that bear no relation to the natural features of the land, and, instead, place them along topographic and hydrographic lines. All of the proposed changes are supported by both the National Park Service and the Forest Service.

Located on the Olympic Peninsula in Washington, both the Olympic National Park and the Olympic National Forest contain a vast abundance of natural resources covering over 1.5 million acres. Both the national park and the national forest share miles of common borders. As a result of their close proximity, the two agencies work together very cooperatively. I would like to say at the outset that both agencies are to be commended for their efforts in developing the basis for this legislative proposal.

When boundaries were established years ago, much of the land was inadequately surveyed. Boundaries were frequently drawn along township and section lines. Many of these boundary lines do not correspond with the natural topographic, hydrographic, and ecological features of the land itself. Redrawing boundary lines along these natural features is far more logical. it will enable both these agencies to better manage and protect their resources.

This legislation will result in 9,638 acres that will be included within the boundaries of the Olympic National Park. A total of 3,352 acres will be taken out of the national park's jurisdiction, and transferred to the national forest. A total of 9,324 acres will be deleted from the jurisdiction of the National Forest Service.

This bill will also authorize the acquisition of 234 acres of private land along the Soleduck Road and 80 acres of private land along Lake Crescent. The Soleduck Road is an important access corridor into the park. The land along the road contains older second growth forest. If the property is not acquired soon, the private landowner will have no choice but to log it.

The submerged lands of Lake Ozette and the Ozette River will be included within the boundaries of the national park. In 1976, this Congress passed legislation that expanded the boundaries of the national park to encompass all of Lake Ozette. It was an oversight at the time to not include the bed of the lake itself. This legislation will correct that oversight.

Also transferred to the jurisdiction of the National Park Service is the intertidal zone on the portion of the park which extends along the Pacific Coast. This will allow the Park Service to better protect the resources in the tidelands, which have experienced problems with the extensive scraping of all forms of shellfish and other marine life from the tidepools. The bill will also add to the park offshore rocks that are presently under the jurisdiction of the Fish and Wildlife Service.

This bill will remedy many of the land management problems that both agencies face as a result of these illogical boundaries. The Park Service will be better able to protect entire watersheds and ecosystems. The Forest Service will be able to reach timber management sites that have had blocked access because park land separates the forest land.

Mr. President, this is legislation that is supported by both administrative agencies, and the many people who heavily use both the Olympic Park and the Olympic Forest. It is supported by Congressman AL SWIFT, in whose district the Olympic Peninsula falls, and by the House of Representatives. I expect their timely consideration of this bill soon after it has passed the Senate. I strongly urge my colleagues to support its passage.

The PRESIDING OFFICER. If there be no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. PACKWOOD. I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDEPENDENT SAFETY BOARD ACT AUTHORIZATION

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 1035, H.R. 4961.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, there is no objection.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

A bill (H.R. 4961), to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3273

(Purpose: To add a provision regarding airport insurance)

Mr. BYRD. Mr. President, I send to the desk an amendment by Mr. EXON and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. EXON, proposes an amendment numbered 3273.

Mr. BYRD. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the end of the bill, add the following:

SEC. 7. AVIATION LIABILITY INSURANCE.

(a) The Secretary of Transportation and the Administrator of the Federal Aviation Administration shall—

(1) not later than March 1, 1987, submit an interim report, and

(2) not later than March 1, 1988, submit a comprehensive final report,

concerning the extent of and causes for the rapidly increasing costs to United States public use airport sponsors for general liability insurance coverage. Such reports shall consider the probable implications of such increasing costs on the future capacity of the airport runway and taxiway system of the United States, particularly at smaller airports, and shall include any recommendations of the secretary and the Administrator for actions which the Federal Government might undertake to assist in ameliorating the liability insurance difficulties of such public use airport sponsors.

(b)(1) The Administrator shall, within sixty days after the date of enactment of this Act, contract with a nonprofit foundation to establish an information clearinghouse concerning general liability insurance coverage at such public use airports.

(2) The clearinghouse shall gather and distribute without charge to such airports information on premiums, coverage limits and insurance availability. All information generated by such clearinghouse shall be made available promptly to the Secretary

and the Administrator for use as appropriate in the reports required under subsection (a) of this section.

(3) There shall be available for the purposes of this subsection $250,000 of funds appropriated for the Federal Aviation Administration for each of the fiscal years 1987 and 1988.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3273) was agreed to.

Mr. EXON. Mr. President, I rise in strong support of H.R. 4961, legislation authorizing expenditures for the National Transportation Safety Board for fiscal years 1987, 1988, and 1989. This legislation is needed prior to the adjournment of this Congress to ensure the continued operations of this important Federal agency.

In recent years, the NTSB has been on the forefront of ensuring that the Department of Transportation and the individual aviation, surface, and water transportation industries do all they can to promote safety. For example, only last week the Board recommended a number of new proposals for crew training, increased surveillance, and new flight safety equipment for the commuter airline industry. Without this type of leadership, we would likely fall short of fulfilling our mandate for providing an adequate margin of safety.

The present bill, which passed the House of Representatives on September 30, 1986, without objection, is similar to a bill reported earlier this year by the Senate Commerce Committee. The major change is a provision which I believe is extremely important for the well-being of our Nation's airport system. It is much less than what I originally sought and was successful in including in the Senate bill during Commerce Committee consideration, but I believe it will provide significant assistance to the many smaller airports around the country that have been hit hard by increasing liability insurance costs.

Very simply, this measure would require the Secretary of Transportation and the Federal Aviation Administration to undertake a joint study of the problems created by the rapidly escalating insurance premiums for public airports and the effect these increased costs are having on limiting airport capacity. An interim report is called for early next year, with the final study to be transmitted to the Congress no later than March 1, 1988. Among other items, we have asked DOT/FAA to provide any recommendations for Federal actions that should be undertaken to help alleviate the airport liability insurance problem.

To assist public airports in obtaining the insurance needed to remain operationally viable, this bill also calls for the creation of a nonprofit clearinghouse that would provide information on the availability of insurance, premium levels, and coverage limits. This information, which would be provided by the clearinghouse at no charge to the airports, is desperately needed by smaller- and medium-sized airports who do not have the staff required to stay on top of the ever-changing insurance market.

Public airports have suffered under the current liability insurance crisis. The Aviation Subcommittee heard of numerous instances where the rapidly increasing liability insurance premium costs have threatened the ability of many smaller public airports to remain in operation. Yet, unlike many businesses, these airports are severely limited in their ability to pass on these higher costs.

I had hoped we could do even more for smaller airports to assist them in their efforts to cope with the insurance crisis. However, my interest is principally in obtaining some aid for these airports, a sentiment that I know is shared by the chairman of the Aviation Subcommittee, Senator KASSEBAUM. And I trust our friends in the House of Representatives will look upon this effort, and in particular, this provision, in the same light.

As a whole, I believe this is a good bill. It follows many of the recommendations made by the Board itself, to better equip it to handle its every-increasing role in ensuring the enhancement of safety. And it provides some assistance to smaller airports who have been hurt by the liability insurance crisis.

I urge my colleagues to support its passage.

Mrs. KASSEBAUM. Mr. President, I would ask my colleagues to support H.R. 4961, legislation similar to S. 2807, which was reported by the Commerce Committee earlier this session to reauthorize appropriations for the National Transportation Safety Board [NTSB]. This agency plays a crucial role in maintaining and improving standards of safety related to air, highway, rail, pipeline, and marine transportation, as well as to the movement of hazardous materials by those modes.

Specifically, the legislation does the following:

1. authorizes appropriations of $24.0, $25.4, and $27.0 million for fiscal years 1987, 1988, and 1989, respectively;

2. provides the NTSB with authority for a $1 million emergency fund for use in years where there is an unusually large number of accidents;

3. deletes certain Federal Register notice requirements which are unnecessary, thus saving $25,000 annually;

4. redirects tuition funds collected from non-NTSB employees attending accident investigation training courses to NTSB's appropriations in order to offset costs; and

5. requires federal agencies and state, local, and foreign governments, who request assistance with accident investigations, to make payments, which would be applied to NTSB's appropriations.

These provisions would reduce unnecessary expenditures and allow the NTSB to better utilize staff capabilities. The funding levels assume a continuation of current activities and no new responsibilities. The slight dollar increases over this year's appropriations reflect the effects of inflation and other uncontrollable cost increases.

I urge the support of my colleagues for H.R. 4961.

The PRESIDING OFFICER. Are there further amendments? If not, the question is on the engrossment of the amendment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. PACKWOOD. I move to reconsider the vote.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL INDEFINITELY POSTPONED—S. 2807

Mr. PACKWOOD. Mr. President, I ask unanimous consent that consideration of Calendar No. 893, S. 2807, be indefinitely postponed.

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

BILL HELD AT DESK—H.R. 3415

Mr. PACKWOOD. I ask unanimous consent that when the Senate receives from the House, H.R. 3415, the Bicentennial Coins and Medals Act, it be held at the desk pending further disposition.

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

RESTRICTION OF USE OF GOVERNMENT VEHICLES

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Senate turn to consideration of H.R. 3614, dealing with the use of Government vehicles now being held at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. There is no objection, Mr. President.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

A bill (H.R. 3614) to restrict the use of Government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3274

(Purpose: To substitute alternate provisions)

Mr. PACKWOOD. I send an amendment to the desk on behalf of Senators ROTH and PROXMIRE and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] for Mr. ROTH and Mr. PROXMIRE, proposes an amendment numbered 3274.

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) section 1344 of title 31, United States Code, is amended to read as follows:

"§ 1344. Passenger carrier use

"(a)(1) Funds available to a Federal agency, by appropriation or otherwise, may be expended by the Federal agency for the maintenance, operation, or repair of any passenger carrier only to the extent that such carrier is used to provide transportation for official purposes. Notwithstanding any other provision of law, transporting any individual other than the individuals listed in subsections (b) and (c) of this section between such individual's residence and such individual's place of employment is not transportation for an official purpose.

"(2) For purposes of paragraph (1), transportation between the residence of an officer or employee and various locations that is—

"(A) required for the performance of field work, in accordance with regulations prescribed pursuant to subsection (e) of this section, or

"(B) essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties, is transportation for an official purpose, when approved in writing by the head of the Federal agency.

"(b) A passenger carrier may be used to transport between residence and place of employment the following officers and employees of Federal agencies:

"(1)(A) the President and the Vice President;

"(B) no more than 6 officers or employees in the Executive Office of the President, as designated by the President; and

"(C) no more than 10 additional officers or employees of Federal agencies, as designated by the President;

"(2)(A) officers compensated at Level I of the Executive Schedule pursuant to section 5312 of title 5; and

"(B) a single principal deputy to an officer described in subparagraph (A) of this paragraph, when a determination is made by such officer that such transportation is appropriate;

"(3) principal diplomatic and consular officials abroad, and the United States Ambassador to the United Nations;

"(4) the Deputy Secretary of Defense and Under Secretaries of Defense, the Secretary of the Air Force, the Secretary of the Army, the Secretary of the Navy, the Joint Chiefs of Staff, and the Commandant of the Coast Guard;

"(5) the Director of the Central Intelligence Agency and the Director of the Federal Bureau of Investigation;

"(6) the Chairman of the Board of Governors of the Federal Reserve System;

"(7) the Comptroller General of the United States and the Postmaster General of the United States; and

"(8) an officer or employee with regard to whom the head of a Federal agency makes a determination, in accordance with subsection (d) of this section and with regulations prescribed pursuant to paragraph (1) of subsection (e), that highly unusual circumstances present a clear and present danger, that an emergency exists, or that other compelling operational considerations make such transportation essential to the conduct of official business.

Except as provided in paragraph (2) of subsection (d), any authorization made pursuant to paragraph (8) of this subsection to permit the use of a passenger carrier to transport an officer or employee between residence and place of employment shall be effective for not more than 15 calendar days.

"(c) A passenger carrier may be used to transport between residence and place of employment any person for whom protection is specifically authorized pursuant to section 3056(a) of title 18 or for whom transportation is authorized pursuant to section 28 of the State Department Basic Authorities Act of 1956 or section 8(a)(1) of the Central Intelligence Agency Act of 1949.

"(d)(1) Any determination made under paragraph (8) of subsection (b) shall be in writing and shall include the name and title of the officer or employee affected, the reason for such determination, and the duration of the authorization for such officer or employee to use a passenger carrier for transportation between residence and place of employment.

"(2) If a clear and present danger, an emergency, or a compelling operational consideration described in paragraph (8) of subsection (b) extends or may extend for a period in excess of 15 calendar days, the head of the Federal agency shall determine whether an authorization under such paragraph shall be extended in excess of 15 calendar days for a period of not more than 90 additional calendar days. Determinations made under this paragraph may be reviewed by the head of such agency at the end of each such period, and, where appropriate, a subsequent determination may be made whether such danger, emergency, or consideration continues to exist and whether an additional extension, not to exceed 90 calendar days, may be authorized. Determinations made under this paragraph shall be in accordance with regulations prescribed pursuant to paragraph (1) of subsection (e).

"(3) The authority to make designations under subsection (b)(1) of this section and to make determinations pursuant to subsections (a)(2), (b)(2)(B), and (b)(8) of this section and pursuant to paragraph (2) of this subsection may not be delegated, except that, with respect to the Executive Office of the President, the President may delegate the authority of the President under subsection (b)(8) of this section to an officer in the Executive Office of the President. No designation or determination under this section may be made solely or principally for the comfort or convenience of the officer or employee.

"(4) Notification of each designation or determination made under paragraphs (1), (2)(B), and (8) of subsection (b) and under paragraph (2) of this subsection, including the name and title of the officer or employee affected, the reason for any determination under paragraph (8) of subsection (b), and the expected duration of any authorization under such paragraph, shall be transmitted promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate.

"(e)(1) Not later than March 15, 1987, the Administrator of General Services, after consultation with the Comptroller General, the Director of the Office of Management and Budget, and the Director of the Administrative Office of the United States Courts, shall promulgate regulations governing the heads of all Federal agencies in making the determinations authorized by subsections (a)(2)(A), (b)(8), and (d)(2) of this section. Such regulations shall specify that the comfort and convenience of an officer or employee is not sufficient justification for authorizations of transportation under this section.

"(2) In promulgating regulations under paragraph (1) of this subsection, the Administrator of General Services shall provide criteria defining the term 'field work' for purposes of subsection (a)(2)(A) of this section. Such criteria shall ensure that transporation between an employee's residence and the location of the field work will be authorized only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

"(f) Each Federal agency shall maintain logs or other records necessary to establish the official purpose for Government transportation provided between an individual's residence and such individual's place of employment pursuant to this section.

"(g) As used in this section—

"(1) the term 'passenger carrier' means a passenger motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased by the United States Government; and

"(2) the term 'Federal agency' means—

"(A) a department (as such term is defined in section 18 of the Act of August 2, 1946 (41 U.S.C. 51));

"(B) an Executive department (as such term is defined in section 101 of title 5);

"(C) a military department (as such term is defined in section 102 of title 5);

"(D) a Government corporation (as such term is defined in section 103(1) of title 5);

"(E) a Government controlled corporation (as such term is defined in section 103(2) of title 5);

"(F) a mixed-ownership Government corporation (as such term is defined in section 9101(2) of this title);

"(G) any establishment in the executive branch of the Government (including the Executive Office of the President);

"(H) any independent regulatory agency (including an independent regulatory agency specified in section 3502(10) of title 44);

"(I) the Smithsonian Institution; and

"(J) any nonappropriated fund instrumentality of the United States,

except that such term does not include the government of the District of Columbia.

"(h) Notwithstanding section 410(a) of title 39, this section applies to the United States Postal Service.".

(b) The table of sections for chapter 13 of such title is amended by striking out the item relating to section 1344 and inserting in lieu thereof the following:

"1344. Passenger carrier use.".

SEC. 2. (a) Title 10, United States Code, is amended—

(1) by striking out section 2637 thereof; and

(2) in the table of contents of chapter 157 thereof, by striking out the item pertaining to section 2637.

(b) Section 636(a)(5) of the Foreign Assistance Act of 1961 (22 U.S.C. 2396(a)(5)) is amended by striking out "(without regard to the limitations contained in section 5 of Public Law 63-127, as amended (31 U.S.C. 639a(c)(2)), and section 201 of Public Law 85-468 (31 U.S.C. 638c))".

(c) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "without regard to the limitations contained in section 78(c) of title 5 of the United States Code".

(d) Section 11 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2678) is repealed.

(e) Section 660 of title 14, United States Code, is amended by striking out subsection (e).

SEC. 3. Within one year after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall prepare, in consultation with the Marshal of the Supreme Court of the United States, the Clerk of the United States Court of Military Appeals and the Court Administrator of the United States Tax Court, and transmit to the Congress, appropriate recommendations concerning the transportation needs of the judicial branch and of courts established pursuant to Article I of the Constitution.

Mr. PROXMIRE. Mr. President, I am delighted to join as a cosponsor of the pending substitute to H.R. 3614, legislation to restrict the use of federally owned or leased vehicles for home-to-work transportation.

The substitute we are offering today has been the result of long and hard bargaining on both sides of the aisle and by Members of both Houses.

Even with this substitute, this bill is far from perfect. But on balance, this bill goes a long way toward clarifying a law which has been cavalierly ignored by Federal bureaucrats for far too long.

A BRIEF HISTORY

Mr. President, legislation has been on the books since 1946 prohibiting the use of federally owned or leased vehicles for home-to-work transportation of Federal employees.

While this legislation has often been referred to as "the limo law," its coverage is far broader than a mere prohibition on the use of expensive limousine-type automobiles. It even goes beyond cases in which a Federal driver or chauffeur is employed. This law flatly prohibits the use of any federally owned vehicle or leased vehicle for home-to-work transportation, even where the employee drives himself or herself.

The only exceptions to that law are spelled out in the existing statute, recently recodified in section 1344 of title 31 of the United States Code.

While the law has always been quite clear to Chairman BROOKS of the House Government Operations Committee and myself, apparently there is not a bureaucrat in town who finds the statute clear. They have been particularly adept at finding, or creating, loopholes large enough to accommodate a Federal car.

After all, home-to-work transportation is the ultimate status symbol for a Federal bureaucrat. It sends a clear message to his friends and neighbors that here comes "Mr. Big" or "Ms. Big."

My surveys of all Federal agencies over the last decade have repeatedly found 140 to 200 Federal bureaucrats using this perk, far in excess of the number entitled under Federal law. Just last year a report by the General Accounting Office for Chairman BROOKS of the House Government Operations found similar results.

As a result, it has become clear that the best course of action is to rewrite the 1946 statute and specify more clearly the individuals who are entitled to home-to-work transportation. In addition, because of a myriad of General Accounting Office opinions on related issues—some of which are contradictory as GAO's own views have evolved on this issue—this bill also addresses the rare circumstances under which exceptions can be considered.

THE PENDING SUBSTITUTE

Mr. President, Chairman BROOKS is to be congratulated for his committee's tremendous work in restructuring the "home-to-work" statute. If the negotiations over this substitute are any indication, the task which Chairman BROOKS and his committee faced was clearly formidable.

The pending substitute builds upon the tremendous work of the House Government Operations Committee. It makes a number of important changes in clarifying the application of this revised statute. In light of the fact that this bill has been held at the desk and, therefore, there will be no committee report, it is crucial that these changes be emphasized now for the purpose of future legislative history.

COVERAGE OF THE JUDICIAL BRANCH AND LEGISLATIVE SUPPORT AGENCIES

The first key change is the substitution of the word "Federal" agency for "executive" agency and the reference in (f)(2) of the substitute to section 18 of the act of August 2, 1946 (41 U.S.C. 5a).

The choice of terms and reference was done very carefully. After the House completed action on their bill, it was discovered that the choice of the term "executive" agency in their bill had the inadvertent effect of exempting the entire judicial branch as well as all of the legislative branch support agencies, such as the General Accounting Office, the Government Printing Office, the Congressional Budget Office, the Congressional Research Service, and so on.

The change we are making in this substitute will restore the existing coverage of the judicial branch and the legislative support agencies. It is crucial that these principles be applied to all three branches of Government.

MONITORING COMPLIANCE

Mr. President, Federal agencies have repeatedly ignored rulings of the Comptroller General regarding the interpretation of the present statute, arguing that they were only bound by the ruling of their own agency's general counsel.

The substitute language we are proposing today vests rulemaking authority for the entire Federal Government in the General Services Administration [GSA] but provides that the GSA Administrator must consult with representatives of all three branches of Government before promulgating regulations: for the executive branch, the Office of Management and Budget; for the legislative branch, the General Accounting Office; and, for the judiciary, the Director of the Administrative Office of the United States Courts.

The significance of this change should not be overlooked:

First, it reaffirms that all three branches of the Federal Government are subject to the restrictions of this title.

Second, it establishes consistency in the application of Governmentwide rules on home-to-work transportation. Individual agencies will no longer be in a position to substitute their own judgment on the applicability of the law.

Third, it reflects our clear intent that these regulations will be promulgated through the Federal Register and receive the public scrutiny and comment they require.

APPROPRIATE RECORDKEEPING

The third change draws on the experience of the General Accounting Office. This change will require that every agency maintain logs or other records each time a Federal employee receives home-to-work transportation.

Mr. President, this requirement is essential if the GAO is to effectively monitor compliance with this statute. In their efforts to assess compliance with the existing statute, the GAO was repeatedly stymied by the fact that many agencies simply did not maintain adequate records.

This provision makes their responsibility crystal clear and all agency heads should take notice of it.

PROXMIRE CONCERNS

Mr. President, having discussed the positive aspects of this substitute, I would be remiss if I did not point out my areas of disagreement.

First, the substitute and the House bill simply permit too many Federal officials to make use of home-to-work transportation. While the bill represents a significant improvement over the current confused state of affairs, we should have pared away even more positions—both in the executive branch and we should have taken action on the legislative branch as well.

For example, we should not be extending this perk to the principal deputy of Cabinet secretaries.

And I want to put the Senate on notice that I intend to offer legislation next year to reduce both the number of executive and legislative branch officials eligible for home-to-work transportation.

Second, this substitute goes in the wrong direction by adding the position of the Comptroller General or the Postmaster General to the list of exempt officials. This sends the wrong signal at the very time we are paring down the executive branch.

Third, there needs to be more specificity regarding the exemptions contained in section (a)(2)(B) for "intelligence, counterintelligence, criminal law duties, or protective services." These activities are essential and, in certain circumstances, warrant exemption from the restrictions of this title. But by exempting them from the review of the GSA in the rulemaking section of the substitute, we are increasing the potential for abuse. It is crucial that the conference committee will clearly spell out congressional expectations regarding the way in which compliance will be monitored.

CONCLUSION

Mr. President, despite my reservations regarding specific compromises reached in this substitute, I believe that this substitute deserves the Senate's support.

Clearly, this substitute is a compromise proposal. One that I hope we can improve in the future. But this proposal builds upon the best concepts embodied in the House bill and makes substantive progress toward eliminating the abuse that has pervaded home-to-work transportation for far too long.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3274) was agreed to.

Mr. ROTH. Mr. President, H.R. 3614 was designed to "restrict the use of Government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment." It was meant to resolve a number of longstanding Government transportation problems that have repeatedly been pointed out on audit by the General Accounting Office.

The underlying difficulty in providing home-to-work transportation for Government officials and employees or in the use of Government vehicles for that purpose is that existing law on the subject gives an uncertain and confusing mandate. In an area such as this, however, legislative imprecision invites conflicting opinions and abuse.

Specifically, the latest report of the General Accounting Office on the matter, issued just over a year ago, identified 128 officials who were provided transportation between their residences and their places of employment. In addition, on some occasions 17 relatives of officials were provided transportation to various locations. According to the GAO, under current law, more than one-half of those officials and their relatives received home-to-work transportation that was unauthorized. At the same time, and because of the imprecise nature of the existing statute, legal counsel for the Departments of State and Defense, and the U.S. Postal Service, among others, have disagreed with some of GAO's interpretations.

Mr. President, it is time to end the dispute over conflicting interpretations. It is also time to end the absues that continue to occur in the use of Government vehicles. A clear and realistic line must be drawn between those who are and those who are not entitled to home-to-work transportation at Government expense.

At the same time, legislation in this area must be flexible enough to make allowances for security concerns where there is a clear and present danger of attack, for genuine emergencies, and for other compelling operational considerations. Flexibility must also be preserved for effective intelligence and counterintelligence operations, protective services, and for criminal law enforcement. In addition many "field work" activities of investigators, auditors, and inspectors may be made most efficient where home-to-workplace use of vehicles is permitted. But in all of these kinds of situations, appropriate safeguards must be provided under carefully devised regulations.

Since H.R. 3614 was received from the other body last March 5, my staff and I have worked with many other Members of the Senate and their staffs, with Chairman JACK BROOKS of the House Government Operations Committee and his staff, with the General Accounting Office, and with staffs of various departments and the White House in order to resolve a number of difficult and intractable technical problems that remained in the House-passed measure. This was a bipartisan, bicameral effort to strike a precise balance between control and accountability on the one hand and efficient flexibility on the other.

Mr. President, I believe that, as the result of that effort, such a balance has been struck in the amendment I offer in the nature of a substitute for H.R. 3614. This amendment specifically identifies and carefully limits the number of officials of the Federal Government who will be entitled to home-to-work transportation while also allowing restricted Presidential and Cabinet-level discretion for additional transportation of this kind where specifically authorized. It also provides for written authorization of agency vehicle use for intelligence, counter intelligence, protective services, criminal law enforcement duties, and for "field work," that may involve home-to-work use of vehicles under the guidance of properly adopted regulations.

This amendment will not only end a lingering and potentially costly legal quarrel, it will also reduce markedly and make definite the number of home-to-work transportation services now provided for Government officials. Further, it will demand proper record keeping in connection with all such transportation services, and it will extend the restricitons on home-to-work transportation to the judicial branch and to legislative branch support agencies.

Mr. President, it has come to my attention that the Smithsonian Intitution asserts that the secretary is not an officer or employee of the Federal Government. He is appointed under the authority of the Board of Regents of the Institution (20 U.S.C. 41 et seq.) and is paid from non-Federal resources. Furthermore, the Institution contends it has never been and is not a Federal agency. Rather it is a trust established to carry out the obligations assumed by the Congress under the will of James Smithson in 1836. It is important for this bill to be acted upon this year, but Congress may well wish to take a look in the next session at the arguments presented by the Smithsonian and consider changing the law to reflect these facts.

Mr. President, I urge the adoption of H.R. 3614, as amended.

Mr. LEAHY. Mr. President, I strongly support the purposes of H.R. 3614 to limit the use of limousines by Government officials and to eliminate unneeded and improper use of Government vehicles for home to work transportation.

However, I believe that the House bill and its accompanying report contain a serious defect which, if enacted, would have a devastating impact on the Government's ability to properly execute its law enforcement, intelligence, counterintelligence, and protective functions.

I had intended to offer an amendment to cure that defect but I am pleased that the substitute offered by Senator ROTH incorporates my suggestions.

The bill amends section 1344 of title 31, United States Code, which regulates the use of Government vehicles for official purposes. Currently, section 1344 limits the use of Government vehicles for home to work transportation, but contains a broad field work exception. Agencies such as the FBI, Secret Service, and the DEA have relied on the field work exception to permit a limited number of agents to take their vehicles home to ensure

that the agency had an emergency response capability. These agents who would be on call during the night would be able to respond to emergency situations without having to first get back to a government garage where they could obtain a government vehicle.

In response to GAO findings that nonlaw enforcement agencies were abusing the field work exception, H.R. 3614 narrows the definition of the field work exception. The House report accompanying the bill states:

> The field work exception may not be used (1) when the individual's work day begins at his or her official government duty station, or when the individual normally commutes to a fixed location, however far removed from his or her official duty station. Although their daily work station is not located in a government office, these individuals are not performing field work. * * * Like all government employees, individuals working in a field office are responsible for their own commuting costs. (H. Rept. 99-451.)

This language, while appropriate to eliminate abuses in other contexts, would virtually eliminate the ability of agencies carrying out law enforcement, foreign intelligence, counterintelligence, and protective functions to provide emergency response capabilities. Judge Webster, the Director of the FBI, testified before the Subcommittee on Security and Terrorism that this language would have a devastating effect on the FBI's ability to fulfill its missions. The Secret Service has similarly complained to the subcommittee that it could not carry out its duties if restrained by this language.

To remedy this problem, I proposed to create a narrow exception to restrictions contained in the bill, which have been incorporated in the Roth substitute. It permits home to work transportation for officers or employees of certain executive agencies where such transportation is necessary for the safe and efficient performance of intelligence, counterintelligence, protective, or criminal law enforcement functions specifically assigned to such officer or employee by the head of the agency. The transportation must be approved in writing by the head of the agency.

I believe that the bill as now drafted preserves all the essential features of H.R. 3614 while curing its most important defect.

I would like to thank Senator ROTH and especially Senator PROXMIRE for working with me and being helpful in resolving my concerns about this legislation.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed for a third reading and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. PACKWOOD. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IMPEACHMENT JUDGE HARRY E. CLAIBORNE

Mr. BYRD. Mr. President, the responsibility imposed on the Congress for article II, section 4 of our U.S. Constitution, is perhaps the most solemn and painful duty that we Members of the legislative branch must perform.

That section states:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

This is the only instance in which the legislative branch of our Government acts in a purely judicial capacity. Article I, section 2, clause 5 we find these words,

> The House of Representatives * * * shall have the sole power of impeachment.

We find in article I, section 3, clauses 6 and 7:

> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.
>
> Judgement in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

Article II of section 2, clause 1 states as follows:

> The President shall * * * have Power to grant Reprieves and Pardons for Offenses against the United States except in Cases of Impeachment.

I have already read article II, section 4. Article III, section 2, clause 3 states:

> The trial of all crimes except in cases of impeachment shall be by jury.

So, Mr. President, this is an awesome power that the Senate holds under the Constitution. And similarly, it is an awesome duty upon Senators. No official who comes within the parameters of that constitutional language, and no person, no Vice President, no civil officer of the United States can escape the reach of article II, section 4. The Senate can remove any President, any Vice President, any civil officer of the United States in impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. And no Presidential pardon can be given to any such party who is impeached and convicted under those constitutional provisions.

The historical antecedents of this impeachment process extend back through history over a period of hundreds of years. Impeachment has been described by the notable historians as the chief institution for the preservation of government. It developed as a logical way for the Parliament of England to exercise control over the British judicial system and to keep the King and his ministers from becoming too authoritarian.

The framers of our U.S. Constitution were very familiar with its essential purpose in maintaining a democratic form of government. They included it in our own Constitution to assure that all officers in our Government remained accountable to the people—to the people through their elected representatives. Now for the 13th time in our Nation's history, and the first time in over 50 years, the U.S. Senate has been required to try an impeachment of a civil officer, U.S. District Court Judge Harry E. Claiborne.

I believe that the Senate undertook this duty responsibly, and with a judicious sense of purpose. The committee of 12 Senators appointed by the distinguished majority leader and myself pursuant to Senate Resolution 481 passed on August 14 of this year spent 7 full days in hearing witnesses, and compiling testimony for the Senate as a whole to evaluate and to analyze. The transcript of these proceedings, almost 1,200 pages of text, as well as 3 additional volumes of exhibits, were printed for each Senator to study.

I take this opportunity to praise publicly, as I previously have done privately, the diligence and the exceptional hard work of those members of that committee, Chairman MATHIAS and Vice Chairman SARBANES, both of Maryland, and Senators HATCH, WARNER, RUDMAN, PRESSLER, MCCONNELL, HEFLIN, DECONCINI, PRYOR, GORE, and BINGAMAN.

I carefully studied the transcript and the posttrial briefs of the two parties. And I concluded that there was more than sufficient evidence on the record to sustain a verdict that Judge Claiborne did willfully and knowingly file tax returns for tax years 1979 and 1980 that understated his taxable income by substantial amounts. He signed and verified those returns with a written declaration under penalties of perjury.

I believe it is clear that Judge Claiborne either knew of the substantial understatement of his taxable income on his returns or he went to such great lengths to avoid knowing that he may be deemed to have had constructive knowledge of the returns' falsities. A jury of 12 of the Judge's peers found

him guilty of two counts of violating section 7206(1) of title 26, United States Code, which is the criminal statute for committing tax fraud or filing a false return. By having been convicted of these felony charges by a trial jury of the judicial branch of our Government—a verdict with which I can fully agree based on my review of the evidence—Judge Claiborne has brought dishonor and opprobrium on our Federal judiciary. Mr. President, I voted to convict Judge Claiborne on three of the four articles of impeachment brought by the House of Representatives. I would now like to briefly summarize the evidence that I believe was probative and helped me reach the verdict of guilty.

The critical issue that must be decided to sustain a violation of title 26, United States Code, section 7206(1) is whether the conduct was done "willfully." Section 7206 provides in pertinent part:

> Any person who—
> (1) * * * willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter * * * shall be guilty of a felony * * *.

The Supreme Court has recently refined the definition of "willfulness" in construing that statute as "a voluntary, intentional violation of a known legal duty." As the House managers pointed out in their posttrial brief: "A crime whose very purposes is to conceal is not often telegraphed with direct proof."

Consequently, Mr. President, courts have held that "intent" may be inferred from statements and conduct. *United States* v. *Cusino*, 694 F.2d 185, 1867 (9th Cir. 1982). Several court opinions have laid out the elements of circumstantial evidence on which the Government may rely to prove "willfulness."

The case that I found particularly meaningful in detailing certain of these elements was one in which Judge Claiborne had served as defense counsel, which proves that the judge was aware of these elements, *United States* v. *Conforte*, 624 F.2d, 869 (9th Cir. 1978). The decision in that case held that "willfulness" may be inferred from: "The extensive use of currency and cashier's checks to satisfy obligations"; a "pattern of understatement of income in successive years"; the "use of memory, surmise, estimates, or a careless disregard in making of tax returns"; a "taxpayer's effort not to learn what his tax obligations are"; and the "presence of large sums of money in cash not deposited in a bank."

The transcript of the committee hearings shows numerous examples where the judge conducted his business affairs in a manner comparable to those listed above.

"Extensive use of currency and cashier's checks to satisfy obligations": Judge Claiborne cashed increasing numbers of legal fee checks at the local hotels and casinos in Las Vegas, which had the effect of making the receipt of this income much more difficult to trace. When questioned about why one would need $37,500 in cash in his pocket—one legal fee check—or $44,256 in cash from a Government tax refund check cashed at the Golden Nugget Casino, his answers were unconvincing and raised questions about other laws that he may have violated. He said that he paid workers in cash to remodel his house and stated incorrectly, when asked, that he had no obligation to pay Social Security withholding on those workers' wages.

He claimed that he cashed the $44,256 refund check because he was considering purchasing some quarter horses in Mexico. He never concluded that purchase and stated that he ended up buying some real estate with the cash. No explanation was given for why the money was not deposited in a bank, why large payments on real estate would not better be done by check, or even how one can carry that much cash in one's pockets, let alone feel safe while doing it.

The one salient bit of information that I did glean from this peculiar pattern was that Judge Claiborne did have time to pursue personal projects like buying livestock, supervising numerous remodeling projects, and working on real estate investments. This would seem to contradict one of his main lines of defense; namely, that he had let his personal financial affairs go to pieces because he was so all consumed by his judicial duties. He stated that his 14-hour work days left him no time to examine his tax returns as they were prepared or to keep records of his business income.

However, when it served his financial interests, Judge Claiborne was capable of compiling and listing carefully detailed financial information. He delivered to his accountant, Jerry Watson, a three-page listing of the items comprising the cost basis on the house that he sold, in meticulous detail down to the last cent.

A "pattern of understatement of income in successive years": The facts presented at both trials and admitted into evidence by the Senate Impeachment Committee prove without dispute that Judge Claiborne understated his taxable income by $18,740.06 in tax year 1979. For the 1980 return, the judge failed to report $87,911.83 in legal fees by incorrectly and illegally writing them off against a phony capital loss on the nonexistent sale of his law practice that he had previously fully depreciated in 1978. In addition, he failed to report a new capital gain on the sale of his house of $214,000. In tax years 1981 and 1982, he again used the fabricated capital loss to offset $40,000 in 1981 and a comparable amount in 1982 in legal fees that should have been reported as ordinary income. In addition, with a careful reading of the committee's transcript, we must deduce that the judge significantly underreported his 1977 tax obligation as well, because he withdrew $74,000 from a safe deposit box in a hotel—the balance of a $100,000 gift from a friend and kept in the hotel's safe—in August 1978, to pay a tax deficiency for tax year 1977.

"Use of memory, surmise, estimates, or a careless disregard in making tax return": The record before us in the Senate was replete with evidence on this point. We are told that the judge had previously deposited all fee checks in his bank account. His accountant, Joseph Wright, was instructed to compute his legal fee income each year by tabulating those deposits from statements sent to Wright by the bank. Then we learned that the judge no longer deposited all fee checks in the bank but cashed some of them at casinos; he also stopped sending his bank statements to Mr. Wright. Mr. Wright no longer had any way of verifying Judge Claiborne's income.

The judge at various points in the spring of 1980 gave Wright different, conflicting figures for his 1979 legal fee income, that I will detail below. In addition, the judge testified that his personal system for keeping track of his income consisted of writing the amount of each fee check on a slip of paper at work, putting the slips in an envelope, and periodically carrying the envelope home to write the amounts in a personal financial diary at some later date. But he did not use this system methodically: Sometimes the slips were misplaced; the envelope was lost at one point during a move, and this required him to estimate his income several different times. The record clearly indicates that the judge displayed a "careless disregard" in compiling his personal records and in the making of his tax returns.

A "taxpayer's effort not to learn what his tax obligations are": This is the indicator of willfulness that I find to be most blatant. Judge Claiborne testifed that he signed his 1979 return in blank—although this point is disputed—and never looked at it when he got a final copy. Before hiring Jerry Watson to fill out his 1980 return, he had been told that he would owe a significant amount of tax for that year, as indeed he should have. He himself seems to have prepared the form 4868 requesting an extension for filing his return; on that form he reported that his 1980 taxes would be $42,847.96, and he submitted a check for $20,817.59—the difference between what had been

withheld and what he estimated he owed. Just 2 months later he signed the return prepared by Watson that showed him owing not $42,847.96 as he himself had computed, but $1,103.00. He signed a return that just wreaks of being defective. Filled out in pencil, with arrows indicating needed changes on the form, and including errors that even the slowest neophyte on taxes would not make, the judge signed it. The only question he asked Mr. Watson was "are you sure that this is correct?" But he had never asked the preliminary question that would have made a "yes" answer meaningful: What are your qualifications to fill out and evaluate a return? What is your educational and professional background? What experience have you ever had in coping with a professional personal-service business and the schedule C form, capital gains and losses and the schedule D form, and the form 2119 for the sale of a residence?

It is clear to me that Judge Claiborne deliberately did not want to know anything about his tax obligations, based on the overview of the evidence that I have listed above. There is, however, a substantial body of case law that states that a jury may properly infer that a taxpayer has read and approved his tax return if his signature appears on the return. See, for example: *United States* v. *Romanow*, 505 F.2D 813 (1st Cir. 1974). "The signature at the bottom of the return is prima facie evidence that the signor knows the contents of the return." *United States* v. *Harper*, 458 F.2D 891, 894–895 (7th Cir. 1971). The judge signed his tax returns. He, like every other "average" citizen has a sworn duty to believe and support the information included on his tax return. I believe that the evidence fully supports, beyond any doubt, that Judge Claiborne committed "a voluntary, intentional violation of a known legal duty". His conduct was "willful" as required to prove a violation of 26 U.S.C. sec. 7206(1).

THE 1979 TAX YEAR

During 1979, Judge Claiborne received 14 fee income checks that totaled $41,072.93. This amount is confirmed by adding up the checks listed as House managers' exhibits 1–14 and also by adding up the notations the judge made in his personal record book for fee income received in 1979.

In March 1980, the judge sent his accountant, Joseph Wright, a note asking that Wright notify a mortgage company that the Claiborne legal fee income for 1979 was $45,371.93 (later changed to $46,371.93). The note included a list of earnings identified as being a "tabulation taken from my deposits and authentic." Because this was the only figure that Wright had received by the time the judge's request for an extension form 4868 had to be filed, he used it to compute the estimated tax due for 1979. When Wright told Claiborne that he would need to send in $16,000 to cover the taxes owed, Claiborne responded by saying that the tax owed would be less. He sent a check for $8,000 on April 11, 1980.

Judge Claiborne says that he talked with Wright sometime before April 11, 1980, and indicated that of a $20,622.17 deposit, only $10,000 was actually a fee, with the balance being a rollover of a time certificate of deposit with interest. This was erroneous, and Claiborne rests his case on a letter that he says he drafted and had delivered to Mr. Wright on April 11. The letter states that his fee income was $41,073.93.

However, Joseph Wright testified that he never received that letter and had not seen it until Mr. Goodman showed it to him (produced from the judge's files) in late 1983. On May 22, 1980, Wright still had the understanding that Claiborne's legal fee income for 1979 was $45,371.93, and he used that figure in letters to mortgage companies. But he claims that Judge Claiborne called him between May 22 and June 15, when the tax return was filed, and eliminated certain items of income so that the total was dropped to $22,332.87. This amount was listed on his schedule C for that year as fee income. The judge himself used a figure of $23,050.76 to report his 1979 legal fee income to the judicial ethics committee.

The resolution of this controversy largely depends on whether one believes Judge Claiborne or Joseph Wright. I personally cannot understand how anyone could supposedly write a letter on April 11 that said his legal fee income was $41,073.93 and barely 1 month later, on May 13, fill out his judicial ethics financial disclosure form listing legal fee income of $23,050.76.

I believe Mr. Wright's explanation of what must have happened, and I find the judge's version lacks credibility. But I might have been inclined to grant him some benefit of the doubt were it not for the incredible tax return the judge filed in 1980.

THE 1980 TAX YEAR

In the spring of 1981, during the time 1980 tax returns typically were being prepared, Judge Claiborne in effect fired his long-time accountant, Joseph Wright. He made the acquaintance of Jerry Watson, who purported to be a financial adviser and tax consultant and who owned the Creative Tax Planning Co. In fact, Mr. Watson only had a high school diploma, had no training at all in any accounting or business courses, and had been fired from several previous jobs that he had held. Witnesses testified before the committee that Jerry Watson had a generally poor reputation around town for the quality of his work. The judge, however, on first meeting Watson, was impressed with his manner and mentioned to him that he had been told previously that he would owe substantial taxes for the 1980 tax year and might need some assistance.

But the judge did not retain Watson until after he had received a letter from Watson, dated April 6, 1981, elaborating on how a business loss could be taken on the judge's old law practice. The letter also indicated that no tax would be owed on the sale of the judge's house. Less than 1 week later, the judge personally filed a request for extension form 4868 that indicated he expected to owe $42,847.96 in taxes for 1980. He submitted a check for $20,817.59 as the balance due on this estimated return.

In the meantime, the judge discussed with Jerry Watson at least twice, and possibly three times, the possibility of taking a loss on his law practice that he had abandoned upon taking the bench in September 1978. Watson testified, and the judge did not deny it, that they spent more than 1 hour in total time discussing the fair market value of the firm (including valuations of $5,000 for his rolodex file—which he admitted at the hearing he did not even have; $5,000 for his phone number and yellow page ad; $110,000 for 26 years of goodwill; the value of a client list; accounts receivable for cases still pending; valuations for briefs, points, and authorities; and so on.)

Watson arbitrarily decided that the fair market value of the firm had to have been at least $250,000. But at this point, several facts leap out that strike anyone right in the face with any tax knowledge, or anyone who merely reads the schedule D form, as simply outrageous:

First, they listed the law firm as an asset acquired in 1978, when in fact the judge had started it from nothing more than 25 years before;

Second, they listed the cost basis of the firm as $250,000 when, in fact, that was their "guesstimate" of fair market value; all tangible assets of the firm had been fully depreciated in tax year 1978, so that the cost basis was actually zero. Again I emphasize, they used their "ballparked" (their term) estimate of fair market value which is totally incorrect in determining a capital loss;

Third, they determined that the sale price was $150,000, even though there had been no sale, never had been any sale. From this they subtracted the phony, fabricated cost basis of $250,000 to create an equally phony loss of $100,000.

The really creative part of this return was discovered when it was admitted by Watson that he had taken the judge's $87,911 of legal fee ordi-

nary income for 1980 added to that roughly $12,000 of fully depreciated law books that he had simply given away and invented the remaining $50,000 to equal the sales price of $100,000.

Fourth, no schedule C on which ordinary income from a personal business was listed was filed even though Clairborne had filed that form for at least the preceding 20 years.

The judge and his accountant had in effect masked ordinary income as a deduction against a fabricated capital loss. They also used this fabricated capital loss to offset ordinary income for the 2 years that followed. That is the transaction that never was.

The judge later tried to slough off any culpability by saying that he had not looked at the return and really was not knowledgeable about these types of tax matters. When he received his return from Watson that showed him owing $1,103 instead of the $42,848 that he himself had calculated 2 months earlier, he took no action; when he received a refund check for $44,256 some time later, he still did not look at the return to try to determine what the problem might be.

Evidence was also presented before the Senate hearing that showed flagrant miscalculations on the judge's form 2119 so that it showed no tax owing on the house he sold for $725,000 on which he had a cost basis of $362,000. Because the house he purchased subsequently only cost $285,000, the judge owed tax on his accumulated capital gain of $314,000 minus the $100,000 he appropriately excluded for being over 55 years of age. This $214,000 capital gain was omitted from his return.

With the facts there presented, I have no difficulty in determining that Judge Harry Claiborne did not believe these returns to be true and correct as to every material matter, and that he well knew and believed that he received, and failed to report, substantial income in addition to that stated on the returns, in violation of section 7206(1) of title 26, United States Code. So, I think the Senate righly adjudged him to be guilty of misbehavior and guilty of high crimes and misdemeanors. These facts lead me inexorably to conclude that his impeachment and removal from office under articles I and II of the impeachment resolution were fully warranted.

Article III of the impeachment resolution states that, because a 12-person jury of his peers found the judge guilty of two felony convictions for which he is serving a 2 year prison sentence and has paid a $10,000 fine, he is guilty of misbehavior and is guilty of high crimes and should be removed from office.

Mr. President, I voted "present" on that article. I did not want the support of that article to be misinterpreted as meaning that the Senate has no role to play when a person has been convicted previously by our judicial branch of Government. Nor did I want the Senate, in a future case in which the court may have failed to convict an individual, to ipso facto infer that the Senate should not convict that same individual on an impeachment article or articles brought by the other body.

I supported article IV of the Impeachment Resolution because I believed it obvious that Judge Claiborne had betrayed the trust of the people of the United States by falsifying his tax returns and had reduced confidence in the integrity and impartiality of the judiciary, which therefore brings disreput on the Federal courts and their ability to administer justice. This violated his oath of office and for that I thought he should be removed from office.

I think that all Senators and all citizens need to focus on the bottom line of this proceeding. If Judge Clairborne had been found not guilty on these charges of filing false tax returns it would have made a mockery of every citizen's legal duty and civic obligation to pay his taxes.

When Judge Claiborne stood here in the well before this assembled body he spoke for 35 minutes to a still Chamber. Yet in those 35 minutes he did not respond to the critical charges that had been made to him by the managers of the House of Representatives who sat also in the well of the Chamber. Judge Claiborne's comments did not go to the gravamen of the charges that had been made against him in Articles of Impeachment brought by the other House.

Instead he told us that he had been a "fair" judge.

All judges are expected to be fair.

He told the Senate and those listening in the galleries and those listening and watching on TV and radio that he had worked hard.

And yet all judges are expected to work hard. There is plenty for all to do.

He said that he was too busy, in other words, too busy to study the tax return.

I read from his statement directly from the record as to the 1979 tax returns. He said, "This is plainly a matter, in my opinion, that they did not believe my secretary."

In speaking of his 1980 returns he said that he had very little time for his personal business. "* * * I had very little time for my personal business, very little time. And I am not alone. I don't think there is a Federal judge in America on the bench that has time for his personal business. I can honestly state that I believe this, that Federal judges of this Nation are killing themselves. You cannot imagine the long hours they are working. You cannot imagine the time they spend on the bench. During recess, they are dictating orders or signing orders or reading briefs or preparing opinions, sustaining opinions. Then they go on the bench and try a case. They cut their lunch hours short, they stay at night and get into their offices sometimes as early as 6:30 a.m.

Mr. President, those words fell upon rather unsympathetic ears here in this Chamber. Senators are accustomed to working hard also. Also I suppose that there are a good many Senators who cut their lunch hours short, who work into the evenings. That is no excuse for not paying one's taxes.

No, he did not address the charges that had been made against him by the managers of the other body.

In those 35 minutes, he said, "I could not walk away because I have not violated a single law of the United States. I have not defrauded my Government. I have not been corrupt in my office."

Mr. President, there are few rather than many who, upon the commission of crimes, are willing to admit that they have violated the law. Most of them say they have not violated the law.

I was reading in the newspapers recently about the arrest of an individual who had just shot three or four police officers in the District of Columbia. When he was being carried away, he said, "I ain't done nothin'. I ain't done nothin'."

Even the hardest criminals, upon arrest, have often been known to say they have not violated any law.

Did G. Gordon Liddy say that he had violated any law in the Watergate episode? Did President Nixon say that he had violated any law when he resigned from that high office? Aaron Burr, who was the third Vice President of the United States, shot and killed Alexander Hamilton in a duel in July 1804. Murdered Hamilton. And yet Burr had the affrontery to come back, after fleeing to Georgia, come back to the Senate and preside over the Senate as though nothing had ever happened. Later he was tried for treason.

So often those who commit crimes will say that they "never violated the law."

We heard that mournful plea as we sat here yesterday and listened to the judge. But the facts, Mr. President, in the case did not and do not support his contention. He was found guilty by a Federal district court. A special three-judge panel of judges, named by the Chief Justice of the United States, confirmed the judgment of the district court by a vote of three to nothing. And then Judge Claiborne asked the entire Ninth Circuit to sit en banc for a rehearing of his case. I am told that

there are 25 members within that circuit. Six of them recused themselves and of the remaining 19, 16 voted to deny the rehearing. Only 3 dissented.

And then Judge Claiborne petitioned for a writ of certiorari to the Supreme Court of the United States, and that was denied.

He then went to the penitentiary and began serving his time. He refused to resign from the high office to which he had been appointed by the President of the United States and for which he had once been confirmed by the Senate of the United States.

Then he came here to this Chamber. The House of Representatives impeached him and he appeared before the bar of the Senate, saying that he had violated no law; saying that he had not defrauded his Government; saying that he had not been corrupt in his office; saying that "I did nothing, I don't think, that the average American citizen does."

Mr. President, the average American citizen is not a Federal judge and the average American citizen just does not know what it is to file a tax return with an income of roughly $356,000, I believe it was, in one year—$54,500 salary as a district judge, almost $88,000 in legal fees, $214,000 in capital gains. And he filed a return claiming that the Government owed him almost $22,000. The average citizen does not have an income of that size.

Mr. President, I believe, as most Senators did, that Judge Claiborne was guilty. He was a convicted felon serving in a penitentiary in Alabama. He continued to draw his salary of a Federal district judge, $78,700 a year. He refused to resign from office. I voted to remove him from office and strip him, strip him of that salary which he did not deserve and which came out of the pockets of the honest taxpayers of this country.

Mr. President, the Senate fulfilled its responsibility under the Constitution. I again wish to compliment the committee of Senators, bipartisan in its makeup, Republican and Democrat, who belabored so dutifully and so faithfully in hearing the evidence, taking the testimony, compiling the facts, and submitting the report to the Senate. They worked diligently and faithfully, and they did their work well.

I hope that this example will be a lesson and I would hope that that lesson might not be lost on not only Federal judges but also all other officials in high places in our country.

On yesterday, I asked unanimous consent that my two statements that were made during the course of the closed sessions of the Senate on yesterday and the day before, appear in the public record. I now include, at the conclusion of these remarks, those two statements excerpted from the closed record and they will hereafter appear in the public record.

The statements follow:

REMARKS OF WEDNESDAY, OCTOBER 8, 1986

Mr. BYRD. Mr. President, I do not think that the respondent should be permitted to go away and say that the Senate did not vote on the substance of his motions. At the same time, I do not think the Senate has to accept his language. It is very cleverly crafted, "a full and fair trial."

Shortly, I shall ask unanimous consent to set aside this motion and have the Chair put before the Senate a motion which contains the substance of the respondent's request, to is it; one, that rule XI of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials is unconstitutional; and, two, that the Senate issue subpoenas to, and hear the testimony of in open Senate, the witnesses listed in Judge Claiborne's application for issuance of subpoenas.

Now that motion would contain the substance of Judge Claiborne's request, stripped, stripped of the overblown rhetoric. I think that the Senate is required to do no more than that.

Mr. President, while I am on my feet, let me address the substance of the respondent's motion. Actually, as I see it, it would be divided in two parts. But in the second part, it is so worded as to include not only those witnesses who were called before the committee but also the additional witnesses that Judge Claiborne is requesting in the memo that is at the bar.

Mr. President, first of all, I hope that we will keep in mind that the Senate is not sitting as a court of law. Second, we should keep in mind that our responsibility is to focus on, and render judgments with respect to the Articles of Impeachment that have been presented to the Senate by the House managers.

Now, as to the respondent's contention that rule XI is unconstitutional, let us go to the Constitution. The Constitution, in section 5, paragraph 2, of article I, says, "Each house may determine the rules of its proceedings." Every Senator knows that. Every Senator knows that this Senate can constitute a committee to take evidence, to take testimony, and to report back to the Senate in respect to the impeachment involving the respondent. It was done in impeachment cases heretofore, and Senators need only look in the little book "Procedure and Guidelines for Impeachment Trials in the United States Senate" and they will find such instances on page 43, for example:

"In the trial of Judge Peck in 1830, following the impeachment at the bar of the Senate by two members of the House of Representatives, the Senate proceeded to consider the message from the House and resolved:

That it be referred to a select committee, to consist of three members, to consider and report thereon."

Another case, in the case of Judge Archbald, in 1912:

. . . following the reading of the articles of impeachment and in order that they be printed by the Senate, the articles were referred to a special committee appointed by the President pro tempore, pursuant to a resolution as follows:

"*Resolved*, That the message of the House of Representatives relating to the impeachment of Robert W. Archbald be referred to a select committee, to consist of five Senators, to be appointed by the President pro tempore."

And it goes on to state the names of the Senators who were appointed.

So, in the one case it was referred to a "select" committee and in another instance to a "special" committee. Ergo, the Senate clearly has that power. It has exercised such powers before, and there is no question but that it is constitutional.

So much for that part of the respondent's motion. What the respondent is really asking for, here is another trial. That is what the respondent is asking for, a full trial in open Senate. Actually the respondent has already gone a long way toward getting a new and full trial because under rule XI, I will read this extract therefrom.

"The evidence so received and the testimony so taken shall be considered for all intents and purposes subject to the right of the Senate to determine competency, relevancy, and materiality as having been received and taken before the Senate—

Before the Senate—

but nothing herein shall prevent the Senate . . .—

Ellipsis—

from having the entire trial in open session.

So, the testimony and the material reported by the committee to the Senate in 2,300 pages, and four volumes "shall be considered for all intents and purposes as having been received and taken before the Senate."

The respondent had his case considered in the Federal District Court, and he was found guilty of income tax evasion. Thereafter, an appellate tribunal made up of three judges was appointed by the Chief Justice of the United States to hear the case on appeal. That special tribunal confirmed the decision of the lower court, three to nothing.

The respondent then petitioned for the entire Ninth District Court of Appeals sitting en banc to rehear the case. I am told that there are 25 judges in the ninth circuit. Six of them recused themselves, leaving 19. Of the 19, 16 rejected the petition for rehearing. Three dissented, not meaning necessarily that they thought that the respondent was not guilty, but simply meaning that they felt there should be a rehearing. Then there was the petition for the writ of certiorari which went all the way to the Supreme Court of the United States, and that was rejected.

Hence, the respondent has had his day in court. The district court, the special three-judge appellate panel, the ninth district Appeals Court en banc, the Supreme Court of the United States. Now, he seeks to make the U.S. Senate a super Supreme Court.

I listened to his speech yesterday. I listened to his attorney's speech. I did not hear one thing said that would destroy or was even directed to destroy the case that was made by the managers of the House. And with specific reference to the 1980 tax return, it was said that "like the average American citizen," Judge Claiborne relied on his tax reporter. "I don't think the average citizen goes home and makes a personal audit," it was said. Mr. President, Judge Claiborne is not the "average" citizen. He is a learned man, learned in the law. He is a Federal judge. He has conducted trials of tax cases. He is not the "average citizen". What we are talking about in that particular instance of 1980 was income amounting to $356,400 in 1 year. The "average citizen" does not know anything about that kind of income.

Why did Judge Claiborne not resign when sent to prison, rather than risk impeach-

ment? One might say, why is the judge coming to the U.S. Senate? My opinion is, that he felt he would have two out of three chances of winning. The odds are 2 to 1 here, because it requires a two-thirds vote to declare him guilty of the Articles of Impeachment. So it is a gamble for him.

Should the Senate then accord him a full trial in open Senate? I would hope that the Senate would reject this part of the respondent's motion also.

The special committee was appointed by the majority and minority leaders, using great care, may I say. And the members of that select committee applied themselves studiously. They dutifully attended the meetings. They sat for hours, daily; and they sat for days. They were thorough. In my judgment, they bent over backwards, as they should have done. I think the record is clear that they did that. I think they reflect, and I think the Senate can look with great pride upon their work.

Now, to say that after the respondent has had his case tried in all of the long judicial chain that constitutes legal due process, and then that he should come in here, and that this Senate should accord him what amounts to a new trial in open Senate, it seems to me as going very far. Too far.

Let me just point out another thing to my colleagues. I have read the posttrial brief of the House of Representatives, a blue-backed little booklet. It has only 59 pages in it. In this booklet, I found that in connection with the 1980 tax return, the judge had earned a judicial salary of $54,500 in 1980. He had judicial fees amounting to $87,900. He had a capital gains—on property that he sold for $750,000—of $214,000. His tax return states that he owed the Government only $1,103. Actually, his return declared that the Government owed him $20,900-plus.

He actually got a return of something like $44,000. There were other items. But on his return he claimed that the Government owed him almost $21,000. So Judge Claiborne had a total of $356,000 in income, including capital gains, and, yet, he claimed that the Government owed him almost $21,000.

It is beyond this Senator's ability to imagine that that learned man would not know from that kind of income and that kind of claimed repayment that something was wrong with his tax return.

What about his tax preparer? The judge employed an individual who had not more than a high school education. That is all right. There may have been Presidents who did not have more than a high school education. But this man also had a questionable reputation. He had been fired. He was not a certified tax preparer. But they discussed a scheme, if we are to believe this document, which was prepared by the House of Representatives. They discussed a scheme. The judge had been told that he would be liable for a considerable amount of taxes. As I recall, I think he was told that he would probably owe between $90,000 and $100,000 for that year.

They discussed a scheme in which the following "transaction" took place: they took the judge's legal practice. There was no cost price for the practice. He had built it up over the years. No cost basis for it. They took this practice which had already been written off in 1978. The cost of the library, the cost of the fixed equipment, the cost of the leasehold improvements had been written off, and the judge had recovered in full in 1978. Yet, they came up with this scheme by which they would estimate the cost of this legal practice at $250,000.

Then they established a phony sales price for it of $150,000, so that out of this bogus transaction, the respondent took a loss of $100,000. A $100,000 loss on a transaction that never occurred.

Of course, the $150,000 "sales price" covered the $87,900 legal fees for 1980, plus $40,000 for the next year and about the same for the following year. The judge had 1980, 1981, and 1982 covered in that bogus sales price.

It is beyond the very limited stretches of my imagination and credulity to believe that a Federal judge of this standing, a man with this experience, a man as learned as this man was, would enter into a scheme such as this and sign a return and accept the check, the figures being as I have already set forth.

I say all of this to say that I hope that the Senate will reject this motion for a full trial in open Senate.

As to the request that the Senate proceed now to issue subpoenas and hear the testimony in open Senate of all these witnesses, I hope the Senate will not stultify itself by going through such an extended and unnecessary exercise. Take a look at the facts as shown in this brief. I did not write the brief. This is a posttrial brief. I did not write it. I can only read it. It was prepared by the House. I accept it as being factual. There were those who were present in the hearings and they, of course, have their own viewpoints.

I urge the Senate to reject this motion.

REMARKS OF THURSDAY, OCTOBER 9, 1986

Mr. BYRD. Mr. President, I have listened through most of this debate here on the floor. I have reflected with pride on the attendance throughout most of the debate here of Senators on both sides of the aisle. I have commended and I commend again the committee of 12 that was appointed by the distinguished majority leader and by me under the resolution adopted by the full Senate.

I have listened to those who have said, as they have searched their consciences and their hearts, that they would like to see Judge Claiborne appear before the Senate and answer questions. Yes, they can read the record, they say, that has been prepared and submitted to the Senate by the committee, but they would like to have seen Judge Claiborne as he answered the questions; they would like to have observed his demeanor.

Mr. President, as has already been said, one may observe the judge's demeanor by looking at the video tapes that are available and have been available. But, Mr. President, I observe the demeanor of Judge Claiborne when he was before the Senate yesterday. He stood right here in the well of this Senate and he talked for 30 minutes. He needed more time. The distinguished Senator from Maryland, Mr. MATHIAS, asked unanimous consent and gave Mr. Claiborne an additional 5 minutes. The managers on the part of the House presented their case here in open Senate before the eyes of millions throughout this country.

When it came Judge Claiborne's time to respond, did he respond to the charges that had been made by the managers on the part of the House? Well, no. He had his chance. But he did not respond. What did he say? He said, "I have been fair." Well, what judge would expect to be otherwise than fair? He said, "I have worked hard." Well, what judge would be expected not to work hard? He talked about how the Federal judges are overworked, how they go without lunch, how they work into the evenings, and how they are killing themselves. But did he answer the question? Did he go to the gravamen of the charges that had been made? No. With respect to the 1979 return, here is what he said. "This is plainly a matter, in my opinion, that they did not believe my secretary." That is about all he said about the 1979 return.

On the 1980 returns, what did he say? He said:

"Mind you, the only thing the Government was charging me with on the 1980 return is that I did not declare fees that I collected in the amount of $88,500.

"Mr. Watson's office had treated the $88,500 on a schedule D, which my accountant when he performed my audit after I was indicted said he can't do that. We conceded that he did it incorrectly. But I did not catch that it was done incorrectly. He told me that it was correct.

"When it began to look like I was going to be indicted, I talked to him. I said, "I want to know how you did it. I want to know exactly what you did."

Let me read that again from yesterday's transcript:

"When it began to look like I was going to be indicted"—

Aha—the hour was late.

"When it began to look like I was going to be indicted, I talked to him. I said, "I want to know how you did it. I want to know exactly what you did."

Then, the judge said to Watson,

"Can you support that?"

And then Watson, who prepared the tax return, said,

"Yes. * * * Judge, I have taken your return to two IRS agents, both of whom I trust and have great confidence in their ability. Both of them have told me, * * * 'that your tax return was done correctly.' That reassured me. That reassured me."

Now that is the sum and substance of what Judge Claiborne had to say in answer to the critical charges made against him by the managers on the part of the House. All of the rest of the time he talked about how fair he had been, how hard he had worked, and how he wanted to retrieve his good name. But not once did he go to the gravamen, to the center, to the heart of the charges. Not once did he explain the bogus scheme by which the phony sale of assets had been created in a transaction that had never occurred.

I will not go further into that. I spoke on those things briefly yesterday, and I need not say anything further in that regard.

But let me say to my colleagues we are approaching the hour when we will vote. Not very long ago the Congress of the United States passed a far-reaching tax bill, and its purpose was to make the Tax Code fair. Its purpose was to wipe out the loopholes, to tear down the tax shelters, and to instill confidence in the tax system on the part of the American people.

Now we are about to cast a vote on whether Judge Claiborne should be removed from office. Are we to say that this man is not guilty of tax evasion because he was too busy? Every Senator here knows that every Senator is also busy, but every Senator is also expected to pay his taxes, and we cannot get by with saying we are too busy. Are we going to send a signal that there is to be a double standard—one for Federal judges, and another for other taxpayers?

What are we going to say to that widow out there who is working day and night to pay her bills, to buy clothes for her children, to put her kids through school? How are we going to answer her when she says "I pay my taxes. Why did you vote to let this judge be acquitted on the Articles of Impeachment brought against him for tax evasion?"

What am I going to say to that coal miner in West Virginia? Talk about somebody who works hard. Somebody who has to go into the bowels of the Earth, hear the mountains groaning over his head, hear the timbers cracking to the right and to the left of him, and who pays his taxes on the money that he earns in the sweat of his brow? How am I going to look him in the face and say, "Well, the judge was too busy. He just took his accountant's word. He is a busy man, you know. He has sometimes worked a little bit at lunchtime. Sometimes he has to go back and work a little in the evening."

That coal miner does not have money to invest in apartments or horses as Judge Claiborne did, in Mexico or anywhere else. How am I going to answer him? What are we going to do to the confidence of our people in our tax system if we vote to acquit this man? He has had his chance. I saw his demeanor. And if he were back here before the Senate another hour, another day, how would I still answer that coal miner or that poor widow or that black who is toiling in the factories of the country, in the fields of the West or South, and of the North.

I ask for 2 more minutes.

Mr. MATHIAS. I yield 2 more minutes.

Mr. BYRD. How would we answer those who are justly toiling, who believe that they have a duty to pay their taxes, and who want to live up to the laws of the land, and are doing their best to do it? How can we then say to them, "Well, we judge him by a different standard"? I cannot do it, Mr. President.

I have seen the judge. I have seen his demeanor. I saw him take 35 minutes here in the well of the Senate, and appeal to those watching and listening out there on TV and radio and those in here in this Chamber. What did he say? Nothing to explain his defense against the charges; only that he believed his accountant, and that he was busy, too busy.

Mr. President, each Senator must do his duty according to his own lights, each according to his own conscience, and each Senator wants to be fair. Each Senator wants to live up to his own oath to uphold the Constitution. I have said all I will. Judge Claiborne has had his day in court. He has run through the line of due process. And he has had his day before the U.S. Senate.

I will vote "guilty" on three of the four articles: I, II, and IV.

STATEMENT OF SENATOR STEVENS IN CLOSED SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the statement I made in relation to the impeachment proceedings concerning Judge Claiborne appear similarly in the RECORD following those of my distinguished friend from West Virginia.

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

STATEMENT OF SENATOR STEVENS DURING CLOSED SESSION

Mr. STEVENS. Mr. President, on Tuesday the Senate sat as a court of impeachment for the first time in a half century. As a former U.S. attorney with substantial experience as a prosecutor, I have serious misgivings about the circumstances under which the impeachment trial of Judge Harry E. Claiborne has been conducted.

The Constitution clearly indicates that the impeachment process is a unique congressional function and is not intended to serve as a substitute for our criminal law process. That fact adds great weight to the argument that the Senate is not bound by all the rules of American criminal law when it sits as we are now, as a court of impeachment. It does not, however, mean that an impeachment trial is a proceeding of less significance and dignity than a criminal trial.

No court of the United States can remove a Federal judge from office, no matter how heinous his or her crime. The Constitution reserves that extraordinary power to Congress. As we know, upon receiving a message that the House of Representatives has approved articles of impeachment against an individual, the Senate is charged by the Constitution with the task of examining the articles and passing judgment on them without regard to determinations that may, or may not, have been made by the judicial branch of the Federal Government.

If the Senate fails to try the charges made against Harry Claiborne by the House of Representatives as an independent legislative court, it will frustrate the intent of the Framers of the Constitution. I do not believe we should allow the impeachment process to deteriorate into a second-rate criminal appeals process.

To be absolutely frank, Mr. President, I do not believe that Members of this Senate have had enough time to weigh independently the evidence that has been presented in the Claiborne trial.

I make this statement because I know I have not had the time to do so. I have been asked to represent the Senate in conference with the House, and I have been present on the floor of the Senate for no more than 35 minutes out of this trial to date.

Those of us who are members of the Appropriations Committee have been presented with a choice between doing the task assigned to us as Members of the Senate in a conference with the House that will determine when this session of Congress will conclude or absenting ourselves there and coming here to listen to this trial. Many of us have pleaded for some way to have time to go through the evidence at least once.

I do not know about the rest of the Members of the Senate, but I was in conference late into the evening on Tuesday and Wednesday. After the conference I spent the rest of my waking hours going through appropriations materials to prepare for the conference on the defense appropriations bill the next day.

I am not criticizing anyone here in the Senate. The extreme pressures we all encounter during the last few weeks of any Congress are simply not conducive to being a part of the impeachment trial process. I take this process very seriously as a Member of the Senate and as someone who has spent a total of almost 40 years in the practice of law and the making of laws.

Since this is the will of the Senate to finish consideration of the charges pending against Judge Claiborne before we adjourn this month, I intend to take the circumstances under which the impeachment trial was conducted into account, as far as I am concerned in deciding how to vote on the articles of impeachment. In my opinion, the burden is on the House managers to demonstrate that these circumstances have not fatally flawed the Senate's consideration of the articles of impeachment. Let us not forget that the timing of the presentation of these articles was decided by the House, not the Senate.

There was no reason for the delay in the approval and presentation of the articles of impeachment, which has forced the Senate to conduct an impeachment trial in the last month of a 2-year Congress.

I hope no one misconstrues my comments. I commend the majority and minority leaders for their efforts to prepare us for the impeachment trial. I have gone through the booklet prepared under their supervision, and it is a very good booklet, an historic document, as a matter of fact, in terms of providing guidelines for the conduct of this trial.

I think the distinguished chairman and vice chairman of the impeachment trial committee have done an excellent job in preparing the record of this trial for our consideration. I sincerely regret that I have not been able to find time to read through even the first volume, let alone the volumes as a whole.

Mr. President, the problems I have identified are not the problems of any individual. They are the product of timing factors beyond the control of any Senator.

I am making this statement to indicate the total frustration of this Senator in attempting to deal with this trial process responsibly, and at the same time, deliver back to the Senate floor by midnight tomorrow, as I have been instructed to do, the defense appropriations bill, the largest of the 13 appropriations bills. Mr. President, it is impossible to do both jobs at the same time, and it is unfair to place such a burden on Senators and on the accused. Unless somebody corrects this unfairness, I shall vote "present" on every charge against Judge Claiborne because as a juror, I have not been able to participate fully in the trial process.

STATEMENT OF SENATOR MATSUNAGA IN CLOSED SESSION

Mr. BYRD. Mr. President, I ask this at Mr. MATSUNAGA'S request. I ask unanimous consent that his statement made during the closed session anent the impeachment of Judge Harry Claiborne appear in the RECORD of today.

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

STATEMENT OF SENATOR MATSUNAGA DURING CLOSED SESSION ON THE IMPEACHMENT OF JUDGE CLAIBORNE

Mr. MATSUNAGA. Mr. President, I sat here listening to the arguments presented on both sides. I came here unprepared to vote either way. As one who served as a public prosecutor back home for 2½ years and subsequently who served as defense counsel in criminal cases, as well, I came here fully prepared to listen to the evidence, read whatever evidence was presented to the committee of 12, and to make up my mind only after all the evidence has been in.

This is my first experience serving as a juror. What disturbs me most, after listening to what has been said on this floor, is

that members of the panel have indicated that they are prepared to find the respondent guilty on article III simply because the respondent was found guilty in a court of law. Now, that violates our basic tenet, our basic concept of three separate and independent branches of Government.

We must serve as a check on the other two branches of Government. That is what the three independent branches of Government were set up for, as checks and balances. And we will have destroyed that by ruling or by deciding on article III. We should completely disregard article III and proceed, if we must, on articles I, II, and IV. And I urge my colleagues not to take article III into consideration at all.

Now, we have this difficulty also: Supposing the respondent's petition for trial de novo is granted and suppose, also, that he is then found not guilty. Had we proceeded to impeach him on article III, where are we then?

So I urge my colleagues, do not proceed on the basis of article III. If you need to go, go on articles I, II, and IV, and that is what I intend to do. I am prepared to proceed on articles I, II, and IV, although I am not prepared yet at this time to determine, to declare, whether I find him guilty or not guilty. I will wait until all the arguments have been made and I have listened to the arguments and I have satisfied myself that without a doubt I am making the right decision.

STATEMENT OF SENATOR MITCHELL ON IMPEACHMENT

Mr. MITCHELL. Mr. President, it is my understanding that by unanimous consent permission has been granted to Members of the Senate to have printed in the RECORD statements made during the closed debate on the impeachment of Judge Claiborne.

The PRESIDING OFFICER. The Senator is correct.

Mr. MITCHELL. Mr. President, pursuant to that understanding, I ask unanimous consent that the full text of the statement that I made during debate on the Articles of Impeachment on yesterday Thursday, October 9, be printed in the RECORD.

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

STATEMENT OF SENATOR MITCHELL ON IMPEACHMENT

Mr. MITCHELL. Mr. President, I think it is important that as we vote on the Articles of Impeachment that we first have clearly in mind what impeachment is and what it is not. Simply put, all that conviction on impeachment means is removal from Federal office. It does not take the place of a judicial proceeding, nor does it preclude a judicial proceeding. Impeachment is a political action in the sense that it is the only means by which certain high Federal officials may be removed from office.

It is essentially a discipline. The impeachment authority is limited. It has great moral force which it gains from its rarity, not from it severity.

So all we are talking about is whether or not Judge Claiborne will be removed from his office as a Federal judge. We have no power other than that.

The question then is whether or not the Articles of Impeachment presented by the House constitute an adequate ground on which to remove Judge Claiborne from office.

The record in this case, which includes the testimony of witnesses called by Judge Claiborne in a lengthy proceeding before the special committee, is available to every Member of the Senate, both in printed form and on video. An examination of that record reveals to me that Judge Claiborne has presented no substantial evidence to cast doubt upon the case against him.

The facts have been so extensively discussed here during this debate that I will not repeat them in detail. I will focus instead just on the one year of 1980 when Judge Claiborne received his judicial salary of $54,000, plus fee income of over $87,000, plus a taxable gain on the sale of his home in excess of $214,000. He was told, and he has admitted that he was told, that he faced a tax liability of over $97,000 for that year. He signed and filed an application to extend the time for filing his tax return in which he estimated that his tax liability would be almost $44,000. Yet, a few weeks later he signed a tax return and paid a tax of $1,103.

Members of the Senate, every American jury hearing a criminal case is instructed by the trial judge not to leave their common sense outside the courtroom when they enter it. And I urge the Members of the Senate not to leave their common sense outside this Senate Chamber when they consider this case.

Here was a man, a lawyer, a skilled trial lawyer, a skilled tax trial lawyer, a Federal judge who had presided over tax trials, who had instructed juries on what the tax laws mean, having income well in excess of $300,000, having been told that his tax liability would be about $97,000, having filed an application for an extension of time in which he said he expected his tax liability to be $44,000, and then he filed a tax return and paid a tax of $1,103. Leave aside every other aspect of your judgment other than common sense, and ask yourselves whether or not that does not constitute willful violation of the tax laws of this country.

There has been a lot of talk here about wilfullness as though somehow the Members of the Senate expect some evidence to come forth from the judge himself establishing his willfulness.

But I say to you that willfulness is an element in virtually every criminal trial. It is proven by circumstantial evidence. It is inferred from other facts.

I think what we have had here is a clear case and nothing in the record justifies our reversing the conclusion of the juries which tried and convicted Judge Claiborne. He has not rebutted the charges against him, even though he had ample opportunities to do so.

In their presentation in this Senate Chamber, the House managers were explicit in setting forth the charges against Judge Claiborne. He spoke after them. He could have responded to their charges. He chose not to do so.

The issue here is not whether there is hostility toward Judge Claiborne in the Justice Department or the strike force. I favor an investigation by an appropriate committee. But that is not the issue. What is at issue is whether or not Judge Claiborne violated the criminal laws of this country when he signed and filed his tax returns in 1979 and 1980. To me, the answer is as clear as it is regrettable.

I am convinced that Judge Harry Claiborne knowingly and willfully committed the crimes for which he was convicted.

Let me say, those are the most difficult words I have had to speak since entering the Senate. The proudest moment of my life was when I was sworn in as a Federal Judge. It is an honor that is difficult to put into words. But with that honor comes a commensurate responsibility. Those persons who are invested with the awesome power to pass judgments on their fellow citizens must themselves adhere to the highest standards. Otherwise, public respect and support for our judicial system will collapse.

I was and I am proud of my association with Federal judges.

I never met Judge Clairborne, but I want to say that I began these proceedings with a considerable amount of sympathy for him. But that sympathy has given way to the facts, and to me the facts are clear.

We have heard the argument that he was entitled to an audit. There is no such right. That is not the issue.

The issue is whether the proper payment of taxes due under the laws of this country is an obligation of all citizens, including Federal judges, and whether the failure to fulfill that obligation constitutes a sufficient basis to remove a judge from office.

Many people have said taxes are the price we pay for civilization. I say Government financed by taxes is the price we pay for civilization. Without government, society could not function. Without Government, every individual, every family, would exist in a state that would be at best chaotic and most brutal. Many of the functions of Government are questionable. Most are controversial. We spend much time in this Senate debating what our Government should or should not do. But the most fundamental function of Government, the one on which there is no disagreement, is that Government must administer justice in our society.

Our courts are the means by which justice is administered in this country, and the individuals presiding have an obligation to fulfill that function which is the most minimally essential to an ordered life, the upholding of the law. In American life, law owes its authority almost entirely to its intergrity. If that integrity is gone, so is the law.

A convicted felon simply cannot sit as a Federal judge. I repeat that, a convicted felon cannot be permitted to sit as a Federal judge. It would totally undermine respect for law and authority in our country.

We simply have to recognize that and do what we must do. It is a very, very difficult vote. It is a very difficult thing for me, a former Federal judge, to say these words about another Federal judge. But when we entered the Senate, we swore an oath to do our duty, and hard as it may be, unpleasant as it may be, that is our duty.

I urge the Members of the Senate to vote for conviction of impeachment. The record is clear. I believe the judge is guilty of the crimes for which he has been convicted, and for the respect that our Nation must maintain for the judicial branch of Government he must be removed from office by this Senate. I thank the Chair.

Mr. BYRD. Mr. President, I yield the floor and 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.

□ 1700

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, if any Senator wishes the floor, I will be happy to yield the floor at any time for any Senator or for transaction of business.

EVERETT DIRKSEN'S SENATE

Mr. BYRD. Mr. President, I have over the course of the last 6½ years been making a series of statements on the subject of the United States Senate. Today, I speak on the subject of Everett Dirksen's Senate.

Mr. President, the poet Carl Sandburg once described the Rotunda of the United States Capitol as being located "midway between the House and Senate chambers, midway between those seats and aisles of heartbreak and passion." Beginning with the visit of the Marquis de Lafayette in 1824, the Rotunda has served as a place in which we as a nation pay tribute to our heroes. Senator Henry Clay, in 1852, became the first person to lie in state there. He was followed in 1865 by Abraham Lincoln. Since Lincoln's time, eight presidents, from James Garfield to Lyndon Johnson, have lain in state on that hallowed site. Among the men and women whose highest public office has been the Senate of the United States, only six of more than 1,768 have been so honored. In addition to Henry Clay, they include Charles Sumner, John Logan, Robert Taft, Hubert Humphrey, and the senator who is the subject of my remarks today—Everett McKinley Dirksen.

In my previous addresses on the history of the Senate, I have given special attention to those senators who have, in their own way and in their own eras, virtually personified this institution in the eyes of the American public. For the twentieth century those individuals have included party leaders such as Joe Robinson, Alben Barkley, Lyndon Johnson, and Mike Mansfield—on the Democratic side of the aisle. On the Republican side, I have discussed Nelson Aldrich, Henry Cabot Lodge, Sr., Charles Curtis, Arthur Vandenberg, and Robert A. Taft, Sr., among others.

Everett Dirksen, like Robert Taft before him, was widely referred to as "Mr. Republican." Each, in his time, could also have been called "Mr. Senate." During his eleven years as his party's Senate Leader, from 1959 to 1969, Dirksen became more closely identified in the public mind with the Senate than any other member of the era. It is safe to say that today he is among the most remembered former senators of this century.

He was a creative political craftsman. He possessed a razor-sharp mind and a masterful sense of timing. He adopted a sometimes-clowning but always-theatrical style, partly to mask his intentions and partly for the pure fun of it. Such was the case in his perennial campaign to make the marigold the national flower. He gave expression to his wide knowledge of the world's great literature including the Bible and Shakespeare with a voice that he played like a cathedral organ. As to the organ metaphor, one reporter observed, "He could draw out the stops and declaim like a thundering prophet. And in the next breath his voice could drop to the softest whisper and he would let his audience hang on his every word." [1] Dirksen's mellifluous oratory moved his admirers to label him "the Golden Voice of the Senate." His detractors less charitably offered "Old Honey Tonsils", "the Wizard of Ooze", "Oleaginous Ev", and "Irksome Dirksen."

Everett McKinley Dirksen was born on January 4, 1896, in the small farming town of Pekin, Illinois. His parents came to the United States from northern Germany in the 1870's. His father, a modestly prosperous painter and decorator, was a staunch member of the Republican party. In 1894, he named his eldest son after the then most recent former Republican president, Benjamin Harrison. When twin sons arrived two years later, he gave to one the name of Republican House Speaker Thomas B. Reed. The other, Everett, took a middle name in honor of Republican presidential candidate William McKinley. Sadly, the elder Dirksen suffered a paralyzing stroke when Everett was only five and died fours years later.

Under these trying circumstances, Everett and his brothers had to work doubly hard to help the family survive. His mother cultivated within him a deep religious faith. The voice training he received in his church choir built the oratorical power that served him so well in later years. He became an avid reader and a resourceful debater. While a high school senior he met Secretary of State William Jennings Bryan. The three-time Democratic presidential candidate, whose electrifying 1896 "Cross of Gold" speech had made him the nation's best-known orator, counseled Dirksen, "Always speak to the back rows, my boy, and the rest will be sure to hear you." In the years ahead Dirksen would work hard to develop a booming outdoor voice. He learned to size up an audience quickly and to use humor and appropriate anecdotes to great effect.[2]

Upon graduation from high school, Dirksen worked for a year at a local corn refining company and then entered the University of Minnesota, supporting himself with a variety of part-time jobs. The 1916 presidential campaign of Charles Evans Hughes nourished Dirksen's love of politics and drew him into the public arena as a campaign organizer and speech maker. In April 1917, when the United States entered World War I, Dirksen set aside the college life and enlisted in the Army. Early in 1918, he was shipped to France where he earned a commission as an artillery officer. Assigned to a company of spotter balloons, the young lieutenant survived enemy gunfire directed at his balloon perch more than a half-mile above the ground.

At war's end, Dirksen traveled throughout Europe and then returned to Pekin. Abandoning his college studies, he eventually joined his brothers in running a wholesale bakery. The long hours failed to sap Dirksen's limitless energy. During those years he directed his creativity toward writing and the theater. He wrote five novels as well as dozens of short stories and plays. His writing experience proved useful. As journalist Neil MacNeil has observed in his excellent biography, Dirksen was "learning how to handle language, how to create effects with words, how to manipulate the audience."[3]

In 1926, at the age of thirty, Dirksen entered elective politics, winning a seat on the Pekin Town Commission. As an active and visible member of the American Legion, he became a popular public speaker. By 1930, Dirksen felt he was ready to achieve his greatest political goal, a seat in the U.S. House of Representatives. Later he observed, "The ambition to sit in Congress is probably similar to the 'flu'—everybody gets it at some time or another. While it had been lurking in my system like some deadly virus, it did not become virulent until 1930." [4] Although he lost that year's Republican primary to a well-funded and entrenched incumbent, he defeated the same opponent two years later.

As Dirksen prepared for the 1932 general election, he realized that he would need considerable Democratic support. "How", he thought, "could one successfully apologize for Republican leadership when the nation was bleeding from the wounds of the Depression? Shrewdly, Dirksen avoided a partisan approach and carefully identifed himself with the legacy of Democratic President Woodrow Wilson. When President Hoover made a campaign appearance in nearby Peoria, Dirksen realized that if he praised the unpopular chief executive, his own election chances would be doomed. Appearing on the same platform, Dirksen in his address ignored the president and focused instead on George Washington, whose bicentennial the nation was then celebrating. In November, both Republican Everett Dirksen and

Democrat Franklin Roosevelt carried his district with comparable huge majorities.

When Dirksen began his House service in March 1933, Depression-weary voters had reduced his party in that chamber to a hopeless minority. Democrats outnumbered Republicans by a margin of 310 to 117. Over the next four years Republican ranks would suffer an even greater erosion as their numbers dropped to 103 in 1935 and 89 in 1937. With his customary wit, Dirksen observed, "Any member of the minority who essays to speak on any administration measure must feel a great deal like the fellow who was in jail and who, as he saw a buddy going along, called and said, 'Hey, partner, what time is it?' He said, 'What do you care? You are not going anywhere!' So", Dirksen concluded, "we of the minority know we are not going anywhere." [5] Nonetheless, Dirksen intended to be an active and constructive member. He boldly requested committee assignments on the powerful Appropriations, Ways and Means, and Commerce panels. Party leaders rebuked this upstart with assignments to the committees on Territories, Immigration, and the District of Columbia! Only in 1937, with fewer members to fill Republican committee slots, did Dirksen finally land a choice assignment on the Appropriations Committee.

Dirksen soon associated himself with the moderate political views and the pragmatic style of Massachusetts' Joseph Martin, an assistant minority leader. Martin counseled his protege to "Perfect yourself in committee work, and in due course you'll start up the ladder. Study the rules. Those who know the rules know how to operate in the House, because you operate under the rules." [6] Dirksen took this advice seriously. He spent countless hours reading the House rule book and the multi-volume edition of Asher Hinds' *Precedents of the House of Representatives.* With the same diligence, Dirksen took an intensive course in preparation for the bar examination, which he passed in 1936. Although he had no intention of practicing law, he welcomed the prestige among his House peers that membership in the bar offered.

During his early years in the House Dirksen displayed an independence that irritated old guard party leaders. He supported some domestic New Deal programs such as the Agricultural Adjustment Act and the Social Security Act, while opposing the Tennessee Valley Authority and the Securities and Exchange Act. In foreign policy, he executed a dramatic and courageous shift in September 1941. Just months before the attack on Pearl Harbor, Dirksen reversed his isolationist opposition to the draft and aid to Great Britain in favor of a strong internationalism. He remained a vigorous and effective exponent of these views, unpopular with many midwestern Republicans, until he left the House seven years later.

In 1943, *Fortune* magazine selected Everett Dirksen as the subject for a major article entitled "Congressman: A Case History—A Report on How Congress Works and How It Might be Made to Work Better." Late in 1942, Dirksen had launched an attack on Congress' increasing inability to operate on a level of equality with the Roosevelt White House. Lacking sufficient funding and staff resources, Congress was becoming a decidedly secondary institution within the Federal Government. *Fortune*'s reporter saw in the Illinois Representative an example of a "quick-learning, quick-thinking, quick-acting" member who "has found that he can get through his work only by taking almost no time out from it except for sleep." [7] Dirksen contributed greatly to the success of the resulting landmark congressional reform measure, of which I have spoken on numerous occasions, the 1946 Legislative Reorganization Act.

By the end of World War II, Dirksen had risen to a prominent position within the national Republican party. In 1944, he conducted a brief campaign for the presidency, in the hope of securing a vice presidential bid. An August 1946 poll of House members by *Pageant* magazine rated Dirksen as that body's most effective speaker and its second "ablest member." [8] When the Republicans took control of the House in 1947 for the first time in sixteen years, Dirksen became chairman of the District of Columbia Committee and the Appropriations Subcommittee on Agriculture.

Just as Everett Dirksen seemed to be reaching the highest rungs of the political ladder, illness struck. Late in 1947, he experienced a clouding in the vision of his right eye. Doctors advised him that he was suffering a degeneration of the retina, possibly caused by cancer. They recommended removal, but after "weeping and praying" he decided against it. The eye required extensive rest, so in January 1948 the Illinois representative announced his intention to retire at year's end.

As a Member of this body, I can remember Everett Dirksen speaking of that eye which he had been told by the doctors was going blind. I can remember how he spoke of his concerns and worries, his prayers.

Fortunately for Dirksen, his vision returned to normal within several months. Restored and restless, he decided to achieve a new goal—a seat in the United States Senate. Over the next twenty-one months he traveled a quarter of a million miles and delivered two thousand speeches in a vigorous campaign against Senate Majority Leader Scott Lucas. Although Lucas had the benefit of his senior status within the Democratic Party, his duties as majority leader kept him in Washington while Dirksen visited virtually every crossroads hamlet in Illinois. Lucas' Democratic Senate colleague Estes Kefauver only made things worse when he decided that his investigating committee should look into an emerging political scandal involving associates of the Illinois senator. When a Chicago newspaper obtained and published secret committee testimony, days before the election, Lucas' already shaky reelection chances were doomed. Everett Dirksen swept to victory and won immediate national prominence as the man who defeated the Senate's majority leader. [9]

The Senate that Everett Dirksen joined in January 1951 was ideally suited to his newly found conservative political views. In 1949, he had experienced a change of heart and a disaffection from the Republican Party's internationalist wing. No longer a supporter of such ventures as the Marshall Plan, he moved comfortably into the orbit of Senate party chieftian Robert Taft. In an unusual gesture of confidence toward a freshman senator, Taft appointed Dirksen chairman of the Republican Senatorial Campaign Committee.

Then during the summer of Dirksen's first year in the Senate, his daughter Joy, his beloved only child, arrived at the family's summer cottage with a young lawyer whom she had been dating. That lawyer, Howard Baker, Jr., asked the senator to take a walk with him along the beach. As Neil MacNeil tells the story, Baker explained that he and Joy wished to get married. "I didn't ask him," Baker said. "I told him!" Baker later told MacNeil, "He was the most formidable character I'd ever met. He was pretty deeply moved. I'm sure he knew. He listened. He listened, and I ran out of things to say." [10] It is just like Howard Baker to say that. Happily, that marriage took place. Joy Dirksen Baker, in addition to her own accomplishments, would one day secure a unique distinction in the annals of Senate history as the daughter and the wife of Republican floor leaders.

Dirksen worked hard for Robert Taft's nomination during the 1952 presidential campaign. His party's eastern internationalist bloc, whose members advocated Dwight Eisenhower's election, bitterly opposed the Taft forces. At the Republican convention Dirksen delivered the most dramatic and well publicized speech of his entire life, in a last ditch effort to secure the nomination for Taft. Before a national televison audience, Dirksen berated the liberal wing of his party for its habit of winning conventions and losing elections. He reminded his

listeners that he had compaigned vigorously for the internationalist Thomas Dewey in 1944 and 1948. He then glowered down from the podium at Dewey. In a moment of high drama, he shook his finger at the former party standard bearer. "We followed you before," Dirksen cried out, "and you took us down the path to defeat!"

I can just see him, with his unruly hair and speaking with all the force within that great body and with that voice. I have never heard a voice before or since like Dirksen's. In my 34 years in the House and Senate of the United States, plus 6 years in both Houses of the West Virginia Legislature, the two Members whom I most lovingly recall as being the most captivating speakers were Martin Dies of Texas and Everett Dirksen of Illinois.

The convention exploded in anger and turmoil. But Eisenhower delegates gained control and carried the nomination, thus crushing Dirksen's hopes for a vice presidential place on the Taft ticket.[11]

For the remainder of the 1952 campaign, Dirksen worked hard for the election of Republican candidates to the Senate. His effort and Eisenhower's coattails paid off in November. Republicans regained control of the Senate by a slim 48-47 margin, with Oregon's Wayne Morse, a newly declared Independent, voting with the Republicans on organizational matters. Although the Democrats resumed control two years later, the Senate during the 1950's prior to 1959 operated with nearly even party ratios. I have already described those years in previous addresses in this series. I shall not repeat the familiar story here, except to note that Dirksen underwent a shift of political orientation in 1955 reminiscent of his 1950 shift away from his party's international wing. The years 1953-1954 marked a decidedly unhappy chapter in Dirksen's public career. His support of Joseph McCarthy and of the Bricker Amendment to limit the President's treaty powers deepened his estrangement from the Eisenhower White House.

In 1955, Dirksen began to mend fences with the Eisenhower administration. The following year he led a campaign to enact the administration's civil rights bill. Throughout 1956, Dirksen supported the president, frequently at the risk of his standing with his party's conservative Senate hierarchy. Eisenhower repaid this kindness by actively supporting Dirksen's reelection bid. On election day, the president carried Illinois by a landslide and contributed significantly to Dirksen's own victory.

At the start of the Senate's 1957 session, the departure of key Republican conservatives opened several party leadership posts. Republican Leader William Knowland had made up his mind to leave the Senate in 1958 to run for governor of California. He and Policy Committee chairman Styles Bridges feared that Republican Whip Leverett Saltonstall, a prominent member of the party's liberal-internationalist bloc, would advance to the floor leader's position in 1959. Consequently, they convinced Saltonstall, who was unaware of Knowland's plans, to give up the whip's post to become chairman of the Republican Conference. This opened that position for Dirksen, who enjoyed the trust of his conservative and moderate Republican colleagues.

The election of 1958, as I have previously described, brought to the Senate new faces—my own, being one—and new methods of operation. In 1959, as Democrats outnumbered Republicans by a margin of nearly two to one, Everett Dirksen was elected minority leader. In the previous Congress, he had served as acting floor leader during Knowland's frequent absences. In so doing, he developed a particularly close relation with Eisenhower, who was happy to be freed of the inept and cumbersome Knowland.

William Knowland, as Republican Leader, had alienated, rather than drawn together, his party's antagonistic factions. With Dirksen likely to move up to that post, party liberals in 1958 had proposed a modification in the system of committee assignments. That system had worked well for the Democrats since 1953 when Democratic Leader Lyndon Johnson devised it to allow junior members their choice of one major committee assignment before senior senators could make their second selection. Republican Senators Jacob Javits and George Aiken convinced Dirksen that such a system would help restore cohesion for their party as well. The catastrophic election results for the Republicans in November 1958 allowed Dirksen to implement this plan with relative ease. Having lost thirteen seats, the Senate's Republican contingent included only thirty-four members at the start of the 1959 session. With these greatly reduced numbers, it would be less difficult to find attractive assignments.

As the session began, Dirksen faced a threatened split between his party's reduced conservative ranks and its increasingly emboldened moderate-liberal wing. With party elder Styles Bridges, he agreed to support California's Thomas Kuchel, of the liberal faction, for the post of minority whip. Along with President Eisenhower's obvious support for Dirksen, this allowed him to turn back a challenge by Kentucky's John Sherman Cooper. He further strengthened his hold on the allegiance of junior Senator Republicans by yielding his own cherished seat on the Appropriations Committee to open a place for Colorado Republican Gordon Allott. Two years later, he gave up another of his prized assignments to allow Texas' John Tower a seat on the Labor and Public Welfare Committee.

By the time Everett Dirksen settled into his duties as Republican Leader, he had undergone a political and personal reorientation. He abandoned his aspirations for the presidency and channeled his ambition along a new course within the Senate. Instead of seeing the Senate as a path to higher office, he had come to view the Senate as an end in itself. Neil MacNeil has aptly characterized the transformation.

> This is a mystic phenomenon that in time shapes the understanding of some senators, but not of all senators, by any means. Those who are struck by the mystique of the Senate come to believe that service in the Senate is an ennobling experience and that service to the Senate is a calling worthy of selfless devotion. Those who sense the Senate in this wise traditionally have been men who have found in the Senate the summit of their own political careers, and Dirksen was now becoming one of them. He was beginning to find meaning in the office of senator that he had not found before, and to take his place with such Senate stalwarts as Richard Russell of Georgia and John Stennis of Mississippi. They believed in the Senate with a reverence that approached religious intensity.[12]

Dirksen adopted an activist leadership style. An artful persuader, he worked tirelessly to unite his party and to boost its morale in the face of the two-to-one Democratic majority. New Hampshire Republican Norris Cotton considered Dirksen a "gifted" political leader. He believed that the Illinois senator "was endowed by nature with more talents than almost any man I have ever known."[13] Dirksen hosted luncheons for party members on Mondays following the weekly Republican leaders' meeting at the White House. He arranged cocktail parties and formal dinners for Republican senators and their spouses. Unlike his predecessors, Dirksen went out of his way to cultivate the press, supplying reporters with reliable background information. He also instituted weekly news conferences following the Monday luncheons. The *New York Times* suspended its earlier disdain for Dirksen, noting that "It began to occur to everyone * * * that he was probably the most effective leader the Republicans had had in the Senate for years."

Everett Dirksen and Lyndon Johnson, as their parties' leaders during the 1959-1960 sessions, became warm personal friends. They trusted each other completely. Each man realized that the other had a necessary political role to play. But both went out of their way to keep channels of communication open. After the Senate completed its work for the day, one leader would customarily head for the other's

private capitol office for drinks and relaxed conversation. At the end of the 1959 session, Johnson wrote to his Republican counterpart, "Of the leaders with whom I have served, there have been none who can wield the partisan stiletto with quite the gusto and zest that you do. But even though the stiletto cuts deep, it never stings."[14]

Dirksen explained this relationship as follows. "The Senate is a public institution; it must work; it's a two-way street; and that requires the efforts of both parties. One party can not do it on its own because if the opposition, or minority party, wanted to be completely obstructionist, you could tie up the Senate in a minute, even with a handful of people. So we fully understood each other, that's how it had to be." [15]

The election of 1960 greatly reshaped Dirksen's Senate role. For his first two years as floor leader, he had acted as Eisenhower's faithful lieutenant. Now, with the White House in John Kennedy's Democratic hands, the Illinois senator took on to a more assertive and independent position. With House Republican leader Charles Halleck, Dirksen became his party's principal Washington spokesman. In international affairs, he supported the Kennedy administration. This was particularly evident during the 1961 Bay of Pigs fiasco and the Cuban missile crisis that followed a year later. On domestic policy matters, however, Dirksen worked to block or reshape much of the new president's ambitious "New Frontier" program. He observed that the 1962 "State of the Union" address looked "like a Sears Roebuck catalog with all the old prices marked up." [16]

By 1962, his weekly press conferences with Representative Halleck—the "Ev and Charlie Show"—had made Dirksen a national celebrity. Increasingly the public associated his stylized oratory with the very institution that served as his platform. *Time* magazine captured the Dirksen manner:

> He speaks and the words emerge in a soft, sepulchral baritone. They undulate in measured phrases, expire in breathless wisps. He fills his lungs and blows word rings like smoke. The sentences curl upward. They chase each other around the room in dreamy images of Steamboat Gothic. Now he conjures moods of mirth, now of sorrow. He rolls his bright blue eyes heavenward. In funereal tones, he paraphrases the Bible and church bells peal. "Motherhood," he whispers, and grown men weep. "The Flag!" he bugles, and everybody salutes.[17]

Some close observers of the Senate in the mid-1960's contend that Dirksen was its single most powerful member. I believe that, Mr. President. I served in the Senate at that time and I think that I would join my voice with those who say and who said that he was the single most powerful Member. That debate remains to be settled, but the reasons advanced by its proponents are worth examining. They argue that traditional power alignments were disrupted by the low-key, non-directive style of Mike Mansfield. They point to the rise of a new liberal-moderate coalition from northern and midwestern states that undercut the power base of the previously dominant conservative coalition from the South and West. The death of Oklahoma's Robert Kerr, the man Paul Douglas of Illinois derisively called the "Uncrowned King of the Senate," removed a strong, and some say ruthless, contender for power within this body.

In his 1962 campaign, Dirksen recognized that the White House and the Senate's Democratic leadership quietly hoped he would be reelected. As Senator Paul Douglas later observed, the Democrats "apparently wanted to appease, rather than oppose." Earlier that year, Douglas had tried to find a credible Democratic candidate to challenge the seemingly invincible Republican leader.

Among those to whom he turned was a young State legislator named Paul Simon, who now sits over to my left in this Chamber, whom he, Dirksen, considered "brilliant and honorable."

Simon wisely decided to wait and Dirksen defeated Representative Sidney Yates.[18]

Into that relative power vacuum moved Everett Dirksen with his appreciation for the Senate's tradition of unlimited debate. During Dirksen's years as floor leader, until 1969, there were never more than thirty-six Republicans in the Senate. Not surprisingly, he resisted efforts to reduce the number of votes required to cut off debate. He declared, "If I read my history correctly, past and present, whenever the freedom of a parliamentary body is impaired, we go down the road to tyranny. Show me any place in the world where a parliamentary body and its freedoms are impaired, and I will show you an instance of freedom in retreat." [19]

Mr. President, one of Everett Dirksen's greatest assets as a statesman was his ability to change his position on major issues. He did not compromise his convictions but he could change his position on the issues as the shifting sands of facts change. Some critics dismissed this characteristic as a sign of political opportunism, calling him "Mr. Flip Flop" and "the Grand Old Chameleon." Those of us who viewed the man at closer range, during his Senate years, recognized the more positive qualities of courage and political sagacity. In my earlier addresses on the Senate of the 1960's, I have discussed the two issues in which Dirksen's shift from opposition to support accomplished the passage of major legislation.

I shall only mention here the 1963 Limited Nuclear Test Ban Treaty and the 1964 Civil Rights Act. For his support of the test ban treaty, he extracted a promise from President Kennedy that the government would not slacken its weapons development program after the treaty was approved. For the civil rights legislation, he masterfully maneuvered to provide the votes necessary to end a civil rights filibuster for the first time in the Senate's history. Before that vote, he told a hushed chamber, "The time has come for equality in sharing in government and education, and in employment. It will not be stayed or denied. It is here." When the Senate approved the cloture motion on June 10, 1964, Dirksen stood at the pinnacle of his political power in the Senate.

For the remainder of his time in the Senate, Dirksen continued as an effective and responsible leader of his party's minority. On one hand, he actively supported Lyndon Johnson's conduct of the war in Vietnam. He saw that struggle as a clear-cut matter of defending the right of self determination for the South Vietnamese. Ultimately, his determined support of the President cost him a large measure of influence over Senate Republicans. On the domestic front, Dirksen pressed with equal vigor for constitutional amendments to overturn Supreme Court rulings on prayer in public schools and upholding equal representation within State legislatures. He also took on a spirited defense, against heavy labor lobbying, of the Taft-Hartley Act's Section 14(b), which banned union shops.

By 1967, time and health problems began to catch up with Everett Dirksen. In the late 1950's he had suffered a heart attack without knowing it. An enlarged and weakened heart caused him great physical distress over the final decade of his life. A fairly large man with seemingly unlimited energy, Dirksen drove himself at an ever-increasing pace. His legislative prowess and his inimitable style kept him constantly within the spotlight of national attention. He received hundreds of speaking invitations each month. His record album, *Gallant Men*, intensified his public appeal. In 1968, he starred as the grand marshal in the Tournament of Roses parade. In a desperate effort to regain a measure of privacy, he ordered the sign bearing his name removed from the door of his Capitol office, hoping thus to discourage swarms of tourists who regularly wandered in.

For a time the Senate Republican Leader frequently checked in and out of Walter Reed Army Hospital, suffering from acute exhaustion as well as emphysema and stomach disorders. In 1967, he said, "I've been trying for four years to get a vacation. If I don't get one pretty soon, something is going to happen to me." [20] Shortly

afterwards, he was admitted to the hospital with infectious pneumonia so severe that it nearly killed him. At that point he relied increasingly on trusted aides such as John and Glee Gomien and Oliver Dompierre to lighten his heavy burdens.

On August 19, 1969, the 73-year-old senator once again checked in Walter Reed Hospital. There doctors discovered an enlargement of a previously identified tumor on his right lung. Bravely, Dirksen underwent surgery, realizing his chances for survival were, at best, limited. While recovering, on September 7, 1969, he suffered a fatal heart attack.

Speaking at the memorial service at the Capitol Rotunda two days later, Senator Howard Baker aptly compared Dirksen to Abraham Lincoln. He said, "Both men understood with singular clarity that a great and diverse people do not speak with a single voice and that adherence to rigid ideology leaves little room for compromise and response to change." [21] Shortly afterwards, I expressed to the Senate my own feeling that Dirksen's loss was as if a "pillar had been torn away, a pillar that furnished /the Senate/ with central strength and stability, fashioned with grace and elegance and skill." [22]

□ 1800

Mr. President, the jury of historical opinion still deliberates the rightful place of Everett Dirksen. As with other powerful public figures, the Illinois senator has had his ardent defenders and his bitter critics. His congressional service—sixteen years in the House and nineteen in the Senate—spanned an era justly called "the most creative legislative period in the history of the United States." [23] He spent all but four years of that time in the minority party. Although thus cast in the opposition, Dirksen took what Neil MacNeil describes as a "creative and activist's role" in the legislative process. Another perceptive journalist concluded, "Combining Taft's legislative craftsmanship and Johnson's ability to amass Senate votes, Dirksen was the complete senator of the postwar era." [24]

Today, we are surrounded by Dirksen's memorials. In 1972, we named what was then called the "New Senate Office Building" the "Everett McKinley Dirksen Senate Office Building." Three years later, the Everett McKinley Dirksen Congressional Leadership Research Center opened in Pekin, Illinois. This center is intended "to serve as an educational institution for the art and science of American politics and American government /and/ in particular /for/ the role of United States Congressional Leadership." [25] In 1978, Congress appropriated $2.5 million to support the center's programs. These programs include stipends for scholarly research, conferences on congressional leadership, exhibitions, and an annual award for the distinguished reporting of Congress. The winners of the Dirksen Awards, since its inception in 1981, have been Neil MacNeil of *Time* magazine, David Rogers, then of the *Boston Globe*, Martin Tolchin of the *New York Times*, Allen Ehrenhalt of *Congressional Quarterly*, Helen Dewar of the *Washington Post*, and Steven Roberts of the *New York Times*.

Mr. President, as we seek to draw meaning from Everett Dirksen's example as a Senator, a congressional leader, and an American, we would do well to remember a statement that he might have intended as his guiding philosophy. He said, "Life is a matter of development or decay. You can either grow or you can retrogress. There's no standing still. You go backward or forward. The challenge will make you grow, if you are willing to assert a *leadership* and look on the challenge as something to be met and disposed of." [26]

Mr. President, as I remember Everett Dirksen, I remember him as a gentleman, one who was the most erudite and learned, an extremely gifted man, a man who more than any other I have ever seen in this Chamber had the facility for expressing every move and for captivating not only the attention but the heart of every listener. He spoke with feeling, as I have already indicated, with a voice that I never heard before, and that mood could flow from the most passionate, the most stentorian, to the most slightest wisp of a whisper.

I will also remember Everett Dirksen as a man who was not too big to know you, as one who could take a moment out of his busy life and laugh with you, always with a gentle smile, with a sparkle in his eye. And he will always be my favorite Republican Senator.

Mr. President, I ask unaimous consent to insert in the RECORD notes to Everett Dirksen's Senate.

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

NOTES TO "EVERETT DIRKSEN'S SENATE"

[1] *Washington Post*, September 8, 1969.

[2] Neil MacNeil, *Dirksen: Portrait of a Public Man* (New York, 1970), 22-28; Edward L. Schapsmeier and Frederick Schapsmeier, *Dirksen of Illinois: Senatorial Statesman* (Urbana, 1985), 3-7.

[3] MacNeil, 31.

[4] Everett M. Dirksen, "Mr. Dirksen (R) Goes to Congress," in *New Outlook*, (March 1933), 23.

[5] MacNeil, 49.

[6] Ibid., 52.

[7] "Congressman: A Case History," *Fortune*, (April 1943), reprinted in *Congressional Record*, 78th Congress, 1st sess. A2346-49.

[8] *Pageant* (August 1946).

[9] Edward L. Schapsmeier and Frederick H. Schapsmeier, "Scott Lucas of Havana: His Rise and Fall as Majority Leader in the United States Senate," in the *Journal of the Illinois State Historical Society* 70 (November 1977), 317-20; Schapsmeier and Schapsmeier, *Dirksen of Illinois*, 61-64.

[10] MacNeil, 98.

[11] Ibid., 103-105.

[12] Ibid., 156.

[13] Norris Cotton, *In the Senate: Amidst the Conflict and the Turmoil* (New York, 1978), 169.

[14] Schapsmeier and Schapsmeier, *Dirksen of Illinois*, 120.

[15] Ibid., 151.

[16] MacNeil, 195.

[17] Ibid., 202.

[18] Paul H. Douglas, *In the Fullness of Time* (New York, 1972), 572-75.

[19] MacNeil, 214.

[20] Ibid., 307.

[21] *Memorial Services . . . Everett McKinley Dirksen*, 91st Congress, 1st sess, (1970), 13.

[22] "*Congressional Record*, 91st Congress, 1st sess., 32131.

[23] MacNeil, 2.

[24] Robert Novak, "Ev Dirksen: The Compleat Senator," *New York Times Book Review* (1970).

[25] Senate Report #95-706, 5.

[26] Dirksen Center promotional pamphlet in files of the Senate Historical Office.

Mr. BYRD. Mr. President, sometime ago, on September 8, 1986, I delivered an address on "Mike Mansfield's Senate: The Great Society Years," as part of my continuing series on the history of the U.S. Senate. My good friend, Senator TED KENNEDY, has provided me with some additional information on the enactment of the 26th amendment, which gave the right to vote to 18-year-olds. This material elaborates on the contributions of other Senators to the amendment, and on the effect of the Supreme Court's decisions on the legislative strategies involved. I certainly appreciate Senator KENNEDY's attention to this matter, and I would like to incorporate his suggestions into the final version of my history, which will be published in commemoration of the Senate's bicentennial.

Mr. President, I ask unanimous consent to include this information in the RECORD.

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

For his own part, Senator Mansfield willingly conceded the spotlight and shared the credit for these accomplishments with his colleagues. When asked by the press about his proudest accomplishments, the bill that he delighted in citing was not one of the monumental Great Society laws, but the Twenty-Sixth Amendment to the Constitution, ratified in 1971, which gave eighteen-year-olds the right to vote. Senator Jennings Randolph had been advocating such an amendment since 1942, and is entitled to much credit in the successful outcome, but the idea only began to gain popularity during the Vietnam War, when so many teenage young men were inducted into the armed forces. If one was old enough to die for his country, the reasoning went, he was old enough to vote.

In 1970, Senator Edward Kennedy proposed reducing the voting age to eighteen as an amendment to the Voting Rights Act. Kennedy reasoned that the Supreme Court's decision in *Katzenbach* v. *Morgan* in 1966 would support taking this action by statute rather than by Constitutional amendment. The idea appealed to Senator Warren Magnuson, who took it up with the majority leader. "You know, Mike, Teddy's got a pretty good idea there," Magnuson said. "I was a member of the state legislature in Washington in 1933, and I introduced a bill permitting eighteen-year-olds to

vote. I couldn't get it to the floor for a vote. It still hasn't passed. * * * Suppose you introduce the amendment." Mansfield thought it over and agreed. With his prestige behind it, the Mansfield-Magnuson-Kennedy amendment cleared the Senate and House, and was signed by President Nixon.

The statute was immediately challenged in the courts, and the result was an unusual "double" 5-4 decision by the Supreme Court in *Oregon* v. *Mitchell* in December 1970. Justice Hugo Black cast the swing votes, upholding the eighteen-year-old vote 5-4 in federal elections, but holding it unconstitutional, 5-4, in state and local elections.

To resolve this difficulty, Senator Birch Bayh, who chaired the Constitutional Amendments Subcommittee of the Judiciary Committee, led a successful effort to pass Jennings Randolph's original proposal for a constitutional amendment. The Twenty-Sixth Amendment was ratified by the states in record time in 1971, and it reduced the voting age to eighteen for all elections. Senator Mansfield was delighted with the results and proud of his contribution. It was an appropriate stand for a man whose first political organization consisted of the students from his university classes.

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 11:06 a.m., the message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 816. An act to establish the Pine Ridge National Recreation Area and Soldier Creek Wilderness in the State of Nebraska, and for other purposes;

S. 2048. An act to encourage international efforts to designate the shipwreck of R.M.S. TITANIC as an international maritime memorial and to provide for reasonable research, exploration, and, if appropriate, salvage activities with respect to the shipwreck;

H.R. 1598. An act for the relief of Steven McKenna;

H.R. 2224. An act to amend the Immigration and Nationality Act to permit non-immigrant alien crewman on fishing vessels to stop temporarily at ports in Guam;

H.R. 5016. An act for the relief of Sueng Ho Jang and Sueng II Jang;

H.J. Res. 517. Joint resolution providing for reappointment of David C. Acheson as a citizen regent of the Board of Regents of the Smithsonian Institution; and

H.J. Res. 666. Joint resolution expressing the sense of Congress in support of a commemorative structure within the National Park System dedicated to the promotion of understanding, knowledge, opportunity, and equality for all people.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 2:10 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 2266. An act to establish a ski area permit system on national forest lands, and for other purposes;

S. 2320. An act to amend an act to add certain lands on the Island of Hawaii to Hawaii Volcanoes National Park, and for other purposes; and

S. 2720. An act to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indian Claims Settlement Act of 1980, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 565) to direct the Secretary of Agriculture to convey, without consideration, to the town of Payson, AR, approximately 30.96 acres of Forest Service lands.

The message further announced that the House agrees to the amendment of the Senate to the following bills:

H.R. 1593. An act to direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the town of Jerome, Arizona; and

H.R. 4354. An act to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1987, and for other purposes.

The message also announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 5679. An act to extend the exclusion from Federal unemployment tax of wages paid to certain alien farmworkers; and

H.J. Res. 751. Joint resolution making further continuing appropriations for the fiscal year ending September 30, 1987, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 2182. An act to authorize the inclusion of certain additional lands within the Apostle Islands National Lakeshore;

H.R. 4212. An act to provide for the reauthorization of the Deep Seabed Hard Mineral Resources Act, and for other purposes;

H.R. 5073. An act to amend the Toxic Substances Control Act to require the Environmental Protection Agency to promulgate regulations requiring inspection for asbestos-containing material in the Nation's schools, development of asbestos management plans for such schools, response actions with respect to friable asbestos-containing material in such schools, and for other purposes;

H.J. Res. 17. Joint resolution to consent to an amendment enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920; and

H.J. Res. 438. Joint resolution to designate October 31, 1986, as "National Child Identification and Safety Information Day".

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 4:17 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the following bills:

H.R. 3559. An act to amend the Act establishing a Commission on the Bicentennial of the Constitution of the United States to clarify the status of employees of the Commission, to raise the limits on private contributions, and for other purposes; and

H.R. 3578: An act to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 2722) to amend title 13, United States Code, to eliminate the requirement relating to decennial censuses of drainage.

The message further announced that the House has passed the following joint resolutions, without amendment:

S.J. Res. 169. Joint resolution to commemorate the bicentennial anniversary of the first patent and the first copyright laws;

S.J. Res. 232. Joint resolution to designate October 6, 1986, through October 10, 1986, as "National Social Studies Week";

S.J. Res. 299. Joint resolution to designate the week of December 7, 1986, through December 13, 1986, as "National Alopecia Areata Awareness Week";

S.J. Res. 304. Joint resolution to designate the week of November 16, 1986, through November 22, 1986, as "National Arts Week";

S.J. Res. 306. Joint resolution to designate the week beginning November 23, 1986, as "National Adoption Week";

S.J. Res. 311. Joint resolution designating the week beginning November 9, 1986, as "National Women Veterans Recognition Week";

S.J. Res. 322. Joint resolution to designate December 7, 1986, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor;

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week";

S.J. Res. 352. Joint resolution to designate the week beginning October 19, 1986, as "Gaucher's Disease Awareness Week";

S.J. Res. 392. Joint resolution to designate the month of December 1986 as "Made in America Month";

S.J. Res. 395. Joint resolution to designate the period October 1, 1986, through September 30, 1987, as "National Institute of Health Centennial Year";

S.J. Res. 396. Joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week";

S.J. Res. 407. Joint resolution designating November 12, 1986, as "Salute to School Volunteers Day";

S.J. Res. 410. Joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week";

S.J. Res. 414. Joint resolution to designate March 16, 1987, as "Freedom of Information Day";

S.J. Res. 418. Joint resolution to designate February 4, 1987, as "National Women in Sports Day; and

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-gurion.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 381. Concurrent resolution expressing the support of the Congress for the awarding of the Ellis Island Medal of Honor as a symbol of the Statue of Liberty Centennial Celebration.

At 4:58 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 bill (S. 1200) to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, and for other purposes, with amendments; it insists upon its amendments to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on the Judiciary, for consideration of the entire Senate bill and House amendment: Mr. RODINO, Mr. KASTENMEIER, Mr. SEIBERLING, Mr. MAZZOLI, Mr. SYNAR, Mr. FRANK, Mr. SCHUMER, Mr. SMITH of Florida, Mr. BERMAN, Mr. BOUCHER, Mr. BRYANT, Mr. FISH, Mr. MOORHEAD, Mr. LUNGREN, Mr. MCCOLLUM, Mr. SHAW, and Mr. DEWINE.

From the Committee on Agriculture, solely for consideration of sections 121–125, 202(h), 203, and 304 of the Senate bill and sections 116, 121, 204, 301–305, and 701 of the House amendments: Mr. PANETTA, Mr. HUCKABY, and Mr. MORRISON of Washington.

From the Committee on Education and Labor, solely for consideration of sections 101(d), 121–125, 202(h), 203, 304, 402, and 604 of the Senate bill, and sections 101, 121, 201(h), 204, 301–305, 316(d), 402, 403, and 701 of the House amendments: Mr. HAWKINS, Mr. FORD of Michigan, and Mr. JEFFORDS.

From the Committee on Energy and Commerce, solely for consideration of sections 125(b), 202(h), 203, 304, and 404 of the Senate bill, and sections 121, 201(d), 201(h), 204, 404, and that portion of section 302(a) inserting subsection 210(f) in the Immigration and Nationality Act: Mr. DINGELL, Mr. WAXMAN, and Mr. DANNEMEYER.

From the Committee on Ways and Means, solely for consideration of sections 121(a), 121(g), 121(h), 124(c), 125(b), 202(h), 203, 304, 404, and 602 of the Senate bill, and sections 121, 201(h), 204, 302(b), 402, 404, 407, 601, 701, and that portion of section 302(a) inserting subsection 210(f) in the Immigration and Nationality Act: Mr. FORD of Tennessee, Mr. PEASE, and Mr. DAUB.

From the Committee on Rules, solely for the consideration of section 604(b) of the Senate bill, and section 811 of the House amendments, and modifications committed to conference: Mr. BEILENSON and Mr. TAYLOR.

As an additional conferee, solely for consideration of title VIII of the House amendment, and modifications committed to conference: Mr. MOAKLEY.

The message also announced that the House has passed the joint resolution (S.J. Res. 367) to designate September 24, 1986, as "National Kidney Program Day," with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 1426) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bill and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 5277. An act to transfer certain public lands in Nevada to the Toiyabe, Humboldt, and Inyo National Forests;

H.J. Res. 10. Joint resolution to designate the week beginning January 19, 1987, as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays' Rebellion Day";

H.J. Res. 594. Joint resolution to designate the week beginning May 3, 1987, as "National Correctional Officers Week"; and

H.J. Res. 620. Joint resolution designating the week beginning January 4, 1987, as "National Bowling Week".

MEASURES REFERRED

The following bill and joint resolutions, received from the House of Representatives on today, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 5679. An act to extend the exclusion from Federal unemployment tax of wages paid to certain alien farmworkers; to the Committee on Finance.

H.J. Res. 10. Joint resolution to designate the week beginning January 19, 1987, as "Shays' Rebellion Week" and Sunday, January 25, 1987, as "Shays' Rebellion Day"; to the Committee on the Judiciary.

H.J. Res. 594. Joint resolution to designate the week beginning May 3, 1987, as "National Correctional Officers Week"; to the Committee on the Judiciary.

H.J. Res. 620. Joint resolution designating the week beginning January 4, 1987, as "National Bowling Week"; to the Committee on the Judiciary.

The following concurrent resolution, received from the House of Representatives today, was read, and referred as indicated:

H. Con. Res. 381. A concurrent resolution expressing the support of the Congress for the awarding of the Ellis Island Medal of Honor as a symbol of the Statue of Liberty Centennial Celebration; to the Committee on the Judiciary.

The following bills, previously received from the House of Representatives, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 5020. An act to expand the United States Secret Service Uniformed Division protective jurisdiction; to the Committee on Finance.

H.R. 5215. An act to authorize the construction by the Secretary of Agriculture of a salinity laboratory at Riverside, California, to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5218. An act to amend title 5, United States Code, to provide that certain individuals be accorded competitive status for purposes of transferring to the competitive service; to the Committee on Governmental Affairs.

H.R. 5343. An act to designate certain segments of the Maurice and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the national wild and scenic rivers system; to the Committee on Energy and Natural Resources.

H.R. 5613. An act to provide for the uniform disclosure of the rates of interest which are payable on savings accounts, to provide for detailed and uniform disclosures of information on interest rates and other fees in applications and solicitations for credit cards, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 5602. An act to amend the Public Buildings Act fo 1959 to authorize the Administrator of General Services to issue obigations to finance the acquisition and construction of public buildings; to the Committee on Environment and Public Works.

MEASURE PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5420. An act to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes.

MEASURE HELD AT THE DESK

The following bill, previously referred from the House of Representatives, was ordered held at the desk by unanimous consent, pending further disposition:

H.R. 3415. An act to authorize the minting of coins in commemoration of the bicentennial of the United States Constitution.

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. PROXMIRE (for himself and Mr. COHEN):

S. 2917. A bill to amend title 10, United States Code, to increase the combat support assignments open to women in the Armed Forces; to the Committee on Armed Services.

By Mr. KERRY:

S. 2918. A bill to amend the Foreign Assistance Act of 1961 to modify provisions relating to the trade and development program; to the Committee on Foreign Relations.

By Mr. ZORINSKY (for himself and Mr. EXON):

S. 2919. A bill to amend the Tax Reform Act of 1986 by repealing the treatment of certain amounts to or for the benefit of certain institutions of higher education; to the Committee on Finance.

By Mr. INOUYE:

S. 2920. A bill to amend titles XVIII and XIX of the Social Security Act to provide that a nurse practitioner or clinical nurse specialist may, in collaboration with a physician, certify or recertify the need for certain services, to provide for coverage of certain items and services furnished by a nurse practitioner or clinical nurse specialist, and for other purposes; to the Committee on Finance.

By Mr. McCLURE (by request):

S. 2921. A bill to amend the Public Law 99-396 exception to the Balanced Budget Emergency Deficit Control Act of 1985, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MATSUNAGA (for himself and Mr. WARNER):

S. 2922. A bill to amend the Tax Reform Act of 1986 to remove the retroactive effect of the repeal of the 3-year recovery of basis rule in pension plans; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MELCHER (for himself and Mr. BAUCUS):

S. Res. 505. A resolution relating to grizzly bear management; to the Committee on Energy and Natural Resources.

By Mr. GLENN:

S. Res. 506. A resolution expressing the sense of the Senate that the President should encourage foreign governments to ratify, accept, or approve the Convention on the Physical Protection of Nuclear Materials; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY:

S. 2918. A bill to amend the Foreign Assistance Act of 1961 to modify provisions relating to the Trade and Development Program; to the Committee on Foreign Relations.

MODIFICATION OF TRADE AND DEVELOPMENT PROGRAM

Mr. KERRY. Mr. President, recently the distinguished Senator from New Mexico, Senator BINGAMAN, came to the floor to introduce a report which was the result of a significant amount of work by a number of my colleagues on the issue of competitiveness. It became clear as a consequence of that report as well frankly as many reports over the course of the last few years, the Young commission, the Packard commission, a number of blue ribbon panels, that this country is fast falling behind in our ability to compete in markets where once before we competed with great ease.

There are many different things that we could do from the question of dealing with our universities, our laboratories, and our ability to be able to put additional funds into research and development, to the fiscal and trade decisions which we must also make.

This bill is directed toward the trade sector, Mr. President, because increasingly we have become concerned over that growing trade deficit and the need for the Government to try somehow to assist American firms in opening new markets in developing countries as a means of reducing that deficit.

The People's Republic of China is obviously a major, long-term market for the export of United States goods and services. Other industrialized nations, all of which we compete with in those foreign markets, are currently utilizing foreign assistance funds as a means of capturing the Chinese market for their exporters.

Since 1981, nine nations have given continuing technical assistance to China as a means of gaining access to that market for their goods.

Australia has provided approximately $13 million per year since 1981 in technical assistance funds, much of it earmarked for agricultural and husbandry development.

Since 1981, the Canadian Development Corporation has provided $20 million a year in such assistance and has pledged a doubling of such aid to $40 million a year. Much of this assistance will be eamarked for energy, agriculture, electric power and forestry development.

The Federal Republic of Germany has provided approximately $18 million in grant assistance per year in addition to another $22.7 million in 30 year loans carrying a 2 percent interest charge. Much of Germany's aid is earmarked for communications, energy, human resources, and technological transfers.

Japan provides approximately $37 million per year in technical assistance.

Since 1983, Italy has provided $20 million a year in assistance.

The United Kingdom provides between 1 to 5 million English pounds per year, mostly earmarked for highway transportation and communications.

Sweden provides soft and mixed loans for training in technology and industry.

Denmark funds some four to five projects a year.

Belgium provides funding for five to six technical assistance projects a year.

The European Economic Community has provided China with 6 million European currency units a year since 1983 for technical assistance projects.

All of these countries are taking pains to invest in a way that will return jobs to their countries. The United States is not following suit.

I believe training programs are essential to opening up potential export markets. It only stands to reason, that if a Chinese technocrat or manager is trained on U.S. technology there will be a desire to import the technology which is compatible with the training.

There is no reason why we should not proceed to try to protect that market and those opportunities.

That is the reason for my introduction of this legislation, which I would characterize as the training for trade bill.

The purpose of this legislation is to provide funds to train citizens of the People's Republic of China in the United States with the principal objective of promoting United States trade with China in sectors which are important to that country's economic development. The funds authorized by this legislation are to be used to complement the ongoing activities of the U.S. Trade and Development Program [TDP], a U.S. Government organization located within the International Development and Cooperation Agency.

TDP presently manages programs authorized by the Congress under section 661 of the Foreign Assistance Act and, as such, is the only source of foreign assistance moneys used in China.

TDP presently utilizes section 661 funds in China and other developing nations to finance the planning of projects which are potential export markets for American goods and services and which are critical to the development of China. Such projects include planning for the construction of dams, powerplants and airports—all of which are markets for U.S. engineering services and such key U.S. high technology exports such are computers.

The $25 million provided for under this legislation is designed to carry out education and training programs in the United States for nationals from the People's Republic of China. It is the intent of this legislation that the

funds authorized in this bill would be used to support the training requirements associated with potential small- and medium-sized businesses with export potential to the People's Republic of China. Some 50 percent of the funds authorized in this bill would be available only for education and training programs administered by such companies as defined by the Small Business Administration.

This legislation is a follow up to a resolution passed April 30 of this year during the sixth meeting of the National Advisory Council to the Senate Committee on Small Business. At that meeting, the following resolution was approved by the Council:

The Congress should authorize foreign aid in the form of technical assistance and training for Chinese and other foreign countries to train on the use of American products, 50 percent of the funds should be set aside for small businesses, as defined by the SBA.

Mr. President, there are numerous small- and medium-sized high technology companies in the United States which, if funding for training programs were available, could realize significant exports to the People's Republic of China. Our industrial allies are very aggressive, through their own training programs and financing packages, in utilizing foreign assistance to promote their own products for export. I believe we have an obligation to our own private sector to utilize foreign assistance programs to promote trade where possible, particularly if the recipient country, such as the People's Republic of China, are highly desirous of receiving such training in the anticipation that they will then import United States technology.

By Mr. ZORINSKY (for himself and Mr. EXON):

S. 2919. A bill to amend the Tax Reform Act of 1986 by repealing the treatment of certain amounts paid to or for the benefit of certain institutions of higher learning; to the Committee on Finance:

TAX TREATMENT OF CERTAIN CONTRIBUTIONS TO INSTITUTIONS OF HIGHER LEARNING

Mr. ZORINSKY. Mr. President, today I am introducing a bill on behalf of almost every college football program in the country. The tax reform bill recently passed by Congress grants a special tax favor to two college football programs. This is unfair to the rest or our hardworking universities. My bill will rid the Tax Code of these two exceptions.

Many schools have booster clubs through which fans obtain their tickets. As a condition of getting their tickets, the fans make contributions to the schools' scholarship funds. The IRS ruled that any contribution made as a condition of receiving tickets is not deductible.

I believe this ruling is wrong. The scholarship funds depend heavily on the deductibility of contributions to attract donors. Work is being done on several fronts to force the IRS to reconsider its decision. I wholeheartedly support those efforts.

Until the IRS changes its mind, however, Congress should not exempt this or that program from the ruling. Yet, section 1608 of the tax reform bill includes just such an exemption for two schools. This is precisely the kind of loophole tax reform was supposed to eliminate.

I hope the chairman of the Senate Committee on Finance will consider this legislation when drafting his technical corrections bill. We should either make the exemption apply to all schools or adopt my bill leaving everyone subject to the ruling.

This legislation gives new meaning to our desire, stated many times during the tax reform debate, to "level the playing field." It simply eliminates the provision which provides the special exemption. I urge my colleagues to support this bill as a small step toward making our tax system fair and our football programs truly competitive.

I ask unanimous consent that the bill be printed at this point in the RECORD.

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

S. 2919

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—Section 1608 of the Tax Reform Act of 1986 is hereby repealed.

(b) EFFECTIVE DATE.—Subsection (a) shall take effect as if included in the Tax Reform Act of 1986.

By Mr. INOUYE:

S. 2920. A bill to amend titles XVIII and XIX of the Social Security Act to provide that a nurse practitioner or clinical nurse specialist may, in collaboration with a physician, certify or recertify the need for certain services, to provide for coverage of certain items and services furnished by a nurse practitioner or clinical nurse specialist, and for other purposes; to the Committee on Finance.

CERTIFICATION AND RECERTIFICATION OF THE NEED FOR CERTAIN SERVICES

● Mr. INOUYE. Mr. President, today I have introduced legislation to modify our Nation's Social Security Act in order to ensure that the services of nurse practitioners and clinical nurse specialists will be readily available in nursing homes under both Medicare and Medicaid.

As our Nation's elderly continue to become a larger segment of our overall population, it is becoming increasingly important for us to establish comprehensive health care programs targeted toward their unique needs. In addition, in the wake of Medicare payment reforms in 1983, the length of stay in hospitals has dropped dramatically. Patients are being discharged earlier, but in many cases are still in need of nursing care in skilled nursing facilities or intermediate care facilities. These dramatic changes in the nursing home area are the impetus behind my introduction of the Advanced Nursing Services in Nursing Homes Act of 1986.

The act would let nurse practitioners and clinical nurse specialists, working in collaboration with a physician, certify and recertify the need for certain services in nursing homes, as well as perform the mandatory nursing home patient visits under both Medicare and Medicaid. This bill would also provide payment for certain services furnished by a nurse practitioner or clinical nurse specialist.

The results of numerous studies demonstrate the positive impact that the use of health care teams in nursing homes, which include nurse practitioners and clinical nurse specialists, has had on quality of care and cost effectiveness. For example, a recent Massachusetts study found that when nursing home patients received care by a health care team, rather than solely by a physician, the following results occurred: More timely visits, reduced hospitalizations for emergency and outpatients services, reduced total inpatient hospital days, and reduced overall medical care costs. The study concluded that under the health care team approach, nursing home patients received more timely, appropriate and cost-effective care.

Similarly, a Wyoming study found that when a gerontological nurse practitioner was employed at a facility, hospital transfers were reduced substantially. Accompanying that decrease was an increase of discharges from the nursing home back to the community. Another finding of the study was that gerontological nurse practitioners improved the public image of the nursing home as evidenced by a survey of community residents. Most importantly, via their emphasis on health promotion, disease prevention, early diagnosis, treatment and rehabilitation, gerontological nurse practitioners were able to improve the quality of patient care.

A major barrier to the increased use of nurse practitioners and clinical nurse specialists in nursing homes is embodied in outmoded Federal reimbursement policies that currently do not reimburse providers of nursing home primary care other than physicians. Clearly, a major incentive to transfer the place of care from hospi-

tal to nursing home must be a reimbursement policy that recognizes the utility and fundamental economy of ongoing care in the nursing home via reimbursement for nurse practitioners and clinical nurse specialists.

The bill, which I am proposing today, also promotes cost-effective provision of health care by paying for nursing home visits by nurse practitioners and clinical nurse specialists at a rate equal to 75 percent of the prevailing charge paid for similar services in the same locality. In addition, under my proposal the nursing home resident would personally save money because they would not have to make copayments to nurse practitioners and clinical nurse specialists; mandatory assignment would also be required under Medicare.

The act creates a "win-win" situation by: Containing Medicare and Medicaid Program costs, increasing the quality of care provided to nursing home residents, recognizing the expanded role that nurse practitioners and clinical nurse specialists are qualified to play in providing care in the nursing home, and saving nursing home residents money.

I would like to thank the American Nurses' Association for assistance in drafting this legislation, and I am looking forward to having this bill become public law as soon as possible.

Mr. President, I request unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2920

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTIFICATION AND RECERTIFICATION OF THE NEED FOR CERTAIN SERVICES.

(a) MEDICARE CERTIFICATIONS AND RECERTIFICATIONS FOR CERTAIN SERVICES.—Section 1814(a) of the Social Security Act (42 U.S.C. 1395f(a)) is amended—

(1) in paragraph (2) by striking "(2) a physician" and inserting in lieu thereof "(2) a physician, or, in the case of services described in subparagraph (B), a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,", and

(2) in the matter following paragraph (7) by striking "a physician makes" and inserting in lieu thereof "a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes".

(b) MEDICAID CERTIFICATIONS AND RECERTIFICATIONS FOR CERTAIN SERVICES.—Section 1902(a)(44) of such Act (42 U.S.C. 1396a(a)(44)) is amended—

(1) in subparagraph (A)—

(A) by striking "physician certifies" and inserting in lieu thereof "physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician) certifies", and

(B) by striking "the physician, or a physician assistant or nurse practitioner under the supervision of a physician," and inserting in lieu thereof "a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services of intermediate care facility services, a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,"; and

(2) in subparagraph (B) by striking "a physician;" and inserting in lieu thereof "a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician;".

(c) SUPERVISION OF HEALTH CARE FURNISHED IN SKILLED NURSING FACILITIES.—Section 1861(j)(4) of such Act (42 U.S.C. 1395x(j)(4)) is amended—

(1) in subparagraph (A) by striking "a physician," and inserting in lieu thereof "a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,", and

(2) in subparagraph (B) by striking "a physician," and inserting in lieu thereof "a physician or a nurse practitioner or clinical nurse specialist working in collaboration with a physician,",

(d) DEFINITION.—

(1) Section 1861 of such Act (42 U.S.C. 1359x) is amended by adding at the end thereof the following new paragraph:

"Nurse Practitioner and Clinical Nurse Speclialist

"(ee)(1) An individual shall be treated as a nurse practitioner or clinical nurse specialist if the individual—

"(A) is licensed to practice professional nursing;

"(B) performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law); and

"(C)(i) holds a masters degree in nursing and is certified or eligible for certification by a national professional nursing organization,

"(ii) holds a masters degree in a related field and is certified by a national professional organization, or

"(iii) has completed a nurse practitioner continuing education program and is certified by a national professional nursing organization.

"(2) A nurse practitioner or clinical nurse specialist works in collaboration with a physician where the nurse and physician act pursuant to an agreement that allocates responsibility for decisions and actions, but allows each professional to retain responsibility for their respective actions and engage in such actions independently.".

(2) Section 1861(aa) of such Act (42 U.S.C. 1395x(aa)) is amended in paragraph (3)—

(A) by striking "and the term 'nurse practitioner'" and "or nurse practitioner", and

(B) by striking "mean" and inserting in lieu thereof "means".

(3) Section 1861(s)(2)(H) of such Act (42 U.S.C. 1395x(s)(2)(H) is amended in clause (i) by striking "physician assistant or by a nurse practitioner (as defined in subsection (aa)(3))" and inserting in lieu thereof "physician assistant (as defined in subsection (aa)(3)) or by a nurse practitioner".

(e) EFFECTIVE DATE.—

(1) The amendments made by subsections (a), (c), and (d) of this section shall apply to items and services furnished on or after the date of enactment of this Act.

(2)(A) Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to medical assistance provided on or after the date of enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements of the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the additional requirements before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 2. COVERAGE OF CERTAIN ITEMS AND SERVICES FURNISHED BY A NURSE PRACTITIONER OR CLINICAL NURSE SPECIALIST.

(a) PAYMENT OF BENEFITS.—Section 1833(a)(2) of the Social Security Act (42 U.S.C. 13951(a)(2)) is amended—

(1) in subparagraph (B) by striking "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)",

(2) in subparagraph (C) by striking "and",

(3) in subparagraph (D) by inserting "and" after "tests;", and

(4) by adding at the end thereof the following new subparagraph:

"(E) with respect to items and services described in section 1842(s)(2)(J), the amount paid shall be equal to 100 percent of the amount determined as the reasonable charge for such items and services under section 1842(b)(10).".

(b) CONTRACTS WITH CARRIERS.—Section 1842(b) of such Act (42 U.S.C. 1395u(b)) is amended by adding at the end thereof the following new paragraph:

"(10) In providing payment for the items and services described in section 1861(s)(2)(J), each carrier shall require that payment be made in the manner described in paragraph (3)(B)(ii), except that the reasonable charge shall be determined as 75 percent of the prevailing charge paid for similar items and services in the same locality.".

(c) DEFINITION.—Section 1861(s)(2) of such Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (H),

(2) by adding "and" at the end of subparagraph (I), and

(3) by adding at the end thereof the foloiwng new subparagraph:

"(J) services furnished by a nurse practitioner or clinical nurse specialist in a skilled nursing facility and services and supplies furnished as an incident to such services;".

(d) CONFORMING CHANGE.—Section 1861(h) of such Act (42 U.S.C. 1395x(h)) is amended by inserting ", and excluding any item or service described in subsection (s)(2)(J)" before the period.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after the date of enactment of this Act.

SEC. 3. COVERAGE OF CERTAIN ITEMS AND SERVICES FURNISHED BY A NURSE PRACTITIONER OR CLINICAL NURSE SPECIALIST.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in paragraph (5)—

(1) by inserting "(A)" after "(5)", and

(2) by striking "elsewhere;" and inserting in lieu thereof "elsewhere; and (B) services

furnished in an intermediate care facility or skilled nursing facility by a nurse practitioner or clinical nurse specialist (as defined in section 1861(ee)) working in collaboration with a physician.".

(b) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance provided on or after the date of enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements of the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the additional requirements before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.●

By Mr. McCLURE (by request):

S. 2921. A bill to amend the Public Law 99-396 exception to the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes; to the Committee on Energy and Natural Resources.

EXCEPTION TO DEFICIT REDUCTION LEGISLATION

● Mr. McCLURE. Mr. President, pursuant to an executive communication referred to the Committee on Energy and Natural Resources, at the request of the Department of the Interior, I send to the desk a bill to amend the Public Law 99-396 exception to the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes.

Mr. President, this draft legislation was submitted and recommended by the Department of the Interior, and I ask unanimous consent that the bill, and the executive communication which accompanied the proposal from the Assistant Secretary be printed in the RECORD.

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

S. 2929

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 19(b) of Public Law 99-396 is amended to read as follows:

"(b) The amounts to be paid into the treasuries of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands, respectively, pursuant to:

"(1) section 4 of the act of April 12, 1900 (31 Stat. 78, 48 U.S.C. 740), as amended, and section 9 of the Act of March 2, 1917 (39 Stat. 954, 48 U.S.C. 734), as amended;

"(2) section 30 of the Act of August 1, 1950 (64 Stat. 392, 48 U.S.C. 1421(h)), as amended;

"(3) section 28(a) of the Act of July 22, 1954 (68 Stat. 508, 48 U.S.C. 1642), as amended, and section 7652 of the Internal Revenue Code of 1954 (68A Stat. 907, 26 U.S.C. 7652), as amended; and

"(4) section 3 of Public Law 94-241 as amended (P.L. 99-396, 100 Stat. 837), and section 703(b) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America as approved in section 1 of Public Law 94-241 (90 Stat. 263, 48 U.S.C. 1681 note),

shall not be reduced pursuant to Public Law 99-177, Public Law 99-366, or any other provision of law enacted to implement Public Law 99-177."

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, October 8, 1986.

Hon. GEORGE BUSH,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: There is enclosed a draft bill "To amend the Public Law 99-396 exception to the Balanced Budget and Emergency Deficit Control Act of 1985, and for other purposes," to provide a technical clarification to language in P.L. 99-396, the omnibus territories legislation. This draft reflects the agreement reached between the President and the Congress that facilitated approval of P.L. 99-396.

We recommend that the bill be introduced, referred to the appropriate committee for consideration, and enacted.

The draft bill would clarify the language of section 19(b) of P.L. 99-396 to reflect the intent of Congress in enacting that section. Specifically, Section 19(b) of P.L. 99-396 makes the Gramm-Rudman-Hollings Act inapplicable to (1) payments made to territories and Puerto Rico equal to United States internal revenue taxes on articles produced in the territories and transported to other United States jurisdictions, (2) payments to Guam of Organic Act of Guam section 30 taxes, and (3) payments to the Northern Mariana Islands of Covenant funds.

The enclosed draft bill makes explicit which funds are to be exempted from the Gramm-Rudman-Hollings Act consistent with correspondence from the Committee leadership of the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs (enclosed).

We urge your prompt consideration and enactment of this technical matter.

The Office of Management and Budget advises that enactment of this proposal would be in accord with the program of the President.

Sincerely,

RICK MONTOYA,
Assistant Secretary.●

By Mr. MATSUNAGA (for himself and Mr. WARNER):

S. 2922. A bill to amend the Tax Reform Act of 1986 to remove the retroactive effect of the repeal of the 3-year recovery of basis rule in pension plans; to the Committee on Finance.

REMOVAL OF RETROACTIVE EFFECT OF THE REPEAL OF THE 3-YEAR RECOVERY OF BASIS RULE IN PENSION PLANS

● Mr. MATSUNAGA. Mr. President, in a bill of the magnitude of the Tax Reform Act of 1986, there will often be provisions which we find to be unpalatable. There is one particular area of the tax reform conference agreement which troubles me. I refer specifically to the retroactive effective date of July 1, 1986, for the repeal of the 3-year basis recovery rule for pension benefits. As a member of the conference committee I opposed the retroactive nature of the provision. I worked with other conferees in an effort to obtain a prospective effective date for this change, and argued that Congress should provide for a reasonable transition period so that those who have relied on the current law are not adversely affected by a sudden, dramatic, and retroactive change in policy. A transition to a new tax system is always difficult, but in this instance we are unfairly penalizing taxpayers who retired after July 1, 1986 with the full expectation that they would be able to recover their full basis within the 3-year period. I am, therefore, very much disappointed that this provision is contained in the Tax Reform Act of 1986.

Mr. President, in fairness to those retirees who relied on the law with which they were familiar, I am introducing legislation today to remove the retroactive repeal of the 3-year basis recovery rule for pension plans. This legislation would substitute a January 1, 1987 effective date for the July 1, 1986 date as set forth in the Tax Reform Act of 1986.

Mr. President, I ask unanimous consent that the full text of my bill be printed in the RECORD.

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

S. 2922

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REMOVE RETROACTIVE EFFECT OF REPEAL OF 3-YEAR RECOVERY OF BASIS RULE IN PENSION PLANS.

(a) IN GENERAL.—Subparagraph (A) of section 1122(h)(1) of the Tax Reform Act of 1986 (relating to effective dates for amendments relating to taxation of distributions) is amended by striking out "July 1, 1986" and inserting in lieu thereof "January 1, 1987."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the Tax Reform Act of 1986.●

● Mr. WARNER. Mr. President, I am pleased to join this evening as an original cosponsor of the measure introduced by my distinguished colleague from Hawaii, Senator SPARK MATSUNAGA. We seek to amend the Tax Reform Act of 1986 to remove the retroactive repeal of the 3-year recovery basis for contributory pension plans.

As my colleagues will recall, this is not the first time this attempt has been made. On June 17, 1986, I joined with my Virginia colleague, Senator TRIBLE, in an effort to eliminate the repeal of the recovery rule from the tax bill altogether. That amendment failed by a vote of 42 to 57, a strong sign of dissent but obviously not enough to carry the day.

Our distinguished chairman of the Finance Committee, Senator PACKWOOD, recognized the concern of those

voting for repeal and attempted in conference to strike a reasonable compromise for the effective date. January 1, 1987, the date proposed by the Senator from Hawaii, was Senator PACKWOOD'S conference proposal as well, but it proved unacceptable to the House conferees. The House insisted on the retention of their original effective date of July 1, 1986.

The measure introduced by Senator MATSUNAGA provides the Senate with what may be our last chance to close one of the most inequitable gaps in the tax bill. Rather than penalizing our most senior Federal employees for their devotion in staying on the job past July 1, 1986, they can be provided with a transition period just as so many other groups have been granted.

I commend Senator MATSUNAGA for this initiative and encourage all of my colleagues to lend us their support. Let us allow all Americans to participate as equal beneficiaries in tax reform.●

ADDITIONAL COSPONSORS

S. 2183

At the request of Mr. METZENBAUM, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 2183, a bill to improve services for individuals with Alzheimer's disease and their families.

SENATE JOINT RESOLUTION 388

At the request of Mr. LEVIN, the name of the Senator from Rhode Island [Mr. PELL] and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating the week beginning January 4, 1987, as "National Bowling Week".

SENATE JOINT RESOLUTION 426

At the request of Mr. WARNER, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 426, a joint resolution to designate the week of October 19 through 25, 1986, as "National CPR Awareness Week".

SENATE RESOLUTION 505—RELATING TO GRIZZLY BEAR MANAGEMENT

Mr. MELCHER (for himself and Mr. BAUCUS) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 505

Resolved, That it is the sense of the Senate that the Secretary of Interior using Federal and private wildlife biologists shall institute an investigative study and one or more experimental projects in managing grizzly bears in Yellowstone National Park with these goals:

1. Avoiding conflict between man and grizzly bears.
2. Assuring stability of the numbers of the Yellowstone Park grizzly aggregation.
3. Documenting the nutritional needs of grizzlies necessary for normal reproduction.
4. Determining whether the effects of eco-center management would contribute to alleviate conflict and secure grizzly nutrition.

SENATE RESOLUTION 506—RELATING TO APPROVAL OF THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIALS

Mr. GLENN submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 506

Whereas the Convention on the Physical Protection of Nuclear Materials, opened for signature at Vienna and New York on March 3, 1980 (hereafter in this preamble referred to as the "Convention"), by its own terms requires the deposit of 21 instruments of ratification, acceptance, or approval before the Convention may enter into force;

Whereas the Convention has not entered into force for lack of the requisite number of ratifications, acceptances, or approvals; and

Whereas the Convention represents an important step toward international cooperation to prevent nuclear terrorism: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should make vigorous efforts to encourage the governments of signatory countries to ratify, accept, or approve the Convention on the Physical Protection of Nuclear Materials, which was opened for signature at Vienna and New York on March 3, 1980.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. GLENN. Mr. President, as we all know, terrorism in the world is a growing and increasingly significant factor in the international system.

The growth of terrorism coupled with the proliferation of nuclear facilities and nuclear weapons, however, adds up to the most frightening and potentially destabilizing threats of modern times—nuclear terrorism. We know what havoc is wrought upon the world when terrorists decide to use conventional weaponry. It is hard for us to imagine what might happen if we had a nuclear terrorist incident.

All nations in the international community, particularly the developed nations of the West, must be concerned with the rising specter of nuclear terrorism.

In modern societies in which government monopolizes both the organized use of force and the control of nuclear weapons and nuclear materials, the citizenry must look to the state to prevent and combat the threat of nuclear terrorism.

For instance, the thought of nuclear weaponry or materials in the hands of individuals such as Mu'ammar Qadhafi or Idi Amin is staggering. I have followed the issue of nuclear proliferation for many years here in the Senate and I have taken a leadership role in this area. We have closely monitored the efforts of Qadhafi, for instance, to obtain nuclear weaponry, and we dread to think what would happen if someone of his nature and unpredictability obtained a nuclear weapon.

Several years ago, a young student walked into the office of the Subcommittee on Energy, Nuclear Proliferation, and Government Processes, laid some papers on the desk, and said that he would like the staff director, Dr. Leonard Weiss, to look at the drawings and see if in his scientific opinion he thought this atomic bomb design would work.

Well, Dr. Weiss examined those drawings, and he consulted with Dr. Henry Taylor. Dr. Taylor was a nuclear weapons design expert and he said that he thought this design would work.

That was 6 or 7 years ago. The spread of nuclear weapons knowledge around the world has increased since that time.

It would be wrong to think that terrorists could not bring themselves to use such weapons of mass destruction. Technological knowledge, such as that needed to create a nuclear explosive device, is a free good that spreads with the number of states that acquire such knowledge. The next several decades are likely to see a proliferation of nations acquiring nuclear capability. With the growth of nuclear proliferation will come the increased likelihood that these nuclear nations will lose their nuclear weapons, materials, or knowledge to terrorists or unstable revolutionary groups. It is highly unlikely that terrorism and the threat of nuclear terrorism is merely a passing phenomenon. The trend toward the politicization of religion, the increase in ethnic and nationalistic sentiments, and the increasing dichotomy between the haves and have nots in the world point toward its increase as a means of political protest and persuasion.

While terrorist access to nuclear materials represents the most obvious harbinger of nuclear terrorism, several additional factors point to the increased possibility of nuclear terrorism.

As has already been mentioned, the fanaticism which seems to grip terrorists would not preclude their willingness to use nuclear weaponry or materials. The essence of effective terrorism is the use or threat of using force indiscriminately. It is the randomness of applying violence that makes such acts so terrifying. The extraordinary zeal of Islamic fundamentalists is an excellent modern-day example of the fervor that can grip a terrorist or terrorist movement. Islamic zealots, willing to drive a truck full of explosives into the American Embassy in Beirut, Lebanon, display how far fanatics are willing to go to destroy a perceived enemy. These terrorists' belief in their

cause, combined with their unshakable conviction that God is on their side and that their suicide mission will automatically gain them entry into paradise is alien to most Americans. But if such terrorists are willing to make such sacrifices to kill so many, it is within the realm of possibility to think they might utilize nuclear terrorism to attain their goals.

Another factor that points to the possibility that terrorists might use nuclear weapons, closely linked to the previous factor, is the terrorist's apparent insensitivity to orthodox deterrence. A terrorist is someone who is unwilling to abide by social norms and what is generally conceived as being rational behavior. It stands to reason that terrorists gauging the costs and benefits of nuclear terrorism might completely ignore the fear of retaliation against them or the particular cause they espouse. Traditional deterrence, therefore, may have little if any appreciable effect on prospective nuclear terrorists. This dilemma underscores one of the greatest difficulties in dealing with any form of terrorism—combating the threat of terrorism without resorting to tactics that undermine a free society's institutions.

A third factor that points to the increased possibility of nuclear terrorism is the cooperation and collaboration among terrorist groups. This phenomenon has been primarily evident in the volatile Middle East where Qadhafi's regime encourages and supports numerous terrorist groups around the world and the Popular Front for the Liberation of Palestine [PFLP] which has collaborated with numerous terrorist groups from such diverse areas as Germany, Latin America, and Japan. This interterrorist cooperation has several implications. First, such cooperation among terrorist groups greatly increases the opportunities for terrorists to acquire nuclear weapons and materials. Since cooperation increases opportunities for sharing capital resources and expertise, obtaining nuclear weapons and materials is greatly enhanced when acquisition takes the form of self-development from raw fissionable materials. Second, interterrorist cooperation is likely to encourage the proliferation of nonstate nuclear devices, creating a network whereby such weapons can be spread across national borders. Third, interterrorist cooperation will be likely to increase the benefits to be derived from advanced training in the deployment and use of nuclear weaponry and materials. Finally, cooperation among terrorist groups is likely to foster reciprocal privileges such as safe havens and forged documents which would be needed for successful nuclear terrorist operations.

The final factor that points to the increased possibility of nuclear terrorism is the increased tolerance and support of terrorism within the international system. States that support terrorism, such as Khomeini's Iran and Qadhafi's Libya, do so with the belief that terrorism serves their national interests. Terrorists are undoubtedly considered as useful tools in the struggle for power and influence in the global system. Terrorism seems to be increasingly viewed by some states as a surrogate for conventional warfare.

The attraction of terrorism to extremist states seems certain to persist and grow.

AMERICA'S SUSCEPTIBILITY TO NUCLEAR TERRORISM

The United States is an ideal target for terrorism. America's extensive communications system provides the terrorist or terrorist group what it desires more than anything else—publicity for its cause. The enormous media coverage that would occur after a nuclear terrorist threat became public would effectively rivet national attention on the terrorists and their espoused cause and the ensuing hysteria could virtually compel the Government to succumb to terrorist demands. America's vast expanses and widespread transportation system would provide the terrorist with numerous safe-havens and rapid mobility which would permit escape from apprehension. In particular, the United States is the world's foremost modern, technological society, which makes it especially susceptible to the threat of nuclear terrorism.

America's densely populated cities provide the most vivid example of the vulnerability of a technological society. Some years ago, the entire city of New York lost all power after an upstate power transformer was hit by lightning and a technician failed to make the correct circuit adjustment. The city was virtually incapacitated for the duration of the blackout and crime rose dramatically. It is not difficult to imagine what kind of impact the use or threatened use of nuclear material would have on a large urban area.

America is a free society which justifiably prides itself on its openness and civil liberties. This very aspect of the United States makes it an appealing target for nuclear terrorism. The terrorist would not be subject to the constant surveillance and scrutiny that is evident in more repressive societies that lessen the opportunity to accumulate the necessary knowledge and materials to commit an act of nuclear terrorism. The Iranian hostage crisis also demonstrated the enormous prestige to be derived by a comparatively weak power incapacitating the United States. America stands as a symbol of strength in the international system and to be able to successfully extort demands from the most powerful nation in the world would be considered by many to be a considerable temptation.

Since World War II, it has been established that thousands of pounds of uranium and plutonium, materials needed for the construction of a nuclear device, have not been accounted for in the United States. Most experts agree that it is entirely possible for individuals to construct a crude nuclear device.

The threat of exploding a homemade nuclear device is not the only possibility. Terrorists may explode a crude nuclear weapon without warning in an effort to avoid detection and capture, and even misidentify themselves in the hope of igniting domestic repression or international chaos. One can only imagine the damage to be wrought by a 1 kiloton weapon, 20 times less powerful than the Hiroshima bomb, exploded outside the Capitol Building during a State of the Union Message. The U.S. Government would virtually cease to exist.

Another dimension to the threat of terrorism with nuclear weapons is the possibility that a terrorist group could steal a weapon from the U.S. arsenal of over 30,000 nuclear devices stockpiled in more than 100 military installations in the United States and abroad. While there is enormous security surrounding American nuclear weapons around the world, and while most American nuclear devices have highly sophisticated devices to prevent their unauthorized explosion, the possibility still exists that these nuclear weapons could fall into the hands of terrorists and be detonated.

Protection of America's far-flung nuclear arsenal is hampered by their wide dispersal around the globe where American security systems are dependent on the security systems of the host nation which are of varying reliability. Also, the weakness of local law enforcement agencies in most parts of the United States means that they are of little help in assisting Federal authorities in the event of a nuclear weapon theft.

Radiation dispersal devices in the hands of terrorists pose another serious threat to the United States. Radiation dispersal devices, in contrast to nuclear weapons, require less expertise, nuclear material, and production time by a terrorist group. Dispersal of a highly toxic carcinogen such as plutonium could have a devastating effect on the American public. The U.S. Atomic Energy Commission has estimated that the release of 4.4 pounds of plutonium oxide in fine powder form would result in 100 percent probability of developing lung or bone cancer up to 1,800 feet from the area of release, and a 1-percent risk of developing such cancer up to 40 miles downwind.

For the nuclear terrorist, the dispersion of nuclear material would undoubtedly be an attractive means to obtain his political ends. Authorities would be virtually unable to prevent the release of plutonium when it would be effectively dispersed over a wide, dense area by using such a simple device as a leaking container attached to the underside of a vehicle or dropping it from a tall building. Construction of such a dispersal device would require only a basic knowledge of nuclear chemistry and would thereby lessen the risks inherent in forming a larger terrorist network to design and assemble a nuclear weapon. Also, the enormous social and economic chaos that would certainly result after the announcement of radiation leakages would be tempting to terrorists in possession of plutonium.

The increased production of plutonium is another inducement to terrorists. A 1,000 megawatt light-water nuclear power reactor generates an estimated 440 pounds of plutonium each year—an appealing target to terrorists.

A third possible target for nuclear terrorists in the United States is a nuclear facility itself. While the construction of nuclear power reactors has slowed in the United States in the past decade, it is likely to grow in the future and with that growth is the increased risk that a terrorist group will seek to damage a nuclear facility in order to precipitate a radiation release.

CONFRONTING THE THREAT OF NUCLEAR TERRORISM

Mr. President, some individuals believe that it is essential to eradicate the conditions that spawn terrorism. It is argued that greater attention should be given to the legitimate economic, social, and political grievances of individuals in the United States and throughout the world as a viable means of combating terrorism and thereby reducing the threat of nuclear terrorism.

Undeniably, the injustices of the international system require attention, but to attempt to correct these grievances as the sole means of combating the menace of terrorism and the threat of nuclear terrorism is naive and unrealistic. When a neighborhood is confronted with a rising crime rate, the community does not initiate a study of the reasons for the criminals' behavior, but undertakes a program of increased vigilance and deterrence. The same is true of the nuclear threat to the United States.

As I have discussed, the threat of nuclear terrorism in the United States is real and growing. The American military's protection of the U.S. nuclear arsenal, private enterprise's control of nuclear materials pursuant to the regulations of the Atomic Energy Commission, and the nuclear emergency search team's ability to trace nuclear terrorist threats all provide considerable security from the threat of nuclear terrorism, yet no safeguard can be considered completely fail safe.

The United States is not a secure island, but a major force in a highly diverse international system whose members have widely divergent views as to what constitutes acceptable national behavior. As terrorism increases and nuclear knowledge, weapons, and materials spread throughout the world, the United States is increasingly likely to be the site of a nuclear terrorist incident. We must do everything we can to insure that such a catastrophic possibility does not occur.

THE REPORT OF THE INTERNATIONAL TASK FORCE ON THE PREVENTION OF NUCLEAR TERRORISM

Mr. President, on June 25, 1986, the Nuclear Control Institute of Washington, DC, issued a report by the International Task Force on the Prevention of Nuclear Terrorism. I believe that this report contains important suggestions on one of the most serious threats confronting the United States today.

The report contains numerous recommendations dealing with, among other things, the protection of nuclear weapons, nuclear materials, and nuclear facilities. I have written the Secretaries of Defense and Energy and the Chairman of the U.S. Nuclear Regulatory Commission to request their comments on the report's recommendations and what their respective agencies are going to do to encourage and implement the report's recommendations.

Mr. President, today I rise to offer a resolution that states that it is the sense of the Senate that the President should make vigorous efforts to encourage the governments of signatory countries to ratify, accept, or approve the Convention on the Physical Protection of Nuclear Materials.

This treaty, although chiefly directed to shipments of peaceful nuclear materials between nations, does define a large range of nuclear terrorist acts and requires parties to make them criminal offenses and to provide for the prosecution of extradition of offenders under domestic law. The convention, which applies to "nuclear material used for peaceful purposes while in international transport," was agreed to in 1980 but has not come into force because only 18 of the required 21 states—including the United States—have ratified it. The Convention on the Physical Protection of Nuclear Materials represents an important step toward international cooperation to prevent nuclear terrorism.

Mr. President, I ask unanimous consent that a copy of the treaty itself, be printed in the RECORD.

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

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

Signed at New York March 3, 1980.

Ratification advised by U.S. Senate July 30, 1981.

Ratified by U.S. President September 4, 1981.

The States Parties to This Convention,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy.

Convinced of the need for facilitating international co-operation in the peaceful application of nuclear energy.

Desiring to avert the potential dangers posed by the unlawful taking and use of nuclear material.

Convinced that offenses relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offenses,

Aware of the Need for international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

Convinced that this Convention should facilitate the safe transfer of nuclear material,

Stressing also the importance of the physical protection of nuclear material in domestic use, storage and transport,

Recognizing the important of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

Have Agreed as follows:

* * *

2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.

3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

ARTICLE 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

ARTICLE 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.

6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.

7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

ARTICLE 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;

(b) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance, if requested;

(iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

ARTICLE 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

ARTICLE 7

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation.

(e) a threat:

(i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or

(ii) to commit an offense described in subparagraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(f) an attempt to commit any offense described in paragraphs (a), (b) or (c); and

(g) an act which constitutes participation in any offense described in paragraphs (a) to (f) shall be made a punishable offense by each State Party under its national law.

2. Each State Party shall make the offenses described in this article punishable by appropriate penalties which take into account their grave nature.

ARTICLE 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offenses set forth in article 7 in the following cases:

(a) when the offense is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offenses in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the State Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offenses set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

ARTICLE 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction to article 8 and, where appropriate, all other States concerned.

ARTICLE 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

ARTICLE 11

1. The offenses in article 7 shall be deemed to be included as extraditable offenses in any extradition treaty existing between States Parties. States Parties undertake to include those offenses as extraditable offenses in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offenses as extraditable offenses between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offenses shall be treated for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

ARTICLE 12

Any person regarding whom proceedings are being carried out in connection with any of the offenses set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

ARTICLE 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offenses set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

ARTICLE 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect of this Convention. The depositary shall communicate such information periodically to all States Parties.

2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome

of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

3. Where an offense involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offense was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offense.

ARTICLE 15

The Annexes constitute an integral part of this Convention.

ARTICLE 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

ARTICLE 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted in arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.

4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

ARTICLE 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.

(c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

(d) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

ARTICLE 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

ARTICLE 21

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

ARTICLE 22

The depositary shall promptly notify all States of:

(a) each signature of this Convention;

(b) each deposit of an instrument of ratification, acceptance, approval or accession;

(c) any reservation or withdrawal in accordance with article 17;

(d) any communication made by an organization in accordance with paragraph 4(c) of article 18;

(e) the entry into force of this Convention;

(f) the entry into force of any amendment to this Convention; and

(g) any denunciation made under article 21.

ARTICLE 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

ANNEX I

LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

(a) For Category III materials, storage within an area to which access is controlled;

(b) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection:

(c) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

(a) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;

(b) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

(c) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

In witness whereof, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

AMENDMENTS SUBMITTED

ADDITIONAL POSITIONS IN THE DEPARTMENT OF LABOR

HATCH AMENDMENT NO. 3271

Mr. PACKWOOD (for Mr. HATCH) proposed an amendment to the bill (S. 2864) to provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes as follows:

In the amendment to section 5315 of title 5, United States Code, made by section 2(b)(2), strike "(9)" and insert "(10)".

In section 2(e), strike out "Act" and insert "section".

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

GORTON AMENDMENT NO. 3272

Mr. PACKWOOD (for Mr. GORTON) proposed an amendment to the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act, 1987".

SEC. 2. There is authorized to be appropriated to the National Aeronautics and Space Administration to become available October 1, 1986:

(a) For "Research and development", for the following programs:

(1) Space station, $410,000,000;

(2) Space transportation capability development, $515,500,000;

(3) Physics and astronomy, $529,400,000;

(4) Life sciences, $74,300,000;

(5) Planetary exploration, $374,300,000;

(6) Space applications; $552,600,000;

(7) Technology utilization, $13,300,000;

(8) Commercial use of space, $27,000,000;

(9) Aeronautical research and technology, $376,000,000;

(10) Transatmospheric research and technology, $40,000,000;

(11) Space research and technology, $183,200,000; and

(12) Tracking and data advanced systems, $17,100,000.

(b) For "Space flight, control and data communications", for the following programs:

(1) Space shuttle production and operational capability, $783,800,000;

(2) Space transportation operations, $1,350,700,000; and

(3) Space and ground network, communications and data systems, $860,900,000.

(c) For "Construction of facilities", including land acquisition, as follows:

(1) Construction of addition to Orbiter Processing Facility Annex, John F. Kennedy Space Center, $3,400,000;

(2) Construction of addition to the Systems Integration and Mockup Laboratory, Johnson Space Center, $5,000,000;

(3) Construction of Central Computing Facility, Johnson Space Center, $9,000,000;

(4) Modifications to Test Stand 300 for Space Station Hydrogen/Oxygen Propulsion Systems Development, George C. Marshall Space Flight Center, $2,100,000;

(5) Construction of Spacecraft Systems Development and Integration Facility, Goddard Space Flight Center, $8,000,000;

(6) Construction of Engineering Support Building, Jet Propulsion Laboratory, $9,800,000;

(7) Modification of Uninterruptible Power System in Space Flight Operations Facility, Jet Propulsion Laboratory, $2,600,000;

(8) Construction of Human Performance Research Laboratory, Ames Research Center, $9,400,000;

(9) Construction of Integrated Test Facility, Dryden Flight Research Facility, $17,500,000;

(10) Modifications to 8-Foot High Temperature Tunnel, Langley Research Center, $9,700,000;

(11) Construction of addition for Non-Destructive Evaluation Research Laboratory, Langley Research Center, $2,000,000;

(12) Construction of Power Systems Facility, Lewis Research Center, $5,800,000;

(13) Construction of the Second Tracking and Data Relay Satellite System Ground Terminal Facility, New Mexico, $22,000,000;

(14) Repair of facilities at various locations, not in excess of $750,000 per project, $24,000,000;

(15) Rehabilitation and modification of facilities at various locations, not in excess of $750,000 per project, $30,000,000;

(16) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of $500,000 per project, $7,000,000; and

(17) Facility planning and design not otherwise provided for, $14,000,000.

Notwithstanding paragraphs (1) through (17) of this subsection, the total amount authorized by this subsection shall not exceed $161,300,000.

(d) For "Research and program management", $1,425,000,000.

(e) Notwithstanding the provisions of subsection (h), appropriations authorized in this Act for "Research and development" and "Space flight, control and data communications" may be used for (1) any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the Administration for the performance of research and development contracts, and (2) grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities; and title to such facilities shall be vested in the United States unless the Administrator determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Each such grant shall be made under such conditions as the Administrator shall determine to be required to ensure that the United States will receive therefrom benefit adequate to justify the making of that grant. None of the funds appropriated for "Research and development" and "Space flight, control and data communications" pursuant to this Act may be used in accordance with this subsection for the construction of any major facility, the estimated cost of which, including collateral equipment, exceeds $500,000, unless the Administrator or the Administrator's designee has notified the President of the Senate and the Speaker of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives of the nature, location, and estimated cost of such facility.

(f) When so specified and to the extent provided in an appropriation Act, (1) any amount appropriated for "Research and development," for "Space flight, control and data communications" or for "Construction of facilities" may remain available without fiscal year limitation, and (2) maintenance and operation of facilities and support services contracts may be entered into under the "Research and program management" appropriation for periods not in excess of 12 months beginning at any time during the fiscal year.

(g) Appropriations made pursuant to subsection (d) may be used, but not to exceed $35,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator, and the Administrator's determination shall be final and conclusive upon the accounting officers of the Government.

(h) Of the funds appropriated pursuant to subsections (a), (b), and (d), not in excess of $100,000 for each project, including collateral equipment, may be used for construction of new facilities and additions to existing facilities, and for repair, rehabilitation, or modification of facilities: *Provided*, That, of the funds appropriated pursuant to subsection (a) or (b), not in excess of $500,000 for each project, including collateral equipment, may be used for any of the foregoing for unforeseen programmatic needs.

SEC. 3. Authorization is granted whereby any of the amounts prescribed in paragraphs (1) through (11) of section 2(c) of this Act—

(1) in the discretion of the Administrator or the Administrator's designee, may be varied upward 10 percent, or

(2) following a report by the Administrator or the Administrator's designee to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives on the circumstances of such action, may be varied upward 25 percent,

to meet unusual cost variations, but the total cost of all work authorized under such paragraphs shall not exceed the total of the amounts specified in such paragraphs.

SEC. 4. Not to exceed one-half of 1 percent of the funds appropriated pursuant to section 2 (a) or (b) of this Act may be transferred to and merged with the "Construction of facilities" appropriation, and when so transferred, together with $10,000,000 of funds appropriated pursuant to section 2(c) of this Act (other than funds appropriated pursuant to paragraph (12) of such section) shall be available for expenditure to construct, expand, and modify laboratories and other installations at any location (including locations specified in section 2(c)), if (1) the Administrator determines that such action is necessary because of changes in the national program of aeronautical and space activities or new scientific or engineering developments, and (2) the Administrator determines that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities. The funds so make available may be expended to acquire, construct, con-

vert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment. No portion of such sums may be obligated for expenditure or expended to construct, expand, or modify laboratories and other installations unless a period of 30 days has passed after the Administrator or the Administrator's designee has transmitted to the President of the Senate and to the Speaker of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a written report containing a full and complete statement concerning (A) the nature of such construction, expansion, or modification, (B) the cost thereof including the cost of any real estate action pertaining thereto, and (C) the reason why such construction, expansion, or modification is necessary in the national interest.

SEC. 5. Notwithstanding any other provision of this Act, no amount appropriated pursuant to this act may be used for any program—

(1) deleted by the Congress from requests as originally made either to the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Science and Technology of the House of Representatives;

(2) in excess of the amount actually authorized for that particular program by section 2 (a), (b), and (d); and

(3) which has not been presented to either such committee,

unless a period of 30 days has passed after the receipt by the President of the Senate and the Speaker of the House of Representatives and each such committee of notice given by the Administrator or the Administrator's designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

SEC. 6. The President shall, on the date of the submittal to the Congress of a budget for the National Aeronautics and Space Administration for fiscal year 1988, submit to the Congress budget estimates for the recommended level of program activity and subactivity funding for fiscal years 1989 and 1990 of a permanently manned space station.

SEC. 7. No civil space station authorized under section 2(a)(1) of this Act may be used to carry or place in orbit any nuclear weapon or any other weapon of mass destruction, to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.

SEC. 8. It is the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.

SEC. 9. (a) Section 24 of the Commercial Space Launch Act (49 App. U.S.C. 2623) is amended by adding at the end thereof the following: "There is authorized to be appropriated to the Secretary to carry out this Act $1,120,000 for fiscal year 1987.".

(b) Section 5(a)(1) of the Commercial Space Launch Act (49 App. U.S.C. 2604(a)(1)) is amended to read as follows:

"(1) pursuant to authorization and subject to the availability of appropriations, encourage and facilitate commercial space launches by the private sector, in consonance with the space policies of the United States as established in public law; and".

(c) Section 15(b) of the Commercial Space Launch Act (49 App. U.S.C. 2614(b)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following:

"(2) For purposes of paragraph (1), direct costs shall not include costs associated with meeting the space transportation needs of the United States. Notwithstanding the provisions of this paragraph, charges for the use of government payload processing facilities and associated services for comemrcial payloads shall continue to be based on the current full cost recovery standard.".

SEC. 10. The Administrator of the National Aeronautics and Space Administration shall review the proposed space agenda submitted by the National Commission on Space pursuant to title II of the National Aeronautics and Space Administration Authorization Act, 1985 (Public Law 98-361; 98 Stat. 427) and recommend to the appropriate committees of the Congress a long-range plan to implement such proposed space agenda, including a specific agenda for the five-year period beginning on the date of enactment of this Act. Such recommendations shall be made not later than February 15, 1987.

SEC. 11. (a) The Administrator of the National Aeronautics and Space Administration shall prepare and submit to the Congress, not later than March 31, 1987, a comprehensive acquisition strategy and plan for the continued procurement of space shuttle solid rocket motors. Such strategy and plan shall specifically address (1) the decisions made by the Administrator regarding the motor design or designs, (2) alternatives for establishing and maintaining competition in the future procurements, and (3) costs and benefits of each such alternative.

(b) Upon completion of the solid rocket motor redesign and the upgraded motor evaluation efforts, and the determination of a safe and reasonable flight rate, but before signing or extending any production contract for follow-on solid rocket motors beyond those currently under contract, the Administrator shall (1) issue a request for proposal for a second source for a redesigned motor, or (2) issue a request for proposal for an upgraded motor.

(c) The Administrator shall determine whether a request to the Congress for second source qualification funding is necessary or desirable in order to permit the second source to compete with the incumbent on a fair and effective basis, consistent with the Competition in Contracting Act of 1984 (Public Law 98-369; 98 Stat. 1175).

(d) The Administrator shall consider the competitive advantages of the nozzle and solid rocket motor separately. No determination of the advantages of the second source of either the solid rocket motor or the nozzle shall preclude a judgment on the advantages of the other. In evaluating proposals received in response to the request for proposal issued pursuant to subsection (b) of this section, the Administrator shall consider costs and cost savings in accordance with applicable law.

(e) The comprehensive acquisition strategy and plan prepared under subsection (a) of this section and proposals for a second source for a redesigned motor under subsection (b) of this section shall apply to all modifications of the solid rocket motor that are intended for production.

(f) In addition to the requirements of subsection (b) of this section, the Administrator, before signing or extending any production contract for follow-up solid rocket motors beyond those currently under contract, shall notify the Congress of the number of additional solid rocket motors required in order to allow the space shuttle transportation system to continue to operate if a new contractor, selected pursuant to subsection (b)(1) or (2) of this section, is not able to provide any of such additional solid rocket motors. The Administrator shall not sign or extend any such contract until a period of 30 calendar days during which either House of Congress is in session has passed after the date of such notification.

(g) Nothing in this section shall be construed to direct the Administrator to select and qualify a second source or upgraded source of production for solid rocket motors if the proposals received pursuant to subsection (b)(1) of this section are inconsistent with the requirements of section 2304(b)(1) of title 10, United States Code, or if the proposals received pursuant to subsection (b)(2) of this section are inconsistent with the requirements of section 2304(a)(1) of title 10, United States Code.

SEC. 12. (a) It is the sense of the Congress that the United States must promptly restore its space transportation capabilities and such restoration must be accomplished without deemphasizing other space programs.

(b) The Administrator of the National Aeronautics and Space Administration is directed to take the necessary steps to return safely the space shuttle fleet to flight status.

(c) There are authorized to be appropriated for fiscal year 1987 $100,600,000 to carry out this section.

SEC. 13. (a)(1) The Administrator of the National Aeronautics and Space Administration shall promptly take such steps as may be necessary to construct a fourth space shuttle orbiter as a replacement for the space shuttle orbiter Challenger.

(2) There are authorized to be appropriated for fiscal year 1987 $272,000,000 to begin the construction required by paragraph (1) of this subsection.

(b) The Administrator shall explore the availability of private funding for construction of the replacement orbiter authorized by subsection (a) of this section. The Administrator shall accept private funding for such construction—

(1) if the Administrator finds that such private funding is available; and

(2) if the Administrator finds that such funding—

(A) is in the best interests of the United States; and

(B) results in no additional net costs to the Federal Government.

Private funding accepted under this subsection shall replace appropriated funding obligated or expended for such a replacement orbiter.

SEC. 14. (a) The Administrator of the National Aeronautics and Space Administration, in cooperation with the Secretary of Defense, and before July 1, 1987, shall submit to the Congress a five-year plan, to be updated annually and presented to Con-

gress along with the President's annual budget request, setting forth—

(1) a schedule for planned reimbursements from the Department of Defense for space shuttle services; and

(2) a schedule for the provision of such services.

(b) There is authorized to be appropriated for fiscal year 1987 $531,000,000 as payment to the National Aeronautics and Space Administration for reimbursable services provided to the Department of Defense.

SEC. 15. (a) The space shuttle shall be the primary United States launch system for manned missions and missions needing its unique capabilities. The space shuttle shall also be available for other missions, including the launch of non-shuttle-unique foreign and commercial payloads, pursuant to the priorities specified in subsection (b)(2) of this section.

(b) The Administrator of the National Aeronautics and Space Administration shall make best efforts to develop a space shuttle launch manifest that—

(1) ensures that existing commitments of the National Aeronautics and Space Administration to its customers, including launch service agreements, are met within the priority constraints contained in paragraph (2) of this subsection; and

(2) reflects the following priorities (in descending order):

(A) Payloads deemed critical to the national security.

(B) Significant civil government missions, including those having limited launch opportunities.

(C) Government payloads other than those referred to in subparagraphs (A) and (B) of this paragraph.

(D) Payloads other than those referred to in subparagraphs (A) through (C) of this paragraph, including foreign and commercial payloads.

(c) The Administrator shall submit the current flight manifest to the Congress reflecting the priorities contained in this section not later than November 1, 1986. The Administrator shall keep the Congress fully and currently informed of the status of the flight manifest.

SEC. 16. (a) It is the sense of the Congress that the shuttle pricing policy established in title II of the National Aeronautics and Space Administration Authorization Act of 1986 (Public Law 99-170; 99 Stat. 1017) remains valid and should be implemented so as to assure reliable access to space for all United States space users.

(b) In the report required by title II of such Act submitted with the budget request for fiscal year 1988, the Administrator of the National Aeronautics and Space Administration shall include a description of how the Administrator's implementation of the pricing policy will accomplish the objectives of this section.

SEC. 17. (a) It is the sense of the Congress that in order to ensure reliable access to space, in order to meet national security, scientific, and commercial objectives of the United States space program, and in order to ensure that the United States does not concede the commercial launch vehicle business to foreign competition, the United States should utilize the capability of expendable launch vehicles as well as the space shuttle for placing govenment payloads into orbits.

(b) In order to meet the requirements of subsection (a) of this section, the Administrator of the National Aeronautics and Space Administration shall develop a plan for the purchase, through competitive procurement, of expendable launch vehicle services for the purpose of launching government payloads, as aggregated by the Administrator. The services purchased under this subsection shall be provided on a reimbursable basis.

(c) The Administrator shall report to the Congress on how the Administrator will carry out this section not later than February 15, 1987. Such report shall include—

(1) an estimate of expendable launch vehicle requirements for the five years following the date of enactment of this Act;

(2) an explanation of how the National Aeronautics and Space Administration intends to utilize expendable launch vehicle launches for future civil launch requirements, including but not limited to the availability of a commercial expendable launch vehicle capability, a National Aeronautics and Space Administration expendable launch vehicle capability, and a Department of Defense expendable launch vehicle capability;

(3) an explanation of how such utilization of expendable launch vehicles can be carried out in a manner which fosters the development of a competitive expendable launch vehicle industry;

(4) a proposed procurement plan for commercial expendable launch vehicle services for the five years following the date of enactment of this Act; and

(5) an estimate of the authorizations of appropriations that are necessary to procure launch services for United States Government satellites by expendable launch vehicles for fiscal year 1988 and the four succeeding fiscal years.

SEC. 18. (a) Congress finds that the National Aeronautics and Space Administration should take every action available to it to restore, to its previous standards of excellence, its commitment to quality assurance, reliability, and safety.

(b) The Administrator of the National Aeronautics and Space Administration shall identify as a separate item in the budget submitted by the President under section 1105 of title 31, United States Code, for any fiscal year, the number of individuals per facility of the National Aeronautics and Space Administration whose functions relate to quality assurance, reliability, and safety.

SEC. 19. (a) There is hereby established, in the Executive Office of the President, the National Aeronautics and Space Council (hereinafter called the "Council") which shall be composed of—

(1) the Vice President, who shall be Chairman of the Council;

(2) the Secretary of State;

(3) the Secretary of Defense;

(4) the Secretary of Transportation;

(5) the Secretary of Commerce;

(6) the Director of Central Intelligence; and

(7) the Administrator of the National Aeronautics and Space Administration, who shall be the Vice Chairman of the Council.

(b) The President shall from time to time designate one of the members of the Council to preside over meetings of the Council during the absence, disability, or unavailability of the Chairman.

(c) Each member of the Council may designate another officer of their department or agency to serve on the Council as their alternative in their unavoidable absence.

(d) Each alternate member designated under subsection (c) of this section shall be designated to serve as such by and with the advice and consent of the Senate unless at the time of such member's designation the member holds an office in the Federal Government to which the member was appointed by and with the advice and consent of the Senate.

(e) It shall be the function of the Council to advise and assist the president, as the President may request, with respect to the performance of functions in the aeronautics and space field, including the following functions:

(1) survey all significant aeronautical and space activities, including the policies, plans, programs, and accomplishments of the United States, including all departments and agencies of the United States engaged in such activities, and other nations;

(2) develop a comprehensive program of aeronautical and space activities to be conducted by departments and agencies of the United States;

(3) designate and fix responsibility for the direction of major aeronautical and space activities;

(4) provide for effective cooperation among all departments and agencies of the United States engaged in aeronautical and space activities, and specify, in any case in which primary responsibility for any category of aeronautical and space activities has been assigned to any department or agency, which of those activities may be carried on concurrently by other departments or agencies; and

(5) resolve differences arising among departments and agencies of the United States with respect to aeronautical and space activities under this Act, including differences as to whether a particular project is an aeronautical and space activity.

(f) The Council may employ a staff to be headed by a civilian executive secretary who shall be appointed by the President by and with the advice and consent of the Senate. The executive secretary, subject to the direction of the Council, is authorized to appoint and fix the compensation of such personnel, including not more than seven persons, as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions. Each appointment under this subsection shall be subject to the same security requirements as those established for personnel of the National Aeronautics and Space Administration appointed under section 203(c)(2) of this Act. Other provisions of law or regulations relating to Government employment shall apply to employees of the Council reporting directly to the Chairman to the extent that such provisions are applicable to employees in the Office of the Vice President.

(g)(1) The Council shall establish a Users' Advisory Group composed of nine non-Federal representatives of industries and other persons involved in space activities.

(2) The Vice President shall name a Chairman of the Users' Advisory Group.

(3) The Council shall from time to time, but not less often that once a year, meet with the Users' Advisory Group.

(4) The functions of the Users' Advisory Group is to ensure that the interests of industries and other non-Federal entities involved in space activities, including in particular commercial entities, are adequately represented in the Council.

(5) The Users' Advisory Group may be assisted by the staff of the Council.

SEC. 20. The Administrator of the National Aeronautics and Space Administration shall submit a report to the Congress by January 30, 1987, detailing the Administra-

tor's actions to comply with Executive Order 12564.

SEC. 21. (a) The Congress finds and declares that—

(1) The implementation of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) has begun and some of the major milestones contained in such Act have been met;

(2) the Congress remains strongly committed to the guiding principles set forth in such Act;

(3) notwithstanding the accomplishments thus far, the relationships among the involved Federal agencies and the private sector have not been adequately defined; and

(4) inasmuch as the technical development and commercial applications of future land remote-sensing systems cannot now be predicted with certainty, it is in the national interest of the United States that the involved Federal agencies and the private sector remain flexible in carrying out their respective responsibilities under such Act.

(b) It is therefore the purpose of this section to set forth amendments to the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) to ensure that—

(1) the original intent of such Act is carried out in the most effective manner consistent with the guiding principles expressed in such Act;

(2) specific mechanisms for carrying out the original intent of such Act are provided in those cases where none have materialized thus far; and

(3) the working relationships among involved Federal agencies and private sector parties for the purpose of carrying out such Act are fully developed and mutually understood.

(c) Section 202(a)(4) of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4212(a)(4)) is amended by inserting before the semi-colon the following: ", except in the case of research and development activities conducted in accordance with section 504".

(d) Title III of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4221 et seq.) is amended by adding at the end thereof the following:

"DISPOSITION OF GOVERNMENT ASSETS

"SEC. 308. Following the completion of a contract made pursuant to this title, the Secretary may, upon 30 days advance notice to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives, dispose of assets (other than real property) under the control of the Secretary in a manner which best ensures the continuation of the contractor's commercial activity.".

(3) Section 502 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4262) is amended to read as follows:

"RESEARCH AND DEVELOPMENT ACTIVITIES OF FEDERAL AGENCIES

SEC. 502. Each Federal agency is authorized and encouraged to provide data gathered in experimental remote-sensing space programs to related research and development programs funded by the Federal Government (including applications programs) and to cooperative research programs if the Federal agency involved determines that the data will not be used—

"(1) for any commercial purpose, or

"(2) in substantial competition with data available from a licensee under this Act,

except pursuant to section 503.".

(f) Title V of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4261 et seq.) is amended by adding at the end thereof the following:

"RESEARCH AND DEVELOPMENT ACTIVITIES OF SYSTEM OPERATORS

"SEC. 504. Notwithstanding section 601, any system operator under title II, III, or IV, or any marketing entity under section 503, may provide data for research and development programs if—

"(1) a complete and timely disclosure of the results of such research and development is made in the open technicial literature or is otherwise made publicly available;

"(2) the system operator or marketing entity provides to the Secretary an annual report of all research and development data transactions including the nature of any cooperative agreements and the prices charged for data; and

"(3) the data are not used for commercial purposes or in substantial competition with data available from a licensee under this Act.".

(g) Section 603 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4273) is amended to read as follows:

"NONREPRODUCTION

"SEC. 603. In addition to such other terms and conditions as the system operator may set forth in compliance with section 601, the system operator may require that unenhanced data not be reproduced or disseminated by any foreign or domestic purchaser.".

SEC. 22. (a) There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its public warning and forecast service duties under law, $330,598,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to public warning and forecast specified by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and by any other law involving such duties. Such duties include meteorological, hydrological, and oceanographic public warnings and forecasts.

(b) Of the amount authorized to be appropriated by subsection (a) of this section, $45,500,000 is authorized to be appropriated only for activities related to the Next Generation Weather Radar Program. Such activities may include site surveys, preparation for production radars, limited radar production, initial operational test and evaluation of radars, training of personnel, release of long lead items for full production, award of the production contract, and land acquisition for radar sites.

SEC. 23. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric and hydrological research duties under law, $68,044,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to atmospheric and hydrological research specified by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.,), and by any other law involving such duties. Such duties include research for developing improved prediction capabilities for atmospheric and hydrological processes.

SEC. 24. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its satellite services duties under law, $72,606,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to satellite services specified by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Aeronautics and Space Administration Authorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and by any other law involving such duties. Such duties include satellite maintenance and operations and satellite data analysis.

SEC. 25. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its satellite systems duties under law, $168,139,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used by the National Oceanic and Atmospheric Administration to purchase, launch and operate the most reliable polar-orbiting meteorological satellite system that is feasible including a full complement of all present instruments in the afternoon orbit and a backup capability for additional reliability in the morning orbit. In addition, such moneys shall be used to fund those duties relating to satellite systems specified by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Aeronautics and Space Administration Authorization Act, 1985, approved July 16, 1984 (Public Law 98-361; 98 Stat. 422), and by any other law involving such duties. Such duties include spacecraft procurement, launch, and associated station system changes involving polar-orbiting and geostationary environmental satellites.

SEC. 26. There are authorized to be appropriated to the Department of Commerce to enable the National Oceanic and Atmospheric Administration to carry out its data and information services duties under law, $22,734,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those duties relating to data and information services specified by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1980 (15 U.S.C. 311 et seq.), and by any other law involving such duties. Such duties include environmental data and information products and services in the atmospheric, marine, solid earth, and solar-terrestrial sciences.

SEC. 27. (a) Section 2(d) of Reorganization Plan No. 4 of 1970 (5 U.S.C. App. 1) is amended to read as follows:

"(d) There shall be in the Administration a Chief Scientist of the National Oceanic and Atmospheric Administration who shall

be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316). The Chief Scientist shall be the principal scientific adviser to the Administrator, and shall perform other duties as the Administrator may direct. The Chief Scientist shall be an individual who is, by reason of scientific education and experience, knowledgeable in the principles of oceanic, atmospheric, or other scientific disciplines important to the work of the Administration.".

(b) Section 5315 of title 5, United States Code, is amended by striking "Associate Administrator, National Oceanic and Atmospheric Administration.".

(c) Section 5316 of title 5, United States Code, is amended by inserting at the end thereof the following:

"Chief Scientist, National Oceanic and Atmospheric Administration.".

INDEPENDENT SAFETY BOARD AUTHORIZATION ACT

EXON AMENDMENT NO. 3273

Mr. BYRD (for Mr. EXON) proposed an amendment to the bill (H.R. 4961) to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes, as follows:

At the end of the bill, add the following:

SEC. 7. AVIATION LIABILITY INSURANCE.

(a) The Secretary of Transportation and the Administrator of the Federal Aviation Administration shall—

(1) not later than March 1, 1987, submit an interim report, and

(2) not later than March 1, 1988, submit a comprehensive final report,

concerning the extent of and causes for the rapidly increasing costs to United States public use airport sponsors for general liability insurance coverage. Such reports shall consider the probable implications of such increasing costs on the future capacity of the airport runway and taxiway system of the United States, particularly at smaller airports, and shall include any recommendations of the Secretary and the Administrator for actions which the Federal Government might undertake to assist in ameliorating the liability insurance difficulties of such public use airport sponsors.

(b)(1) The Administrator shall, within sixty days after the date of enactment of this Act, contract with a nonprofit foundation to establish an information clearinghouse concerning general liability insurance coverage at such public use airports.

(2) The clearinghouse shall gather and distribute without charge to such airports information on premiums, coverage limits and insurance availability. All information generated by such clearinghouse shall be made available promptly to the Secretary and the Administrator for use as appropriate in the reports required under subsection (a) of this section.

(3) There shall be available for the purposes of this subsection $250,000 of funds appropriated for the Federal Aviation Administration for each of the fiscal years 1987 and 1988.

RESTRICTIONS ON USE OF GOVERNMENT VEHICLES

ROTH (AND PROXMIRE) AMENDMENT NO. 3274

Mr. PACKWOOD (for Mr. ROTH, for himself and Mr. PROXMIRE) proposed an amendment to the bill (H.R. 3614) to restrict the use of Government vehicles for transportation of officers and employees of the Federal Government between their residences and places of employment, and for other purposes, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) section 1344 of title 31, United States Code, is amended to read as follows:

"§ 1344. Passenger carrier use

"(a)(1) Funds available to a Federal agency, by appropriation or otherwise, may be expended by the Federal agency for the maintenance, operation, or repair of any passenger carrier only to the extent that such carrier is used to provide transportation for official purposes. Notwithstanding any other provision of law, transporting any individual other than the individuals listed in subsections (b) and (c) of this section between such individual's residence and such individual's place of employment is not transportation for an official purpose.

"(2) For purposes of paragraph (1), transportation between the residence of an officer or employee and various locations that is—

"(A) required for the performance of field work, in accordance with regulations prescribed pursuant to subsection (e) of this section, or

"(B) essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties.

is transportation for an official purpose, when approved in writing by the head of the Federal agency.

"(b) A passenger carrier may be used to transport between residence and place of employment the following officers and employees of Federal agencies:

"(1)(A) the President and the Vice President;

"(B) no more than 6 officers or employees in the Executive Office of the President, as designated by the President; and

"(C) no more than 10 additional officers or employees of Federal agencies, as designated by the President;

"(2)(A) officers compensated at Level I of the Executive Schedule pursuant to section 5312 of title 5; and

"(B) a single principal deputy to an officer described in subparagraph (A) of this paragraph, when a determination is made by such officer that such transportation is appropriate;

"(3) principal diplomatic and consular officials abroad, and the United States Ambassador to the United Nations;

"(4) the Deputy Secretary of Defense and Under Secretaries of Defense, the Secretary of the Air Force, the Secretary of the Army, the Secretary of the Navy, the Joint Chiefs of Staff, and the Commandant of the Coast Guard;

"(5) the Director of the Central Intelligence Agency and the Director of the Federal Bureau of Investigation;

"(6) the Chairman of the Board of Governors of the Federal Reserve System;

"(7) the Comptroller General of the United States and the Postmaster General of the United States; and

"(8) an officer or employee with regard to whom the head of a Federal agency makes a determination, in accordance with subsection (d) of this section and with regulations prescribed pursuant to paragraph (1) of subsection (e), that highly unusual circumstances present a clear and present danger, that an emergency exists, or that other compelling operational considerations make such transportation essential to the conduct of official business.

Except as provided in paragraph (2) of subsection (d), any authorization made pursuant to paragraph (8) of this subsection to permit the use of a passenger carrier to transport an officer or employee between residence and place of employment shall be effective for not more than 15 calendar days.

"(c) A passenger carrier may be used to transport between residence and place of employment any person for whom protection is specifically authorized pursuant to section 3056(a) of title 18 or for whom transportation is authorized pursuant to section 28 of the State Department Basic Authorities Act of 1956 or section 8(a)(1) of the Central Intelligence Agency Act of 1949.

"(d)(1) Any determination made under paragraph (8) of subsection (b) shall be in writing and shall include the name and title of the officer or employee affected, the reason for such determination, and the duration of the authorization for such officer or employee to use a passenger carrier for transportation between residence and place of employment.

"(2) If a clear and present danger, an emergency, or a compelling operational consideration described in paragraph (8) of subsection (b) extends or may extend for a period in excess of 15 calendar days, the head of the Federal agency shall determine whether an authorization under such paragraph shall be extended in excess of 15 calendar days for a period of not more than 90 additional calendar days. Determinations made under this paragraph may be reviewed by the head of such agency at the end of each period, and, where appropriate, a subsequent determination may be made whether such danger, emergency, or consideration continues to exist and whether an additional extension, not to exceed 90 calendar days, may be authorized. Determinations made under this paragraph shall be in accordance with regulations prescribed pursuant to paragraph (1) of subsection (e).

"(3) The authority to make designations under subsection (b)(1) of this section and to make determinations pursuant to subsections (a)(2), (b)(2)(B), and (b)(8) of this section and pursuant to paragraph (2) of this subsection may not be delegated, except that, with respect to the Executive Office of the President, the President may delegate the authority of the President under subsection (b)(8) of this section to an officer in the Executive Office of the President. No designation or determination under this section may be made solely or principally for the comfort or convenience of the officer of employee.

"(4) Notification of each designation or determination made under paragraphs (1), (2)(B), and (8) of subsection (b) and under paragraph (2) of this subsection, including the name and title of the officer or employee affected, the reason for any determination under paragraph (8) of subsection (b),

and the expected duration of any authorization under such paragraph, shall be transmitted promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate.

"(e)(1) Not later than March 15, 1987, the Administrator of General Services, after consultation with the Comptroller General, the Director of the Office of Management and Budget, and the Director of the Administrative Office of the United States Courts, shall promulgate regulations governing the heads of all Federal agencies in making the determinations authorized by subsections (a)(2)(A), (b)(8), and (d)(2) of this section. Such regulations shall specify that the comfort and convenience of an officer or employee is not sufficient justification for authorizations of transportation under this section.

"(2) In promulgating regulations under paragraph (1) of this subsection, the Administrator of General Services shall provide criteria defining the term 'field work' for purposes of subsection (a)(2)(A) of this section. Such criteria shall ensure that transportation between an employee's residence and the location of the field work will be authorized only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

"(f) Each Federal agency shall maintain logs or other records necessary to establish the official purpose for Government transportation provided between an individual's residence and such individual's place of employment pursuant to this section.

"(g) As used in this section—

"(1) the term 'passenger carrier' means a passenger motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased by the United States Government; and

"(2) the term 'Federal agency' means—

"(A) a department (as such term is defined in section 18 of the Act of August 2, 1946 (41 U.S.C. 5a));

"(B) an Executive department (as such term is defined in section 101 of title 5);

"(C) a military deparment (as such term is defined in section 102 of title 5);

"(D) a Government corporation (as such term is defined in section 103(1) of title 5);

"(E) a Government controlled corporation (as such term is defined in section 103(2) of title 5);

"(F) a mixed-ownership Government corporation (as such term is defined in section 9101(2) of this title);

"(G) any establishment in the executive branch of the Government (including the Executive Office of the President);

"(H) any independent regulatory agency (including an independent regulatory agency specified in section 3502(10) of title 44);

"(I) the Smithsonian Institution; and

"(J) any nonappropriated fund instrumentality of the United States,

except that such term does not include the government of the District of Columbia.

"(h) Notwithstanding section 410(a) of title 39, this section applies to the United States Postal Service.".

(b) The table of sections for chapter 13 of such title is amended by striking out the item relating to section 1344 and inserting in lieu thereof the following:

"1344. Passenger carrier use.".

SEC. 2. (a) Title 10, United States Code, is amended—

(1) by striking out section 2637 thereof; and

(2) in the table of contents of chapter 157 thereof, by striking out the item pertaining to section 2637.

(b) Section 636(a)(5) of the Foreign Assistance Act of 1961 (22 U.S.C. 2396(a)(5)) is amended by striking out "(without regard to the limitations contained in section 5 of Public Law 63-127, as amended (31 U.S.C. 638a(c)2)), and section 201 of Public Law 85-468 (31 U.S.C. 638c))".

(c) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "without regard to the limitations contained in section 78(c) of title 5 of the United States Code".

(d) Section 11 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2678) is repealed.

(e) Section 660 of title 14, United States Code, is amended by striking out subsection (e).

SEC. 3. Within one year after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall prepare, in consultation with the Marshal of the Supreme Court of the United States, the Clerk of the United States Court of Military Appeals and the Court Administrator of the United States Tax Court, and transmit to the Congress, appropriate recommendations concerning the transportation needs of the judicial branch and of courts established pursuant to Article I of the Constitution.

OMNIBUS DRUG ENFORCEMENT EDUCATION, AND CONTROL ACT

DOLE AMENDMENT NO. 3275

Mr. DOLE proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes;

(The text of the amendment will be printed in Part II of the RECORD.)

ADDITIONAL STATEMENTS

OFFICER DELBERT LANNIER

● Mr. SIMON. Mr. President, the Nation has lost a valued public servant, and many of us have lost a friend.

Officer Delbert Lannier of the Capitol Hill Police has died after complications from heart surgery.

Officer Lannier met countless people each day in his work at the Cannon House Office Building. He assisted or brightened the day of most of them. He leaves behind hundreds of friends, and I am proud to count myself among them. It can truly be said that the world is a better place because of the good work and good deeds of Delbert Lannier.

Del Lannier went out of his way to be good to me and to many of us in the House and Senate, as well as to any visitor or human being who crossed his path. I talked to him about an hour before he underwent heart surgery, and he sounded optimistic and was in great spirits. That is how I shall always remember him.

We do not recognize as often as we should the great work done by the Capitol Police.

Congressman DOUG BARNARD was another of Del's friends, and he has prepared a eulogy that captures so well these exceptional qualities about our friend Del.

I ask that the eulogy be printed in the RECORD.

The eulogy is as follows:

EULOGY

Friends, Family, Officers, it is a great honor for me to have the opportunity to say a few words about our friend, Delbert Lannier. I say it is an honor because Delbert was a man who had touched many people and affected many lives. There are scores of congressmen, staffers, and fellow policemen who could give their own testimony as to what Delbert meant to them.

More than anyone else I have ever known, Delbert lived out the Will Roger's philosophy, "I never met a man I didn't like." I don't believe Delbert knew what a stranger was—and he must have come in contact with literally hundreds of people a day. With close friends and passersby on the street, he was friendly, outgoing and cheerful.

Now I know there are lot of you out there who knew Delbert more personally, and who worked with him more closely, than I did so I am not going to try to chronicle his life and his good deeds—and they are numerous. In fact, I think it would be a mistake to just list off the statistics of his life here today and leave. As one who has buried both parents and many other loved ones, as I know all of you have, I have come to learn something about death.

And what I have learned is that if you want to keep someone alive, then you have to keep a part of that person in you. You have to internalize some of his virtues and his philosophies so that when a new member joins the police force or a new congressional staffer comes to work on Capitol Hill, they can say "I feel just like I knew Delbert." Our lives can be a living testimony to his life so that his spirit, his energy, his force will always be with us.

And so, I want to tell you a few of the things I learned from Delbert.

I think if you asked anyone for one adjective to describe Delbert, they would say "cheerful." You know it is really hard to be in a good mood all the time. Most of us don't even succeed half the time. And as all of us know, everyone's life has its share of pain and suffering. Delbert had more than some, less than others. But the important lesson is that he didn't let it get him down. He was not defeated by life—rather he defied the sorrow and grief that keep many people down. He suffered but that smile never left his face.

And even more important, he was able to pass on that happiness to other people.

There were many mornings when I passed Delbert on the way to my office at 7:00 or 8:00, and I don't mind telling you that I was not looking forward to the day. Maybe I had a tough schedule ahead of me or I had some personal problems on my mind. But after talking with Delbert a few minutes, I never failed to enter my office with a ligther heart and a better outlook on the day ahead. The gift to make other people smile and to be glad to live is a precious gift that the world needs to keep alive. And I am sure everyone who walked the halls of Cannon, or the Capitol, or the police locker room, or the sidewalk of Washington could tell you of the time that he or she walked past Delbert in a slump, and left him with a grin on his face and spring in his step.

Thirdly, Delbert treated everyone like they were special. In a town like Washington, it is easy to have your head turned. But Delbert, who came in contact with the greatest and the humblest, was never affected by power of titles. If it was a congressman rushing across the street for a vote, or a tired tourist asking for directions, Delbert's smile was the same. He helped everyone equally and never thought about getting anything in return. As a matter of fact, his friendliness and helpfulness got into print at least twice that I know of. Just going about his business, helping anyone who asked for it.

Finally, Delbert always put other people before himself. He was a sympathetic listener and a kind friend. People could sense his warmth and compassion and felt free to take him into their confidence. I do not know personally of any incidences where Delbert risked his life for other people, but I am sure that in his line of duty as a police officer or in the armed services, he had occasion to defend other people and did so without a thought for himself. I DO know that he was loved and respected by all the people he came to know in his thirteen years on Capitol Hill, and that we all considered it a privilege to call him a friend.

To put others before yourself, to treat everyone with equal respect, to make other people happy by your happiness—those are noble, though almost unattainable, traits. But Delbert had them all. Now if we can all try to learn from his example and take on some of these characteristics ourselves, we will have paid the greatest tribute of all to our friend, Delbert.

If Delbert thought that he had made just his little corner of the world a better place, then I know he would be satisfied. So let's all keep Delbert alive and with us by our own actions, our own compassion, and our own smiles. If we can do that then we will change this afternoon from a time for mourning to a celebration of life.●

CONGRATULATIONS TO THE REPUBLIC OF CHINA

● Mr. DENTON. Mr. President, on October 10, 1911, Dr. Sun Yat-sen was successful on his 11th attempt to overthrow the Manchu Dynasty. As a result of Dr. Sun's success, a representative government of the people was established in China. This representative government, based on Dr. Sun's three principles of the people—often described as nationalism, self-determination, and social well being—has served the cause of personal and national freedom.

Today, the Republic of China stands as a symbol of freedom for all the Chinese people. I salute the Republic of China for its commitment to personal and national freedom. I also salute President Chaing Ching-kuo for his recent announcement of his intent to end martial law on the island of Taiwan. Such intent is truly consistent with the Government's desire to further democratize the political process as well as to improve economic conditions on Taiwan.

Mr. President, I ask that two articles from the Washington Post concerning the announcement be printed in the RECORD.

TAIWAN PRESIDENT TO PROPOSE END TO ISLAND'S MARTIAL LAW

(By Daniel Southerland)

TAIPEI, TAIWAN, October 7—Taiwan President Chiang Ching-kuo said today that his government will soon propose lifting emergency decrees, commonly referred to as martial law, imposed by his ruling Nationalist Party on this island nearly four decades ago.

Chiang, 76, the eldest son of the late president Chiang Kai-shek, said that terminating the decrees would mean an end to trials of civilians in military courts, and the removal of unspecified restrictions on personal freedoms.

Chiang also said that penalties for some offenses would be made "comparatively more lenient."

Chiang said that a longstanding desire to "democratize" as well as improve economic conditions on Taiwan had led to the decision to end the decrees.

The president spoke in an hour long interview held in a sparely decorated reception room with Katharine Graham, chairman of the board of The Washington Post Co., and two editors from Newsweek and the Washington Post.

Despite his remarks on democratization, Chiang said that a newly formed opposition political party on Taiwan, the Democatic Progressive Party, had failed to meet requirements set by the ruling Nationalists.

The new party "had no concept of our nation and . . . failed to mention the anti-communist policy in its platform" he said. He referrd to the new party as the "so-called political party."

Until recently, the Nationalists banned organized political opposition. Chiang said the Nationalists now are studying the question of legalizing new political parties "very vigorously" and expect to come to a conclusion "very soon."

Chiang's negative comments seemed to indicate that the newly formed party would not be legalized. But they may also have been aimed at pressing the party to conform to what Chiang and other officials have said is required.

Chiang said that any new party must respect the constitution, uphold a basic policy of anticommunism, and stay clear of the secessionist Taiwan independence movement. "If they successfully meet these requirements, we will allow new political parties to be formed," he said.

Chiang said that newspaper reports had called attention to "separatist elements" in the new party.

Despite his negative tone, some observers predicted that after lengthy bargaining, the Nationalists and their opponents will reach an agreement permitting the new party to operate.

"Each side would like to take the credit for political liberalization," said one foreign observer. "The Nationalists don't want to be seen as being forced into this."

This observer said that Chiang wants in his final years in office to bequeath some kind of stable, lasting system, and has concluded that the only way he can do this is to invite broader participation in the political process.

Pressure comes from a growing middle class, which has attained an educational level giving it the confidence to demand change.

Skeptical members of the political opposition said that they believed the Nationalists' talk of lifting martial law was an exercise to improve their image both at home and abroad.

Some foreign observers said, however, that the impending announcement on martial law could constitute a symbolic and psychological breakthrough. It might lead, they said, to a significant liberalization of what has been essentially one-party rule for the past 37 years.

Chiang made it clear in today's interview, however, that some restrictions will be retained through the imposition of a new national security law. He said the measure was required because of what he described as a continuing communist threat to Taiwan.

In an interview earlier this week, Mah Soo-lay, secretary general of the Nationalist Party's central committee, said the new law would include restrictions on immigration into Taiwan and on movements along the island's coast. The law would be aimed, in part, at countering communist infiltration, Mah said.

Chiang said it was unclear how long it would take for an end to martial law to be formally promulgated because Taiwan's legislature had to consider the issue.

Despite speculation about his health, Chiang appeared relaxed, self-assured and mentally acute. A diabetic, he clearly has difficulty moving about, but is expected to speak in public on Taiwan's national day on Friday.

In addition to answering questions during the hour-long interview, Chiang provided written answers to a series of questions submitted to him in advance of the interveiw.

"Except for my diabetes, I am in good health," said Chiang in answer to one of the written questions.

In both his written and verbal answers, the Taiwanese leader displayed an unyielding attitude toward proposals made my China for reaching an accommodation between the two.

In the written answers, for example, Chiang dismissed talks by Taiwan and China last May involving a hijacked airliner as an isolated case that did nothing to change Taipei's policy of "no contact, no negotiation, and no compromise" with Peking.

Chiang said that China's proposal for "one country, two systems," under which Taiwan would maintain its own economic system and army, was merely a variation on old "united front tactics" aimed at achieving communist domination.

"They have not abandoned their desire to invade or incorporate us," said Chiang.

Asked about changes occurring on the mainland under the leadership of Deng Xiaoping, Chiang said: "There are certain changes taking place. But they are cosmetic. The essence of communism remains the same.

"They may change their outfits from Mao suits to western suits, but the essence remains the same," he said.

"Just think of a tree," he continued. "Deng Xiaoping has been trimming the branches, but the root stays the same.

". . . Unless they forsake communism and return to Chinese traditions, there will be no real change" he said.

Chiang claimed that irreversible trends in world history would lead to the failure of communism and an eventual recovery of the mainland.

"One day we'll rejoin our people," he said.

POLICE STATE SURPRISE

(By Meg Greenfield)

TAIPEI.—After a couple of weeks in China and a few days here, I am prompted to write about a phenomenon I think of as "police state surprise"—the reaction of an American traveler to the reality of life in an undemocratic place, as distinct from the preconception of it. I use the term "police state" loosely and, no doubt, unfairly to cover a broad range of repressive states from eastern Europe to southern Africa to South America to this part of the world. But though they are all different, including in the degree of their repression, they all have this in common: they have been so relentlessly reduced in our national conversation to their essential political features that the initial encounter with their daily life tends to astound. Why, look! There are people buying their noodles and riding their bikes and carting their dressed-up babies around as if it didn't matter—as if they weren't about to be shot to death by the secret police—what can it mean?

I exaggerate, but not by much. The sight of real people going about their workaday business and doing familiar household things, taken together with some hidden official prompting and a pleasant unofficial meeting or two, has caused any number of otherwise sane Americans to infer that some of the worst tyrannies on earth were merely victims of our own misapprehension. The more notable burblings have even been collected in savage satirical books. But you don't have to be one of the burblers to be struck, as I invariably am, by how little the scene in our line of vision conforms to a lifetime's store of images drawn from movies about the Nazis and third-rate imitations of "Darkness at Noon."

One recent day in Peking, I stood in the vast interior courtyard of the Forbidden City, where a spectacular Bertolucci film is being made about China's last emperor. At least a thousand lavishly gowned film extras were compliantly going through takes and retakes of a scene in which they kowtow to the imperial infant, as stylishly casual British and Italian movie types bellowed their orders over megaphones.

Who were these extras? I asked.

"Army," came the reply.

Yes, the dread Chinese People's Liberation Army of my Korean War-ridden youth—there were their inheritors, lolling about between takes in full-length red velvet dresses, courtesy of the communist government. So Element One of the "surprise" is a truth that shouldn't even be surprising: that life, with its ordinary preoccupations and its rare exotic moment, goes on.

The journalist, pressing a little further, discovers more that doesn't comport with expectation. It is that a political life of sorts, ranging from minimal and rudimentary to fairly elaborate, will assert itself and sometimes flourish within the confines of a repressive system—inside the single permitted party, for example, or outside it in various realms of religious or cultural or military life. In some countries, such as Spain and Portugal during the later years of their Fascist dictatorships, these reached so advanced a state as to make the transition to democratic rule fairly easy. In others, such as here in Taiwan, a president like Chiang Ching-kuo must at least yield on some reforms and must "bring along" a number of strong-minded, differing colleagues as well as appease various domestic and foreign constituencies to get his business done.

You don't encounter absolute rule, in other words, and it is the fault of a kind of Achtung delusion that you even expect it. For nobody and no group, not even the driven, arrogant Chinese government, can entirely control a nation's life. Consider this: central government official after official in China makes it plain that the highest priority is the attraction of foreign capital and technology in joint ventures that will work. To this end the Chinese are regularly sternly instructed that they must cooperate in making these ventures profitable to foreign businesses. Yet you can hardly hack your way through the accounts of American businessmen and others about how these instructions are being flagrantly disregarded, just as the newly liberalized rules governing agricultural production and some industries are being misused by some Chinese to make an extra unauthorized buck.

My own favorite illustration comes from a Western hotelier who paid $6 million for a parcel of desirable land and who, before he could get his own construction under way, saw a prefabricated Japanese hotel going up on a part of it, a situation he was unable to reverse, so that his own hotel will now have another hotel on what had been planned as its modest grounds.

You hear stories of draconian punishment for some instances of corruption—embezzlement, in particular—but concerning this other funny business you hear mainly stories of unpunished, rapacious defiance of the government's intentions. To the sight of normal people doing normal things, then, add a perception of some measure of restraint on the party or leader, some residual political expression, perhaps, degrees of resistance and willfulness within the society.

And to these must be added a third revelation: that of the complexity of relationships within the society as a whole where the regime and its assaults on people's personal freedoms and dignity are concerned. As in Argentina after the nightmare of the "disappeareds," so in China after the incomparable horror of the Cultural Revolution, it is very difficult to locate a sharp line between a class of doers and a class of done-tos. Once the readily identifiable culprits have been singled out, the division of responsibility blurs. Yes, it was a violent, mindless Mao-encouraged brutishness that took over in China and which succeeded in obliterating much of value in Chinese culture and drastically altering, even subduing the society that survives. Person after person that you meet—a mayor, a factory manager, a university president, a writer—will tell you with a small, rueful smile, "Oh, yes, I went to the countryside during the Cultural Revolution," meaning that he or she was subjected to extremes of privation and degradation we can hardly imagine.

Over supper a film director told me what it was like to wear his big metal-lined dunce cap around the factory where he then worked and how at first he tended to believed the charges against him. Others talk of lost family life and lost family members. But when you ask who was responsible besides "the Gang of Four," and what has been done to them, you will generally hear only vague remarks about Red Guards and how they were very young at the time and how so many of them have changed.

Some part of this seems to reflect a kind of lingering anxiety: people say it couldn't happen again, but they speak in the unsure tones of a terrorized family that wonders if the burglar may still be somewhere in the house. More importantly, I think, one also learns that the perpetrators were often in the same family as the victims, that the atrocities cannot be laid at the door of some discrete group designated as "they" or "the authorities," but rather that guilt is woven through communities and classes and work places and homes. These people do not necessarily wish to call each other to account. And that is the third element in the breakdown of preconceptions: the difficulty of discerning a simple subjugator-versus-subjugated scheme. There are multiple degrees of acquiescence and participation, and while there are tormentors and victims, it tends not to be always a case of a vicious, unelected minority with the guns controlling the others—despite what you may read in cheap books and political speeches.

To all this add one final pressure, proceeding from personal encounters. The mayor of Shanghai was going on the other day to a group of us about the burdens that growing prosperity had imposed on his capacity to get his job done. It was the most agitated he became during the interview. "Watermelon rinds!" he exclaimed at one point. "Watermelon rinds!" It turned out that practically everyone in Shanghai can now afford much-loved watermelon, and the mayor is at a loss for a way to dispose of the leavings. I thought: the universal mayor—he could be any big-city mayor in America keening about garbage problems. But of course there is a basic difference between the mayor of Shanghai and our mayors. He is not popularly elected, is not in our sense a "mayor" at all.

This is the old counterpart problem. American lawyers recently complained about cultural exchanges with Soviet-variety lawyers, noting that it was false to assume that there was an equivalence here. I feel the same when the "we journalists" formulation is applied to me and some government or party functionary who is putting out the local sheet.

I don't think we should reinforce, through our camaraderie, the notion that the free press is the same as the other kind. But even so, there is a sort of watermelon-rind connection among almost all professions that meet in these odd moments. One can share certain jokes and lore about the superficial aspects of the job. A deadline is a deadline. A printing press is a printing press. And besides, internal inhibitions make one reluctant to made a big deal of the distinctions. This is the pull of the personal encounter. Tempted often to declare the wide gulf between what we do as press and what the people giving us lunch or a tour of their newsroom do, setting out to extract an admission that what they almost invariably describe as journalistic inquiry is, by our lights, something else, one draws back, feeling a bit of bully, a braggart who is different from those Americans who brag about their wealth when abroad only in the choice of subject matter. So one finally demurs, subsides.

Traveling journalists, of course, have a legitimate cop-out: we are the detached observes there to ask, to learn. "All we want are the facts, ma'am," as the TV cop would say. It is part of our sacred doctrine that we don't participate don't issue manifestos or 12-point plans. We are allowed, in theory, anyway to sit down with Attila the Hun for a working breakfast without being considered his collaborators or pals.

To show our stuff we always insist on asking some questions about political prisoners and their whereabouts. But this is quite unsatisfactory. Invariably we are told that these people are few in number and that they are not in prison because of dissent, but because they committed common crimes, and after a spell of this we are expected to return to questions about debt repayment or foreign relations—and we do. A variety of influences are at work to make us back off: the discovery that all is more complicated than we thought, the sense of our role as mere recorders and, I fear, even the basic rules of the drawing room. For with the obligatory cup of coffee comes, inevitably, the amenity, the little joke about the weather, and the need to laugh and be minimally gracious—"Do you take cream and sugar, General Pinochet?"

I hate these moments. They make me wildly uncomfortable and unhappy. I don't believe I should set fire to myself in the midst of a journalistic interview—one is either one thing or the other—but something within me always objects that even these inconsequential little pleasantries are a form of indicating approval of things I would rather protest.

What is our obligation, then, as journalists? As Americans? As travelers whose approval or disapproval can have some impact on the rights of people in another country? How do we accommodate the new dimension of our understanding of these countries to an obligation to get at and report and thus make some kind of issue of their repressiveness? How do we test out what may simply be a second illusion—that of normality and tranquillity and even contentment in what we would find an insupportable dictatorship? The American traveler to Johannesburg is first struck by the evident ease and mixing of the races in the Carlton Center lobby, after all. It is only with time, further travel and some pushiness that he can get at a truth that eludes him at first. And finally to what extent does our amiable chitchat with a variety of greater and lesser tyrants and petty strongmen imply an acquiescence in or even encouragement of their rule, a kind of endorsement that can be exploited by them against protesting citizens in their own country?

These problems aren't unique to us. They beset the American government too. Watch Ronald Reagan trying to find his right pitch in a cacophony of advice about how and even whether to deal with the Russians. Consider how this country went from a 20-year sulk and denial of the reality of the Chinese government to an almost gooey affection for it after Nixon and Kissinger wisely reversed the policy madness of those two decades. Consider that in the rush of emotion that followed—and still now, here and there—it is thought churlish to point out that the Chinese rulers do many brutal things in their country. It is easier to despise totally and to forgive totally than it is to keep pressing for further, deeper, more laminated truths about what is going on in a country, and it is hardest of all to figure out right ways, to act in respect to what you have learned.

I don't feel as if I am doing much better than a torn-apart, warring, Congress-versus-executive, left-versus-right American government has over the years, but I must say, I know how it feels.●

COMMEMORATION OF THE 10TH ANNIVERSARY OF THE NATIONAL REGULATORY RESEARCH INSTITUTE

● Mr. METZENBAUM. Mr. President, November will mark the 10th anniversary of a very unique and successful institution.

In November 1976, at the initiation of the National Association of Regulatory Utility Commissioners [NARUC], the National Regulatory Research Institute [NRRI] was formed to provide research and technical assistance to public utility regulators.

We all know the tremendous importance of utility regulation to the cost and quality of public services. Yet, until the founding of the NRRI, public service commissions lacked a national research center capable of providing data, analyses, and broad policy reviews to help them with State specific issues and overall regulatory policy.

While regulated utilities could rely on large in-house staffs, paid consultants, and research provided by trade associations to supply information and analyses to advance their interests, utility regulators, charged with balancing the interests of the public and the utilities, lacked similar resources.

The NRRI filled this void and has performed this service admirably. It has performed timely, applied research on a variety of issues related to electric, gas, telephone, and water regulation. The institute has also established data bases and devised computer models to assist regulators with specific problems and issues.

By limiting its services to regulators, the NRRI has avoided even the appearance of any possible conflict of interest, and has developed a deserved reputation as an objective and valuable source of information and analysis for broad policy questions and State specific issues related to public utility regulation.

In its 10-year history, the NRRI has produced some 170 reports and analyses on major issues in four utility fields: Electric, natural gas, telecommunications, and water. These studies have addressed many of the leading issues confronting regulators today. These include power pooling and wheeling, cogeneration and avoided costs, cost overruns in plant construction, wellhead price deregulation, gas rate design, divestiture and competition in the telecommunications field, access charges, and water service pricing and rate design.

None of these reports is proprietary. Complimentary copies are sent to all public utility commissioners and their senior staffs, and the reports are available at cost to the rest of the public.

Mr. President, the NRRI is a perfect example of how a limited amount of Federal funds can be used as seed money for a public service idea which will take off and eventually succeed on its own. I worked very hard to secure an initial $2 million in Federal funds for the start up of the institute. Since then, it has flourished on its own, as a result of the quality and timeliness of its work. To date, the NRRI has attracted over $10 million to support its research efforts. The institute has received no Federal Assistance since 1981, although it does occasional contract work for some Federal agencies. Its funds are derived from NARUC member commissions and contract research and assistance money from individual public service commissions for state-specific research. In fact, the Public Utilities Commission of Ohio has been a steadfast supporter of the NRRI. It has annually placed about $200,000 in the institute for research activities. Financial assistance is also provided by the NRRI's host university—Ohio State University [OSU].

As the host of the NRRI, Ohio State University deserves a great deal of credit and praise for the institute's success. Over the last 10 years, OSU has contributed over $1 million in assistance to the research center. In addition, highly qualified graduate students and faculty members from the university provide valuable assistance to the institute's full-time staff. Ten to twenty graduate students and a half dozen faculty members participate in the center's research projects on a part time basis during the academic year, and many work full time over the summer. This cooperative relationship between the university and the NRRI can serve as a model for other university research centers. Ohio State University is to be commended for its support of, and contributions to this institute.

Mr. President, both Ohio State University and the staff of the NRRI are to be congratulated for its success over the past 10 years. The NRRI has established itself as a valuable source of information and analysis for those charged with making important and complicated regulatory decisions. Its work has benefited consumers and regulated utilities alike, by ensuring that public service commissions will have the data and research assistance necessary to make well informed decisions on important regulatory matters.

I am confident that the NRRI will continue to fill this valuable role for many years to come.●

KENNETH A. KLOOS

● Mr. SIMON. Mr. President, I would like to take this opportunity to mark

the passing of one of Alton, IL, finest citizens, Kenneth A. Kloos.

Kenneth Kloos was an active businessman and civic leader in the Alton community for many years.

He was well known for promoting growth, business, and industry in the Alton area. He extended himself to be active in many organizations which promote health, art, and cultural affairs in the community. Mr. Kloos received the Book of Golden Deeds Award from the Exchange Club for his service to the community. He also served as president of Pride, Inc., an organization which promotes the beautification and improvement of the area.

Mr. Kloos was active in the chamber of commerce, was former president of the Beltline Businessmen's Association, a longtime member of the Alton-Godfrey Lions Club and a member of Franklin Masonic Lodge No. 25 A.F. and A.M.

In addition to those activities, Ken's activities included Lions Club, YMCA, Rotary Club, Mental Health Center, and a host of unknowns, including "silent" gifts to needy people.

He was a devoted family man and church man but extended himself in a most unselfish way to help serve his fellow citizens. Kenneth Kloos will be sorely missed by his friends, but his many good deeds will live for many years.

I am pleased to make this trubute to this fine man.●

JOB SKILLS AND TRAINING

● Mr. GORE. Mr. President, October 12 to 18 has been designated National Job Skills Week by the Congress. In keeping with the focus of the week, bringing attention to job training and the job skills needs of our work force, the following article about workplace training and development is submitted for perusal by my colleagues. The article was prepared by Anthony Carnevale, chief economist with the American Society for Training and Development. The piece explores the size, scope and influence of training and development today. It first appeared in the January 1986, issue of Training & Development Journal. I ask that this article be printed in the RECORD.

The article follows:

THE LEARNING ENTERPRISE

(By Anthony Patrick Carnevale)

Workplace training and development is roughly equivalent in size of the entire elementary, secondary, and higher education systems. If that's news to you, don't feel left out. It's news to just about everybody. Workplace learning has taken a back seat to the formal education of baby boomers for the past forty years.

Largely unrecognized, corporate learning has grown to be a $30 billion industry, a silent and efficient postscript to employees' formal education. Ironically, it is training and not format education that mainly determines what a person will earn throughout his working life, and it is training and not formal education that provides all the skills for two out of three jobs.

Employers provide enormous amounts of formal training to be sure, but it is scattered throughout unrelated industries and goes largely unnoticed by the government or any other observer that might lend it importance or visibility. In fact, many of the people who train or develop other employees don't consider themselves to be in the learning delivery business. They think of themselves in terms of their primary work role rather than as training professionals.

The government provides training too, but its interest in formal training has been connected to the needs of people outside the economic mainstream. It funds, counts, and regulates training programs mainly for people who aren't yet working and who are trained in programs outside the workplace.

Workplace learning is large and likely to grow larger still. And there are signs that the workplace learning system will no longer be the silent partner in the nation's learning programs outside the workplace do not have appreciable effects on individual earnings or on institutional performance. Training outside the workplace does not create jobs; Jobs create training.

Economic and technological changes also fuel interest in training and development at work. Such changes have an impact at the point of production and the point of sale and employers are scrambling to find ways to accelerate learning and adaption on the line and where products are sold and customers served. Often such pressures encourage employers to formalize on-the-job training that has been handled informally.

Even as interest in and demand for training is growing within corporations, opinion leaders and government policymakers are showing more interest in encouraging workplace training and development to leverage individual earnings and improve the nation's competitive advantage. The new interest is a mixed blessing. It is sure to encourage an uncomfortable scrutiny of training by the government and to challenge the integrity of the training and development profession, but ultimately it will increase the size, scope, and quality of the already impressive learning enterprise.

WHERE DO PEOPLE LEARN TO DO THEIR JOBS?

Americans learn what they need to know to do their jobs in schools and on the job, formally and informally. School tends to be most important for managers, professionals, technical and sales employees, and people in publicly regulated jobs. Formal employer training tends to be important for all employees except for those in "extractive" industries—farming, forestry, and fishing. Informal job training is important in all job categories but most important in blue-collar jobs. When surveyed about retraining, however, employees tend to emphasize formal and informal training in the workplace rather than formal schooling.

FORMAL JOB-RELATED TRAINING AND DEVELOPMENT

If we exclude informal, on-the-job training in the workplace and those courses in formal schooling that have little job application, the employer training and development system is still surprisingly large. Business organizations alone provide twice as much job-related education as any other single provider. Employers provide at least 17.6 million formal courses each year to almost 15 million trainees. Roughly one in every eight working Americans participates in a formal training course each year.

Training in the workplace is not distributed evenly among industries. Governments, especially the Federal government, are the most intensive trainers because they are the largest employers of highly skilled and specialized personnel, and because promotion and compensation are tied tightly to credentials and skill acquisition. Mining is training intensive because the mining industry is highly regulated for safety. Transportation and public utilities also train heavily partly because of government regulation and safety standards. Highly specialized industries, such as finance, insurance, and real estate, also train more than the average. ASTD's recent survey of bank training showed that banks provide 1.3 formal courses per employee every year—nearly nine times the national average.

Most formal training in the workplace concentrates in the 25 to 44-year-old age group and among white-collar managers, professionals, and clericals. This doesn't mean that blue-collar employees don't get any training, but that it tends to be informal, on-the-job training.

THE BEHAVIORAL COGNITIVE SPLIT

There is a fuzzy but useful distinction between training and development that is intended to achieve behavioral or affective learning and that which is intended to impart cognitive skills. In general, the split between behavioral and cognitive training and development shows that roughly two-thirds of all formal training and development is cognitive and one-third is behavioral. The behavioral/cognitive split in informal learning on the job is unmeasured. In theory, both kinds of informal learning take place. One learns "how to" perform specific tasks on the job informally. At the same time, one learns the affective skills necessary to work with others as a productive member of a team.

WORKPLACE TRAINING INSIDE AND OUT

Most employer-based training in the United States takes place in-house, but more than a third is done outside. The principal outside providers are schools. Among the nonschool providers are consultants, ventors, and professional organizations. At this point it is difficult to predict the future distribution of in-house and outside training. Competitive pressures to link the training and development function to the specific needs and strategic directions of firms are likely to encourage training in the context of a specific culture. Those pressures will increase in-house training. Alternatively, cost pressures are likely to encourage external training paid for by employers.

The role of public and not-for-profit institutions is the wild card in the future of employer-based training. Schools are losing their traditional clientele as the baby boom ages beyond their reach. Schools are already showing an intense interest in employer markets.

The possibility of substantial training tax incentives for employers also clouds the picture. Current legislative proposals vary according to whether they encourage employers to make or buy training and the extent to which they would allow employers to buy from providers other than traditional schools.

COSTS AND BENEFITS

Workplace learning—former and informal—provides substantial benefits to individuals in the form of increased earnings

and to institutions in the form of increased productivity. Analysis of data available as far back as 1929 consistenly shows that human factors are the major source of growth in individual earnings, institutional productivity, and national income. Moreover, the same data demonstrates clearly that "working smarter"—the ability of working teams to learn together—is the most significant among human factors in producing income and productivity growth. Projections of economic growth through the eighties, based on U.S. Department of Commerce data, show similar patterns. Plant level data is sparse but tends to corroborate national analysis. For instance, an analysis of 1983 census data shows that those who received informal training on their job improved their earnings by five percent more than those who didn't receive the training. Those who received informal training improved their earnings by 13 percent more than their peers. The effects of training on workplace productivity also appear powerful. For instance, after adjusting for inflation, the productivity returns to on-the-job training was 12.6 percent for those who were college-educated and 19 percent for those without college. A 1984 study found that 32 percent of employees were more productive in the twelfth than in the third week of employment, suggesting improvements due to learning on the job.

Studies that map the sources of differences in the economic success of individuals are equally flattering to workplace learning.

Earnings are largely a function of formal and informal learning on the job. Individuals tend to leverage their incomes by translating formal and informal learning on the job into higher wages. The best jobs are those that incorporate the most learning. Access to jobs with a high training and development content is the key determinant of lifetime economic success. Econometric studies have consistently shown that only 15 percent of the variation in income among Americans can be accounted for by formal education. The remaining 85 percent is accounted for by learning in the workplace. Earnings are driven by the ability of working teams to learn together in the context of appropriate technology.

If trainers are so darned important, why aren't they rich, famous, and powerful? There are lots of reasons. Primary among them, however, is the simple fact that we don't understand what we know. We know that normal and informal learning in the workplace produces large earnings and productivity gains but we don't understand how. The learning process in the workplace remains a black box. The state of the theoretical and practical art of leveraging earnings and productivity through training and development is relatively primitive. While we have devoted billions to research and dissemination of best practices in formal education, workplace training and development remains the silent partner in the nation's learning enterprise.

GROWTH AND DECLINE

A variety of forces account for growth and decline in the training and development function in companies. The trickle-down effects of economic, technological, and demographic trends are distant but powerful. For instance, at present huge budget deficits translate into high interest rates that squeeze employer spending and discourage all forms of investment. The same deficits encourage an overvalued dollar that makes American products more expensive relative to foreign products and further squeezes profits. At the same time, the competitive squeeze demands greater efficiency and accelerates economic and technological change. Employers are faced with the difficult task of maintaining or increasing their share of a shrinking economic pie by investing more in functions that will boost efficiency and adaption. To the extent the training and development function has established its legitimacy as a cost-effective lever for promoting efficiency and adaption, it will be used as a strategic tool. To the extent that it is regarded as ineffective and costly, it will free the working end of the budget cutter's axe. A third, more common scenario is for employers to demand that training be more cost effective. A surgical approach to cost cutting or a decision to make rather than buy training and development is most common in these cases.

Major economic, technological, and demographic forces can also affect training and development. Recent trends show an eagerness to focus training and development where change hits hardest—at the point of production and the point of sale. The lions' share of training and development increases appear to be among middle managers, first-line supervisors, professional and technical employees, and sales and marketing personnel.●

TRIBUTE TO LAWRENCE L. BROWN III

● Mr. HATFIELD. Mr. President, I would like to take this occasion, before this session comes to a close, to remember Lawrence L. "Lonny" Brown III, a distinguished career member of the Senior Executive Service in the U.S. Department of Education.

"Lonny," as he was known to his friends and colleagues, was Director of the Division of Elementary, Secondary, and Vocational Analysis in the Office of Planning, Budget and Evaluation. He died all too suddenly on September 20, 1986, at the height of his career.

In his capacity as Division Director, Lonny was responsible for directing the review and analysis of budget, legislative, and program policy for all the Department's elementary, secondary, and vocational education programs. These programs number over 40 and have a total budget of almost $7 billion.

Over the years, Lonny worked with the staff of the appropriations and authorizing committees of Congress on numerous important budgetary and legislative matters. He was known for his expert program knowledge and made numerous contributions toward the formulation of public policy. In particular, he excelled in bringing the results of program research and evaluation to bear on improving policy decisions. He was also known for his outstanding management skills and for his ability to work well with people. Lonny had many friends and colleagues in the executive branch and on the Hill.

I would like to take this occasion to offer my personal sympathies to his immediate family, including his wife, Carol, and his daughter, Susan. Lonny will be missed and remembered by all who knew him.●

ABORTION AND INFORMED CONSENT: MICHIGAN

● Mr. HUMPHREY. Mr. President, I ask all my colleagues to carefully consider this letter from Annette of Michigan, and consider cosponsoring my informed-consent bill, S. 2791.

The letter follows:

[Letter undated (approx. July 1, 1986)]

HONORABLE SENATOR GORDON HUMPHREY:

I am writing to you with a concern I have over the lack of counselling given to women prior to, or at the time of, considering abortion. I sincerely believe there should be a law specifically stating what information must be given to a woman in a crisis pregnancy situation. After the complete counselling session has been executed, there should be at least a 72 hour waiting period before an abortion can be obtained. This is a very emotional situation, no matter what the circumstances, and a hasty decision to abort cannot be reversed once the abortion is complete. I personally have experienced an abortion where there was literally no counselling, no options given and no time to contemplate my dilemma.

I was in the hospital, scheduled for a tubal ligation at 8 AM. At 1 AM I was awakened by a doctor to be informed that I was pregnant. This doctor informed me that he personally did not believe in abortion for any reason, but legally he had to offer the option to me. Well, I had already been sedated for sleep and was not real coherent, and this doctor was talking about abortion. I had never even considered an abortion. I wasn't really sure what it all meant. I'd seen newsreels at 6 o'clock with protestors declaring it was a woman's right, but that's where my knowledge ended. I had a gut feeling that it was wrong, but I didn't know why.

About 5 minutes later, 2 other doctors came into my room to see if I'd decided. They explained it wasn't like we were discussing a baby, this was just a blob of cells, tissue adhering to the uterine wall. Why it wouldn't be a baby for months. They proceeded to tell me how it can all be done at the same time, the abortion and the tubal. After all, I was already prepped for surgery.

If those doctors would have been required by law to give me all the options and a time period to make an intelligent decision, I would never have murdered my baby. I might have miscarried, I had a history of that, but I would not have chosen an abortion. Women have a right to be given ALL options open to them and a length of time to intelligently consider each option and the repercussions involved with each.

Thank you for your time and interest.

Sincerely,

ANNETTE HOUSE,

HOLT, MI.●

TEST BAN RESOLUTION IN KANSAS CITY

● Mr. EAGLETON. Mr. President, yesterday as the President of the United States was landing in Reykjavik, Iceland for his meeting with Soviet leader Gorbachev, the city

council of Kansas City, MO was busy with their own efforts to ensure world peace. At 4:30 p.m. the city council passed a resolution calling on the President to "immediately ban nuclear testing and to seek a mutual and verifiable Comprehensive Test Ban Treaty with the Soviet Union."

That resolution should send a strong message to the President. It says that while the people of America's heartland are "four square" behind their President in his negotiations with the Soviets, they are also greatly concerned about the quickening pace of the nuclear arms race. They know that absent nuclear testing, it is very difficult for either superpower to upgrade their nuclear forces and thereby further destabilize the nuclear balance.

The resolution also asks the President to "immediately undertake a program that would replace the jobs that are lost from the nuclear weapons industry as a consequence of a test ban policy." In so doing, the city council recognized the enormous sum of money that we dedicate to nuclear weapons development. Nuclear testing is, however, a capital intensive activity and I suspect that the few engineers that might be put out of work by a test ban would quickly find lucrative and more productive applications for their talents.

The importance of this resoluton is underscored by the fact that Kansas City is the 176th local governmental body to pass such a resolution. It comes on the heels of a similar resolution that was passed by the St. Louis City Council last August.

Mr. President, I applaud the leaders of Kansas City, MO for speaking out as they have for a more responsible government, a more attentive chief executive, and, most of all, a safer world in which to live.

I ask that the text of the city council's nuclear test ban resolution be printed in the RECORD following this statement.

The resolution follows:

RESOLUTION ON BANNING NUCLEAR TESTING

Whereas, the economic and security interest of the city of Kansas City would be best served by a mutual and verifiable suspension of nuclear testing coupled with a program of converting jobs in the nuclear related industries in Kansas City to other related employment opportunities; and,

Whereas, a ban on nuclear testing can be verified with high confidence by a worldwide network of seismic monitors, satellites and other verification technology, the use of which would be a necessary condition to a test ban policy; and,

Whereas, a ban on nuclear testing would provide our community with greater security by assuring that new, more sophisticated, and dangerous weapons would not be developed in the U.S.-Soviet nuclear arms competition; and,

Whereas, the U.S. and U.S.S.R, each, have the power to trigger nuclear winter, independent of any defensive action of the other, fifty times over;

Whereas, the U.S. currently has the power to destroy the 200 largest cities in the Soviet Union 2,000 times over—roughly the same capacity the U.S.S.R. holds to overkill the cities of the U.S.—including Kansas City.

Whereas, the most effective antimissile defense conceivable to be installed in twenty years could not be more than 95 percent effective in destroying the enemy's total aresnal, the remaining five percent provides two and a half times the necessary trigger of nuclear winter.

Whereas, testing for greater nuclear arsenals cannot possibly add to the security or deterrent force of either adversary—no matter which side produces or controls the newer weapons;

Whereas, the uncertainty of the U.S.S.R. joining the U.S. in a mutual ban on testing has been a major impediment in the past, and now that the U.S.S.R. has pledged and is honoring a unilateral test ban easily monitored and confirmed by the U.S.;

Whereas, the Soviet Union has not tested since August, 1985, and has offered to allow on-site inspection for verification of adherence to a long-term nuclear weapons test ban; and

Whereas, spending for the arms race is contributing to record budget and trade deficits that threaten our nation and our city's economic security, while programs providing essential assistance to communities throughout the country are being cutback with its resultant effects on jobs, peaceful uses of technology, talents, skills and investment; and,

Whereas, Community Development Block Grants, Urban Development Action Grants, low income housing programs, General Revenue Sharing funds and other Federal programs that are vital to the quality of life in Kansas City have been and are being cut or eliminated because new, experimental and exorbitantly expensive nuclear weapons systems are demanding an ever greater amount of the Federal budget.

Whereas, in the event of a nuclear attack the local governments will bear the brunt of the responsibility of providing food, shelter, and medical attention for the men, women, and children of the community.

Whereas, the Kansas City, Missouri City Council is concerned about the loss of the economic base and jobs that are related to the nuclear weapons industry; therefore

Be it resolved by the City, Missouri, that the City Council of Kansas City calls upon the President of the United States to immediately ban further testing of nuclear weapons and seek a mutual and verifiable, comprehensive Test Ban Treaty with the Soviet Union; and that the President immediately undertake a program that would replace the jobs that are lost from the nuclear weapons industry as a consequence of a test ban policy. This body also calls upon our members of congress to support legislation that would enact a moratorium on nuclear testing, to be continued as long as the Soviets do not test. Copies of this resolution shall be forwarded to the President of the United States and to the Senators and Representatives from our congressional delegation.

REAUTHORIZE MARINE FISHERY PROGRAMS ADMINISTERED BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

● Mr. GORTON. Mr. President, I strongly support the committee amendment to S. 991, which, among other things reauthorizes important marine fishery programs administered by the National Oceanic and Atmospheric Administration [NOAA]. The amendment includes three separate bills of which I was an original cosponsor—S. 991, which passed the Senate as a general fishery authorization bill last year; S. 2583, to provide for an Under Secretary of Commerce for Oceans and Atmosphere, an Assistant Secretary for Oceans and Atmosphere and a Chief Scientist position at NOAA; and S. 958, reauthorization of the Magnuson Fishery Conservation and Management Act [MFCMA].

The committee bill is divided into four titles: Title I includes amendments to the Magnuson Fishery Conservation Act [MFCMA]. Title II sets up a new seafood promotion program that is intended to increase domestic and foreign trade of fishery and seafood products. Title III revises the Commercial Fisheries Research and Development Act. Title IV contains miscellaneous provisions such as the establishment of a Chief Scientist postion at NOAA.

I would like to focus on two aspects of S. 991. First, I am pleased that we were able to work out amendments to the Magnuson Act. The changes to the act strengthen its management and enforcement provisions of the act. The MFCMA is the single most important law pertaining to the management of the fisheries resources located within our 200-mile fishery conservation zone. This law would be reauthorized through fiscal year 1989.

Second, the bill provides waivers from restrictions on vessel documentation for two vessels located in the Pacific Northwest—the *Kodiak Queen* and the *Northwind*. The *Kodiak Queen* is a vessel that was built in California in 1941 for the Department of the Navy. It was placed under Liberian registry in 1962 when it was purchased by foreign interests. In 1967, the vessel was acquired by a company in Alaska, and placed under U.S. flag and registry. The vessel has since remained in the ownership of U.S. citizens. The *Kodiak Queen* is documented for use in the fisheries. It has been engaged in the crab fishery in Kodiak, AK. Its present owners would like to expand the use of the vessel in coastwise trade for other fishery purposes such as tendering salmon, herring or freight.

The *Northwind* is a motor yacht built in Wisconsin in 1930. In 1938, the vessel was transferred from United

States to British ownership, to be used in the service of the British Government and Royal Navy. The *Northwind* is now located in Seattle, WA. The vessel has undergone substantial renovation. The present owners wish to engage in the coastwise trade as a pleasure charter in and around Puget Sound.

Mr. President, S. 991 as amended by the committee amendment is the result of a lot of hard work. I thank the chairman as well as the Commerce Committee staff for their efforts in getting this bill before the Senate. I urge my colleagues to adopt this legislation expeditiously.●

A FORCE FOR GOOD

● Mr. SARBANES. Mr. President, the recent death of Rabbi Jacob B. Agus, scholar, teacher, leader, theologian, writer and leader in the efforts to expand the Jewish-Christian dialog, is a loss not only to Beth El Congregation and Baltimore, but to all who have been involved in building bridges among the various faiths.

During all his extraordinary career, Rabbi Agus was proud of his role as "a community pastor, to have helped preserve a Jewish mentality, to have helped people with some serenity through these cataclysmic times, to be an interpreter of Jewish values." This is, as Rabbi Agus said, "the greatest challenge one could wish."

Rabbi Agus met that challenge every day of his life. I ask that an article from the Baltimore Evening Sun outlining some of Rabbi Agus' accomplishments be included in the RECORD.

The article follows:

[From the Baltimore Sun., Oct. 7, 1986]

A FORCE FOR GOOD

(By Albert E. Denny)

The death of Jacob B. Agus, rabbi emeritus of Beth El Congregation, removes an intellectual giant from the American rabbinate and represents a stunning loss to Baltimore's Jewish community.

An internationally recognized scholar, teacher, philosopher and theologian, Agus' penetrating insights into religion and his enlightened views of contemporary Jewish life made him a leading force in the Conservative movement. He was the author of nine scholarly books, some of them used as texts in religious courses on the university level, and dozens of articles that appeared in a wide range of Jewish and secular publications.

He lectured at Johns Hopkins University and other colleges in the United States and abroad, and for 12 years was editorial consultant to the Encyclopedia Britannica on articles of Jewish content. He served as Visiting professor of modern Jewish philosophy at Temple University, Dropsie College, the Reconstructionist Rabbinical College and St. Mary's Seminary.

Perhaps the most durable achievement in the life of Jacob Agus was his long-time, assiduous involvement in building bridges of understanding between the various faiths. Beginning in the early 1950s and extending to his death, the rabbi worked unremittingly at promoting interfaith harmony, representing Judaism at various ecumenical conferences in the United States, South America and England.

He was a member of a trialogue composed of Jewish, Christian and Muslim leaders sponsored by the Kennedy Institute on Ethics at Georgetown University in Washington. As professor of classical Hebrew studies at the Ecumenical Institute of Theology of St. Mary's Seminary and University, he taught a course entitled "Matthew—The Jewish Gospel," which analyzed Matthew in the light of Jewish literature that was contemporary with the Gospels.

"When the Gospels are placed within a Jewish context and interpreted accordingly," the rabbi explained, "there will result a much deeper appreciation on the part of Jews with Christianity and Christians with Judaism."

Even this year, despite his failing health, the 75-year-old rabbi took an active role in discussions of the ninth national workshop on Christian-Jewish relations held in Baltimore. The conference presented an award to him "for his pioneering efforts in Jewish-Christian dialogue."

Born in Poland on Nov. 8, 1911, the future rabbi lived for a time in what was then Palestine, and was brought to the United States in 1927. After his ordination as an Orthodox rabbi in 1935, he held a pulpit in Cambridge, Mass., later earned a doctorate from Harvard in the history and philosophy of religion and served Orthodox synagogues in Norfolk and Chicago.

Chafing under the constraints imposed by the rigid Orthodox beliefs that clashed with his emerging liberal views, Agus made the leap to a Conservative pulpit in Dayton, Ohio in 1942. He was invited to Baltimore in 1950 to take the spiritual reins of the newly formed Beth El Congregation.

The innovative ideas that he brought to Baltimore meshed perfectly with the desire of Beth El's founders to introduce a liberal brand of Conservatism to the community. In the ensuing three decades, the congregation built its membership to 1,400 families, and Beth El and its dynamic rabbi were catapulted to national prominence.

Agus might have achieved greatness as a full-time university professor, but he never regretted his decision to enter the rabbinate. He once said, "As a community pastor, to have helped preserve a Jewish mentality, to have helped people with some serenity through these cataclysmic times, to be an interpreter and pastor of Jewish values—that is the greatest challenge one could wish."●

LEV NAVROZOV ON MORE CIA INTELLIGENCE FAILURES

● Mr. HELMS. Mr. President, the CIA has repeatedly failed to predict accurately the Soviet military threat, or to understand in any adequate way Soviet global intentions. It appears that the CIA has a methodology for estimating Soviet military expenditures which produces gross underestimates. By the CIA's own evaluation, its current estimates of Soviet strategic forces 5 years into the future will not come even close to being accurate 5 years hence.

Mr. President, I believe that the American people are not getting their money's worth from the CIA. For the many billions of tax dollars spent by CIA, we seem mostly to be getting only underestimates of the Soviet military threat, bungled covert operations, bungled defections of Soviets, bungled counter-intelligence operations against CIA defecters, and even bungled planning and programming of technical collection resources.

Mr. President, Mr. Lev Navrozov, who emigrated from the Soviet Union in 1972 at the height of "detente", has become one of the most articulate and knowledgeable critics of the CIA. Lev Navrozov has made a very careful study of over 77,000 pages of declassified materials from CIA. He bases his critiques on these declassified CIA estimates as compared to his own profoundly deep knowledge of Russia. I point out that Candidate Ronald Reagan in 1978 and 1979 quoted extensively from Lev Navrozov's critiques of CIA during his campaign, thereby bestowing considerable credibility upon Mr. Navrozov.

Mr. President, I ask that the following articles from the *New York City Tribune* be printed in the RECORD at the conclusion of my remarks:

First. "Soviet Anti-Missile Defense Which Was Not", by Lev Navrozov, January 1, 1986;

Second. "The 'World's Most Important Statistic' and the CIA", by Lev Navrozov, January 22, 1986;

Third. "The Soviets' Greatest Spy—Western Free Enterprise?" by Lev Navrozov, January 29, 1986;

Fourth. "1961—The Year of CIA/MI-6's Bittersweet Triumph", by Lev Navrozov, February 19, 1986;

Fifth. "On 30th Anniversary of 'Khrushchev's Secret Speech' " by Lev Navrozov, February 26, 1986;

Sixth. "The CIA and Soviet Defection-Redefection Mysteries", by Lev Navrozov, March 12, 1986;

Seventh. "Arms Agreements? Compliance Unverifiable by CIA", by Lev Navrozov, March 26, 1986;

Eighth. "Illusions on Which CIA Was Founded 40 Years Ago", by Lev Navrozov, April 2, 1986;

Ninth. "How the CIA Bores the US Congress Stiff", by Lev Navrozov, April 16, 1986;

Tenth. "Kim Philby: Espionage Romance and Drab Reality", by Lev Navrozov, April 30, 1986;

Eleventh. "How the CIA Flunked Abysmally on Chernobyl Affair", by Lev Navrozov, May 7, 1986;

Twelfth. "What the CIA Reveals About Itself in Its Pamphlet", by Lev Navrozov, May 21, 1986;

Thirteenth. "Has US Intelligence Improved With Casey at Bat?", by Lev Navrozov, May 28, 1986;

Fourteenth. "What the Ronald Pelton Spy Case Demonstrates", by Lev Navrozov, June 4,, 1986;

Fifteenth. "How Former CIA Official Responded to Past Error", by Lev Navrozov, July 2, 1986;

Sixteenth. "Ineptness, Not Immorality, Is Main Flaw of CIA", by Lev Navrozov, July 30, 1986;

Seventeenth. "CIA and the 'Mystery' of Where Does Soviet Steel Go", by Lev Navrozov, September 3, 1986;

Eighteenth. "Classic Barter, Soviet-Style: A Spy for a Journalist", by Lev Navrozov, September 10, 1986;

Nineteenth. "What the KGB's Daniloff-Zakharov Move Signifies", by Lev Navrozov, September 17, 1986;

Twentieth. "UN Is Moscow's Best Espionage Base Worldwide", by Lev Navrozov, October 1, 1986;

Twenty-first. "Sen. Helms Ushers In New Intelligence Era for West", by Lev Navrozov, October 8, 1986.

The articles follow:

[From the N.Y. City Tribune, January 1, 1986]

SOVIET ANTI-MISSILE DEFENSE WHICH WAS NOT

(By Lev Navrozov)

Today, I begin my weekly Wednesday column on intelligence work in the sense of espionage, not in the sense of Sovietological meditations about UPI news.

Those who imagine Western intelligence work since 1917 as a series of Western espionage exploits in the Kremlin and want to hear of more such will be bitterly disappointed reading my column. Not only are they unlikely to find any more of such exploits in my column, but they will see that most "true spy stories" they know are myths, spread by Western intelligence agencies about themselves with the help of the media and hosts of intelligence/espionage writers who copy their true spy stories from each other like Victorian authors of "true ghost stories" copied them under the assumption that the more minute the details copied, the truer the ghost story was—or at least seemed.

I proceed from the assumption that the West needs espionage in totalitarian societies, not ghost stories—I beg your pardon, I mean—not spy stories. Hence the West needs a critical analysis of intelligence/espionage as is.

Mine is based on (1) primary sources, such as the CIA's testimony before Congress, (2) common sense, such as the belief that Allen Dulles could not be on May 21-27, 1956, at his post of Director of Central Intelligence in Washington DC, if incontrovertible evidence shows that his corporeal self (and not just his ghost) was in Canada at the time; and (3) the existential experiences of those who spent a lifetime in a totalitarian society, such as yours truly.

Between 1965 and 1971, we lived near the international Vnukovo airport, 16 miles from Moscow, Russia.

Whenever a taxi cab sped us from Vnukovo to Moscow, a strange spectacle on the right side of the highway would open to our view: a futuristic composition out of high-voltage insulators, transformers and other such paraphernalia.

"What's that?" I would ask the taxi driver.

"Anti-missile defense," he would answer conspiratorially on the understanding that the information so confidential could only be shared with especially good customers.

Don't tell me how secretive the Soviet regime is. And here every foreigner going from the Vnukovo airport to Moscow could photograph from his car a Soviet anti-missile defense site even without telescopic lenses, for the site began just 10 yards from the highway.

Work on anti-ballistic missile (ABM) defense system in the United States naturally began in the early 1960s, as soon as intercontinental missiles had come into their own. The Soviet military was in despair. ABM defense required more sophisticated computers than did missiles, and that was just the field in which the Soviet war-oriented economy still lagged far behind, too late had the Soviet planners realized how important computers would be for warfare.

The U.S. ABM defense would reverse the global strategic situation. Without it, Soviet missiles could destroy the United States. Even if the United States could retaliate in kind, the very possibility of mutual destruction enhanced Soviet strategic prestige. Thus the possibility of mutual destruction of a terrorist and his important hostages enhances his prestige by equalizing his and their survival chances. The Soviet rulers could always say: "If the worst comes to the worst, remember that we will all blowup."

The U.S. ABM defense would cancel this mutual destruction possibility and introduce, instead, the development of ABM warfare, in which the Soviet armed forces would be notoriously behind. From the glory of the world's first Soviet space satellites and intercontinental ballistic missiles in the late 1950s, the Soviet regime would go back to the status of a second-rate military power in the early 50s.

How could they make the United States stop further development of its ABM defense system?

I doubt that any Western-born expert on the Soviet Union inside or outside the Western intelligence communities had ever heard, until a few years ago, about the Main Directorate of Strategic Camouflage, which had been founded in the Soviet General Staff in 1964 under the leadership of the then General and later Marshal Nikolai Ogarkov (The same person who coped easily with a battery of Western journalists at a news conference after the Soviets shot down a South Korean airliner with 269 people aboard in 1983).

It is known or understood even less that the Directorate's aim is not only to conceal real Soviet weapons systems, but also to create dummy weapon systems to mislead the Western intelligence communities.

The shrewd Ogarkov's solution was simple:

Let us create our dummy ABM defense for the benefit of the CIA. The all-seeing CIA will detect and report it to the U.S. government, Congress and hence the public. The Americans will think that we are even ahead of them in ABM defense. So they will conclude that the best solution is to sign with us an ABM treaty, to halt all further development of ABM defense in both countries, that is, in the United States.

First there began to appear in Soviet open military publications, which many Western experts in and out of the Western intelligence communities love to study, frequent references to Soviet achievements in anti-missile defense.

Shown on the Red Square parade in 1964 was a missile codenamed "Galosh" by NATO because it was always inside a ribbed container. It was decided that Galosh was an anti-missile missile, though as of today, no-one in the West has ever seen it without its galosh-like container and cannot vouch that it is not just a length of pipe.

I have the impression that Ogarkov put those galoshes on those lengths of pipe to make them easily identifiable on space photographs. In sunny weather, the ribs, each of which is at least a foot long, by my measurements, cast sharp clearcut shadows on the sunny part of a galosh and stood out, brightly illuminated by the sun, on its shady side. The CIA immediately identified 64 Galoshes around Moscow, four sites of 16 Galoshes each.

In Soviet documentaries, a Soviet missile shot down another, except that the narrator did not explain that this was no feat if both Soviet missiles were launched by ordered trajectories to hit each other.

Ogarkov's finishing master stroke, however, was the building of dummy ABM bases, like the one near Vnukovo airport, so that they could be observed by foreigners in the Soviet Union.

The CIA could not miss the Vnukovo base. Going from the airport to the U.S. Embassy in Moscow were those of its staffers who were on the CIA's or the Defense Intelligence Agency's payrolls. What an opportunity for honest-to-goodness espionage Ogarkov had offered them!

The Soviet-American ABM treaty was signed in 1972 and thus the development of ABM defenses in the United States was halted for 13 years, up to 1983, when that wicked President Reagan revived it in his Strategic Defense Initiative, to the disgust of the Concerned Scientists and the Soviet Politburo.

Naturally, the Soviet military based those 13 years to advance Soviet ABM defense as much as possible.

Today, the Main Directorate of Strategic Camouflage seems to be pondering a new tack: to rig up and show dummy missiles that allegedly will reduce U.S. anti-missile defenses to a "pile of junk." At least, the first "Soviet military papers," explaining just that, already have appeared, and one of them has been reported in The New York Times in dead earnest.

THE "WORLD'S MOST IMPORTANT STATISTIC" AND THE CIA

(By Lev Naurozov)

A couple of years ago The Washington Post spoke of the "world's most important statistic." What is it?

According to the Post, it is the percentage of military output in the Soviet Gross National Product. That is to say, "What portion of Russia's goods and services is intended for military purposes?"

For the United States, the answer would be simple. You'd buy the latest World Almanac or some other such book for five bucks, look up the defense budget estimate for, say, 1983—$245 billion—and come up with 7%.

For Russia you buy an official statistical book for 3 rubles and learn that 12.8 billion rubles was spent on defense in 1965, for example.

Yes, but what rubles? The rulers of Russia set all the prices, and those for military goods and services are unknown. Therefore, the rubles with which the Soviet Ministry of Defense procures guns may have little to do with the rubles with which a Soviet inhabitant buys butter.

It is equally futile to convert these rubles into dollars according to the official ex-

change rate, as is usually done by the Western media.

Let us try, therefore, to gleam from indirect clues some notion of the proportion of Soviet goods and services intended for military purposes in the last quarter of a century.

In his tapes Nikita Khrushchev recalls: "[The Soviet physicist Peter Kapitza] invited me to his laboratory." The purpose was, of course, to persuade Khrushchev to allocate money for Kapitza's research project.

The Encyclopaedia Britannica gives Kapitza an impressive four-paragraph entry: in 1929, at the age of 35, while living in Britain, he was "elected to the Royal Society [of London], the first foreigner in 200 years to become a member."

Khrushchev says on tape: "We didn't give him the money at that time either. . ."

But why? Khrushchev had made inquiries about the subject of Kapitza's research, and was told that it was not very military. Khrushchev reminisces on tape:

In a while Kaptiza requested me to receive him again. And I did. Then I asked him bluntly: "Why don't you, Comrade Kapitza, take up a defense subject?"

So, Khrushchev, that founding father of détente, could not bear to see even one outstanding scientist without demanding that he take up a military line of research rather than the line the great scientist was inclined to pursue.

In the post-Khrushchev era, at a closed lecture to editors in Leningrad in 1965, Abel Aganbegyan, a member of the Soviet Academy of Sciences and director of the Novosibirsk Institute of Economic and Industrial Organization, said:

"Of approximately 100 million people in the U.S.S.R. who work, about 30–40 million are employed in the defense industry."

High-level economist though he was, Aganbegyan had no access to the Soviet secret statistics on those "employed in the defense industry." His figure was only an educated guess according to the data at his disposal.

But the West has not known any more reliable figure than his guess of 20 years ago.

How did it reach the West? Someone who was present at Aganbegyan's closed lecture managed to record it and gave the text to a samizdat (underground) typewritten magazine. After it had ceased publication, several back issues reached the West, and Aganbegyan's guess became known here.

What about those who are not "employed in the defense industry?" This is not secret sometimes. In 1983, in an edition of 50,000 copies, the Soviet publishing house "Music" printed a book for kindergartens entitled In the Army We Will Serve: Songs, Plays and Poems for Children of Junior Age (from three to six) With Piano (Accordion) Accompaniment.

Listen:

"We don't yet go to school/
But like soldiers on we march!
Chorus: In the army we will serve. . . .
An officer I want to be/To rush ahead in all attacks!
Chorus: In the army we will serve. . . ."

How do you like this little cute poem for tots:

The sun trumpets its golden horn,
"Glory to the hero-warrior!"
The enemy is routed, smashed and destroyed,
"Glory to the hero-warrior!"

The plays for tots are a subject apart. They reduce to drumming, marching, drumming again and are actually a sort of drill exercises to instill military subordination and leadership from infancy. The goal of the whole project is to make a tot enjoy the prospect of being a cog in the global war-machine.

Yet all such writers, composers, teachers, educators, editors, book designers, printers, pianists or accordion players are not "employed in the defense industry." Nor is their activity secret—possibly because children of three are not thought to be sufficiently responsible to sign "obligation of non-divulgence of closed data."

But obviously, all the adults involved in this "aesthetic education of junior-age children" are also engaged in the maximization of the country's global power.

The question is, who is not. After all, those "employed in the defense industry" or even those 3-year-olds who sing about how "in the army we will serve" have to eat, for example, and those who work to provide them with what may be defined as "poor irregular war food rations in peacetime" are also involved in the same all-out military effort.

Now, how has the CIA evaluated the military share in the Soviet goods and services—the "world's most important statistic"?

The CIA kept repeating its absurd figure every year—up to 1975 inclusive.

Before 1976 the CIA's figure was from 6 to 8 percent, roughly the same as for the United States. But since the total output of Soviet goods and services was far smaller than its U.S. counterpart, the Soviet military output must have been far smaller too, the CIA reasoned.

In 1976 the CIA finally notices that inexplicably, Soviet weapons had first overtaken American weapons and then began to surpass them. Then the CIA declared that it had been mistaken between 1957 and 1976 and doubled its figure for the proportion of Soviet military output in the Soviet Gross National Product, where this figure roughly stays in 1986. Well, before 1976 the CIA's "most important statistic" was laughable, while now it is only 50 percent so.

"Can't we make a mistake?" is the CIA's plea. Yes, but what kind of mistake? To say, about a society where even children of three "march like real soldiers," that it spends less for military purposes than the United States does, means just to know nothing about that society.

The Soviets' Greatest Spy—Western Free Enterprise?

(By Lev Navrozov)

We have heard that we live in one of the open societies, called "the West" for short, in which Soviet espionage can easily operate by definition.

This is an understatement. In the West, information which would be considered top secret military espionage data in the Soviet Union is pushed on everyone for free with aggressive high-pressure, salesmanship, or as the expression goes, with the hard sell. Hereby I announce a contest (no cash prizes) for the best term for such societies. The hard-sell-of-military-data societies?

MILITARY MARKET

Here in front of me is the Jan. 18 issue of the British *Jane's Defense Weekly* which the mailman has just brought and thus inspired me to write this column.

Jane's is one of the numberless Western magazines treating military Research & Development, the production of weapons, etc. as a "military market"—just like any other market.

All this splendid military merchandise beautifully displayed on the pages of *Jane's* has to be sold in a fierce competition, right?

Now, to sell it you must advertise your product as smartly as possible. The customers must know that your scientists and engineers have just conceived of a submarine which will be better than any other submarine on the market. Orders can already be filed. Negotiations are on. Our customers are always right, our salesmen are always bright.

"Yes, sir, only our company in the West will be able to produce that submarine. The Soviet military, sir, will perhaps be able to produce it too—as they have learned about our concept from *Jane's Defense Weekly*, but you won't buy weapons from the Soviet military, will you? Yes, sir, the Soviet military will perhaps be able to sink our submarine—since they have learned about our concept. But you are not going to fight *them*. I hope not, sir. You intend, I take it, to fight Tararabumbia or is it South Trali-Vali, sir? If you place an order ahead of Trali-Vali . . . The right decision, sir. We'll formalize it before lunch, sir. Now I don't envy Trali-Vali, ha-ha-ha! Unless it's Tararabumbia, of course."

MIL BIZ IS LIKE ANY BIZ

My subscription to *Jane's* seems to have expired, but I receive it anyway. Of course. Perhaps I'll place an early order for a dozen of those new submarines, after all, or at least will renew my subscription.

Yeah, mil biz is like any biz. From advertisements in *Jane's*, for example, you can learn what weapons every Western company produces, how they look, why they are better than any other on the market—and what the company's location and telephone numbers are. How else? Suppose you want to place an order for those new submarines. What company can afford losing potential customers by withholding its name, address and phone numbers?

There are grandiose military trade fairs, and since mil biz must know what to research, develop, produce and sell and the customers what to order, buy and deploy, magazines like *Jane's* give a wealth of background military information. Supply and demand. Who researches, develops, produces, sells, plans, intends, orders, buys and deploys what in the military field.

Poor KGB and GRU. They feel like the wives of Soviet Embassy officials at Bloomingdale's. Their eyes run away with them. What to buy? Which Western weapons to copy—and improve? What military information to use? I can imagine a Soviet submarine builder, rushing to his design office with a copy of *Jane's* in his hand: "Brothers! A new concept in submarines!"

A TORRENT VS. RARE TINY DROPS

If military information from the West comes to the Soviet military in a torrent, from the Soviet Union to the Western military, it comes in a trickle, nay, rare tiny drops.

Jane's has a special section called "Soviet Intelligence." Usually it is a photograph of, say, a Soviet fighter-bomber in a test flight, and though the fighter-bomber looks on the photo more like a blurred mangled frog than a fighter-bomber (it is, obviously, a blow-up of a satellite photograph) and is a reprint from *Aviation Week and Space Technology*, I imagine the editor rubbing his hands in glee and composing a text to conjecture the performance characteristics as well as the size and configuration of the

mangled frog—I mean the Soviet fighter-bomber.

But in the current issue there is an even greater piece of "Soviet Intelligence:" two full pages devoted to Vladimir Chernavin, the new commander-in-chief of the Soviet Navy.

Well *Jane's* even carries his photographs, somewhat blurred, too, but possibly because the *Pravda* photocamera was poor (almost everything is poor in the Soviet Union except weapons), not because the picture had to be taken by the CIA from space.

Strangely enough, while, say, the Soviet designers of submarines or missiles are total unknowns (even their names are secret until they die), the names and faces of Soviet top military men are at least allowed to be recognized by the West. But what else?

The first subhead of the *Jane's* article about Chernavin is "Patriotic Loyalty." How did *Jane's* or the CIA discover *that?* From his speeches in the Soviet newspapers.

You see, were not Vladimir a loyal patriot he would say as much in *Pravda.* Imagine a banner headline: "Fleet Admiral Chernavin: Am I a Loyal Patriot? Not By a Long (Naval) Shot!" But he didn't. So he must be a loyal patriot.

Similarly, *Jane's* makes other Soviet intelligence revelations. At the end, the magazine discovers (from an article in *Izvestia,* July 27, 1985) that "Chernavin introduced a new definition" of naval power. It is the "extent to which a particular state is able to make the most effective use of the oceans of the world." Terrific! But I think the "new definition" could be found in *Izvestia* 10 or 15 years ago too—or in 16th century British naval papers.

THE WAY OUT

In short, while the Western military market or mil biz cascades its splendors on all and sundry like Bloomingdale's and Macy's do theirs, the West receives the blurred photograph of a Soviet admiral and Soviet newspaper clichés, referred to as "Soviet intelligence" revelations.

What's the way-out? To try to eliminate or reduce free enterprise in the military field in favor of secretive bureaucracy is insane.

Free enterprise is creative. It does forge ahead in many areas ahead of the Soviet military despite everything. Now, free enterprise cannot function without a free open market and its free open advertisement and exchange of information.

Hence Western military information cascades freely and openly on all and sundry, including the Soviet military, while Soviet military information is contained inside the totalitarian reservoir which Western intelligence/espionage cannot penetrate.

The solution seems to lie in the penetration of the totalitarian reservoir by Western intelligence/espionage rather than the attempt to impose secrecy on the Western free and open military market. But more about it on future Wednesdays.

1961—The Year of CIA/MIA-6's Bittersweet Triumph

(By Lev Navrozov)

A quarter of a century ago a Soviet high-ranking official named Oleg Penkovsky and a British businessman in Moscow named Greville Winne walked through Moscow's whirling snow "on which even the KGB could not hang a microphone."

The joke is not mine, but Winne's, and hence in quotes. But whether or not the KGB can hang microphones on whirling snow, Penkovsky asked Winne to pass to Britain a package in which he suggested that he would be an espionage agent for the British Intelligence Service, MI-6.

And so he was, for about half a year, practically the only espionage agent the West ever had in post-1917 Russia—that is, in almost 70 years.

There have been many defectors from among those Soviet nationals stationed in the West—but stationed in the West, they have had no access to centers of strategic information in Russia.

Penkovsky had that access. The English-language version of his calling card said: Deputy Division Chief, Foreign Relations Department, State Committee for Coordination of Scientific [read: Military] Research.

IN WEST, MORE MAY BE LESS

The more strategically important the information a Soviet official handles, the higher his socio-economic status in the "Soviet State." The West cannot induce him to become an espionage agent with only the prospect of a post and salary in the West. His relative socio-economic status in the West will always be lower than it was in Russia—that is, in the West he will never be so much more important and wealthy than the rest of society as he was in Russia.

In his book *CIA's Secret Operations,* Harry Rositzke, who worked in the CIA for 25 years and with whom I almost came to blows on a TV program about intelligence/espionage, described an alleged successful inducement in the form of rubles. This is ridiculous. Rubles buy little wealth in Russia, since real wealth is actually distributed according to official rank—via "closed stores," for example.

Therefore, one of the strong motives for a Soviet high-ranking official to become an espionage agent for the West has to be ethical or spiritual (as it was in the case of Penkovsky), that is, connected with a strong realization that the West is right and the "Soviet State" is wrong.

But here comes a new difficulty. Those with strong ethical-spiritual motives of this kind do not usually join even the Communist Party, let alone the KGB, just as decent women do not usually go to work at a brothel. Hence, those with strong ethical-spiritual motives have as a rule no access to strategic data of national importance.

Those like Penkovsky are rare, marginal or mixed cases.

Let us suppose that a Soviet national who has access to strategic data and yet is not devoid of strong ethical-spiritual motives has realized that the West is right and the "Soviet State" is wrong.

But it's a long way from having this ethical-spiritual realization to becoming an intelligence agent for the West, something infinitely more dangerous in Russia than any other "crime."

NATHAN HALE NO PARIAH

My apartment house is called "Nathan Hale Gardens." Some day I will take a poll to see how many tenants know that Hale was America's espionage agent.

I wonder, though, if anything in the West has been named after Oleg Penkovsky. To the new American culture, grown by universities in the last 20 years, the military are the country's pariahs, while espionage agents are pariahs of pariahs.

Quite a few CIA officials themselves have been explaining at great length that the CIA is a kind of university, consisting of scholars, thinkers, analysts, philosophers—not some, God forbid, spies—and that the word "intelligence" and the name "CIA" mean just information, or analysis of information. These CIA authors have been avoiding the very word "espionage" as if it referred to something shameful, almost indecent and certainly having nothing to do with the CIA.

If this has been the West's attitude toward espionage on behalf of the free world, why should a Soviet official or officer translate his ethical-spiritual endorsement of the West into infinitely dangerous espionage on behalf of the free world? To be regarded by the West as a pariah of pariahs?

However, a Soviet official who may contemplate conducting intelligence information for the West does not live in the West. He has been living in a Soviet environment where it was drilled into his mind since infancy that no creature on earth is more heinous than a spy for the West—a loathsome traitor and an unspeakable scoundrel.

If he is uncovered, his wife, his children and his friends may think of him in just such terms, while all Soviet media without a single dissenting voice will depict on millions of screens and printed pages how monstrous he is.

Yes, Penkovsky was a miracle. A rare statistic. A godsend for the West. Yes, 1961 was the year of triumph for MI-6 and for the CIA, which had joined MI-6 on the Penkovsky case. A real espionage agent worked for the West in Russia.

Those billions of dollars taxpayers had put into the CIA seemed to be now justified to some degree. It was now only necessary to preserve Penkovsky for at least 10 years and then retrieve him.

All was well for about half a year, as long as Penkovsky met only Winne (a contact authorized by his Soviet chiefs) and went abroad (a privilege of the chosen few that he also enjoyed) to pass on his espionage data on behalf of the free world.

Now in the fall of 1961, MI-6 and the CIA decided to use their expertise. In the spirit of an old sloppy spy thriller, they instructed Penkovsky to approach the wife of a British embassy official (she was an MI-6 agent) seated in a park in Moscow with her children and present one child with a box of candy that actually did not contain candy (Oh, the diabolical joint cunning of MI-6 and the CIA!) but Penkovsky's espionage data.

Since all members of the British Embassy in Moscow and their families have always been watched all round the clock, Penkovsky was destroyed then and there, though the KGB did not "nab" him on the spot, of course, but continued to watch him for about a year, a standard KGB time for "investigation."

I always wondered what MI-6 and the CIA meant to tell the KGB by this grandmotherly spy thriller of theirs—that high-ranking Soviet officials are in the charitable habit of walking about in Moscow's parks and giving boxes of candy to the families of members of the British Embassy?

On 30th Anniversary of "Khrushchev's Secret Speech"

(By Lev Navrozov)

Yesterday it was 30 years since the delegates to the 20th Congress of the Soviet Communist Party listened all night to Nikita Khrushchev's report, according to which Josef Stalin was not by far the greatest man in history, nay, an omniscient, kind and beloved deity, but as a neighbor of ours put it, "our Hitler, only worse."

No Western intelligence agency is impudent enough to claim it knew anything about the report when it was delivered.

Even today, 30 years later, it would have been known to Western intelligence no more than is, say, the secret "Letter Concerning L.P. Beria," the chief of Stalin's secret police, had not Khrushchev decided to pass copies of his report via Tito to the West and to Poland, where they became freely available.

WHAT THE CIA DID NOT KNOW

The CIA did not know that:

Khrushchev's report was motivated by his struggle for power only: in 1955 he still meant to succeed Stalin as Stalin's "closest associate." (Allen Dulles, then CIA director, thought Khrushchev had to deliver his report under the pressure of anti-Stalinist public opinion, led by the intelligentsia!)

Khrushchev managed to deliver the report only due to a trick of his own, taking advantage of the fact that the Presidium of the Central Committee was to be formed after the Congress, not at the congress.

The delegates listened to the report in a dead silence. (Dulles thought they argued with Khrushchev!)

The report was a scholarly bureaucratic treatise, with long quotations (the CIA wondered whether the written text of the "speech" existed).

The report was printed in a closed edition of about a half million copies and read to practically the entire able-bodied adult population of Russia at "closed" (secret) meetings.

NATIONAL CONSPIRACY

This last point is especially staggering. Suppose the entire able-bodied adult population of Russia is gathered for secret meetings to listen to a decision to the effect that a suprise nuclear-missile attack will be launched on the retaliatory potential of the West.

Comrades, we are telling you this so that you could be prepared for nuclear defense since the enemy may try some countermeasures in case his retaliatory potential has not been completely destroyed. But the enemy should not know this."

If Western intelligence agencies don't have a single agent even among the ordinary population, as it had none in 1956, the West would not know the content of such a decision, known to the entire able-bodied population of Russia. Therefore, Western intelligence wouldn't know even the fact that such secret meetings took place all over the country, as it didn't know in 1956.

A countrywide conspiracy against the West is possible, to which practically all the adult population of Russia would be privy, while Western intelligence agencies would read *Pravda* with an air of great importance and brag that "space satellites can see even a hare scampering in a field" (which, incidentally, is not true either).

But what about more narrow higher-level Soviet conspiracies to which only privileged strata of the Soviet population are privy? If the CIA knows nothing even at the Soviet grass-roots level, how can it presume to know anything at the highest level which is infinitely more secret, hidden within thousands of walls, screens and barriers of all kinds and accessible only to the most privileged few?

NO ANSWER FROM CIA

In my last column (Feb. 5, 1986) I wrote about my Appeal to the CIA's Information Review Committee to give the CIA a fair chance to dissociate itself, on the occasion of the 30th anniversary of "Khrushchev's Secret Speech," from the inane canard that the CIA had allegedly almost purloined the text of the speech right after the 20th Congress if not at the 20th Congress or before it.

True, the head of German intelligence, Reinhard Gehlen, also bragged that his agency and no other secured the complete text of the "speech," and certainly had done so before the CIA or anyone else secured any text at all.

Similarly, it has been claimed that the Israeli intelligence agency Mossad, and no other, secured the "speech."

The canard that a Western intelligence agency purloined Khrushchev's "Secret Speech" took wind in 1962 with the help of Dulles himself and has been flying about since then frantically in all directions.

To begin with, members of each of the three agencies—the CIA, Reinhard Gehlen's "ORG" of West Germany and the Mossad of Israel—have been claiming that *their* agency, and no other, acquired the report. The absurd impression they have been creating is that Khrushchev's report existed in one copy, and the only problem is to decide which intelligence purloined that unique copy and thus immortalized itself.

It is forgotten that the Soviet bloc countries have even "closed" newspapers for their ruling elites, not to mention texts like Khrushchev's report.

Current and former members of each agency "leaked" to their favorite journalists imaginary colorful details about how their agency accomplished that "espionage coup of the century."

Intelligence/espionage authors and whoever is not too lazy to write on this subject have been copying these imaginary details from each other, embellishing them, adding what their own imagination suggests and passing off the resulting concoctions as the latest inside info, straight from top secret sources.

Nothing is missing in these yarns: the CIA's spies in the Kremlin and millions of dollars in Swiss banks, Gehlen's writing of Stalin's would-be assassin, Dostoyevskian love-hate friendship between the head of the CIA's counterintelligence, James Angleton, and the head of the Italian Communist Party, Palmiro Togliatti, and whatever a spythriller author can imagine given unlimited leisure.

Those who have been spinning these yarns have never noticed that their yarn not only contradicts all the other yarns, but is also self-contradictory as such unless it is all absurd. Reputable book publishers and publications like the *New York Times* have been publishing these yarns as serious scholarly studies, often complete with source notes.

Since I am an American citizen, I thought it behooved me to request the CIA to dissociate itself from these inane boasts on the occasion of the 30th anniversary of Khrushchev's nocturnal delivery of his report. Let other Western agencies make fools of themselves by bragging of their imaginary feat.

Alas, the CIA's Information Review Committee has answered that it wouldn't be able to consider my appeal in such a short time.

The fact that the CIA was unable to acquire Khrushchev's report until and unless Khrushchev sent copies to the West via Tito and to Poland does not discredit the CIA—such an operation exceeds by many orders of magnitude the ability of Western intelligence agencies as they are today.

Something else is deplorable: the event demosntrated that Western intelligence knew nothing about what was going on in Russia behind the exterior visible to tourists or depicted in the Soviet "open" media, that is, the media available to all, in contrast to the Soviet multitiered "closed press" available to Soviet officials according to their rank.

THE CIA AND SOVIET DEFECTION-REDEFECTION MYSTERIES

(By Lev Navrozov)

When Oleg Penkovsky proposed in 1960 to become a Western intelligence agent without any remuneration, but just out of sympathy for the West, the CIA rejected him as an obvious Soviet plant—he was "too good to be true," in the CIA's opinion.

If British MI-6 had shared this bias—and fortunately, it did not—the West would have lost practically the only intelligence agent it ever had inside the strategic centers of Russia.

This shows that the bias of viewing any present or former inhabitant of Russia willing to help the West as "too good to be true" may lead to disastrous losses of vital information.

On the other hand, here was Oleg Tumanov, a defector working for Radio Liberty for about 20 years. Recently he disappeared—presumably redefected. Was he, the man in charge of broadcasting for Russia, a Soviet agent all along?

And what was Vitaly Yurchenko, who went back to Russia last November? A KGB agent who tricked the CIA all along for some obscured reason? Or a naive minor KGB office who first defected, then changed his mind, and redefected to be shot as a traitor?

To the CIA and the media he was a riddle wrapped in a mystery inside an enigma, to repeat once again a phrase from Churchill's broadcast on Oct. 1, 1939.

Still earlier another Oleg, Oleg Bitov, a jounalist and a brother of Andrei Bitov—a gifted "semidissident" writer whom I knew, respected and translated into English—defected, and then redefected so strangely that he was said to have been kidnapped by the KGB.

How to distinguish between an authentic defector and a KGB phony?

In Stalin's era, as I recall it, the failure to spot in one's circle of friends a secret police informer almost inevitably led to being denounced by him and perishing in Stalin's camps. Yet my friends and I survived. I had my trusted friends. They are all alive and well. None of them turned out to be a secret police informer. We were able to spot secret police phonys and avoid them.

How did we do it?

In a circle of intimate friends—devoted to things intellectual or spiritual, for example—there is always some "key" as in music. Whatever is off key is out of tune, and hence a false note.

An intruder trying to be "in" imitates their "music." but he immediately alerts them as soon as he opens his mouth, for his very first "note" is false, and what follows is cacophonic to the intimate circle's ear. They freeze and wait for him to slink away.

Now let us assume that I was to determine in Russia whether a certain American was an authentic communist sympathizer or a CIA agent pretending to be such.

I would not have been able to determine that for two reasons. First since I have never been a communist, it would have been difficult for me to sense what was authentic.

Everything "communist" would have seemed to me phony.

Second, though my knowledge of English was admittedly second to none among the Russian-born, all Americans seemed to me more alike than they really were and the English they spoke seemed to me more uniform than it really was.

All that I could tell about an American correspondent I knew was that he was an American and spoke that kind of English which they speak in the United States.

Recently, 14 years after my sojourn in the United States, he called me. I nearly fainted. He sounded so entirely different. Now I heard not just impersonal "American English," but the language of a particular individual, shaped by his birthplace, childhood, family life, career, psyche, larynx, mouth and vocabulary.

Also, I heard not only the meaning of his words, but also what was behind or under them: his hesitations, motives emotions, intentions and limitations. I heard how and why he chose his words, but them together and articulated them.

That is the CIA's problem. No matter how good its American-born experts of Russia and Russian are, all Russians inevitably seem to them more alike than they really are, and their Russian more uniform than it really is. Neither the CIA nor the media "understood" Oleg Penkovsky, Oleg Bitov, Vitaly Yurchenko or Oleg Tumanov: they perceived them each time just as a "Russian" speaking "that kind of language which they speak in Russia."

The difference between a defector, defecting out of sympathy for the West., and a KGB phony crudely imitating that sympathy, was a nuance for beyond their perception. They heard an alleged defector's words, not what was behind or below them.

After it was all over with Penkovsky, the CIA published *The Penkovsky Papers,* consisting of authentic documents (except one suspicious photograph) and a fake one purporting to be Penkovsky's notes.

To a native Russian, the phoniness of the fake Penkovsky notes is comical; to him everything in the document is plainly ridiculous: it is out of character, out of style, off key all the time. A native Russian can only laugh reading the "notes." But to the CIA, the fake document seemed no doubt very clever.

The question is: how can the CIA distinguish a phony KGB defector from a real one if the CIA considers a laughable fake so cleverly made that it needs to publish it?

Naturally, few Western-born experts even noticed that the "diary" was a fake, and hardly anyone saw its comical crudeness.

Besides, for many in the CIA and the media it is as difficult to sense a true defector's sympathy for the West "as for the sated to understand the hungry."

In the West, freedom is as abundantly obtainable as food. That someone somewhere may lack basic freedom and crave for it is as irreal in the West as that someone somewhere may lack and crave for the food that American supermarkets throw out because it is stale or damaged when shipped.

Therefore, to many in the CIA and media, a defector's sympathy for the West as such seems somehow phony: "Why should a prosperous, high-status Russian give up everything out of sympathy for some Fourth of July abstractions that few recall here even on the Fourth of July?"

When an alleged KGB defector conveys these abstractions in his own language, American-born experts can only grasp the meaning of his words, but not their infinite psychological overtones; and if he conveys them in his rudimentary English, it depersonalizes him completely.

Hence, a true defector becomes indistinguishable from a KGB phony, and his behavior a conundrum that is useless even to begin to solve.

[From the New York City Tribune, Mar. 26, 1986]

ARMS AGREEMENTS? COMPLIANCE UNVERIFIABLE BY CIA

(By Lev Navrozov)

There is a never-answered question that has been asked at least since 1968 when the Strategic Arms Limitation Talks (SALT) went ahead, resulting in the SALT-I agreement in 1972:

"Can the compliance of the closed Soviet regime with such agreements be verified by the CIA-led intelligence community?"

The CIA has been vacillating between its desire to impress the public with its imaginary ability of verification and its fear of being found out the hard way (perhaps even in the extreme form of a surprise Soviet attack on the strategic retaliatory potential of the West).

May of those inside and outside the U.S. government in favor of arms negotiations and agreements have been saying that, *yes,* the CIA has been able to verify SALT I and SALT II, and only secrecy has been preventing them or the CIA from ever saying anything on the subject beyond this bold profession of their faith.

X+Y=?

But does their faith prove anything? In his memoirs published in 1985, Adm. Stansfield Turner, director of Central Intelligence from 1977 to 1980—that is, when SALT II was to be ratified—writes:

"The only means I had for calculating whether the Soviets could cheat was to figure out the different ways they might attempt it. I had a team of experts pretend they were malicious, scheming Soviets and think up techniques for cheating. One idea they came up with to hide the construction of new ICBM silos was to build them inside large buildings and plan to fire the missiles through the roofs."

To suppose that a missile like an ICBM can be hidden inside a large building does not require "team of experts" pretending they are "malicious, scheming Soviets"; a child of six could come up with such an idea. Turner continues:

"I was prepared to say [to the Congress] that I had X percent confidence that they could not secretly build more than 100 missile silos inside buildings without our detecting what was going on, and that our confidence would be X + Y percent by the time they got to 200."

So, even in 1985 Turner does not say what "percent confidence" he had in 1978 or what it was in 1968, when SALT-I began. In 1985 the public was to believe this was still a secret that could only be denoted by X and X + Y.

It is statistically true that anyone who hides a thing runs a certain risk of that thing being discovered. That risk for 100 hidden items may be designated by X, and that for 200 by X + Y. So, put in such neat symbols of school algebra, Turner's verification percentages look impeccable.

But if the Soviet military can hide an ICBM inside a large building, then, even though the probability of discovery for 100, 200, 2,000 (and so on) ICBMs does increase theoretically, neither the CIA nor anyone else can calculate this X, X + Y, X + Y + Z (and so on). They can exist only as algebraic symbols, not as calculated specific figures. Turner takes advantage of secrecy to conceal the fact that no one can calculate them.

The U.S. government machinery of strategic arms negotiations and agreements has been rumbling on in the 1980s on the basis of nothing except a vague national myth about the CIA's ability at verification, which the American media have created for the CIA.

SALT-II was never ratified, since the CIA has refused to say unequivocally that yes, SALT-II is verifiable, but has confined itself to safe assurances that the CIA's probability of discovery of 100 Soviet hidden ICBMs is X and keeps increasing with the number of hidden Soviet ICBMs.

MOBILE UNKNOWNS

In 1985 Turner spoke only about stationary ICBMs, hidden inside buildings, with an empty algebraic promise that if very many ICBMS are hidden in this way, there is an X chance that the CIA will detect "what was going on."

But there has been something still worse in store for the West: mobile missile.

The CIA might have detected this danger in 1969 if it had listened to ex-Soviet leader Mikita Khrushchev's tapes, as I did. The following is Khrushchev on tape:

"I think Stalin was still alive then [that is, it was in 1953, take or leave a year or two]. When we had created mobile missile systems, we discussed this question, and gave up the building of stationary [missiles] and went over to mobile ones, which were a better solution. . . . They could be dispersed and it was more difficult for intelligence to establish where these missiles were."

Do you see the meaning of it all? Somewhere between 1952 and no later than 1964, when Khrushcehv was thrown out of power, the Soviet military gave up the building of stationary missiles and went over to mobile ones for obvious reasons.

But Adm. Turner narrates in 1985 that he explained to the Congress in 1977 to 1980 how the CIA could detect Soviet stationary (pre-1964?) missiles with a probability equal to X, etc. What about mobile missiles? The CIA didn't know that the Soviet military had switched to them at least 13, if not 28 years earlier?

On Dec. 31, 1985, SALT-II formally expired. But the Reagan administration has declared its intention to abide by it at least up to the spring of 1986, and it is widely believed that secret commitments were made by President Reagan at the summit late in 1985 to that effect. The liberal media have been egging on the administration: negotiate, negotiate, negotiate.

But if stationary missiles are unknowns—they could be hidden in large buildings—mobile missiles are mobile unknowns, which the CIA does not even presume to detect with a probability equal to X.

Only espionage agents inside the Kremlin could have yielded such information, but the CIA has, practically, never had any, and has been relying on space surveillance in the hope of photo-graphing Soviet stationary missiles hidden behind walls—which has been futile anyway since at least 1964, when the Soviet building of mobile missiles began.

[From the New York City Tribune, Apr. 2, 1986]

ILLUSIONS ON WHICH CIA WAS FOUNDED 40 YEARS AGO

(By Lev Navrozov)

The birth of the CIA 40 years ago was based on several American illusions.

Since it is no problem to buy any commodity on sale in the United States if you have enough money, there originated a delusion that intelligence/espionage will also be available if Congress pays enough money for it.

Since American corporations like General Motors are fairly efficient, there originated a delusion that a government non-profit bureaucracy will be also fairly efficient if organized along the lines of General Motors to produce intelligence/espionage data.

Since many gifted Americans are paid salaries, there originated a delusion that every American was gifted in intelligence/espionage if he was paid a salary.

Since Soviet spies penetrated during World War II and thereafter even the U.S. top secret atomic laboratory, which was completely isolated in a remote practically desert area, there originated a delusion that an American who is paid a salary for intelligence/espionage would similarly be able to penetrate the innermost recesses of Stalin's Russia.

FROM OMAHA TO THE KREMLIN

We know how the CIA was born due to someone who joined it at its birth worked in it for 25 years, and then wrote memoirs. His name is Harry Rositzke.

I would read his and other such books as comical writing except that their meaning is tragic. Anyway, Rositzke wrote his memoirs in dead earnest. He takes himself for the CIA's master spy who has given the taxpayers more than the value of his salary they paid him for 25 years. So let us begin with Rositzke himself.

Who the hell would imagine that a Rositzke, who was born in Brooklyn, studied German at Harvard and taught English in Omaha, could penetrate, say, a Soviet military laboratory in Kungur?

Did Rositzke know a word of Russian or any other of the more than 130 languages of Russia? Or was it assumed that English or German was spoken in Kungur, and so Rositzke would speak with the local populace in his Brooklyn-Omaha English or his Harvard German? Was Kungur thought to be like Brooklyn, Omaha or Harvard?

What does the teaching of English in Omaha have to do with espionage in Russia? What did Rositzke know about the subject? Why on earth was he thought to be more gifted in the field than in heart surgery, weight lifting or the composition of a concerto for violin and orchestra?

FUTURE SPIES IN THE KREMLIN

Rositzke did us a great service by listing also the occupations of those of his new colleagues whom he came to know best. These were:

Two journalists. Excellent! They would send their messages from a secret laboratory in Kungur as newspaper reports, with byline and all.

A state trooper from the Midwest. Fantastic! He would be a sports coach at a local school.

Several sons of missionaries. Splendid! They would convert some atheists at the Kungur laboratory in the process of espionage.

A lawyer. Magnificent! He would talk in Kungur. Lawyers know how to do it.

A postal clerk. My God! He could get a job at the local post office and read all letters.

Several high-school and college teachers (like Rositzke). They would find no more difficulty than Rositzke himself in passing themselves off in Kungur for itinerant circus acrobats, for example. Surely the nascent CIA could teach them somersaults or whatever.

True, there was one defect in them all. None of these future spies in Kungur of the Kremlin knew a word of any of Russia's 130 languages. A way-out seemed to be for all of them to pretend that they were deafmutes.

REHASHED WISDOM

Once on his job, Rositzke decided to learn something about Russia—to train himself on the job, as they say. How? By reading Soviet books and magazines.

In 1973, that is, about 25 years later, Rositzke published a book of his own, entitled *The USSR Today.* Needless to say, I've tracked it down to see what he produced after 25 years of his salaried sojourn in the CIA. I hardly need to say that the CIA's espionage did not move an inch during those 25 years. But here was at least Rositzke's book.

Thousands of Americans write books about Russia by rehashing other books about Russia, written by rehashing still other books about Russia. So after 25 years of his salaried sojourn in Washington Rositzke churned out in the same way his book about Russia: it is thin, and hence subsequent experts on Russia will have little to rehash.

Otherwise here are three of Rositzke's rehashed "truths about Russia":

The "average Soviet factory worker is better off than the 20 million Americans at the bottom of the income ladder";

"Marxism-Leninism appeals to countless men"; and

The "Soviet record in public health is outstanding."

It is not clear why Rositzke should have struck it out for 25 years in the CIA to pen this rehash one could learn straight from any Soviet propaganda pamphlet in English on sale in Washington for 50 cents a copy. Had Rositzke seen a single Soviet factory worker in the flesh in a town like Kungur? How did Rositzke know that Marxism-Leninism appealed even to Brezhnev? What did Rositzke know about Soviet public health except what was written about it in Soviet propaganda?

TOP SECRET

But it took Rositzke 25 years in the CIA to obtain these gems of rehashed wisdom, while at the birth of the intelligence agency, Rositzke was yet to *begin* reading in absolute top secrecy what—*Pravda?* No, of course, not. In those days *Pravda* was not published in English. But fortunately, several Soviet glossy propaganda magazines were. These Rositzke would read in absolute top secrecy until he knew Russia enough to penetrate the Kremlin or at least Kungur.

In absolute top secrecy did Rositzke arrange for subscriptions to several such periodicals. His job was so secret that even his wife was not supposed to know that her husband was the Chief of Special Projects Division/Soviet, Strategic Services Unit. Indeed, Harry Rositzke didn't exist any more. He used cover names from now on, say, Dick Appel and when Dick Appel was asked where he worked, he had to say: "At the State Department" or name some other innocuous place. Of course, the Soviet magazines were to arrive at some innocent Post Office Box.

Finally, the first of them did, postmarked Moscow. Inside his absolutely top Secret Division within an absolutely top secret Unit, Dick Appel picked up the package from his in-basket and read the Moscow label on the brown wrapper.

Harry Rositzke
Chief, Special Projects
Division/Soviet
Strategic Services Unit
2430 E Street
Washington, DC.

[From the New York City Tribune, Apr. 16, 1986]

HOW THE CIA BORES THE U.S. CONGRESS STIFF

(By Lev Navrozov)

The CIA has been testifying before various congressional committees, and whatever sanitized version is released for the press, I collect it, so that now I have a huge stack of the CIA's testimonies dating back as early as 1959.

As a random sample, I pull out from the stack a typewritten release for the press: the CIA's testimony before the Joint Economic Committee on Sept. 14, 1983, entitled *USSR: Economic Trends and Policy Development.*

In the 1980s a member of the U.S. Congress would not mind hearing from the CIA how the Politburo harnesses all available economic sources to maximize its global might, and when the later will be sufficient in the Politburo's estimation to put an end to the United States by striking at its retaliatory nuclear missile potential.

But there is something more important for the CIA to testify about. Hark ye, U.S. senators and representatives: "Production [in 1982] of fruits and vegetables reached record levels . . ."

This is what the CIA learned from Soviet "open" (that is, freely available) reference books, though as usual the CIA give no source note. The Congress is to suppose that the CIA has received this strategic information via intelligence/espionage, and so no sources could be given.

Imagine a dark, rainy night, when all KGB counterintelligence agents stay at home (at least in American spy thrillers), and the CIA's ace agent passes his case officer on Gorky Street (favored in such spy thrillers, too) and whispers as he passes:

"Production of fruits and vegetables reached record levels . . ."

So why should the U.S. Congress hear from the CIA that in Russia in 1982 there was a good harvest of "fruits and vegetables?" Why should a secret intelligence/espionage agency, leading the secret "intelligence community" of 200,000 secret employees, report this to the U.S. Congress? Can a professor of Soviet economics not register this news from the Soviet open press in his article if it is of interest to anyone?

The testimony takes several hours to read. It is a frightfully boring and irrelevant rehash of the Soviet open press.

Less than 6 percent of the testimony is occupied by two sections called "Defense." It is interesting that even in terms of time and space in the CIA's testimony, the CIA gives Soviet "defense" a modest fraction of its testimony—6 percent—and this fraction figures under the conventional reassuring Soviet propaganda name: "defense." Every country must defend itself, must it not? So the "U.S.S.R." (the CIA uses all the propaganda names) has its "defense," too.

The CIA informs the Congress: "Andropov's position on the share of resources that should go to military is unclear."

Unclear? But what about intelligence/espionage that has penetrated the Kremlin, as we have been told so many times? The CIA explains: "In his November 1982 speech, he [Andropov] stated only that defense requirements as usual have been sufficiently taken into account.'"

You see? Andropov was vague. If he had expressed himself clearly in *Pravda*, the CIA would have copied the article from *Pravda* and read it to the Congress. That's what intelligence/espionage is all for! But Andropov was vague. So what on earth could Congress expect from the CIA? No wonder the CIA was vague too:

New information indicates that the Soviets did not field weapons as rapidly after 1976 as before. Practically all major categories of Soviet weapons were affected—missiles, aircraft, and ships.

What does the first sentence of this verbiage mean? That in 1982 U.S. space satellites saw a smaller number of missiles fielded than in 1975? But what if the missiles of 1982 had far more warheads, and these were far more accurate? What about camouflaged stationary and mobile land missiles that U.S. space satellites did not see?

READING THE TEA LEAVES

Congress then hears:

The growth in total [Soviet military] expenditures still appears to be considerably below the long-term average, and [military] procurement spending remains roughly unchanged, although at a high level, when measured in constant 1970 prices.

What follows is the CIA's favorite pastime: guesswork that the CIA calls "analysis." Having invented a "trend"—in this particular case, the slowdown in the growth in total Soviet military expenditures and military procurement—the CIA proceeds to invent the imaginary causes of its invention:

The slowdown in the growth of military procurement cannot be explained by any single factor. Initially, at least, the absence of growth in military procurement might have been attributed to natural lulls in production as older weapon programs were phased out before new ones bogan. The extended nature of the slowdown, however, goes far beyond normal dips in procurement cycles.

The continued slow growth since the late 1970s seems related to a combination of complex factors including technological problems, industrial bottlenecks, and policy decisions. Some funds budgeted for procurement may have been directed instead to research, development, testing, and evaluation (RDT&E) during this period because of the increasing complexity of weapon systems being researched.

The process of the CIA's production of this verbiage for the benefit of the U.S. Congress, government and all concerned can be outlined as follows: Having invented the "slowdown in the growth of [Soviet] military procurement," the "CIA analysts" begin to "analyze," or as the old English expression goes, to read the tea leaves.

Procurement cycles? No good! According to the CIA's imagination, the slowdown is *extended.* Then the "analysts" begin to enumerate everything that comes to their heads as capable of slowing down the growth of Soviet military procurement, but pass off a string of their ad hoc inventions as facts, established presumably via intelligence/espionage.

Indeed, what possibly *can* slow down the growth of Soviet military procurement? Technological problems. An excellent safe common place!

What else? Industrial bottlenecks. A marvelous fib—and very much in the spirit of the Soviet scene! Policy decisions. A splendid fantasy—and totally noncommittal: surely those Soviets always make *some* policy decisions! Funds *may* have been diverted to RDT&F. A brilliant figment of imagination—surely Soviet RDT&E can do with more funds!

The invention of imaginary causes of an imaginary event may be an interesting game. But it is not clear why everything that was noted above cannot be "testified" to before the Congress by any American able to speak grammatical English, and it is even less clear why Congress should hear this "testimony."

At best, it is a waste of time, filling the legislator's heads with nonsensical trivia at a time the West is gravely threatened.

[From the New York City Tribune, Apr. 30, 1986]

KIM PHILBY: ESPIONAGE ROMANCE AND DRAB REALITY

(By Lev Navrozov)

The trouble with many Western intelligence/espionage writers is that they "tone up" everything and everyone in their book to make them "exciting."

I first noticed this when I read the books and articles about Harold "Kim" Philby, an Englishman who was a Soviet agent for 30 years (1933-63). At the peak of his career Philby functioned in Britain and the United States as director of the counter-Soviet section of the British Secret Intelligence Service, MI 6, and liaison officer between MI 6 and the CIA.

In one book about Philby, three journalists of the London *Sunday Times,* who were aided by a 13-person research team, refer to the "great sexuality" of Litzi Friedman, his first wife, who "had never wanted for admirers" before Philby met her. She was in short a ravishing Austrian girl, beset by admirers, a middle-European sex goddess from a $40-million movie, fit to be the consort of the British superspy.

Then I saw her photograph: a chunky, short-legged peasant girl (you can find such in a Soviet Ukrainian village) with retreating forehead, idiotic hairdo, heavy jaw, big mouth and hooked but by no means well-chiseled nose.

She might have been a good, nice, intelligent girl or a village slut, for village sluts are not always for choosy customers. But what do the *Sunday Times* authors' great sexual fantasies have in common with her?

SOPHISTICATED SOPHISTICATION

That's the working principle of many intelligence/espionage authors. Litzi Friedman did exist and Philby did marry her, but the rest is the *Sunday Times* journalists' imagination—and just as their imagination transforms Litizi, it transforms whatever they describe.

If everything written about Philby, including by Philby himself, is collected, it can be summarized in these four paragraphs:

Functioning in Britain has been the famous MI 6, the British Secret Intelligence Service. Words fail to describe its sophistication, which has been maturing for 3 or 4 centuries.

Working as director of the counter-Soviet section of MI 6 was Harold Philby. While MI 5, the British counterintelligence service, just tracks Soviet spies on English territory, the counter-Soviet section conducts espionage inside the KGB in order to learn who the Soviet spies are, in particular MI 6. Not bad, eh?

But that's not all. Philby, head of the very section of MI 6 aimed at penetrating the KGB to learn who the KGB agents are in MI 6, was . . . a KGB agent. What a wilderness of mirrors! What sophisticated espionage! So that Philby was a man of double genius in espionage: his genius of British espionage combined with that of Soviet espionage.

Finally, imagine the sophistication of the KGB, which planted its agent at the top of the sophisticated MI 6, nay; its even more sophisticated counter-Soviet section! Exposed by defectors, the double genius of espionage Philby disappeared from Beirut and surfaced in Moscow in 1963.

PROSAIC REALITY

Since Philby's father was a British official, he gave his son education "in the humanities." Millions of young people in the West who have no ability for anything receive education in the humanities because their parents can afford it.

Philby could write and speak the English of the upper middle class. That's all he learned to do in his lifetime. Before his escape to the Soviet Union in 1963 he knew nothing about the Soviet Union except what any newspaper-reading Englishman knows. He was never interested in anything except booze (or however you say booze in his upper-middle-class English) and he never said or wrote anything but a platitude.

But how could such a nonentity become the head of the counter-Soviet section of MI 6?

Because MI 6 has been merely pretending since 1918 that it conducts espionage in the Soviet Union. All those books and TV programs about how the ace spy Sidney Reilly nearly toppled Lenin's regime are perhaps exciting, yet they are untrue (see my column of Jan. 15, "How Superspy Reilly Tried to Topple the Soviets").

Characteristically, even the myth is almost 70 years old, and MI 6 has never dared to circulate any fresher myth. Philby had no more ability to conduct espionage in the Soviet Union than to design a nuclear bomb or build a space rocket. But to pretend? Why not?

He describes his greatest espionage operation, Operation Spyglass, as follows:

The main item was, of course, the camera. Having no technical knowledge of photography [and technical knowledge of what did he have?], I could not specify the make; I simply described what I wanted it to do and left the rest to headquarters.

Having the camera designed and built, Philby went to north Turkey, from where Soviet territory is visible, and his aide "swung the camera."

With an ordinary camera one could take only separate snapshots, but as his aide swung this camera, specially designed and built for Operation Spyglass, he took several photographs one after another automatically.

That is how Philby penetrated the Soviet Union, if not the KGB.

Of course, aerial photo-reconnaissance had existed in World War I, not to mention World War II. An ordinary World War II reconnaissance plane could have flown along the border and done within an hour far more than could Operation Spyglass do in a

month, since the plane can carry heavier and more sophisticated cameras, fly far higher than Philby's aide could swing the camera, and hence take a view far deeper into Soviet territory.

But why should Philby have known anything about aerial photo-reconnaissance? Why should he have thought about it? They were supposed to spend taxpayers' money. They did. On Operation Spyglass, for example.

No more difficult was Philby's work as a Soviet agent; contacts are never a problem in a society where anyone can travel all over the world. But what esponage data did Philby pass if MI 6 was all pretense?

Well, the KGB wanted to make sure that it remained all pretense—to keep an eye on MI 6 lest it was up to some mischief.

Thus, in August 1945, Konstantin Volkov, vice-consul at the Soviet Consulate-General in Istanbul, Turkey, wanted to defect with fantastically important intelligence data. The British consulate-general began pondering, and Philby came to the scene as an expert.

But first he informed the NKVD, as the KGB was called then, which dispatched Volkov to Moscow by air either as a corpse already or still alive for further investigation at the Moscow KGB headquarters.

All the KGB did in the Philby case was to receive this kind of information from Philby. The KGB was not interested in his motives. In addition to his MI 6 salary, he received a KGB officer's pay. He enabled the KGB to destroy Volkov—he earned well his KGB salary. That's all.

His escape was no less prosaic. MI 6 did not hold him, but on the contrary wanted him to disappear into the silence of the Soviet Union, to bury the scandal.

MI 6 made a mistake: the KGB began to glorify its former spies instead of denying their existence as before, so the scandal was all the worse.

[From the New York City Tribune, May 7, 1986]

HOW THE CIA FLUNKED ABYSMALLY ON CHERNOBYL AFFAIR

(By Lev Navrozov)

Whatever happened at Chernobyl on Friday, April 25 (Thursday the 24th, Saturday the 26th?), the West, and in particular the American 200,000-member intelligence community led by the CIA, had known nothing about it except what had been publicly known without them—from, say, a French communications space satellite.

In other words, Chernobyl has demonstrated once again that Western intelligence/espionage inside totalitarian societies does not exist, for space satellite observation is not a form of intelligence-gathering or espionage.

Intelligence/espionage is the clandestine acquisition of information denied to our side by a target country. There is nothing clandestine about space satellites, unless the Western intelligence/espionage agencies want to pretend their satellites are clandestine by calling them spies-in-the-sky and other such spy-thriller names.

Nor has any space observation ever been prevented by the Soviet side: on the contrary, for more than 20 years any space satellites have been mutually permitted to fly over any territory and make any photographs or register any waves and particles.

NOT A SINGLE AGENT

If just one Western intelligence/espionage agency had had one agent in Kiev—no, not within any infrastructure, but just as a "man in the street," an ordinary Kievan—he could have informed his agency when Kiev's hospitals began to fill up with radiation victims from Chernobyl. It's only some 50 miles away from Kiev, and he could have ascertained whether these victims were being shipped out of the area to be hospitalized (or buried) in areas where foreigners are not allowed.

Kiev, the third largest city in the Soviet empire, is full of physics laboratories. The level of radiation was known to many scientists and could be readily learned privately from them by any Kievan.

It could thus be calculated how many people were not hospitalized, yet had received a lethal or dangerous dose of radiation, for example in Pripyat, a town with a population of 25,000 about 10 miles from Chernobyl.

Any Kievan could also obtain privately from these scientists information on the size of the area of nuclear contamination.

How much, for example, is Kiev's water contaminated? How much is the entire chain of reservoirs down to the Black Sea contaminated? To know this it would have been sufficient to have an agent in Dnepropetrovsk Zaporzhye or even Odessa or Nikolyev.

But to maintain one agent inside a totalitarian society even as an ordinary, lowest-level member of this society—who has ever heard of that?

Ten years ago, when Mao died, hundreds of millions of people in China were on the verge of starvation, dozens of millions were starving, and millions dying of hunger. Here is an exchange in Congress on the subject in 1976.

PERCY QUESTIONS BUSH

Sen. Charles Percy asks George Bush, now U.S. vice president and then CIA director, whether it is true that there is a "great deal of malnutrition" in China.

Mr. Bush replies: What you have said, sir, comes as a surprise to me. Maybe some of our experts can confirm it. Is anyone prepared to do that?

[No response.]

Mr. Bush. I didn't travel to some of the autonomous regions, but I did travel a lot in China. We were free to move around, although you never get far off the beaten track. But certainly their own theses [are] that there is a basic level of nutrition for the entire population.

Can anyone here help the Senator with that, as to whether there is malnutrition in places in China?

Mr. Field [CIA expert]: No; I have no information on it.

Of course not. How can you see hunger via a space satellite? But you won't imagine, will you, that there was as of 1976 one CIA agent among 900 million Chinese who would report to Bush that they were starving. The conclusion of this particular piece of testimony, boldly entitled "Absence of Hunger in China," is worth reading:

Senator Percy: In other words, so far as we know, the claim that they have made that they are meeting the food problems of the country, and our own observations along that line, were accurate?

Mr. Bush: Yes.

Senator Percy: and I think they have been absolutely remarkable.

If half of Russia's population had received a lethal dose of Chernobyl's radiation or eaten lethally contaminated food, the director of Central Intelligence and his experts would say that they have no information on the subject.

Thus, on May 1, The New York Times related that in the CIA's reports "there was no solid information to prove or disprove the Soviet assertion that two people had been killed and . . . 197 had been hospitalized."

CHERNOBYL AFIRE

The Chernobyl plant began to emit light (that a space satellite could photograph) as well as nuclear radiation and nuclear particles (that a space satellite or an outsider interceptor could register) on April 24, 25 or 26.

On Monday, April 28, a nuclear cloud from Chernobyl reached Sweden, 800 miles away, and the Swedish government spent a full day demanding an explanation. So foreign correspondents in Moscow received from Tass a piece of paper on which were four sentences typed in English to the effect that "an accident" did occur at Chernobyl, "measures to eliminate" its "consequences" were being taken, aid was being given to "those affected," and a "government commission" had been set up.

The Western intelligence/espionage community learned of the "accident" only from these four sentences as they were reported in the West by correspondents in Moscow, and until the next Tass handout knew nothing except these four sentences.

So, the by-no-means clandestine space satellite observation did not work.

The U.S. intelligence community has one (yes, one) space satellite up over Russia. Now, to obtain maximum space satellite resolution—that is, to distinguish, say, a window in a house as at least a dot—it had to span in one photograph no more than a fraction of one-millionth of Soviet territory.

Well, Chernobyl was not inside that fraction. As for the National Security Agency's interceptors along the border of Russia, the interceptions were filed to be studied "later."

Hence, the U.S. intelligence community knew absolutely nothing until Tass told the world Monday, April 28, whatever it deemed necessary to tell.

To cap the irony of it all, the United States' only space satellite over Russia is to be replaced within a year. Yet it may go out of commission any day, and there is no stand-by space satellite to replace it.

[From the New York City Tribune, May 21, 1986]

WHAT THE CIA REVEALS ABOUT ITSELF IN ITS PAMPHLET

(By Lev Navrozov)

The CIA has sent me (free) its glossy 28-page pamphlet about itself. The booklet is entitled Intelligence: The Acme of Skill—a title taken from Sun Tsu, a philosopher of China Circa 400 B.C., who said, "To find security without fighting is the acme of skill."

In general, the philosophical side of espionage has been increasingly dazzling in the CIA. More and more Ph.D.'s work on the CIA—often because the alternative is to work as typists or advertising agents. Naturally, doctors of philosophy philosophize—in this particular case about espionage.

Obviously, they philosophize secretly. Thus, under three pieces of their philosophy cited at the beginning of the pamphlet, their names are withdrawn and only their posts are given. So top secret.

True, above their pieces are their photographs. I thought one's photograph was a

better means of identification for the KGB and GRU than one's name—which may be assumed—but this is what the CIA's secrecy often is.

One of the three secret philosophers says they strive for "that high-quality knowledge that decision makers need to arrive at safe, effective decisions."

Yes, but surely the same can be said by practically any institution from General Motors to the Society for Encouragement of Sunday Family Outings.

The second secret philosopher is no less philosophical: the goal, you see, is "the gathering of as much information as is available on events abroad and the intellectual job of integrating that information."

But surely this is precisely what the State Dept., the relevant university departments and the foreign desks and bureaus of the media do.

ENRICHMENT OF UNDERSTANDING

The third and the last secret philosopher says that "intelligence . . . must be an enrichment of the understanding of the problems that face a decision maker."

One will think this comes from a university department of cognitive psychology, and by intelligence is meant here the mental faculty of reasoning and understanding. Here must be a philosophical society concerned with cognitive intelligence—the Cognitive Intelligence Association, or CIA for short.

While philosophy is obviously advanced at the CIA, painting and sculpture are not lagging behind either. One photograph shows the interior of CIA headquarters: this is the first floor, looking like a modern-art museum. Says the pamphlet: "Works of art grace the building's entire first floor."

As befits doctors of cognitive intelligence, all works of art visible in the photograph are abstract, with a kind of huge broken matchbox in the forefront.

If the second floor of the building is given over as wholly to modernistic music, the third to avant-garde poetry, and the fourth to the theater of the absurd, all worry about the CIA's cultural advancement disappears.

INVENTION OF PHOTOGRAPHY

In the middle of the pamphlet, our eyes are greeted by a magnificent centerfold photograph of the kind that can be seen in Look magazine: an aerial photograph in which one can distinguish the hubs of a truck's wheels.

Several months ago I was studying aerial and space photographs in the Map Division of the New York Public Library. Finally they brought me a state-of-the-art miracle, a desk-size album—the best album I could find in the Map Division. Not without distaste, however, I found the album was Soviet.

Surprising? Not at all. Apart from East Germany working for the Soviet empire (and German photography has always been second to none), the Soviet military can always buy the best photographic equipment for their aerial and space photography in Europe, Japan and the United States.

So what does the CIA want to say by that centerfold photograph? That the CIA has invented photography?

One may here observe:

Aerial photography is the job of the Air Force, not the CIA.

It was practiced by air forces of all countries as early as World War I.

It cannot possibly be practiced over Soviet territory, since reconnaissance aircraft will be shot at immediately.

The CIA has not invented photography and to buy and use photographic equipment takes no "acme of skill," but only commercial and technological routines.

ONLY TWO PARAGRAPHS

So, is there anything in the pamphlet about intelligence/espionage? I found two paragraphs, one of which says: "Where once the human agent was the basic collector of data, a technological revolution in the past 2 decades has generated technical systems capable of producing prodigious quantities of information."

So, 2 decades ago—that is, from 1947 and throughout the 1950s—it was the human agent that was the basic collector of intelligence data. Oh, yes?

If the CIA ever had had a single agent inside a Soviet institution of strategic importance inside Russia and retrieved him successfully, surely he would have written his memoirs in a sensational best-seller under a title like "A Spy in the Kremlin." What an hour of glory that would have been for the CIA.

But next year it will be 40 years since the CIA's establishment. Where are that human agent and his bestseller?

Opposite the text is a page-size photograph from a pre-1953 Soviet illustrated magazine: a festival march carrying a huge portrait of Stalin. The inscription: "In its early years [not now?], the Central Intelligence Agency's primary concern was with Soviet military activities and political intentions."

The photograph is appropriate. It is from Soviet propaganda magazines that the CIA has been deriving its espionage data.

HUMAN AGENT ACKNOWLEDGED

The second paragraph relating to intelligence/espionage says: "And yet the human agent remains vital. If the photographs and signals that technical means gather speak of what people have built or what they are saying, only the human agent can deliver what they are thinking."

But if there was not a single CIA agent inside the strategic infrastructure of Russia in those days when he was supposed to be the "basic collector of data," why should he appear now? Or is he expected to emerge from the CIA's exercises in philosophy, painting and sculpture, as well as music and theater?

[From the New York City Tribune, May 28, 1986]

HAS U.S. INTELLIGENCE IMPROVED WITH CASEY AT BAT?

(By Lev Navrozov)

Among some conservatives there abides a soothing illusion that there has been a dramatic improvement in U.S. intelligence/espionage under Ronald Reagan, since he appointed William J. Casey director of the CIA.

Let me repeat that I regard as espionage/intelligence our clandestine penetration of areas, spaces and institutions "denied" by a prospective totalitarian enemy.

One of the proofs of successful espionage/intelligence in that sense is successfully retrieved agents—such as Arkady Shevchenko—who stay in the West, write public memoirs about their experiences and thus establish their bona fides beyond doubt before the public.

During Reagan's term we have heard of only one such case, that of Shevchenko. But even this sole case belongs to the pre-Reagan era: Shevchenko terminated his espionage for the United States in 1978. But let's imagine that the case continued into the 1980s.

Shevchenko is a hero, and as a true hero he wrote an authentic, excellent and moving book—published in 1985—about how he had been afraid (it's cowards who write books about how fearless they are). I am prepared to write pages in praise of Shevchenko and his book.

LESS THAN MEETS THE EYE

But let us evaluate the case from the point of view of intelligence/espionage:

Shevchenko lived in New York and could move freely about it; so, the CIA's part in this espionage exploit was reduced to renting an apartment in New York to meet with him (and even this job the CIA could not do too well, according to Shevchenko).

The former United Nations official was stationed in the West and hence would not have access to the innermost strategic recesses inside Russia, for those who have such access are not allowed to go abroad in the first place.

Shevchenko was a "Soviet diplomat," and diplomacy in a totalitarian society is a form of propaganda; diplomats in such a society are often the last to learn about what the military are doing.

Since Shevchenko lived in New York, his "successful retrieval" could have been grandly executed without the CIA by taking a cab and asking the driver to go to 26 Federal Plaza—FBI headquarters in New York.

Shevchenko was asked on television last year what secrets he could disclose, and he said that in the late 1970s he knew from rumors at the diplomatic top and could tell the CIA that former Soviet leader Leonid Brezhnev was having the flu—since otherwise the West would not know even that. He is right, and least of all I want to deny the importance to the West of having known Soviet top diplomatic rumors about Brezhnev's flu.

But what a distance between Brezhnev's flu and the vast Soviet unknown where military preparations are afoot. What a pathetic case from every point of view in terms of intelligence/espionage.

What was simpler for Shevchenko's "successful retrieval" than getting into a cab? But no! "I took an overnight bag from the living-room closet and jammed a few shirts and some socks and underwear into it," he recalls in his book.

So, in the United States in general and in the CIA in particular there was a shortage of shirts, socks and underwear. He had to take them along. What else? An electric iron, two pillows, a leg of lamb; I hope the socks had no holes.

Then he discovered that the service elevators he wanted to use did not run after midnight. "I had not worked this part with Bob and Carl [of the CIA]," he explains. With the overnight bag (who could leave behind those socks and everything else?) he began climbing down the fire stairs (20 flights), stumbling, his calf muscles "trembling from the unusual strain," and stopping to shift the bag from hand to hand after each five or six flights.

Then, lugging the bag along, he ran down 64th Street and across Third Avenue to the CIA's car.

The building was tenanted by Soviet officials, including KGB agents. What if he had been watched or seen accidentally by a KGB agent? Out of breath, the undersecretary general of the U.N. was running with an overnight bag in the middle of the night toward a strange car.

Now, this is the CIA's most brilliant successful espionage operation in how many—20? 30? 40 years?

Let us recall that actually, Shevchenko's espionage had ended before the Reagan term. So, in the Reagan era, there has not even been such a case of successful espionage and retrieval. If there had been, the public would have learned about it, as it has about Shevchenko.

CRITICS AND REAGAN

Before Reagan took office he was interested in conservative critics of the CIA, including myself. After he took office, those critics were forgotten by the administration. Instead, we learned that the director of Central Intelligence was now William Casey, Reagan's old friend.

Tremble, Soviet war-empire: Ronald Reagan's old friend would now conduct intelligence-espionage within your innermost strategic depths, and not just on Third Avenue, New York.

When the newly elected president's old friend gets an appointment, there must be some peg to hang it on. For example, if it's ambassadorship to Moscow, the peg may be the appointee's wife's ability to cook Russian Pirozbky (pies), which makes the family well-equipped to get on with the Politburo.

In the case of Casey, the peg was his intelligence work against Nazi Germany during World War II. It was like expecting that Reagan's old friend who worked in a hospital 40-odd years ago would be able to pioneer new fields of heart surgery because he is, after all, an old friend of Ronald Reagan.

But it is not all gloom. Reagan brushed aside all critics and criticisms of the CIA for his old friend was now at its helm. Yet they have not disappeared. They have been thriving and developing outside the official intelligence community.

I will mention just three of such critics: David Sullivan, who left the CIA and is now assistant to several senators; Angelo Codevilla, now a fellow at Stanford's Hoover Institution, and Mark Schneider, now with the Department of Defense.

Conservative criticism of the CIA is often linked with that of Reagan's defense policies as a whole. For example, this months issue of *Commentary* carries Codevilla's article, "How SDI Is Being Undone From Within." This is a devastating piece of criticism, showing how much needed strategic defense is, yet how little is being done in practice—indeed, the Strategic Defense Initiative is being undone.

Perhaps criticism of Reagan's defense policy in general and the CIA during his term of office in particular, will reach its full vigor by the time a new presidential candidate comes to the scene—for, frankly speaking, the U.S. needs now not just Reagan, but a super-Reagan.

[From the New York City Tribune, June 4, 1986]

WHAT THE RONALD PELTON SPY CASE DEMONSTRATES

(By Lev Navrozov)

There is nothing new or peculiar about either Ronald W. Pelton himself or his case, which is to go to jury deliberations this week.

Indeed, about a month before the case opened on May 27 I described a typical espionage case (April 23, "When an American Spies . . .") that subsumed the case of Pelton.

Pelton made $24,500 in 1979, his last year of employment at the National Security Agency. Nothing unusual. Most of the 3.5 million Americans who have access to classified data draw comparable salaries.

In the Soviet empire, Pelton's equivalent would be automatically far better off than, say, an ordinary physician or a plumber. In the United States a physician or even a plumber makes several times as much money as did Pelton.

If we assume that all the 4.3 million Americans who had access to secret data in 1979 (today the figure has been reduced to 3.5 million) made on the average $24,500, the total sum of their pay amounted to more than $105 billion.

But even if the salaries of those with access to classified data were tripled, money for many Americans is a kind of lifeblood, of which they must have always more than they do or they will die of anemia.

Pelton "needed money desperately." What is more common in the United States in almost all brackets?

On the evening of Jan. 14, 1980, Pelton called the Soviet Embassy. That was his gross blunder. He could have walked into the embassy without a telephone call. But he had that American habit of making an appointment over the phone.

Of course, the FBI taped the telephone call. This is routine, since all telephones of the embassy can be switched permanently to recording equipment.

I read about that in a back issue of a Russian magazine published before World War I, when a telephone conversation could be recorded only on a gramaphone disk or a phonograph roll. According to the magazine, the British Intelligence Service recorded all telephone conversation from and to the German Embassy.

Small wonder that in our age of $20 tape recorders at every store, the FBI does along these lines what could be done before World War I.

But Pelton's blunder did not lead to his arrest. The FBI was unable to find the caller by his voice among the 4.3 million Americans who had access to classified data.

The Soviet Embassy official who named himself Vladimir Sorokin at first suggested a morning for Pelton's visit, which shows again how inept the KGB/GRU is (and yet it is doing so well in the West). But at least Pelton had enough gray matter in his head to choose an evening—"tomorrow evening"—so his face wouldn't be seen well: "It will be dark when I come in."

Yes, but today there is excellent night vision photography.

The tape left no doubt as to the purpose of the caller's visit: "I come from . . . I . . . I . . . I'm in . . . with the United States Government," the caller said. "Uh, I have something to discuss with you, I think, that would be very interesting to you." He said everything short of: "I want to be a spy. Can I come to discuss it?"

Having made his appointment for the next evening, Pelton decided to confirm it—"to firm it up"—next day at 2:32 p.m., and appeared at the Soviet Embassy several minutes later—in broad daylight! Apparently, he did not have the patience to wait for darkness as he had intended.

This gave the FBI almost 22 hours—from 4:53 p.m. Jan. 14 to 2:32 p.m. Jan. 15—to organize constant tight surveillance of the Soviet embassy. But the FBI didn't listen to the tape until days later. It was shelved by the FBI for several days!

What about, then, the FBI's routine surveillance of the Soviet Embassy? Well, that didn't help either: while in the embassy Pelton had his beard shaved off and was directed to go out through a service exit, not the exit for official visitors.

These two Soviet espionage tricks at the Stone Age level confused the FBI! Neither was Pelton photographed as he entered nor as he left the embassy. He was not arrested at the time nor at any time after that.

Only when alleged KGB defector Vitaly Yurchenko gave him away late in 1985—almost 6 years later—was Pelton finally arrested.

Yurchenko's information concerning Pelton was cited as proof that he was a bona fide defector who just changed his mind and redefected. But it is no proof.

The KGB/GRU may have decided they did not need Pelton anymore: he no longer worked at the National Security Agency, he had told them all he could recall, and he failed to answer their telephone call in the summer of 1985.

He failed to do so because he was drunk at the time and his car, which his girlfriend drove for him, didn't have enough gas. But the KGB/GRU may have thought he was not interested any more.

What is relevant here is that the exposure of Pelton was purely accidental and had nothing to do with the FBI, CIA, or NSA.

Let us now draw some dire conclusions:

While the West does not even know where the Soviets' "NSA"—the main code-making, code-breaking and radio-intercepting institution—is located, the Soviet KGB/GRU has had a string of spies in NSA, even if only *known* spies are taken into consideration—such as Sgt. Jack E. Dunlap, who became conspicuously rich from selling NSA secrets to Soviet agents in the early 1960s without anyone paying the slightest attention.

No other case has better demonstrated that the FBI's ability to apprehend spying Americans equals zero even when these Americans make gross blunders, like "making an appointment" by telephone with the Soviet Embassy, and when their method is no more sophisticated than walking into the embassy in broad daylight and without disguise to sell classified data.

Under such condition, the ineptness of the KGB/GRU does not prevent Soviet espionage from flourishing—for it is sufficient for the KGB/GRU just to wait for Peltons to come to any Soviet institution abroad, such as the embassy in Washington, and then evaluate their classified data and pay them accordingly.

If the Soviet military knows everything about NSA owing to such "Americans in desperate need of cash," while the West doesn't know even where the Soviet NSA is located, then U.S. codes, for example, will be worse than useless: they will be traps, since the Soviet military will read them, owing to the Dunlaps and Peltons, and will know from them American crucial strategic secerts.

On the other hand, since the Soviet highest-level codes are one-time systems, they are unbreakable without espionage able to secure the code keys, and hence the West will be as much in the dark about the Soviet highest-level codes as it has always been.

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[From the New York City Tribune, July 2, 1986]

HOW FORMER CIA OFFICIAL RESPONDED TO PAST ERROR

(By Lev Navrozov)

When David Sullivan, an aide to three pro-defense Senators and Washington's most powerful critic of the CIA, presented his critique of the agency at a seminar in 1980, his opponent was Ray Cline, CIA deputy director for Intelligence from 1962 to 1966.

One of Sullivan's case histories was the CIA's assurance on Sept. 19, 1962, that Soviet ballistic missiles targeted on the United States would not be installed in Cuba, while actually, oh yes, they were being installed there, as ordinary aerophotography (the business of the Air Force) revealed later very clearly.

The story is simple, obvious, and has been told and retold many times, since the CIA's so-called Special National Intelligence Estimate of Sept. 19, 1962 has been declassified, and so everyone can see retroactively the CIA's gross error.

The error occurred because intelligence/espionage data usually have played no essential role in the CIA's estimates since 1947. To conduct espionage in Cuba in 1962 was still incomparably easier than in Russia after 1921. Cuba was still porous, and exuded a constant flow of practically uncontrolled emigration.

But even in such a case, when intelligence/espionage data could readily be obtained, CIA analysts like Ray Cline derived their conclusions out from intelligence/espionage data, but from "logic," as the CIA once put it.

"Logically," Khrushchev should not install those missiles in Cuba (the CIA analysts philosophized), and so they would not be installed there, for how could Khrushchev go against the CIA's "logic"?

The CIA's former deputy director's rebuttal of Sullivan's description of the CIA's gross error is one of the most instructive documents for all those to whom the destiny of the free West is not a matter of utter indifference.

First of all, Cline explains very movingly that ever since 1942 he has been "worried about how to accumulate the information that our country needs, that or national leaders need."

Also, he has been "very anixous to see groups like this resume the discussion of serious issues concerning the functions and organization of the intelligence community."

Finally, Cline says: "I want to make some comments on the substance of Mr. Sullivan's paper. They are not intended to destroy the validity of his remarks."

They are not? So Cline agrees with Sullivan's remark that the CIA's estimate of Sept. 19, 1962 was a gross error. Now, you expect Cline's explanation of how and why such a gross error was made.

Little do you know the CIA. Cline declares that "intelligence is always [!] wrong." Good Heavens! "Certainly my experience in intelligence estimates is that intelligence estimators are always [!] wrong, and there are always [!] plenty [!] of people around to tell them so."

It's like such a person accused of a bank robbery saying that everyone is always engaged in bank robbery, for any human activity is a kind of bank robbery. The estimate of Sept. 19, 1962 is a gross error because intelligence is always a gross error—it consists of nothing but gross errors!

But listen again to Cline: "I think Mr. Sullivan does a disservice to most of our intelligence analysts by simplifying the conclusions which they reached, and pretty much dismissing them as gross error."

You see, "intelligence estimators are always wrong." But "Mr. Sullivan does a disservice to most of our intelligence analysts" when he states that they were wrong on Sept. 19, 1962. This is Cline's logic.

Whereupon Cline explains philosophically how objective and accurate knowledge is obtained and how they at the CIA were obtaining it on Sept. 19, 1962:

"We were trying to perform what I call an analytical task, that is, an evidence-based description of the real world around us, with as much objectivity and accuracy as possible."

On one hand, Cline says that "intelligence is always wrong," and on the other he defines intelligence/espionage as though it were a rigorous exact science: "an evidence-based description of the real world around us."

Unfortunately, the Soviet empire and its satellite Cuba were not around Cline's desk in Washington, D.C.

Cline's rebuttal lasted for no less than half an hour. I am sorry I cannot quote it in full, but have to choose just a few tidbits. Try this delicious morsel, for example:

"And in the last analysis, a formal estimate is just a racetrack bettor's book on what he thinks is going to happen: "It's six-to-five this way." If it is six-to-five this way—and that is pretty much what the estimates said—remember it is five-to-six the other way. So it is not always an egregious error not to be able to predict which side of a close bet is going to pay off."

So, when the CIA "estimated" that the Soviet missiles would not be installed in Cuba, "remember it is five-to-six the other way"—that is, "the other way" the Soviet missiles were being installed in Cuba.

Intelligence work is racetrack betting, in which the CIA is just one of the bettors; the president and Congress can always bet "the other way." The CIA bets that the Soviet missiles will not be installed in Cuba. Let the president and Congress bet that they are already there. So what's the problem?

"I have great sympathy with Sherman Kent [in charge of the estimation of Sept. 19, 1962]," Cline declares. Why? You see, Sherman Kent "often said" that . . .

". . . his estimate of what was reasonable for the Soviet Union to do was a lot better than Khrushchev's and therefore he was correct in analyzing the situation as it should have been seen by the Soviet Union. What he did not have was any concrete evidence that Khrushchev was seeing it another way."

Well put! With his super-Hegelian mind Kent assumed that he knew what was good for Khrushchev better than Khrushchev did. As Hegel said when he was told that what he said contradicted facts, "So much the worse for facts."

And so it goes on and on. And what's the moral?

Even 14 years later, retired from the CIA, its deputy director from 1962 to 1966 would not honestly admit that smug, high-handed and idiotic mistake that the CIA perpetrated in 1962 and which is now known to the public because the relevant estimates have been declassified.

Instead of admitting that plain and gross, error, Cline goes into comical, impudent and primitive quibbling for more than half an hour.

[From the New York City Tribune, July 30, 1986]

INEPTNESS, NOT IMMORALITY, IS MAIN FLAW OF CIA

(By Lev Navrozov)

In the 1970s the major (liberal-Democrat) media charged the CIA with criminality and immorality. The campaign was so deafening that few noticed the rise of an entirely different kind of criticism of the CIA, that of the CIA's ineptness.

The liberal-Democrat critics of the CIA were not worried about the danger to the West of the absence of intelligence/espionage data on totalitarian military power. But that is precisely what worried the critics of ineptness of the CIA—all of them staunchly pro-defense.

In a sense, it can be said that criticism of the CIA's ineptness was pioneered by Albert Wohlstetter, a mathematical logician, when he published in 1974 two articles entitled Legends of the Strategic Arms Race.

The criticism reached its high plateau in 1978 to 1980 when the critics were befriended by Ronald Reagan, who at the time deplored the miserably inept performance of the CIA under President Jimmy Carter.

As Reagan became president, he appointed the so-called CIA Transition Team, the deliberations and report of which are still secret.

Some critics, including myself, were not on the team because we had no security clearances. But when I submitted a memo at the request of Reagan's former National Security Adviser, Richard Allen, he told me that my proposal coincided with that of Bill Middendorf, head of the Transition Team:

Let the CIA be replaced by several competing intelligence units that would sell secret data to the government as competing corporations sell weapons.

One of those CIA bureaucrats, who want to believe that the CIA has always been the best intelligence agency of which human imagination can conceive, called three team members—Angelo Codevilla, Mark Schneider and Kenneth de Graffenreid—"the three hooligans form the Hill."

No wonder. When another hide-bound functionary from the CIA was asked what Codevilla's proposals amounted to, the upset bureaucrat answered that they amounted to firing every official of the CIA above GS-14 (which included him).

In that sense, our criticism threatens the CIA's inept bureaucrats more than liberal-Democrat criticism ever did. When the New York Times or Washington Post attacked the criminality and immorality of the CIA, they never called for the firing of every CIA official above GS-14—but if the CIA is inept, that is what it amounts to.

If a certain official of the CIA is not gifted (and in particular, not intelligent) enough to conduct intelligence/espionage in the sense of the clandestine acquisition of strategically vital data denied by totalitarian societies, no laws enacted by Congress and no rules established by the CIA will make him more gifted or intelligent than he is. He has to be fired and seek employment fitting his ability and intellect.

Thus, our criticism threatens not just a few culprits; but all inept personnel of it as a whole, except the GSI levels of typists or security guards.

Still unkown to the public, as far as I know, the following list of the CIA's failures was presented by the Transition Team:

Chronic failure to predict the actual size of the Soviet military effort and of the military portion of the Soviet GNP.

Constant gross misstatement of Soviet global objectives.

Failure to predict the fall of the Shah in Iran.

Massive failure to interpret and predict the nature of "wars of national liberation" in Africa and Central and South America.

Constant miscalculation of the effect of massive technology transfer from the West to the Soviet bloc.

Utter failure to predict the massive Soviet buildup of ICBMs and SLBMs.

Massive failure to understand the characteristics of Soviet missiles under development prior to SALT I.

Failure to predict (combined with predictions to the contrary) the major improvements in accuracy of Soviet ICBMs in the late 1970s.

General failure to explain the characteristics of Soviet conventional weapon systems and vessels—for example, the Soviet T-64 and T-72 tanks and new guided missile cruisers.

Massive failure to understand or counteract Soviet disinformation and propaganda.

Failure to detect the Soviet brigade in Cuba.

The list did not make clear where the CIA had not failed.

However, William Casey all of a sudden terminated the Transition Team (before there was any resolution), put its "hooliganism" into secret mothballs, and has ignored it ever since.

The public knew nothing about the storm that had been raging in the Transition Team. The list of the CIA's failures stayed secret. Within the administration, the criticism of the CIA's ineptness froze for 6 years and will probably remain frozen until the end of Reagan's second term.

The CIA's public image of its ability has been as glorious since 1980 as ever before.

Though Casey is supposed to be a conservative Republican, the CIA is as one with the liberal-Democrat media, which support the CIA in their joint fight against the Department of Defense, its Defense Intelligence Agency (DIA) and the Reagan administration itself.

The "three hooligans from the Hill" have not slid into obscurity, however. On the contrary, one of them—de Graffenreid—is in the White House, another—Schneider—in the Department of Defense, and the third—Codevilla—is more visible than in 1980.

The fourth "hooligan," David Sullivan, is quite high on the Hill, and those of us who are not from the Hill do not desist either.

"Are the Soviet silos which the CIA sees via space satellites empty, while the Soviet mobile missiles are hidden?" asked Sam Cohen, the inventor of the neutron bomb, and Joe Douglass, a Washington defense analyst, in their Wall Street Journal article of July 18.

"To enhance the success of such deception, the Soviets would want to conduct missile flight tests and reloading exercises from their silo fields, which the U.S. monitors with great precision. This they have done, enhancing their confidence in their missile-launching capabilities and enhancing the U.S.'s ill-advised confidence in outside monitoring."

Such questions will multiply as the Soviet "great unknown" becomes more and more dangerous and more and more unknown.

Casey terminated the Transition Team's criticism of the CIA 6 years ago.

But he cannot terminate the growth of the Soviet "great unknown"—nor the growing doubts of the American public that the CIA is as successful in penetrating this "great unknown" as its officials have always been saying it is, before and after 1980.

[From the New York City Tribune, Sept. 3, 1986]

CIA AND THE 'MYSTERY' OF WHERE DOES SOVIET STEEL GO

(By Lev Navrozov)

While the Soviet regime successfully conceals from the CIA many of its weapons, it has not been concealing the output of something of which they are made—steel. The output of steel was hailed by Stalin well back in the early 1930s as a symbol of "peaceful industrialization" of the once industrially backward Russia, and this image has stuck in the West.

It was believed in the West that Stalin wanted his populace to have as many cars and other "iron and steel products" as the Americans has already in the 1930s, and hence the Soviet output of steel had to match its American counterpart.

In 1975, the Soviet output of steel reached 141 million tons—that is, it surpassed the U.S. steel output by 32 million tons. So Sen. William Proximire, D-Wisc., brought up the matter with a couple of CIA experts when they testified before his Joint Economic Committee on the Soviet economy in 1975:

"One of the first questions I asked, I wondered what in the dickens that they are doing with all that steel. A lot of it is there, but even there it seems to me they do not have automobiles like we do. They do not have the highway system we have. They do not have the housing construction or anything of that kind.

"If they are producing more steel, how can they use it?"

Proxmire's insight was brilliant. Before citing the CIA experts' answer, let's see how the mystery of Soviet steel has grown ever since.

In 1983, the Soviets' raw steel output surpassed 168 millions tons while they imported a net of 5 million tons, i.e., they used a total of 173 million tons. Meanwhile, America's "total shipments" of steel amounted to 68 million tons.

We know how the U.S. steel is distributed. In 1983, about 17 million tons or 25 percent went to the "distributors," that is, was stocked into warehouses from which the distributors could meet demand whenever it originated, for each steel consumer wants his steel immediately or he will apply to another distributor.

The biggest consumer of steel is the automotive industry: 12 million tons or 18 percent of output. Then follows construction: 10 million tons or 15 percent. Then (don't laugh!) production of cans and other containers: 5 million tons or 7 percent. Finally, production of kitchen appliances, etc.: 3 million tons or 5 percent.

Add the above to the distributors' allotment and we find that 70 percent of U.S. steel is spent on basically civilian uses—which make up only a fraction of the Soviets' use of steel.

In the communist Soviet Union, there is no need to send one-quarter of steel to distributors the way it is done in the United States. There is a hierarchy of military projects, under which lie civilian projects. The military will get all the steel they need according to the hierarchy (the top will get it first). If no steel is left for civilian projects, those will have to wait.

A total of 1,487,000 cars were produced in the Soviet Union in 1983, according to Soviet statistics, as against 6,781,184 in the United States. And Soviet cars are small (except for those few intended for the ruling few), their average weight about 1 ton. Hence the total Soviet steel output for cars does not have to exceed 1,487,000 tons, or less than 1 percent of the steel used by the Soviets.

Construction? American builders begin the construction of even ordinary five-story apartment houses and highways with steelwork. Soviet builders use it only in industrial structures that will carry heavy loads; otherwise they build out of anything but steel.

An American highway is in fact a horizontally level steel-and-concrete bridge over terrain. A Soviet "road with a hard surface" (as Soviet statistics call it) is a layer of asphalt laid over a layer of gravel and sand, which undulates with terrain—it's a "washboard road," as an American reporter put it a week ago.

Cans and other containers? Contrary to Soviet statistics, recent emigrés from the Soviet Union report there was no canned orange juice even in major cities when they left the country. The problem of containers is solved at the customers' expense: they have to bring their own, into which vegetable oil or whatever is poured.

Kitchen gadgets? In 1983, 4,201,000 microwave ovens—of which few in the Soviet Union have even heard—were produced in the United States. Soviet statistics contend that 401,000 "[one-fifth cubic meter] two- and three-chamber refrigerators and freezers" were produced in 1983. The size of such a refrigerator is one-fourth that of our standard General Electric fridge.

Since 5,255,000 refrigerators were produced in the United States in 1983, the Soviet-U.S. ratio of steel in refrigerators—with allowance for size—is 1 to 52.

In short, it is not clear what in the dickens the Soviet economy can do even with 68 million tons of steel. But the Soviet use is 173 million! Let's now see what the CIA experts answered Sen. Proxmire in 1975:

Mr. Burton. They are also inefficient users of steel. Their machines are very, very heavy compared to ours.

Sen. Proxmire. The military weapons systems are usually heavy, too.

Mr. Burton. Yes.

Mr. Proctor. One remembers Khrushcev's cursing of the manufacturers as metal-eaters. He had a campaign to reduce the waste of steel, especially in the manufacture of both military and civilian hardware.

Soviet steel can be wasted in two ways. Between an ingot of steel and a finished product some steel has to be lost as shavings, scrap, etc., owing to machining, etc. As of 1967, the Soviet loss of this kind constituted 18 percent for the Soviet economy as a whole.

Even if it is assumed that not an ounce of steel is lost this way in the United States, 18 percent doesn't solve the mystery of Soviet steel.

The other loss is a "constructive" one. Here we had in 1976 the Soviet T-72 tank. Its U.S. equivalent in performance, the XM-1 tank, appeared in 1979. But suppose the T-72 was poorly constructed and hence weighed more for the same performance. This could be called a "constructive loss" of steel.

The only trouble is that the T-72 weighed less than its U.S. equivalent: 36 tons vs. 53 tons for the MX-1.

So the explanation of the mystery of Soviet steel is that a hidden Soviet military-industrial expansion has been going on—on a scale the CIA did not want even to conjecture upon in 1975, when the mystery so puzzled Proxmire, and the CIA refuses to face up to the reality 11 years later.

[From the New York City Tribune, Sept. 10, 1986]

CLASSIC BARTER, SOVIET-STYLE: A SPY FOR A JOURNALIST

(By Lev Navrozov)

When I heard about the Aug. 24 arrest of Soviet U.N. official Gennadi Zakharov on charges of espionage, I told my wife that an irrelevant American would now be framed as a spy and arrested in Moscow so that later he could be swapped for Zakharov.

A week later, on Aug. 31, my wife, who scans newspapers for me, said as she folded a clipping and pressed it secretively to her chest: "Guess what happened yesterday?"

I said: "Easy. An American was framed-up in Moscow as a spy to exchange him for Zakharov." "Right!" she said. "Nicholas Daniloff, the Moscow correspondent of the U.S. News & World Report."

How could it be otherwise? In Moscow in the early 1970s we met foreign correspondents and passed to them all kinds of "emigration materials," such as letters written by those who couldn't get exit visas, and appealed to all kinds of individuals and institutions or to the world at large.

Now suppose a KGB agent-provocateur posed as one of us hundreds of thousands of aspiring emigrés.

It would be enough for him to pass to a correspondent an envelope looking like one of our letters, but actually containing classified military data. Whereupon the KGB would burst in, search him, find the envelope in his pocket, open it—and here you are, a spy caught in the act! The whole scene could be videotaped as future legal evidence.

IMPECCABLE TRIAL STAGED

An impeccable trial could be staged if necessary. Indeed, the American defendant could even be allowed to have an American lawyer to come to Moscow to defend him.

The KGB agent-provocateur would testify that the American recruited him and requested he bring him those classified data in an envelope. How would the American lawyer be able to prove that this miserable-looking Soviet codefendant whom the American had allegedly recruited was a KGB agent-provocateur and that the American had no idea of the classified military content of the envelope?

And so, faced with the prospect of death for "espionage," the American will most likely "confess" to his imaginary "espionage," (and later be swapped for a real spy caught in the United States) and his lawyer will have to tearfully say in court that his defendant's guilt is fully proved but he is asking the judges for leniency.

As a result, the KGB and GRU have hundreds and thousands of legitimate Soviet spies in the United States to carry out espionage operations openly, legitimately and with total impunity.

To begin with, many of them have diplomatic immunity. So the worst that the U.S. government can do to them is to send them back home to the Soviet Union, from where they will go to spy to another country.

Since there are more than 100 countries, each Soviet spy has to be declared persona non grata at least 100 times before the KGB gives him a job inside the Soviet Union, and such jobs are never lacking, for the entire population has to be watched by that same KGB!

But even if the FBI dares to catch a Soviet spy without diplomatic immunity—like Zakharov—the KGB will frame as a spy any American in the Soviet Union: all Americans there are thus hostages, each of whom can be arrested and exchanged for Soviet spies in the United States who have no diplomatic immunity.

This situation originated no later than 1933, when Franklin D. Roosevelt "recognized" Stalin's totalitarian regime—53 years was not enough for the State Department, the FBI and other U.S. government institutions to understand the nature of the totalitarian regime and consequences of this "recognition."

When Zakharov was arrested, it was reported that more arrests of such Soviet nationals were expected; that the Soviet U.N. mission totals 275 officials—the world's largest by far—about half of whom are KGB and GRU spies, and that all other Soviet institutions in the United States have always been spy nests.

Now, when an American correspondent was arrested in Moscow on Saturday, Aug. 30, the State Department 4 days later still "rejected any attempt by Moscow to link the release" of the framed-up Daniloff to the release of Soviet spy Zakharov.

A deal? A linkage? Never ever! "U.S. Aides Reject Deal For Newsman" and "U.S. Aides Reject Linkage Between Spy Cases" were the heroic headlines of the New York Times' front page Sept. 3.

But in the article under those heroic headlines we could already read: "A senior Administration official with President Reagan in Santa Barbara, Calif., said Monday that no course of action to win Mr. Daniloff's release, including a possible prisoner exchange, had been ruled out."

What about the State Department? Its officials said it was "possible that the Federal Court in New York might allow Mr. Zakharov to be released to the custody of the Soviet Ambassador, Yuri V. Dubinin. If that happens, the Soviet side might allow Mr. Daniloff out of prison, but that would not be an arranged deal."

Certainly not an arranged deal! A linkage? Never ever! A pure coincidence. Zakharov will be released, and then—who would think of it?—Daniloff will be released, too. The FBI catches a Soviet spy, after which the KGB catches any American in the Soviet Union. Then the Soviet spy is released, after which the American is released too. What deal? What linkage? Never ever!

What FDR "recognized" Stalin's totalitarian regime, he thereby legitimized Soviet espionage in the United States—while American espionage in the Soviet Union has essentially consisted in the presence of American military attachés at Soviet parades where the Soviet military either show them dummies of non-existent weapons, or show them real Soviet weapons, or do not show them either dummies or real Soviet weapons, depending on the current scheme of deception.

On one occasion the same new Soviet Bison jet bombers circled out of sight and flew over again. Khrushchev had switched the Soviet aircraft-building plants into missile-production sites, and he wanted to mislead the United States government into the belief that he had more new jet bombers than the United States did.

He succeeded only too well: there was a panic in the U.S. intelligence community, including the CIA.

In other words, while FDR's recognition of the totalitarian regime gave the latter immence opportunities for legitimate—that is, unpunishable—espionage with and without diplomatic immunity, FDR's recognition gave the United States nothing but immense opportunities for self-deception via the American military attachés presence at Soviet deceptive military parades.

[From the New York City Tribune, Sept. 17, 1986]

WHAT THE KGB'S DANILOFF-ZAKHAROV MOVE SIGNIFIES

(By Lev Navrozov)

Soviet espionage in the classical sense—through Soviet or East-bloc nationals disguised as Westerns—has failed everywhere except in West Germany. Only there can numerous Soviet-bloc nationals—East Germans—engage in espionage in the guise of the local inhabitants—West Germans.

The reason is simple. East Germany's espionage agencies have a reservoir of millions of German-speaking natives who can be sent to pose as West Germans.

There is no such reservoir available for use in the United States. Stalin wanted to rectify that situation by organizing educational institutions to create "artificial Anglo-Saxons," so to speak, from among whom the KGB and GRU could select suitable candidates for further training as spies.

This hasn't worked so far, and prior to the General Zahkarov case the system of Soviet espionage was organized as follows:

Soviet nationals without diplomatic immunity acted to "spot" Americans who could be recruited for espionage. This carries no liability under American laws. Even if a "spotter" and an American have reached an understanding about espionage, their understanding does not yet constitute a crime, so the Soviet agent is safe.

At this point a Soviet national who does have diplomatic immunity takes over—receives classified information—does what qualifies as espionage under American laws.

But since he has diplomatic immunity he can only be expelled, after which he can go to another country and do the same thing.

THERE MUST BE A BETTER WAY

The system had an essential defect: the number of Soviet nationals in the United States who have diplomatic immunity is only a fraction of the total number in the United States.

Even in New York with its United Nations, probably no more than 200 Soviets have diplomatic immunity, while the total number of Soviet nationals in New York—including Secretariat employees, such as Zakharov—may exceed 1,000. This number can easily swell if one counts Soviet tourists, traders, scientists who are part of exchange programs, etc.

If *all* Soviet nationals could be made immune to U.S. charges of espionage, Soviet espionage would expand enormously.

The recipe for their immunity is simple. Let the United States know that every arrest of a Soviet spy in the United States will be subject to reciprocity by the KGB's frameup of an American national in Russia so the latter can be exchanged for the Soviet spy.

Thus, no American arrest of a Soviet spy will lead to anything except much ado for the United States and the spy's eventual release.

Of course, the Politburo calculated the winning chances before making its move

and decided that the United States, its government and Ronald Reagan were weak enough to surrender the game and make all Soviet nationals henceforth immune to U.S. charges of espionage.

Since the missile crisis of 1963 the United States has been sinking to the position of a second-rate military power able only to "negotiate" with the Soviet rulers, never stand up to them. Moscow apparently believes the time has come to assert its right to perform acts of espionage in the United States.

On Sept. 8, the official Soviet daily *Izestia* presented the "case" against Daniloff. Reading it, I felt I was facing that boundless Soviet insolence every reader of the Soviet press knows. Now this insolence is directed toward the United States and Ronald Reagan personally.

Says *Izvestia:* "On familiarizing himself with the indictment, Nicholas Daniloff reluctantly put his signature, and his status changed from that of suspect to that of defendant."

Everyone indicted in Russia has to sign that he has read the indictment. The line says: "I have read the indictment. Signed." The indictment may charge that Daniloff is an elephant, but he is not to sign that he is an elephant. He is to sign that he has read that he has been charged with being an elephant.

Thus, *Izvestia* turns a purely formal Soviet procedure into almost a piece of "smoking-gun" evidence, demonstrating that Daniloff is a spy. Why, he *signed*—if only reluctantly—the indictment saying that he is a spy!

The *Izvestia* article was translated by Tass, handed out to Western correspondents, and in its usual humorless way the *New York Times* published it (on Sept. 19) under the headline, "The KGB's Evidence in Developing a Case of Espionage Against Daniloff."

What other evidence did the KGB develop?

Izvestia tell us how Daniloff (himself!) related that the "photographs, diagrams and maps" in the envelopes that "Misha" has thrust on him "were an unexpected and unpleasant revelation to me."

A TWISTING OF EVIDENCE

Well, this is evidence—for Daniloff and against the KGB. But, insolently, *Izvestia* continues:

Was it so "unexpected," Mr. Daniloff?

The name of Nicholas Daniloff has long been known among members of the foreign journalists' corps accredited in Moscow.

At the mention of Daniloff's name, many of his colleagues in Moscow frowned in displeasure, saying: "Ah, that one?" and often made it clear that they had nothing in common with him.

Even more inane is the "evidence" that came from the KGB's agent-provacateur Misha.

One could think that Misha would be passed off as a Soviet whom Daniloff has recruited. Not so! He is being presented as an honest Soviet who set about in 1982 to enlighten Daniloff, whom he thought was an honest American journalist, but discovered that Daniloff "was not the person he was professing to be."

Says Misha: "I gathered the impression that Daniloff was interested in nothing but restricted [that is, classified] information." So it's an honest innocent Soviet Misha whom the American spy tried to deceive, but Misha saw through him.

The KGB-Tass-*Izvestia* concoction ends thus: "Is more proof needed? It exists."

The above, you see, was proof so abundant that really no more proof is needed. Yet more proof of the same kind exists.

Thus, the KGB has not even tried to concoct something plausible. Meanwhile, Daniloff and Zakharov have been released to the custody of U.S and Soviet ambassadors, part one of the exchange the KGB envisions.

For all its inane crudeness, will the KGB's ruse succeed? If it does, the road for unpunishable Soviet espionage in the United States will be open.

[From the New York City Tribune, Oct. 1, 1986]

U.N. IS MOSCOW'S BEST ESPIONAGE BASE WORLDWIDE

(By Lev Navrozov)

What did Franklin D. Roosevelt mean to achieve by his recognition of Stalin's regime in 1933? FDR's view of the post-1917 regime of Russia was so naive, parochial, fragmentary and self-serving that trying to analyze his motives would be a waste of time. On the other hand, what Stalin meant to achieve was simple: to establish an espionage base in the United States under the facade of an embassy.

However, that base had at least three drawbacks:

(1) The number of Soviet Embassy staffers was limited, and the number of those who had diplomatic immunity even more so;

(2) In retaliation for Soviet travel restrictions imposed on U.S. Embassy personnel in Moscow, the U.S. government imposed similar restrictions on Soviet Embassy personnel in Washington; and

(3) Soviet Embassy officials had to introduce themselves as *Soviet* embassy officials.

However, following World War II, FDR presented Stalin with a new espionage base, compared with which FDR's previous gift was a trifle: the United Nations! Can one even compare this Soviet espionage base with the Soviet Embassy? No! As a Soviet espionage base, the U.N. is free from the draw-backs of the Soviet Embassy:

More than 200 Soviet members of the U.N. Secretariat have diplomatic immunity, while the total number of Soviet-bloc nationals in the United Nations exceeds 1,000; and

They can travel without restrictions, for there is no equivalent United Nations in Moscow to impose restrictions on the corresponding 1,000 American nationals in Moscow;

They can appear everywhere as U.N. personnel because U.N. identification doesn't disclose its bearer's nationality.

PROFITMAKING ESPIONAGE

While free from the drawbacks of the Soviet Embassy, the United Nations has many merits of its own as a peerless espionage base.

KBG fronts like the World Peace Council freely participate in U.N. activities, since such fronts have been declared by the rulers of Russia to be nongovernment organizations or NGOs;

Soviet nationals at the United Nations can use the U.N. computerized Data Bank Service to tap into American data banks and the U.N. Dag Hammerskjold Library to acquire scientific technical information on behalf of the United Nations and intended for the Soviet military buildup;

90 percent of the salaries for Soviet personnel in the U.N. Secretariat is paid by other countries, and, besides, the Soviet regime nets every year no less than $20 million by taking a hefty percentage of all Soviet U.N. salaries, so that for the first time in history, espionage doesn't cost anything, but on the contrary generates currency.

NOT SO INTRIGUING

The question as to how many Soviet nationals in the United Nations are KBG or GRU agents intrigues the West. The Western estimates vary from one quarter to three-quarters. However, is the percentage so important?

In the United States, there is a fundamental difference between a CIA officer currently in service and an ordinary U.S. citizen. The latter can tell the CIA to go to hell if the CIA approaches him or criticize the CIA publicly for any real or imaginary fault.

A Soviet citizen has a slave status. This has been unfashionable to mention in the last 20 or so years, yet this is true. The "defection" of a Soviet citizen is always like a slave's escape from his master, trying to retrieve his human property.

Suppose a Soviet national who is not a KGB or GRU officer is requested, before his trip to the United States, to do something for the KGB or GRU. He can refuse under some specious pretext. If the KBG or GRU assignment requires a certain kind of good memory, he can say he has always suffered from the absence of that kind of memory (he cannot remember faces, or location, or telephone numbers, or whatever).

Then he may learn that his trip to the United States has been canceled. Who was behind the decision? Why? He'll never know. He can only guess. Nor will he know why he has been demoted or dismissed.

This is, incidentally, why I never held any post or even any salaried join in Russia and never went aboard even for a day. One's temptation to make a brilliant Soviet career and travel abroad opens one to easy KGB pressure.

Besides, many Soviet members of the U.N. are members of the State Committee for Science and technology or SCST, which is not a department of the KGB or GRU, but which acquires by all means possible Western scientific and technological data of strategic importance to the Soviet war-empire. In other words, the SCST is a kind of scientific & technological intelligence agency in its own right, and members abroad are its agents.

Finally, as far as I know, every Soviet member of the U.N. Secretariat (if not of all agencies) is a member of the Communist Party of the Soviet Union. In case an espionage mission is sufficiently important, the KGB o GRU can apply to the party, and if its member disobeys its order, he "will part with his membership card", as the expression is, that is, will reduce his entire career to zero.

Therefore, the Western interest as to the percentage of KGB or GRU agents in the Soviet U.N. personnel stems rather from Western projections on a society where everyone allowed to travel abroad can be forced into espionage—or lose his privilege of traveling abroad.

It takes the KGB much time, energy and ingenuity to place over 1,000 Soviet-bloc nationals into the United Nations. Some U.N. agencies are quite obscure. Who has heard of WIPO, for example? Yet WIPO is the World Intellectual Property Organization in Geneva, and the KGB has placed there six Soviet nationals to take care of world intellectual property.

The news yesterday that Gennadi Zakharov, the Soviet U.N. official who has been in-

dicted on charges of espionage, was swapped for the innocent U.S. journalist Nicholas Daniloff, indicated that the KGB and GRU have succeeded in their two-fold task:

(1) To preserve their priceless espionage base called the United Nations; and

(2) To enable the 1,000 Zakharovs from this base to spy with impunity. From now on, whenever a Zakharov is apprehended by the FBI, there will be an American arrested and framed up in Russia, so that both can be duly exchanged. Certainly, there are enough Daniloffs in Russia to be used as hostages, ensuring the impunity of Soviet espionage even by those Soviet nationals who have no diplomatic immunity.

[From the New York City Tribune, Oct. 8, 1986]

SENATOR HELMS USHERS IN NEW INTELLIGENCE ERA FOR WEST

(By Lev Navrozov)

What occurred on Sept. 25 on the floor of the U.S. Congress may well turn out to be the most important event in the post-1917 history of Western intelligence services and hence in the post-1917 history of the West.

To say that the major media ignored the event would be wrong. The New York Times from-paged it under a rather enigmatic headline: "Vote in Senate Supports Helms on C.I.A. Curb."

Curb? Apparently the Times missed the point. In reality, Sen. Jesse Helms, R-NC., is out to remove the curb which those in charge of the CIA imposed on the creative minds within the CIA. As has been usual in post-1917 history, the Times couldn't or wouldn't expound the historic purport of the event reported.

I have written this column to put the Helms legislation in its historical perspective on the basis of all-declassified information I gathered on the subject.

The word "declassified" turns off The Washington Post or New York Times. They are not interested unless they get some classified information illegally leaked and publicized. In this way they feel they are privy to top government secrets (which is exciting), do something safe yet forbidden or even criminal (which is even more exiciting) and spite the conservatives, cold-warriors and warmongers (and what is more exciting than that?).

I've been trying to interest my readers not in illegal leaks, but in the story in the making as of this hour.

Owing to the U.S. system covering CIA congressional testimony, the declassifying of once-top secret documents, the Freedom of Information Act and other democratic aspects of American society, I have gathered since 1974 well over 300,000 pages of primary data on the subject of intelligence-espionage. They don't contain an atom of classified information, but this doesn't make them any less interesting or important.

The same applies to my data on Helms and his innovative legislation.

HISTORY IN THE MAKING

It is a truism that the survival of the West depends on vital intelligence data on the closed totalitarian society of post-1917 Russia and its vassals and allies, both actual and potential.

That the CIA (just as other Western intelligence agencies) is tragicomically inadequate in this respect was a paradox in the 1950s, a growing opinion in the '60s, a respectable consensus in the '70s and a plain truth, obvious to anyone willing to look at it on his own, in the '80s.

At the same time, the Soviet-American strategic power ratio has been defined by a Congressional aide at a hearing as follows: "U.S. monopoly in the 1940's, heavy U.S. superiority in the 1950s, light U.S.-Soviet parity in the 1970s, and Soviet superiority in the 1980s."

However, the liberal-Democrat media have refused to face the lethal "intelligence gap" since this would end all those arms-limitation or -reduction agreements, which are based on the CIA's imaginary ability to verify them.

As we know, the liberal-Democrat establishment has been trying since 1963 to replace Western defenses with such self-deceptive agreements, and while the liberal-Democrat media have never stinted on space for what they regard as the CIA's immorality and criminality, the CIA intelligence gap has been one of their most sacred taboos.

What about conservative-Republican president?

RICHARD NIXON'S COMPLAINT

When no longer president, Richard Nixon complained in a TV interview in Paris that the CIA had been grossly misleading the country for 11 years by ignoring the Soviets' stupendous military growth between 1964 and 1975. But where had he been during those 11 years, and why hadn't he done anything to enable outsiders to evaluate the CIA?

Ronald Reagan did accept the plain truth that the CIA is tragicomically inadequate. He did it between 1978 (when his newsletter praised my article on the subject in Commentary magazine) and 1980 (when he abruptly terminated his own Transition Team's study that confirmed the CIA's utter inability to cope with the task it was created for).

But after 1980 he put the plain truth in mothballs. No one has seen the Transition Team's study (except those in charge of the CIA and perhaps John Ranelagh, who claims that he received a copy of it from the CIA for his 847-page eulogy of the CIA entitled The Agency and published this year).

With all major media being liberal-Democrat, President Reagan could ill afford luxuries like evaluating, criticizing and reforming the CIA. His stay in office itself has been possible as long as he can compromise with the liberal-Democrat establishment.

To reform the CIA? What an outcry in the media would have ensued! No, Reagan didn't dare. That's why William Casey, his newly appointed director of central intelligence, appeared at a Transition Team session and just cut it off in the middle of a sentence, with all its materials shoved into the CIA's safest vault, to rest there—forever if possible.

Until Sept. 26 the deadlock seemed unbreakable. To be sure, the plain truth about the CIA was there—but how to bring it to the public? Anxious to suppress it are, above all, those who rule the roost in the CIA and value its corporate and their own personal prestige and prosperity above the survival of the West.

Anxious to suppress, too, is the liberal-Democrat establishment, including the major media and the bulk of the academy. And anxious to suppress it, if only reluctantly, is Ronald Reagan and those Republicans who believe they should not above all "rock the boat," "make waves," anger the liberal-Democrat media.

A WEST-SAVING BOLT FROM BLUE

The two protagonists of the extraordinary effort to stop the suicidal concealment of the plain truth from the public are Sen. Jesse Helms and his legislative assistant for defense and intelligence, David Sullivan.

To say that Sullivan left the CIA about 8 years ago because he dissented from its estimates will probably be proven inaccurate a decade from now. It will then, perhaps, be more apt to say that the CIA left Sullivan. The heart and soul of U.S. intelligence work has shifted from a huge corporation, having thousands of employees and officially designated as the "CIA," to a "one-man CIA," as I called David Sullivan in my review last year of the book he coauthored with Quentin Crommelin: Soviet Military Supremacy.

But Sullivan's superhuman effort, as well as the work of all us critics of the CIA, could smoulder on quietly for a long time in specialized or conservative publications, reaching no decision-making elites, were not Sullivan linked with prominent pro-defense legislators—and above all Jesse Helms, that astute and courageous ranking majority member of the Senate Foreign Relations Committee. The West-saving bolt came from the blue for Congress.

What did Helms do? With his characteristic legislative skill, he added historic amendments to an annual bill authorizing the activities of the U.S. intelligence agencies.

First of all, he introduced a "requirement for intensified competitive analysis" in intelligence work, and invoked in this connection an example that the hidebound segment of the CIA dreads—"A-team-B-team exercise"—in which a dozen outsiders (Team B) are given the same intelligence data as CIA insiders (Team A) and prove that the CIA's Team A has drawn false conclusions from its own intelligence data.

Helms also evoked an even more dreadful ghost as he referred on the floor of the Congress to the "availability[!] of the report of the president's 1980 Transition Team study of intelligence"—yes, that same milestone study that the administration has been hiding for 6 years even from all members of Congress.

The struggle for intensified competitive analysis will no doubt be uphill. Outsiders were allowed by the CIA to participate in the "A-team-B-team exercise in 1976"—but will those in charge of the CIA ever repeat this self-exposure of its incompetence? They have never done it so far. The critics of the CIA in the Transition Team's study were outsiders—but Ronald Reagan, not the CIA, appointed them.

The day after Helms introduced his amendments, The New York Times noted they provide for a "team of 15 experts from outside the government to spend a year reviewing some of the basic intelligence findings of the CIA. Their report would be delivered to the President and Congress."

COMPETITION BETWEEN WHOM?

But a week later—on Oct. 2, 1986—the Times reported:

"Mr. Helms said in his speech that he intended for the agency to bring in a team of outside experts who would re-examine the agency's conclusions on key issues. Senate aides disagreed, arguing that the intelligence agency could satisfy the requirement for competitive analysis by using its own employees or by using analysis from other government agencies.

Competition between government agencies is better than no competition at all. In particular, Helms emphasizes in his amendments the importance of competition between the CIA and the DIA: the latter must

compete with the former, not subordinate its findings to the CIA.

But to say that the CIA can effectively compete "by using its own employees" is the same as to say General Motors can effectively compete with General Motors, and so no outside competitors are needed.

Even if the CIA is compelled by Congress to admit outsiders for evaluation, review and other competitive events, yet allowed to choose it competitors, analysis of the CIA's behavior indicates that it will choose the weakest, the least effective, the most innocuous and hence the best for CIA's corporate interests as those now in charge understand them.

Yet while the path toward truly competitive analysis goes uphill, the trail has been blazed. We'll see why presently.

SELECTED INTELLIGENCE PROBLEMS

However the notion of competition may be understood by the CIA or the liberal-Democrat media, Helms read on the floor of the Congress a list of 32 "intelligence problems" to be "studied under appropriate competitive analysis procedures." Here's my selection of 20, most of which I abbreviate:

Soviet geopolitical and strategic intentions.

Soviet investigation of the feasibility of detecting submerged submarines through the analysis of data on the surface of the ocean.

The role of surprise and deception as principles of Soviet military doctrine.

The accuracy of Soviet missiles.

The existence of hidden Soviet missiles for reload, refire and covert soft launch in strategic reserves.

The reasons for the CIA's continuing underestimation of Soviet strategic forces.

Better methodologies for estimating Soviet defense spending.

The effects of Soviet negotiating and operational deception in arms control.

Means of overcoming a deterring and hardening against Soviet data denial through Soviet radio-electronic warfare.

The extent of the Soviet lead over the United States in deploying a nationwide, land-based ABM defense and in developing a space-based ABM defense, including identification of U.S. intelligence gaps on the Soviet SDI program.

Soviet knowledge of U.S. National Technical Means of intelligence collection and deceptive actions that Moscow may have taken on the basis of that knowledge.

The Soviet Biological and Chemical Warfare threat and potential U.S. counter-measures.

Implications for U.S. national security of Soviet military supremacy.

Better methodologies for estimating yields of Soviet underground nuclear weapons tests by utilizing all the evidence available.

Possible limitations in U.S. area search and spot search reconnaissance capability.

The ability of U.S. National Technical Means of intelligence collection to monitor Soviet compliance with the 1967 Outer Space Treaty prohibiting nuclear weapons in space, and with an Anti-Satellite Treaty.

The history of Soviet violations of the Biological and Chemical Weapons Conventions and whether the CIA blocked the creation of an Interagency Group to study these violations when they were first detected in 1976 and 1977.

The military implications of Soviet SALT and other arms-control violations and the reasons why the CIA resisted evidence and analysis showing Soviet SALT violations for 12 years.

The reasons for reported CIA long-term underestimation of Soviet submarine capabilities.

REQUESTS HAVE FORCE OF LAW

Under congressional rules and owing to Helms' impeccable legislative strategy, these questions "stand as Senate requests" to the intelligence agencies—and such requests have the force of law!

Read the list carefully. Every item confronts the CIA squarely. The CIA has been avoiding the issues by, say, picking from Soviet propaganda myriads of trifles like an "increase of sale of fruit in the U.S.S.R." and discoursing upon them ad infinitum.

Now the CIA has to face the issues by law! The extent of its ignorance, evasion and obfuscation will be revealed, and that will lead to true competition—the CIA against the best, the strongest competitors—no matter how fiercely William Casey resists it now, or did in 1980.

There has never been any other way to achieve excellence in any field except through competition. Even in the Soviet system the best weapons are produced only when all the best designers freely compete (despite the fact that there is no competition in the fields about which the Soviet rulers don't care).

Secrecy is a must in intelligence work and should be observed. All competitors must be checked—and not just by formal signs, such as the assumption that all fourth-generation Americans with impeccably Anglo-Saxon names are loyal to the West while all emigrés are security risks.

Let's recall that in the list of Soviet spies in the United States as exposed in the last decade, there are many Anglo-Saxon-sounding names—Walker, Howard, Whitworth, etc. On the other hand, thousands of emigrés from Russia have secret clearances and hundreds of them top-secret clearances—but not one of them so far has been convicted of spying.

NO HIDING BEHIND SECRECY

Yes, secrecy is a must. But it should not be a tool for an entrenched bureaucracy to avoid all true competition, ignore all effective criticism, conceal its ineptness and ignorance and praise itself to the skies. Certainly not if that bureaucracy is an institution on which the survival of the West so critically depends.

No wonder many anti-defense liberal-Democrat members of the Congress and their aides are full of forebodings. Listen to the New York Times of Oct. 2:

"They said that once the reports were delivered to Congress, Sen. Helms would return next year with broader efforts to rewrite the intelligence legislation on the floor."

Yes, aided by David Sullivan, Helms is doing "on the floor" what Ronald Reagan meant but failed to do. They are doing what the Republican Party ought to have done once the Democratic Party abdicated its defense mission in 1963. To put it bluntly, they are saving the West—and none too soon!

CIA PROBE OF SOVIET SPACE SHUTTLE SABOTAGE

Mr. President, I ask unanimous consent that an article entitled "CIA May Sniff for Space Spies," of October 4, 1986; an article entitled "Senate OK's 'Challenger' Spy Probe" of October 7, 1986; and an article entitled "Sabotage? CIA May Probe Shuttle Disaster"; all by Todd Halvorson published in Florida Today, be printed in the RECORD. I finally ask unanimous consent that an article in the News and Observer of Raleigh, NC, October 8, 1986, entitled "Helms Seeks Investigation of Possibility of Soviet Role in 'Challenger' Explosion," be printed in the RECORD.

The articles follow:

[From Florida Today, Oct. 4, 1986]

CIA MAY SNIFF FOR SPACE SPIES

(By Todd Halvorson)

An unprecedented string of disasters dating back to August 1985 is fueling calls for a CIA investigation into the possibility that the Soviet Union has been sabotaging western space launches.

Legislation that would direct the CIA and other U.S. intelligence agencies to investigate "the possibility of Soviet bloc sabotage" in the Jan. 28 *Challenger* explosion will be brought before the Senate Monday.

If passed, the secret appropriations bill also would direct the U.S. intelligence community to examine the possibility of Soviet sabotage in a string of other recent American and European launch failures.

The legislation passed the House by voice vote on Thursday and must be approved by the Senate before it becomes law.

The presidential commission that investigated the *Challenger* disaster found no evidence of sabotage in its four-month probe of the catastrophe.

The chairman of the *Challenger* commission—former Secretary of State William Rogers—declined comment on the pending legislation.

A congressional source who asked not to be identified said the investigation will focus on "circumstantial evidence" brought to light by Retired Army Lt. Gen. Daniel Graham, former director of the Defense Intelligence Agency and past deputy director of the CIA.

Graham now heads High Frontier, a privately funded organization whose purpose is to propose policies relating to space utilization. He also is the man credited with selling President Reagan on the idea of the Strategic Defense Initiative, more commonly known as the "Star Wars" program.

In a telephone interview from his Washington, D.C., office, Graham said the string of launch failures warrants close scrutiny by the intelligence community.

Two unmanned Titan rockets, a Space Shuttle, an expendable Delta rocket, and a European Space Agency Ariane rocket are among the western space launch vehicles lost to failures since August 1985.

"The odds are astronomical against that all being coincidental," Graham said. "The thing that raises the greatest suspicion is all these things happenings in a series.

"If you don't buy coincidence, if you don't buy a sudden rash of incompetence among everybody in the Western world involved in launching space boosters, you say 'Well, there's foul play involved here somewhere,'" he said.

"It doesn't make the case that foul play was involved," he said. "But it does make the case that you certainly ought to investigate it."

Among items that would be investigated, Graham said, are:

The possibility that U.S. Air Force Capt. William Hughes, who trained range safety officers to destroy malfunctioning rockets, defected to the Soviet Union or was abducted by the KGB, the Russian equivalent of the CIA.

Hughes, 34, "simply disappeared" in July 1983 while he was traveling to the Netherlands, Graham said. Hughes was declared a deserter by the Air Force in December 1983 and has not been seen since his disappearance. He had been stationed at Kirtland Air Force Base in New Mexico.

"Nobody has seen hide nor hair from him since," Graham said.

The possibility that Soviet intelligence trawlers off the coast of Cape Canaveral on Jan. 28 were notified that a disaster was impending.

"About four hours before the *Challenger* launched, (the Soviet trawlers) were noted at flank speed leaving the area," Graham said.

The trawlers, Graham said, usually stay about 12 miles off shore to monitor launches.

"The implications is that the Soviets decided they didn't want any of their ships at the scene of the crime—that they knew it was going to happen and they wanted to be gone, out of the area," Graham said.

The possibility that the Soviet Union placed a spy within NASA.

The Soviets, Graham contended, have a strong motive for wanting the American space fleet grounded.

"The motive is clear—SDI (the Strategic Defense Initiative)," Graham said. "The Soviets are really pulling out every stop to prevent (deployment) of SDI."

Officials at the Soviet Embassy in Washington, D.C., could not be reached for comment.

A spokeswoman for the CIA would neither confirm nor deny that an investigation might take place. She did say, though, that the agency "responds to all congressional queries."

[From Florida Today, Oct. 7, 1986]

SENATE OKs CHALLENGER SPY PROBE

(By Todd Halvorson)

The Senate on Monday sent President Reagan a bill that directs the CIA and other U.S. intelligence agencies to investigate "the possibility of Soviet-bloc sabotage" in the Space Shuttle *Challenger* disaster.

But a former CIA deputy director says the agency may be one step ahead. Retired Army Lt. Gen. Daniel Graham believes the CIA already may have launched an investigation.

The annual appropriations bill for the CIA and other U.S. intelligence agencies, passed by the Senate on a voice vote Monday, directs the U.S. intelligence community to examine the possibility of Soviet sabotage in the Jan. 28 catastrophe as well as an unprecedented string of other Western launch failures.

The House approved the bill Thursday.

An amendment to the bill, proposed by U.S. Sen. Jesse Helms, R-N.C., requires the CIA to send Congress a series of reports on various subjects.

One of those topics, according to a Helms aide who asked not be named, concerns "the possibility of Soviet-bloc sabotage" of *Challenger* and other launches.

The request for the probe, the aide said, was prompted by "circumstantial evidence" brought to light by Graham, also former director of the Defense Intelligence Agency.

Graham now heads High Frontier, a Washington, D.C.-based organization whose purpose is to propose policies relating to the use of space.

"I don't know if the amendment by Mr. Helms is necessary," Graham said recently. "I'm beginning to get some indications around town . . . that, in fact, something has been put together (by the CIA) to investigate."

Graham said the recent rash of launch failures warrants close examination.

Two unmanned Titan rockets carrying sophisticated spy satellites, a Space Shuttle, an expendable Delta rocket and a European Space Agency Ariane rocket are among the Western vehicles lost to failures since the fall of 1985.

"The odds are astronomical against that all being coincidential," Graham said. High frontier statisticians calculated the chances of the string occurring as 1 in 250 million, he added.

Graham asked the House and Senate select committees on intelligence to investigate:

The possibility that U.S. Air Force Capt. William Hughes, who trained range safety officers to destroy malfunctioning rockets, defected to the Soviet Union or was abducted by the KGB, the Russian equivalent of the CIA.

Hughes "simply disappeared" in July 1983 while he was traveling to the Netherlands, Graham said. Then 34, Hughes was declared a deserter by the Air Force in December 1983.

The possibility that the KGB "electronically interferred" with U.S. space launches.

The possibility that Soviet intelligence trawlers off Cape Canaveral on Jan. 28 were notified that a disaster was pending.

"About four hours before the *Challenger* launched, (the Soviet trawlers) were noted at flank speed leaving the area," Graham said, The trawlers, he said, usually stay about 12 miles off shore.

The possibility that the Soviets placed a spy in NASA.

[From Florida Today, Sept. 28, 1986]

SABOTAGE?—CIA MAY PROBE SHUTTLE DISASTER

(By Todd Halvorson)

The CIA is one legislative step away from launching an investigation into "the possibility of Soviet bloc sabotage" in the Jan. 28 Space Shuttle *Challenger* explosion, a Senate aide said.

The investigation also would probe the possibility of Soviet sabotage in a string of other recent U.S. launch failures, he said.

The presidential commission that investigated the *Challenger* disaster found no evidence of sabotage in its four-month probe of the catastrophe, which claimed the lives of seven crew members.

However, an amendment to a Senate bill passed Wednesday directs the CIA and other intelligence agencies to explore "the possibility of Soviet bloc sabotage being among the human errors causing the Space Shuttle *Challenger* and other recent U.S. strategic space mission explosions."

The amendment was tagged onto an annual spending appropriations bill for the CIA and other intelligence agencies. The bill was passed on the Senate floor on a voice vote and then sent to a conference committee with the House.

The House would have to agree with the Senate text before the amendment could become law.

The amendment was proposed by Sen. Jesse Helms, the conservative North Carolina Republican. A Helms aide said the measure is expected to be approved by the conference committee and an investigation would ensue.

"It's safe to say (the CIA) will be investigating," said the aide, who asked not to be identified. "And it won't be just the CIA, it will be a team of outside experts and a counterintelligence team of the whole intelligence community."

CIA spokeswoman Sharon Foster would neither confirm nor deny that an investigation might take place.

"We don't discuss what we do for Congress," Foster said. "We respond to congressional queries but we don't discuss them at all," she said.

Specifically, the Helms amendment directs the intelligence community to use competing teams to evaluate a list of 32 topics, most of which deal with the Soviet Union.

Other than the sabotage inquiry, the list calls for intelligence agencies to examine Soviet strategic intentions, the accuracy of Soviet missiles, the existence of hidden Soviet missiles and reasons for the alleged underestimation by the CIA of Soviet strategic forces and submarine capacity.

[From the News and Observer, Raleigh, NC, Oct. 8, 1986]

HELMS SEEKS INVESTIGATION OF POSSIBILITY OF SOVIET ROLE IN CHALLENGER EXPLOSION

WASHINGTON.—Sen. Jesse A. Helms, R-N.C., wants the U.S. intelligence community to investigate whether Soviet sabotage played a role in the explosion of the space shuttle *Challenger* in January.

Helms included the request in an amendment he attached two weeks ago to a bill to finance the nation's intelligence operations.

He declined to elaborate on his request. "I cannot discuss it, because I would be getting into classified information," he said. But a Helms aide, James Lucier, suggested that the U.S. intelligence community already had begun its own investigation of possible Soviet complicity in the *Challenger* explosion.

The Helms amendment called for a probe into the "possibility of Soviet Bloc sabotage being among the human errors causing the space shuttle *Challenger* and other recent U.S. strategic space mission explosions," according to the Congressional Record of Sept. 25.

That was five days before the White House announced that President Reagan and Soviet leader Mikhail S. Gorbachev would meet Oct. 11-12 in Iceland.

The *Challenger* probe was one of 32 problems that Helms' amendment said should be examined by "competitive analysis." That is a method using separate or competing studies of a topic to arrive at intelligence estimates.

Lucier said Helms included the request after discussion with several people, including retired Army Lt. Gen. Daniel Graham, former chief of the Defense Intelligence Agency and now director of High Frontier, Inc., which is promoting the Strategic Defense Initiative, a space-based missile defense system popularly known as "Star Wars."

"He has compiled a list of 22 incidents or facts relating to the lift-off," Lucier said, "which he considers suspicious in the context of the whole thing that happened, plus the whole string of missile failures . . . that, in terms of mathematical probability, was not consistent with past experience in the missile programs . . ."

"We're not asserting this as fact, but as an hypothesis which is worthy of investigation. It's not just some strange idea . . . There's probable cause to investigate."

However, one informed Senate source said he never had heard "any serious suggestion" in the intelligence community of sabotage of the *Challenger*.

BERNIE FOWLER

● Mr. SARBANES. Mr. President, the Senate should soon be considering the Clean Water Act conference report, a very important legislative item not only to my own State of Maryland, but to the entire Nation as well. I have been a strong supporter of this legislation, which plays an important part in the cleanup of the Chesapeake Bay and its tributaries.

For more than 15 years in public office, Bernard Fowler, now Maryland State senator from southern Maryland, has helped lead the fight for cleaning up the Patuxent River, a major tributary of the bay, which provides drainage for many of Washington, DC's suburbs. Bernie Fowler saw the threat to the Patuxent, and the bay, and fought effectively and successfully for stricter controls on upstream pollution. Bernie has made a major contribution to the health of our waterways.

In an article in last Sunday's Baltimore Sun, Tom Horton, himself a widely respected environmental expert, chronicled some of Bernie Fowler's contribution to clean water for southern Maryland. I ask that his article be reprinted in the RECORD.

The article follows:

ENOUGH OF CHESAPEAKE BAY FACTS—LET'S GET TO THE MORE SIGNIFICANT STUFF: MYTHS

DAMERON, MD.—For 10 years I've been attacking the problems of the environment with artfully crafted facts—facts perfectly balanced, honed to a fine point and driven home with all the force of truth. Might as well have been plinking spitballs at a brick wall, I sometimes think.

Now, I've seen the light, after a visit here in St. Mary's County with my good friend Tom Wisner, the Chesapeake Bay folksinger, poet and storyteller. Wisner told me there's bigger and better ammunition than fact. It's called myth.

Myth is a concept we reporters, steeped in questing for the factual, the verifiable, tend to equate with lies. You will find no such pejorative definition in the dictionary or the thesaurus; rather myths, or folk tales, legends—call them what you will—are the way we embody and transmit down the generations our most deeply held values and beliefs.

Facts, and their sibling, logic, are useful. Without them we would not get to places like the moon. But myths are powerful. Without our myths, we would not long to go to the moon in the first place.

Tom told me last week that it is a misconception that myths are all from the hoary past, the province only of ancient Greeks or Norsemen. He has found a fledgling myth almost at his doorstep in Southern Maryland, he said, and he thinks it is worth nurturing as a step toward helping out the bay.

For a long time, he said, he has been dissatisfied with what he considers the dominant mythology underlying our ethic toward the Chesapeake region's environment.

"When Captain John Smith drafted his piece about 'heaven and earth never having conspired more agreeably to frame a habitat for man,' he composed the principal catch phrase for an ongoing 350-year realtors' campaign to develop and settle the coastline of the region," Tom wrote recently in a curriculum he is developing for a class he teaches at the University of Maryland.

He continues: "The phrase . . . still used by developers and Chamber of Commerce copywriters . . . is an example of the subtle kind of myth-building created by and for individuals who perceive nature as the 'use' and people as the 'user.'"

I had to admit the notion of the bay solely for man's use (13 million users settled in the watershed at last count) has been fairly resistant to refutation by fact. You fight fire with fire, not popguns, Tom explained.

He got the idea of a better legend for the bay when he was invited to receive an award from Gov. Harry Hughes last month for his contributions to the bay. The ceremony took place at a political gathering sponsored by state Sen. Bernard Fowler, D-Southern Maryland.

Now Bernie Fowler, who is destined to play the major role in Tom's attempt at new mythology for the bay, might not strike anyone right off as a hero of mythic proportions.

He's a lean, angular man who look 3 inches taller than his 6 feet. His easy, courtly manner and mellifluous Southern Maryland accent betray no hint of his sprinter's muscles. I would bet he has never told even some friends that he is among the fastest age 60-and-over runners in the country at distances from 100 yards through the 880, and recipient of dozens of gold medals in AAU seniors competition.

He talks very little about himself, even on the campaign trail. Mostly he talks about things like preserving Southern Maryland's rural way of life, and always, about cleaning up his beloved Patuxent River.

He has seen the river and the bay at their very best, and he talks poetically about the waterman's culture and the natural rhythms and the cycles of the years he spent growing up at Broomes Island on the Patuxent.

But perhaps his most vivid memory—a memory that would come to be a touchstone for a whole region in its fight to save the river—is of summer days and soft crabbing after he finished serving in World War II and returned to start a little snack bar-bait shop on Broomes Island with his GI Bill loan.

While his wife crabbed from their boat Bernie, wading, would pursue soft crabs out across the flats with a dip net. Sometimes he would wade all the way out up to his shoulders, crab still in sight, scuttling along the bottom.

"I could see my feet in shoulder-deep water," he recalled recently, adding that it has been many, many years since the river was clean enough to see that far down in the summertime.

In 1970 Bernie ran for Calvert County commissioner. He was elected principally, he recalls, for promising to improve schools and to fight for preserving the rural heritage of the lower Patuxent.

Upstream, those were the years when counties such as Prince George's, Howard, Anne Arundel and Montgomery were booming with new growth, sending all their treated sewage down the Patuxent toward Southern Maryland. In 1970 the grasses that had provided shelter for soft crabs began to disappear on a massive scale from the lower river, whose waters by then were sometimes too cloudy to see a crab on the bottom anyhow.

Bernie says he could fill a book with all the twists and turns the fight for the river took after 1970, pitting upstream growth against the downstream counties' fight to keep their rich seafood harvests. For years, the Southern Marylanders proceeded on the assumption that, ultimately, state and federal water quality authorities would not permit pollution that would ruin their river.

It was in 1978 that, led by Bernie Fowler, Calvert County, joined by Charles and St. Mary's, filed suit against the new comprehensive water quality plan for the river endorsed by Maryland and the U.S. Environmental Protection Agency. It would permit sewage flows from upstream nearly to double and probably would kill the river, scientists at the state laboratory at Solomons told Bernie.

Bernie has a tape of a talk he gave in 1978 to a gathering of local officials as they pondered the big step the lawsuit represented. He did not pretend to understand all the complexities that were sure to be argued about the impacts of this or that sewage treatment technology on water quality, he said, adding:

"Indeed, I don't expect judges and juries will care too much about that either; but I bet you one thing they do understand. They can understand there's slimy river bottoms where there used to be clear water."

In 1979 a federal judge ruled that the state and the EPA were in error on 11 of their 15 major assumptions about the water quality future of the Patuxent. In that same year, after months of urging by Bernie Fowler, Governor Hughes finally took a trip on a University of Maryland research vessel to see the river for himself.

He came away committed to its cleanup, a commitment that would carry over, three years later, to his administration's pushing through a landmark package of legislation to address similar pollution problems throughout the Maryland part of the Chesapeake.

In 1981, a conference of top-level state, local and regional officials was held to end the impasse between upstream and downstream and formalize the campaign to get on with a Patuxent River cleanup. The conference ended on a successful note, but there was concern: How to explain the lengthy, complex and expensive cleanup to the public in terms that would garner the long-term support it would need?

Then, someone hit on the perfect idea. The goal of the cleanup would be reached, they decided, when Bernie Fowler once again could wade out into the river up to his shoulders and see his toes through the clean water.

Five years later, Tom says that is a story he is hearing told and retold, becoming part of the region's oral tradition, with potential to influence events far beyond the Patuxent. "It is the kind of stuff of which folk legends are made," he says.

Tom, who performs all across the bay region, says, "I want to make this story a real part of my life, and to continue to share it with others.

"I intend to pick a day next spring or summer to wade out in the river and look at my feet. . . . I'm going to invite Bernie to join me—in fact, I'd like him to go out in front of me [since] there might be mud or glass out there," he jokes.

Tom wants it to become an annual "Bernie Fowler Day." People concerned about the river will be encouraged to wade in, wherever they are along its shores, (it runs for 110 miles, the longest river wholly contained within Maryland.)

Bernie Fowler Day, he says, will be an alternative to the more commercial celerations of river life that have sprung up on the Patuxent and other parts of the bay in recent years.

"It won't cost anything. It will not invite hordes of tourists in to elevate the local economy, and it will not be encumbered with the usual raft of craft counters, balloon rides, acrobatics and helicopter tournaments that I find so distracting," Tom says.

To kick it off, he has drafted a simple poem, on which he welcomes comments, revisions and suggestions, c/o Tom Wisner, Box 17A, Dameron. MD 20628. It is entitled "Bernie Fowler Day—A guide to wading in the Southern Maryland waters":

All the politicians gathered.
They'd come from miles around
To talk about the river
That flows by Solomons town.
Seems they had a problem.
Things were looking bad.
They'd looked at all resources
And used everything they had.
The scientists had told them
Everything they knew,
Still—the folks were puzzled
And they didn't know what to do.
It came round to Bernie Fowler
And he stood among the best.
He said, "Folks, if you'll bear with me,
I think I have a measure
That can't be beat.
You just wade out in the river
And look down to see your feet."
"If you can't see your cloppers
There'll be trouble in this town
We oughta sue those upper counties.
For the junk they're sending down."
It's Bernie's measure!
It's simple—yet profound.
We got a treasure!.
You can't buy it by the pound.
It's Bernie's measure,
And it ain't hard to do.
It's a pleasure!
And it will soothe you too.
You just wade out in the river,
Give it all you got. . .
Right up to your chest,
And then you pick your spot.
Next you take your peepers
And cast them slowly down
On the day we see our feet again
There'll be celebration in this town.
Well—we should do this yearly
On Bernie Fowler Day.
Dress up fit to kill
And wade out all the way.
And somewhere in the future,
That day is coming sure,
We'll look and see our feet again;
Could we ask for more?
Cause I ask you what's the profit
If we gain these worldly things
And foul the air and water
And all the life that brings?

Remember, you saw it here first.●

TRIBUTE TO CHARLES E. CORD

● Mr. LAXALT. Mr. President, it is with both pride and sadness that I request this tribute to one of Nevada's finest citizens be placed in the CONGRESSIONAL RECORD.

Charles E. Cord, son of classic carbuilder E.L. Cord, was president of the Pan-Pacific Auditorium in Los Angeles, and owned the Los Angeles Monarchs of the old Pacific Coast Hockey League. Moving to Nevada in the 1950's, the Cord family has been involved in broadcasting in Nevada for 36 years. Until his death last April 29 at age 70, Charles Cord still operated the KCRL studios in Reno.

In addition, Charles Cord was president of the Cord Foundation, which regularly made generous donations to the University of Nevada, Reno, and to local hospitals and charities. Nevadans will surely miss the many contributions made to our State by its adopted son.

At a recent meeting of the Los Angeles City Council, the members honored Charles Cord, and I would like their tribute to be placed in the CONGRESSIONAL RECORD. Thank you.

The tribute follows:

CITY OF LOS ANGELES

IN TRIBUTE

The Los Angeles City Council extends its deepest sympathy to you in the passing of your loved one, Charles E. Cord, Sr., in whose memory all members stood in tribute and reverence as the council adjourned its meeting of May 9, 1986.

Sincerely,

ELIAS MARTINEZ,
Clerk.

Presented by:

JOHN FERRARO,
Councilman.

Seconded by:

ZEV YAROSLAVSKY,
Councilman.

KOREAN WAR MEMORIAL

● Mr. GLENN. Mr. President, I am extremely pleased, and I must say a little relieved, that the Senate at long last approved the authorization of a memorial to veterans of the Korean war. As an active cosponsor of this legislation and a strong supporter of this memorial, I appreciate my colleague's recognition of the need for this well-deserved and long overdue tribute.

I supported this bill out of my very profound respect for the sacrifices which were made by those who served in the Korean war. It was not a long war; it lasted only a little over 3 years—but it was a tough little war. The United States suffered 162,708 casualties, including 54,246 killed in action. Over a million U.N. personnel served in combat in Korea, 480,000 of them Americans.

Mr. President, I am a Korean war veteran, but I did not seek this memorial for myself. I have my own personal memorial in memories. I remember a squadron commander getting shot down when I was flying next to him. I thought he was gone, but he came out in Big Switch at Panmunjon at Freedom Village after the war. I remember the ones who did not show up at the rendezvous point after a mission, and that was tough to accept. I remember the letters to the next of kin—that's some of the most difficult writing I have ever done. I remember seeing planes on fire; many of my colleagues here have never seen a plane crash and known that someone was in it you knew as a friend. I remember the gratitude of the men on the frontlines for the close air support we were giving. We used to trade places once in a while. We would go up on the lines for a couple of days, and I remember the profound feelings of respect I felt for them and the job they were doing.

In my own mental memorial, I remember aerial combat. I went up after my Marine missions were done and flew with the Air Force against the MIG's along the Yalu. That was probably the last real jet dog fighting that will ever occur. It was tough one-on-one fighting, and we did it well—we only lost 1 plane for every 12 that they lost. And I remember the exultation of survival.

I remember Chosin Reservoir—Frozen Chosin. It's one of the most amazing military accomplishments in history that our men ever got out of there. I remember a friend of mine who was a forward air controller up there, when they were trying to come out and get to Hungam. He stood up on a ridge trying to direct air support to a target. While he was standing on that ridge he was shot through the neck, but he struggled up again, still giving directions until he died.

In Korea, as much as any place we ever had Americans serve, uncommon valor was a common virtue.

So I have my own personal memorial in these memories. And when I meet others who were out there and shared these experiences, we share a handshake, a look in the eye—that is our memorial. For me the memorial of remembering is enough; but I believe that for others it is not. I cannot pass along these memories, vivid as they may be. We need this memorial to help pass along to our children and to our grandchildren an appreciation of this heritage, a heritage of freedom that is not free; a heritage of individual bravery and personal sacrifice as notable as that of any war in which Americans have served. To me, Korean war veterans are personal heroes, and their heroics were magnificent. These individuals deserve thanks, but we rarely take time to do that. We have an opportunity now—albeit a long overdue one—in a small but significant way, to signal our respect and gratitude to all those who served in defense of freedom in Korea.

I take this opportunity to thank my colleague, Senator ARMSTRONG, for the leadership role he assumed on this issue; I am proud to have been a part of this effort.●

MINORITY ENTERPRISE DEVELOPMENT [MED] WEEK

● Mr. WEICKER. Mr. President, I would like to bring to my colleagues' attention that this week, October 5–9, 1986, has been designated by President Reagan as "Minority Enterprise Development [MED] Week." This is the fourth annual observance of MED Week since the President proclaimed in 1982 that the first full week in October would be so designated. The Small Business Administration [SBA] and the Minority Business Development Agency [MBDA] are holding events honoring distinguished minority entrepreneurs from around the Nation, during this week.

Minority businesses make a significant contribution to our Nation's economy and our local communities. I take this occassion to express my own admiration and gratitude to the minority business community for the strides made and the essential role its many entrepreneurs have played in our daily lives. I offer my congratulations and sincere best wishes to all of the local and national awards winners who will be recognized throughout this week.

Historically in this Nation, ownership of a business has been a vital part of the American dream. It is the essence of our independent spirit, the attainment of a goal that brings with it self-sufficiency, determination, and the personal joy and satisfaction of making it on your own.

Unfortunately, for many years minorities did not share in that dream. Our free enterprise system has, in the past, shut most doors to all but a special few of the minority community who tried to share this Nation's generous economic pie. But I am proud to say that we are making strides in reversing that harsh trend. Today, the achievements of minority-owned firms are some of the finest success stories this Nation has to offer. In all phases of business, increasing numbers of entrepreneurs are getting a bigger slice of the pie through hard work, perseverance, and determination to overcome racial barriers and to succeed. This is the real American dream, Mr. President—the dream that any man or woman, no matter how humble their beginnings, can, through their own diligence and effort, become a success in this country.

The MED Week theme for this year is "Together We're Building America's Future." I urge all of my colleagues to pay special attention to these words. We all have a role to play in assuring that minority owned businesses continue to thrive in this Nation and that opportunities to enter the economic mainstream are just as available to minority as to majority entrepreneurs. While I believe it is appropriate that we set aside a week to pay tribute to these business men and women for their outstanding accomplishments, I urge that we also take this time to reaffirm our commitment and rededicate ourselves to the goal of increasing minority business participation in Federal procurement activities when this week is over. Strides have been made, but there is still much to be done.

According to the 1986 edition of "The State of Small Business: A Report of the President," minority self-employment increased by 64 percent from 1975 to 1985, from 337,000 to 552,000 minority-owned businesses. From 1977–82, the total number of black-owned businesses grew by more than 100,000 from 231,203 in 1977 to 339,239 firms in 1982—a 47-percent increase. During the same time period gross receipts for black firms rose from $8.6 billion to $12.4 billion. In fiscal year 1984 alone, Federal procurement awards to all minority-owned businesses totaled $6 billion. However, there is another side to the story. The fact still remains that of the roughly 14.5 million small- and medium-sized businesses in this country, only about 600,000 are owned by minorities. This simply means that while recognized minority groups—blacks, Hispanics, Asian-Pacificans, Eskimos, Aleuts, and American Indians—make up about 25 percent of our population, they own less than 5 percent of the businesses.

Of those 600,000 minority-owned businesses, over 90 percent are small, sole proprietorships. Two out of every three of them are in the retail trade and service industries, and the vast majority of these businesses have no paid employees. With minority unemployment continuing at unbearable rates, clearly promoting the growth and expansion of minority businesses is one of the key resolutions to this problem.

Mr. President, the statistics cited above are true testimony that minority-owned businesses are a major factor in increasing employment, providing new technological innovations to the marketplace, and ensuring a broader and healthier economy for all our citizens. But again, I urge us all in the spirit of the theme of this year's MED Week Conference, "Together We are Building America's Future," to not lose sight of the tremendous amount of work that still must be done in attaining our goals of helping minority businesses help themselves by ensuring their participation in our Nation's rich economic opportunities.●

RAISING THE PLIGHT OF SOVIET JEWRY IN THE PRE-SUMMIT TALKS IN ICELAND

● Mr. MOYNIHAN. Mr. President, Americans of all faiths have demonstrated continued concern for the plight of Soviet Jewry. It is imperative that their predicament be placed on the agenda at this week's presummit talks in Iceland.

Yuli Edelshtein, Vladimir Slepak, Iosif Begun, Dr. Aleksandr Lerner, Ida Nudel, Vladimir Lifshitz, and Roald Zelichonok are but a few of the 20,000 Soviet Jews who have been formally denied exit visas to Israel. The reasons the Soviets give for refusal range from "access to state secrets" to "no relations in Israel" to "insufficient requirements for an exit visa." Many refuseniks have been waiting nearly 15 ardous years for their one wish—freedom.

And once a Soviet Jew's visa application is rejected, further harassment is the rule rather than the exception. Refuseniks often lose their jobs; are threatened with arrest for "parasitism"; are expelled from university; and suffer vilification and social ostracism. Because the teaching of Hebrew is forbidden in the Soviet Union, those caught teaching it are arrested on trumped-up charges and sentenced to prison and labor camps.

Every recent American President has supported the right of Soviet Jews to religious freedom and emigration. We must urge President Reagan to remember those people during his meeting with General Secretary Gorbachev. If the Soviet Government cannot grant their citizens freedom of religion, then, as Senator Hubert H. Humphrey said with his characteristic elegance and eloquence,

> Let them live as Jews or let them leave as Jews—it is as simple as that.

The Congress has consistently stood in solidarity with the Jews of the Soviet Union. In keeping with this tradition, we must continue our efforts in pursuit of universal human liberty. Over 70 years ago a rally was held on behalf of the then-beleaguered Jews of Czarist Russia. The last speaker was the Governor of New Jersey, Woodrow Wilson, who spoke for all of us here today when he said,

> This is not Jewry's cause alone, it is America's. It is the cause of all who love justice.

I am accordingly pleased to present to the Senate a copy of a petition signed by 500 students at Yeshiva College and Stern College in New York City. These students are asking Mr. Reagan to raise the plight of three brave Soviet Jews: Dr. Joseph Begun, Nadezhda Fradkova, and Elena Keiss-Kuna during this week's talks with General Secretary Gorbachev. I ask that their statement be entered into the RECORD.

The statement follows:

PETITION PRESENTED TO SENATOR MOYNIHAN BY STUDENTS AT YESHIVA UNIVERSITY AND STERN COLLEGE

The Iceland Reagan-Gorbachev summit is rapidly approaching. It is a critical moment to raise the issue of human rights in the USSR.

Please tell Mr. Reagan: Be firm and strong on human rights in your discussions with Mr. Gorbachev. Urge the release of Prisoners of Conscience and refuseniks to show the Kremlin's willingness to abide by minimal international standards of behavior. Among these people are:

Dr. Joseph Begun of Moscow is an engineer and courageous unofficial Jewish educator. After two exiles to Siberia for teaching Hebrew, he was sentenced in 1983 to 12 years in the Gulag. His health is deteriorating in the notorious Chistopol Prison.

Nadezhda Fradkova of Leningrad is a linguist and mathematician who passionately desires to go to Israel. Each time she hunger strikes to draw attention to her plight, the KGB throws her into a mental hospital. In 1984, she was taken from the mental hospital and sentenced to two years in a Labor camp. In August of 1986, when her term was completed, she was barred from returning to her Leningrad home.

Elena Keiss-Kuna is a Leningrad refusenik, barred since 1974 from exiting to reunite with her sister Anna Rosnovsky, a member of the Israel Philharmonic Orchestra. Several years ago, as retaliation for her sending Anna's violin to Israel, their mother was thrown into a Siberian mental hospital for four years. Elena's son Andrei will be 18 next year and subject to a punitive Red Army draft which could delay the family's emigration for many years to come.●

A DIARY OF 21 DAYS WITH REFUGEES FROM NICARAGUA

● Mr. BOSCHWITZ. Mr. President, Nana Gill, a fellow Minnesotan and her family traveled to Central America, at their own expense, to see first hand the current situation in that troubled region of the world. On their trip, they spent 21 days with refugees from Nicaragua now living inside and outside UN camps in Honduras. Their story is both gripping and insightful. For this reason, Mr. President, I ask that the Gills' Letter to the Editor in the Minneapolis Star and Tribune, and the diary of their trip to Central America be printed in the CONGRESSIONAL RECORD.

The material follows:

AUGUST 1, 1986.

MINNEAPOLIS STAR AND TRIBUNE,
324 Portland Avenue
Minneapolis, MN.

To the EDITOR:

It is incredible to read the remarks of a Roman Catholic cleric whose Pope was publically insulted during his 1983 visit in Nicaragua and whose fellow priests are being evicted or forced to flee from that land. The letter from Maryknoll missionary (Tribune—7/23) Fr. D. Newpower, in my opinion, is both inaccurate and intemperate. He poses, most glaringly, an unfair and exceedingly vicious rhetorical attack with his statement ". . . I can't believe people in the (Twin Cities) area endorse atrocities." I both resent and reject this statement for what it is—a cheap shot!

As to the alleged atrocities committed by the UNO (Nicaraguan Opposition Unity party—formerly called "Contra") which is made up of several political factions which originally helped to overthrow Somoza and is now involved in the ongoing Nicaraguan Civil War, even if Fr. Newpower would care to document examples, these could never outnumber what the Sandinistas are recording in the minds and hearts of countless citizens of Nicaraguans who are fleeing their beloved country.

I am aware of about 3,000 first hand accounts of crimes committed by the Sandinistas. Many of these letters have already been sent to the Organization of American States in Washington, D.C. with further tragic results—foolishly, copies of these letters were sent on to the Sandinistas with names and addresses causing the possibilities of additional disastrous results. According to the Nicaraguan Commission of Jurists, 8,000 Sandinista political executions had taken place in Nicaragua within the six year period before October of 1985. There are possibly 300,000 Nicaraguan refugees in Honduras (one of the poorest countries in the Western Hemisphere). According to reliable sources (a United Nations official and the U.S. Embassy in Tegucigalpa, Honduras), for every refugee found in the poorly run, disease ridden United Nations refugee camps (I, myself, have visited two of these), there may be ten more foraging in the countryside. There are approximately 200,000 refugees in Costa Rica. Others are found in Guatemala, Mexico, Belize, and the United States.

It appears as if the Sandinista Communist masters have reached a point of no return in the savagery which they have perpetrated. The Roman Catholic priest, Father Alexander Ratiu who was jailed in Romania for 16 years, said "Communist governments cannot last without making use of constant surveillance, terror, and violence. Fear and repression are the rule in all Communist states."

In addition, the Sandinistas refuse to negotiate with its political opposition. The UNO has in the past expressed willingness to start talks to achieve a freely elected government founded on democratic principles. Instead of responding to this offer to seek reconciliation. and peace, the present Nicaraguan leadership has chosen to precipitate a civil war forcing the UNO to fight for the freedom of their land against an army massively supplied with advisors and war materials by the Soviet Union and its Cuban surrogate.

Fr. Newpower also claims that the United States is deliberately sabotaging the Contadora plan for Central America. On May 9, 1986, Vice President George Bush, representing our government at the inauguration of President Arias in Costa Rica, stated that he (Bush) was hopeful that the Contadora process would put Central America on the road to peace. Our Vice President also complimented President Arias for his initiative in seeking adoption of the Contadora plan.

Later in that some month of May at a meeting held in Esquipalus, Guatemala, attended by democratically elected Presidents of Central American states (Arias, Costa Rica; Duarte, El Salvador; Cerezo, Guatemala; and Azcona, Honduras) and President Ortega of Marxist-Leninist Nicaragua, the Contadora proposal was throughly discussed. The proceedings, well reported in all major newspapers of the world, stated that the Contadora plan which was to have been signed on June 6, 1986 was defeated by one dissenter—Ortega of Nicaragua.

Sincerely,

NANA A.J. GILL,
A Nurse and Housewife.

A DIARY OF 21 DAYS WITH REFUGEES FROM NICARAGUA

(By John and Nana Gill)

CRIES IN THE NIGHT

Hear their cries!
Oh, can't you hear their cries?
I heard a cry . . . despair of souls
in the still night air echoed through the hills
from the mountains to the sea
begging to be answered by you by me—
a cry of sorrowing and suffering.
The earth seemed to shudder as if . . .
as if in answering . . . .
The cry of souls—seeking . . . searching for meaning to life reason for living.
"Did anyone see our tears . . . hear our cries
The world have deaf ears . . . why we've been passed by?"
Their cries!

PROLOGUE

We, John and Nana Gill, because of sensitivities developed by our experiences and envolvement in aiding refugees from Southeast Asia, were suspicious of news bureau reporting within the United States.

Accordingly, for two years we worked at planning a trip into Central America to observe for ourselves what was actually happening.

On January 4, 1986 we completed preparations for this trip, loaded our van with necessary supplies, and with our whole family—Ronnie (13), Tommy (6), Laura (4), and John (3)—began a two month journey into Mexico, Guatemala, and Honduras.

Our main objective was to reach the Honduran-Nicaraguan border in order to visit with refugees we had heard about. Our desire was to help them if we could. (We knew that our resources were very limited as per the average American family—we had to make a bank loan of two thousand dollars—but we felt someone should do some investigation. We also knew and felt that God was with us in this matter.)

From the refugees we would also be able to assess important insights as to the real intentions of the political leaders of Nicaragua who in our news media were often portrayed as necessary for the region.

WHAT CAN YOU DO TO HELP THESE REFUGEES?

(1) Pray about it!

(2) Copy the pertinent information from this pamphlet and give it to ten other people.

(3) Sponsor a family inside a United Nations refugee camp.

(4) Write your state's congessional Senators and Representatives concerning the plight of these refugees.

(5) Write letters to the editors of local newspapers with information about these refugees. Even allow them to copy stories the refugees themselves have written.

(6) Locate companies who are able to to donate food, clothing, and medicine for these helpless human beings.

(7) Pray about it!

(8) Seek persons who would actually travel to Honduras to assist in the distribution of food, clothing, and medicine when they reach their destination.

(9) Send what you feel led by the Spirit of God to do!

(10) Contact local radio and T.V. stations and ask them to broadcast the real story concerning the refugee situation.

(11) Continue to pray for these people and their needs.

Sunday, January 26, 1986

Entering Honduras about 8:30 A.M., we stopped briefly at the ruins of Copan where we met a well traveled person from Australia. As he was going to Nicaragua, we offered him a ride to Tegucigalpa, the capitol of Honduras. At a gas station restroom stop along the road, we acquired an additional passenger, a young woman with a child, who needed a ride to a certain destination. As she left us she expressed her appreciation with "May God bless you and your family in all that you do."

Weary sojourners that we were upon our arrival in Tegucigalpa, we found that all hotels were fully booked as the new president of Honduras was to be inaugurated on the following day. We parked near the pumps of a closed gas station and all, including John Parkinson, slept in the van.

Monday—January 27

After a hearty breakfast of pancakes and ham and the ritual of rolling up the mattress and sleeping bags, we wished John Parkinson "God Speed" and continued south to Danli (pronounced "Don-lee") near the Honduran-Nicaraguan border.

On the way, it was now our turn to witness "slum conditions"—poorer here than anywhere else in Central America. From our point of view, these conditions were as a result of either the poor degree of effort spent on their behalf or the effects of a truly severe environment. We could name many reasons for the very unpleasant sight—no productive enterprise, no developed resources, high interest rates, very expensive electrical power (government owned), hot climate, and a seemingly short rain supply. All contributed to the poor standard of living.

Shortly before reaching Danli, we noticed a shack village in a valley—most likely, a United Nations refugee camp.

The hotel room in Danli, comfortable with pleasant appointments and costing $10 per day in U.S. currency, had only one drawback—no hot water. The showers were invigorating.

Tuesday—January 28

Driving back to the U.N. camp which was seen along the roadway, yesterday, we talked to an English speaking Spanish medical doctor, Fernando Seville. Representing a French organization, Doctors without Borders, he had been serving this and one more camp in the area. Concerning the question of refugee medical problems, he stated that the "abuse" of medicine by the refugees was one of the biggest problems—"They want attention all the time and come for medicine for belly aches or sore throats". He added, "When I get a sore throat, I don't take medicine unless it is really bad." We wondered how he could determine when things were bad, if he denied a patient's complaint of a sore throat. He went on to say that the main health problem was diarrhea caused by a polluted water supply in crowded, unsanitary living conditions.

In the midst of this worthwhile visit, a man stepped forward and, after he told us that we needed permission from the Red Cross to visit a U.N. camp, gently ordered us to leave.

In Danli the Red Cross office which was used for clerical and not medical purposes and employing in such a way that it probably possessed the best jobs within the community, refused us the needed permission and advised us to go to the U.N. in Tegucigalpa.

We discovered that there was a clinic that would have been useful for refugees in Danli. It was financed by a philanthropic American organization called Friends of the America's. As it was a free clinic, a few refugees did come to it, but it served mainly poor Hondurans. However, as Doctor Seville was the legally designated doctor for the refugees, he was in the responsible position of directing them, apparently, to a location he so desired. The Friends of the America's happened to be low on medical supplies, but the Red Cross would not share any of theirs. Doctor Seville even made light of the fact that he had medicine that might never be used.

The next logical step was for us to visit the Friends of the America's Clinic in Danli. We appraised it as being very respectable and were given the Tegucigalpa telephone number of Carmen Winkler, the manager for Friends of the America's in Honduras.

Wednesday—January 29

The objectives for us to accomplish in the Honduran capitol of Tegucigalpa, today, were fourfold:

(1) Contacting our United States diplomatic representatives concerning its advice as to how we could begin the process for getting permits to visit the refugee camps.

(2) Finding the U.N. building and talking with someone who was in charge of the U.N. camps.

(3) Talking to Carmen Winkler about an air flight to the Mosquitia.

(4) Going to the Hotel Maya and exchange our U.S. currency into Lempiras, the official currency of Honduras.

At the U.S. Consulate the treatment afforded us by its personnel was predictably not pleasant. Told that we could not get permission to enter the U.N. camps, we responded that after having traveled over 5000 miles in eighteen days and our U.S. Senator Boschwitz expecting from us a report on the pronounced needs of the refugees, we refused to take "no" for an answer.

After our embassy called and explained our situation to the U.N., it instructed us to go and discuss our request at their Tegucigalpa U.N. office.

At the U.N. building we were met at the top of a flight of stairs by a locked gate and two guards. When we presented our passports and referred to the recent telephone call to the U.N. High Commissioner's office, we were informed that his assistant was out but that her secretary would help us. Nevertheless, after first waiting on a hall couch for two hours, we were allowed by a receptionist to enter the office where the secretary was working. She, however, proceeded to make and receive phone calls and fill out forms for some time period before addressing us as to why we were there and how she could help us. Even while questioning us, she continued doing other things in such a manner that we were made to feel we were a bother. She did give us a form to fill out.

With an additional waiting time of one hour, the Director returned and quickly approved our entry permit.

Although, Carmen Winkler was not in her office, an appointment was made for us to see her on Friday in regard to our desire to visit Miskito Indian refugees in the most eastern region of Honduras called The Mosquitia. This arrangement was fine for us as our two refugee camp visits (Jacaleapa and Teupasenti) were set for Thursday and Saturday.

Reaching Danli late, hungry, and tired, the family warmed up some beef noodles on the sterno burner and ended a very productive day with study of scripture and family prayers.

Thursday—January 30

This was a very special day, involving the purpose of our travel to Honduras, the day of our first official camp visit. However, a threatening thing did weigh upon our minds as we ate our breakfast and, later, our lunch in the room. Most of us were very cognizant of diarrhea and cramp symptoms. When the doctor from Friends of the America's gave us some medication, the cramps stopped immediately but not the diarrhea.

At 3:30 P.M. two of the doctors from Friends of the America's came to our hotel. From there, all went out to the United Nations Nicaraguan Refugee Camp at Jacaleapa, Honduras.

Reaching the camp at 4:30 P.M., we were coldly received by the Honduran camp officials. With the help of the two doctors who came with us, the following information was accumulated:

(1) 2800 people in 257 cabins

(2) Water is shallow and well contaminated

(3) 10-14 persons to each cabin approximately 14x16 feet—not necessarily for only one family

(4) Wood needed for cooking not supplied—refugees get special permit to leave the camp to gather wood

(5) All mail to the camp—searched and scrutinized

(6) No schooling for children within last six months and the U.N. has allocated no funds to offer schooling in 1986

(7) No electricity or means for light once it is dark (The young doctor interpreting for us said something in Spanish and all laughed. We insisted that this be interpreted. He had said, "With no lighting they go to bed early so there are many babies." John said, "That may seem funny but with the U.N. concern over population control, this may be the one single most important fact of the report to our Senator in coercing better circumstances." A young man retorted that sometimes some people bring out films on birthcontrol.)

(8) Most needed items are: Shoes, toothbrushes, toothpaste, soap (personal and laundry), clothing (only one set a year from Catholic Charities), and books and materials so that, even though they are forbidden to be employed in Honduras, the refugees could keep their minds busy. (The refugees, themselves, advised us not to send donations through the U.N., Red Cross, or Catholic Charities, as they would not receive what would have been sent. Furthermore, it was the U.N.'s policy to keep these people at the mere survival level with no relying upon outside help for their needs.)

(9) Although, the U.N. has strict codes for policing up the appearance and the outward cleanlines of the camp, sanitary facilities were totally non-existent. Refugees kept the place clean by picking up fecal material by hand and sweeping the entire area daily with grass brooms which they had made. This is strictly enforced. The U.N. policy is "Don't work, don't eat."

(10) Initially, there were provided for the camp two toilets with seven holes each with no walls, only small roofs on posts, and were located in the middle of the camp's play area. When the toilet holes because full, they were cemented shut and no new ones were built. The refugees were obliged to use two new toilets, seven feet deep, three feet wide, and from ten to twelve feet long—open trenches with no cover anywhere.

Sorrowfully, we saw cataracts untreated in young men, a great deal of skin disease and infections, signs of parasites, malnutrition in children, blank staring fatigue in women, and an aching for something to do in the men. Such human waste we have never seen!

While we were there, the refugees organized a committee, and a representative came forward to talk to us. He stated:

(1) When one brings assistance to the camp, bring it directly and hand it out.

(2) Do not leave your address with them (the camp officials), as they will not give it to the refugees.

(3) We have an organization and will distribute equitably. They will not. (Example: Once a group brought a truckload of 3000 pairs of shoes. The official employees of the camp threw them into the air causing the refugees to run and grab. Then the employees exclaimed, "See, they act like animals.")

At this juncture during our meeting, one man said that we could trust William Stewart in Danli with the "Living Christ Ministries". Others really got sober when out of love, they informed us of a camp that was worse off than theirs. They begged us to go there and help them if we could.

We were touched by this charity (pure love of Christ) in the hearts of these who had, literally, nothing. Ignorant people and all that may go with it, they were not. We could see that many were well educated as they crowded about us urgently attempting to read our notes, and to say this and that to us. They wanted to write us, asked that a school be set up for their children, requested a church for all denominations be made available for all to use, urged that we speak about them to our President, and more.

As we walked with heavy hearts to the car, we prayed, "Lord, what can we do for them?" Suddenly, somewhat inspired, we thought to print our address on paper for each family and along with writing material bring it to the camp.

We then left and returned to Danli. What a day!

Friday—January 31

The drive to Tegucigalpa takes two and one half hours. Today, we went there to talk with Carmen Winkler about a plane trip to The Mosquitia. Carmen told about the possibility of a flight the following week, but we would have to return on Monday to find out.

Nick, a young man from Honduras and one of the doctors working at Danli for Friends of the America's who had come along with us, was told by Carmen that he was fired. The reason given was that he had refused to work in the clinic at the Honduran border town of Los Trojes where some of the heaviest fighting between the Sandanistas and the Contras occurs and can be very dangerous. Only this morning, we heard Honduran government newscasts reporting that the Nicaraguan government had planned a strike against the Contras. Authorities were advising all villages along the border area to be evacuated.

At the Tegucigalpa Friends of the America's office, we met a couple from California who were planning to do missionary work in The Mosquitia.

With a rather early return to Danli and John deciding to lay down because of not feeling well, Nana decided that she and the children would go out for a tour of the town. They came upon some "gringo" (North American white) children who belonged to the Bill Stewarts, Directors of The Living Christ Ministries. What a break! Maybe they could help us find an interpreter for our visit to the other U.N. refugee camp. Tomorrow, we would be visiting Mr. and Mrs. Stewart.

Saturday—February 1

From their mission house for the Living Christ Ministries, Bill and Sherry Stewart had been working for the last two years helping not only poor Hondurans but also Nicaraguan refugees in Danli and in the mountains. What a blessing that God led us to them!

Nondenominational and not in Honduras to proselytize but to coordinate efforts of various Christian projects involving humanitarian aid and medical assistance, Bill and Sherry became convinced, as we, that the oppressed Nicaraguan refugees outside of the U.N. refugee camps could not count on the U.N. nor the Red Cross—physically nor ideologically—to help them. These organizations could not nor would not help these people in the face of expected Sandinista advances into Honduras—already under way at this time.

Our most immediate concerns were:

(1) We had the permit to visit the second refugee camp in the area, but we were told that our vehicle could not negotiate the road to that out-of-the-way place.

(2) The young men who had interpreted for us, previously, were not now available.

These worries dissolved with the appearance of the Stewarts. They took care of our children, fed and prayed with us, and tended to other helpful and positive steps in aiding us. What hospitality!

Today, Bill who had good contacts among the small villages and military outposts along with his Honduran interpreter, Andrew, transported us out to the camp we wanted to go to but over the almost impassable mountain roads. The trip seemed hours and hours long.

As we stood in the middle of a mud-forsaken two acre place enclosing over 2500 individuals, holding hands with the refugees, and praying, our spirits were moved with compassion and grief. How can we now express the feelings that overcame us. One man said, "We prayed and prayed and wondered if our Brothers and Sisters in Christ in the States even knew or cared about us. Now, you and your family came."

This U.N. camp was so isolated that only a few of the sacrificing and serious minded Christian workers in this area of Honduras had been to it.

In their prayers many thanked God and asked Him to continue to take care of them. Another thanked God for inspiring us to come into their midst. Then he added, "God, you know we are here with our mouths open for anything you drop in. We can do nothing for ourselves except trust in you."

A few facts concerning this Teupasenti Camp:

(1) Most of the interned looked very lean and many were sick.

(2) They lived in 14 x 16 feet board huts each holding 12 to 18 people.

(3) No water supply except the river. (There was a row of open-pit outhouses 50 feet above it.)

(4) Dr. Seville visited three days within alternative weeks, but the refugees said he neither brings nor gives out medicine. (Yet, this doctor is responsible for 6,000 refugees under terrible conditions in two camps, we visited thus far and has to travel two to three hours to go from one camp to the other. That he attempts such feats is either extra heroic or very tragic.)

(5) Needs in the order of their importance:

a. Medical attention.

b. Cooking utensils—"We left with nothing or traded what we did bring in order to survive."

c. Clothing, soap, shoes, educational material for the children, and good water.

The sick children, the skin diseases and rashes, and sad eyed women were transcended by the greater wonder and love that they showed to us. Their testimonies, literally, crushed our hearts with sorrow and then comforted with healing joy. The load of feelings we carried, tempered with the thoughts of a seeming impossible task of trying to aid them, made us feel very sober. Nevertheless, we left our name and addresses with one of the pastors who served them from the nearby town and asked the refugees to write letters to us. We also left money with the same pastor to purchase and deliver stationery and pens to the refugees.

With a great sense of the reality and presence of God, we began the rough ride back to Danli in the Stewarts "beat up" Blazer that sounded as if its muffler system was angry over being given such a terrible job of transversing the so-called road. A flat tire was sustained on one of its all terrain tires. We changed it and made it home after dark in almost one piece. Another opportunity to say, "What a day!"

Sunday—February 22

The Sunday worship conjoining our family with that of the Stewarts together with their interpreter, Andrew Swan, and his girlfriend, Miriam, was held in the Stewart home. During the study time a portion in the New Testament book of Thessalonians was studied including discussion of recently finished topics such as works and grace from James' statements and how all of this is effective only in and through the blood of Christ. An emphasis was made that we who believe are responsible for how we serve.

The Stewarts served lunch. Afterwards, Bill had to leave as he had some small villages to visit along the Nicaraguan border. A team of doctors from the United States were coming who had ability to operate on children with cleft palates, Bill, personally, knew of three and he, now, wanted to do some preliminary visiting. He asked us to ride along with him and Andrew. We decided to go. The children, for sure, would not be able to go along because of possible danger associated with this trip. We would be actually driving to the Honduras-Nicaraguan border where there would be investigations as to possible clinic site locations.

A real danger showed itself in that the Sandanistas had been shelling Honduran terrority in order to force poor Honduran local people from harvesting their coffee crop. Several families in the vicinity of where we were going had been shot at by the Sandinistas in an attempt to force their children into Nicaraguan military service.

The Honduran people, here, in the simplest, smallest local villages have personal ownership of land and homes. They run their own schools which are supported by the government. What a privilege to observe how these independent people live, what their homes are like, the individuality in the local color of how they conduct themselves in their town squares, and see their medical buildings or assistance stations.

Honduran soldiers allowed us to go through several road blocks and back road security checks because they knew Bill and

his humanitarian aid. At one point Bill gave a soldier a number of New Testament scriptures and tracts for them to distribute. Johnny attempted to speak but simply broke down and prayed, "God bless you, God bless you." He knew that these poor souls in this poor country were not prepared to meet the might of the entire communist world and commended them to God who only could deliver from the danger that was so close at this time.

As it was later and because we were very tired when we returned to Danli, Mrs. Stewart suggested that we remain at their home for the night. We declined preferring to remain one more night at the hotel. We knew that the morning drive to Tegucigalpa was imperative and we did not want anything else to come into our way. We had to go to the U.S. Embassy and speak with Mr. Joe McLean, the officer in charge of refugee problems. It was also necessary for us to visit with Luis Druke, the U.N. Assistant Director of Refugees for Honduras, to secure permits for returning to the two camps already visited.

Monday—February 3

This day did not turn out to be as productive as we had wished, but we did have a good interview with Mr. McClean. In brief, this was what was said:

Yes—He knew the water system no longer worked at Camp Teupasenti. It had been inoperative for a long while.

Yes—He knew their water was polluted. It was the reason for poor health problems in both camps.

No—They were not without medical attention but want medicine for every little sickness.

Yes—Their situation was sad.

No—"We do not mind if Christian groups help out. . . . But permission has to be gotten from the U.N. . . . The previous director (Linda Lamb—her name will be mentioned later) would have minded, but I don't know about this new one."

Yes—Any future for them in Nicaragua at the present is impossible. Their return would not be in keeping with respect for human life. When we asked, "Would they be killed?", he answered, "Most likely."

Yes—There are many more refugees outside of camps in the mountains with no help. There are many more outside than inside. He said that a low estimate would be ". . . for every one in a camp, there would be ten outside". His conservative estimate along with anyone else we talked with set the total refugee numbers in Honduras at in excess of 150,000. All of these fleeing refugees would have had to run the risk of capture and execution or land mines on the border before getting out. (One man had said that when the numbers of the thousands of Contra throughout Nicaragua were added up plus the refugees in Costa Rica and Honduras, there would be very few of the poorer folk left. He added, "The wealthy got out to Miami and Europe long before." A refugee who had recently escaped said, "It's all Cubans, Bulgarians, or Russians. Everywhere you go, there are foreigners. They are the new Nicaraguans!") When we asked, unofficially, what Mr. McLean thought would be the best fate for the refugees, he qualified his statement and then spoke frankly in favor of Nicaraguan refugees immigrating to the United States.

At the U.N. building an appointment was set for the following day before returning to Danli.

Tuesday—2/4

Leaving reasonably early for Tegucigalpa, we were pleased to drop off stationery and pens at the Jacaleapa Camp.

At the Friends of the America's office, Carmen was not in so we could not get any information on the possible flight to The Mosquitia.

At the U.N. building there was hope on our part to establish some committment that religious groups would be able to enter United Nations camps in order to aid the refugees. Ms. Luis Druke while quite friendly but not giving the committment we wanted, off the cuff said that she wished we ". . . could just take them all to the states".

Wednesday—2/5

An early telephone call to the Friends of the America's and a talk with Carmen still got us no information concerning the flight to The Mosquitia.

Johnny and Andrew went to the Welding Shop to install carrier brackets for the top of our van. We were preparing it for the rough-ride, return visit to the Teupasenti Refugee Camp—this time with out children.

The person who did the welding was thirteen years old and just a little larger in size than our six year old son, Tommy. How efficient he was. He welded the heavy iron straps to the light tin of the carrier, perfectly using an old arc welder—even without a good ground clamp.

While the welding was being done, a young refugee boy selling bananas came by. Of those within his family, he and his father were the only ones who made it out of Nicaragua. This wiry, thin, and barefoot boy, everyday traveled miles with a wheelbarrow he had made out of scraps of wood. He would go into the mountains and pick little bananas and other wild fruit to sell in town. He did this to feed himself and his father—supplementing what his father made.

Another refugee told of escaping Nicaragua by running for fear of his life with a group of one thousand or more people for his town. Johnny invited him to come to the mission and do a taped interview of his experiences. He came to the Stewarts mission house for the taping at 5:00 P.M.

Thursday—2/6

We were determined, this time, to take our children along to be with us at the Teupasenti Refugee Camp. So, waking early, we drove to the Friends of the America's free clinic in Danli in order to pick up Dolly, a person who was writing a story on behalf of its philanthropic "Shoe Box for Liberty" program.

At the clinic we met Mike Bagby, one of the Directors of the American Christian "Salt and Light" group working with the Miskito Indian refugees in The Mosquitia. Medicine and medical supplies along with food and clothing were distributed by them to the Indians.

In the town of Teupasenti and next to the U.N. camp with the same name, we were informed that Mario, the pastor of the local Nicaraguan Evangelical Church in Exile, had been thrown into the town's jail for helping to collect letters for us. Previous to this he had had a meeting with the Red Cross, Caritas (Roman Catholic Charities), Acnur (N.N. Refugee Organization), and the Honduran Immigration Service concerning his refusal to hand over to either caritas or the Red Cross all the medicine and food he had stored in his church. These supplies had been contributed by Christians for aid to Nicaraguan refugees in and around Teupasenti (not in the U.N. camp). We also found out that the Red Cross had censored a teacher who had helped refugees within the camp to write letters to us. Because of a fear of reprisals that might be taken against them, many refugees burned their letters.

When we asked if we could visit Mario in jail, the local Fusep (National Police) officials would not committ themselves but said we would have to wait until the local "Jefe" (Police Chief) returned from his afternoon swim.

During a three hour wait, Johnny played tops in the street with little boys of the town while Nana showed the local Fusep officials a family photo album.

When the "Jefe" returned and when we entered his office, he continued reading a newspaper. When we were announced by his deputy, he looked up and acknowledged us. Firstly, we presented our permission to visit the U.N. camp along with our taking of photographs and gathering information about camp conditions. Secondly, we asked him about Mario. What had he done that caused authorities to throw him in jail? The "Jefe" would not stipulate what the charge was but that he was just being investigated. When we requested that we be allowed to see and visit with Mario, the Police Chief had his deputy bring him out.

Our time with Mario was concluded with a prayer as we joined hands. We prayed for Mario's well being and for the safety of his wife and three small children. (By denying his wife's assistance for her husband, this local Police Chief had forced Mario to sleep inside the walled backyard of the Police Station on the ground without food, warm clothing, pillow and blanket, nor, even, his bible.)

Then we went to visit the refugee camp.

As this was our second visit, the refugees recognized and greeted us eagerly. But as in the United States, also in Honduras, the citizenry had their local "Boss Hog" who happened to "appreciate" his authority in being the gate keeper. He would not allow us into the camp. Fortunately, the refugees could not be restrained and they flooded through the fences and gate in order to come out to be with us.

In the situation we happened to be in, our children were superb. Can one imagine how repelled a child might normally react with over 2000 scared and sickly people pressing around him and our van in a small roadway. Well, our children mixed well and began to play chase games with the little refugee children.

Lifting children over the fence, touching one another with love, and praying for the sick among them, our hearts were drawn out with compassion and love. Some slipped letters into Andrew's pocket and hand underlying the authenticity of what was taking place.

In the dark on our way back to Danli, our spirits were heavy as we sensed the awesome needs of these poor people. We were also filled at the same time with joy because of the bond of the love of Christ that firmly existed between us. What a shared and experienced reality in the Brotherhood of the divine Jesus Christ.

Friday—2/7

To eat our big breakfast this morning took awhile, not only because of the amount of food but more so because of our sharing and reliving the previous day's experiences.

In a visit to a nearby village of El Paraiso, we met a Nicaraguan refugee and his family who operated a "safe house" for escaping

refugees. The wife and children of one of his sons had been separated from him in Nicaragua during their escape into Honduras and were apprehended by Honduran immigration authorities and placed into a refugee camp. Because his son was forced to sneak into the refugee camp to be with his family, he eventually found out that a U.N. official (Linda Lamb) had been paying refugees to go back into Nicaragua. This U.N. "gringo" woman was receiving 200 to 500 Lempiras for each refugee she could get to go back. After being loaded on a truck and driven to the border at midnight, the 100 Lempiras that had been given to the refugees were taken away from them by the Sandanistas. These unfortunates were either thrown into prison or were never heard from again. There was direct dealing between the U.N. and the Sandanistas on this matter.

Returning to Danli, Johnny went to pick up the family van at a garage. The cost of a complete brake job—done on all four wheels—was 75 Lempiras ($30).

We left the children behind in Danli with the Stewarts and took Dolly to Tegucigalpa so she would be able to catch a plane ride the following morning to The Mosquitia. As it was too late to return to Danli, we decided to spend the night sleeping on the Friends of the America' a office couch and hoped that there might be space for us on the morning's flight to The Mosquitia—the same flight Polly was getting on.

Saturday—2/8

Woke up stiff, sore, and very hungry. We washed ourselves still not knowing if we were going to be able to fly today. Carmen came by about 6:50 A.M. and said, "Let's go!"

At the airport we were shown the aircraft, a DC 3 cargo plane—1938 vintage. The pilots came but no one was there to load the dried food which had been contributed by the Shaklee Company of California. Carmen said she would have to go and wake up the men she had hired to do the transferring of the cargo.

After an hour's time she returned with the men. With our help in the loading, the plane was able to leave in two hours with us onboard.

By this time and because of all of the work involved, we found ourselves to be hungry and thirsty—we had left our canteens behind in Carmen's car. We also learned that all water in The Mosquitia was polluted.

The flying time was one hour and thirty-eight minutes.

Two chairs were set near the back door for our comfort. As we sat, however, other thoughts went through our minds. Filled to the ceiling with cargo, the plane's door leaking water as we flew through clouds, and Johnny's noticing that some engine gasket or other was leaking oil, we climbed up, over, and through some of the tallest mountains in Central America to a coastal plain stripped of jungle foliage but covered with pines and tall grass. This latter flora was the creation of the wealthy hunters who had burned the jungle in order to facilitate the hunting of deer in this formerly unpopulated area.

The landing was completed on a hidden airstrip among the tall pines and grass.

After the men unloaded the cargo into a waiting gravel truck, all of us got to what turned out to be our "battle stations". Dolly and Nana rode inside the cab while the men with Johnny "clung" to the top of the dried food boxes as the truck driver executed what could be called "battle field maneuvers" keeping the speed of the truck at about 45 miles per hour over a terribly bumpy and muddy trail called a road. The Miskito workers did not seem to mind the ride. They sang, joked, and talked in three languages (Spanish, English, and Miskito) while challenging their physical skill in remaining in an upright position.

When we arrived at a large flowing river called the Rus Rus, we could see whole crews grading the road with picks and shovels, pile driving for bridge construction, loading of gravel, bathing, swimming, and ferrying vehicles across. In the distance singing could even be heard as the men worked.

Rus Rus was a spread out community in a jungle environment—not like the camps near Danli. But still these people in this area were also refugees from the Lenin-Marxist Sandinista domination of Nicaragua. Their needs were great, but these refugees seemed much better off as far a mental well being was concerned. Though they had suffered tremendously at the hands of the Sandanista government and lost all they owned, there was not the haunted blank stares in the eyes of the women that one experienced in the U.N. camps.

The houses here were thatched, built on stilts with split bamboo paneling for side walls with three rooms made by screens that rested upon broad board flooring. A mud-plastered stove and a table were the major appointments.

Near their houses could be found bananas, coconuts, papaya, plantan, yucca, and even deer.

The Friends of the America's clinic served the Miskito Indians with two doctors and two to three full time nurses.

We spent much of our time visiting with the refugees and with one of the doctors and one of the nurses. We also ate at a native restaurant (in a refugee's home).

The Miskito Indians live on a broad area on the Caribbean side of Nicaragua and Honduras. They are Christian with 35% to 40% belonging to the Moravian Church, 30% to the Roman Catholic Church, and the remainder to various Protestant groups.

The DC 3 returned on schedule. While it was on the ground, Johnny decided to examine why the large disk brakes were smoking so much upon landing. He noticed that the inside of the engine cowling was covered with oil that had been draining from the engine . . . hmm.

As we took off Johnny experienced a headache but decided to make the best of the experience he was going through by moving to the other side of the aircraft to get a better view of the moving scenery outside. As he moved to a better position, one of the helpers in the DC 3 asked him if he would like to see out of the front windshield.

When Johnny moved up, the pilots even allowed him to fly the plan. What a great thrill it was for all of us. (It so happened that on the very next return flight from The Mosquitia, these pilots had trouble getting back due to engine problems caused by the leaking oil.)

Because of the late return to Tegucigalpa, we spent the night at the Friends of the America's headquarters.

Sunday—2/9

Driving back to Danli, we stopped at the Zamarrono Valley where the Honduran government runs an agriculture school. We were more than pleased to be able to purchase fresh vegetables, meat, and cheese for the Stewarts as they had been sharing their food. This school had originally been financed by Rockefeller funding for developing nations.

Later we visited a hospital in which malnourished children are brought and sometimes abandoned. The hospital simply consisted of just one little room with small beds and cribs and one nurse to watch and care for about twenty little sick children.

The Stewarts and Nana fell in love with a little girl (Maria) about sixteen months old whose mother lives in Danli but never comes to take the child home.

Johnny's attention was drawn to a six year old girl, severely malnourished and in deep depression, whose mother lived in the mountains.

Truly, we were touched by these little ones so much in need of the love of man and the knowledge of God's love.

After an evening discussing the experiences we had had in Rus Rus and reading Scriptures with our children, we "bedded down" in our van for the night.

"If you feed not the body that stands in need, what benefit is there in saying 'Be ye filled'."

"Faith without works is dead."

Monday—2/10

The Stewarts operated a clinic at their house for people who could not afford medicine. Some mornings there might be 30 people waiting outside when their door was opened.

We visited with many refugee households that had been graciously accepted by the Hondurans. However, because of the great flux of refugees, the burden precipitated a need that was partially filled by the construction of U.N. refugee camps.

With Dolly we visited some homes that Bill realized would have children whose clothing sizes would fit the items in certain "Shoe Boxes" she had brought. At these homes the heart breaking stories they told were touching. The "peace of Communism" is indeed a lie!

Again, we get permission to visit Jacaleapa. Andrew helped us with this. Besides having a Christian friend in the Red Cross office making it easy in the getting of a permit for us, Andrew knew all the ropes, had friends, and a fantastic translator. Surely, God had prepared him for this work.

As it turned out, time did not permit us to drive to the Jacaleapa Camp. However, we did get many good testimonies through Polly's work.

We spent almost all night talking with Marisio, an intellectual refugee from Nicaragua who is married to a Honduran. What mind! What a grasp of the realities of the Nicaraguan dilemma—past, present, and future.

We could have discussed the situation with him all night, but his wife came for him. She was worried and it should be noted here that the Nicaraguan refugees say that the Sandinistas have direct ties with the Russian KGB. Refugees know of whole families that have been killed because of things said to the wrong person.

How citizens within the United States are fooled and kept from the real world close to its doorstep!

Besides renewing our visas, there had to be the renewing of the various types of permits needed to reenter the refugee camps, the picking up of the letters written by the refugees, and checking on Mario's jail sentence besides acquiring his personal testimo-

ny of deliverance from a sentence of death imposed by the misguided leaders in Nicaragua.

Because of family needs, necessity for writing some letters and notes, and government bureaucratic red tape, we did not reach Jacaleapa until after lunch.

Some refugees were very busy constructing a church building while others walked and talked with us. Johnny went down to see the camp's activity at the river. Nana took more pictures. A representative of the refugees handed us a bag full of letters.

Johnny noticed that the river, shallow and very polluted, was full of soap suds from the washing of clothes for a camp of 2,800 people. Few had pails or pans. Many possessed only the clothes on their backs and had to stand naked until these clothes dried. While a mother washed their clothes, the children would be naked until she finished, or, especially, the older children would wear the washed clothes as these dried.

Johnny met a 13 year old boy who spoke English. He actually wrote his story in Johnny's notebook. Because his dad was in prison, his mother and six other children escaped 20 months ago with no hope that his dad would be released. His dad's crime? It was observed that he was not content with the Sandanista government.

As we walked back to our van, we could not help but notice a man with his pants down. He wore a short shirt, no underwear, his genitals totally exposed, and has head bent sideways and slightly down. As we walked towards this man, the 13 year old boy volunteered, "He's crazy. They beat him so much in a Nicaraguan prison that he don't talk or nothing. He's crazy." Then the boy added, "My dad's in prison there, too."

The scene shocked Johnny more than the boy knew. The man, poor soul, for sure, not sexually maladjusted, had just been beaten so badly by the Sandinista Communists that he could not now neurologically control his body and would exhibit long periods of blankness. These symptoms would be with him, possibly, for the rest of his life.

It was impressed upon our hearts that America must be allowed to find out what was going on-this danger so close to our borders. How could our country continue as a nation with the Christian influence so great and not know these things exist. And knowing, how can we remain silent and allow such an utterly inhumane government to exist on the face of the earth?

Being late in the day for a trip to Teupasenti, we decided to go anyway! We traveled with our children, Andrew, and two of the Stewart children. What a road!

We arrived in one piece and presented our permit to visit the camp. Both the Fusep and Acnur officials had no recourse but to sign. But since we were not Hondurans, they requested that we go to the local immigration office. It was closed and had been all day.

We were pleased to find out that Mario was out of jail. Still under house arrest, he invited us into his home and we were privileged to receive our first opportunity to interview this kind, gentle man.

Later at the refugee camp, the people came out to visit us and exchanged hugs and kisses. More letters were slipped to us.

When time came for our departure, pitch darkness prevailed, and we had two and one half hours of driving ahead of us including the treacherous mountain road, a broken bridge, and tired children.

About one third of the way, we stopped and ate food from our van under the stars.

During our absence from Danli, some refugees had been inquiring for us and wanted to give us testimonies of cruelty and torture committed by the leaders in Nicaragua. We prayed that these people would return.

They did come back later and gave us the name of Dr. Carlos Icasa, their contact man in Tegucigalpa. We decided to locate him. We had one forboding question on our minds and this was on the minds of the refugees—"What was happening to the letters after they were sent to the Organization of American States in Washington, D.C.?"

Wednesday—2/12

Arduous as the day had been yesterday, we rested late into the morning. Johnny spent time writing in his diary.

We drove to Tegucigalpa to find and meet with Dr. Icasa. The meeting took place in a supermarket parking lot where there were many armed guards. Dr. Icasa and a young man whose name was Patrick were both armed, also.

We got into Dr. Icasa's vehicle and went to an open cafe not far from the supermarket. Our meeting lasted for a couple of hours. As Dr. Icasa said he would give us copies of Human Rights Abuses committed by the Sandinista government, we made arrangements to pick them up the following day before we left for the United States.

Thursday—2/13

Leaving Danli Bill and Sherry led the way as far as Yuscaran, a small town nestled among mountains. We could not but help to make a comparison with the land cultivated here among the tightly fitted mountains and that which we had seen in the northern mountains of Guatemala.

Yuscaran, a beautiful little colonial town seemingly untouched for decades with cobble stone streets and balconies hanging over garden courtyards—all hanging to the mountainside with steep little streets—is halfway up to the clouds.

The lunch was eaten with the compliments and company of Bill and Sherry.

Then, we continued on to Tegucigalpa and a motel room for the night.

Friday—2/14

With a late breakfast under our belts, we were met in the motel parking lot by Patrick who gave us three large envelopes filled with copies of Human Rights Abuses. He bid us farewell with "God bless you. We pray you will have a safe journey with these documents."

At 1:15 A.M. when we reached the familiar Copan ruins, it was a signal for us to stop and sleep.

Saturday—2/15

Despite the fact that, yes, there were some sick children, and, yes, our sleep had been "on and off again", we began driving toward the town of Copan at 7:15 A.M.

After being briefly lost in the town, we headed for the border on a "beautifully impossible" back country road through many mountain valleys and even some rivers.

Finally, the time came for us to cross into Guatemala, and eventually we reached home in Rosemount, Minnesota safe and sound.

What can one say? How can one express the love, the joy, the heartache, the sorrow, the wonderful blessings of God, and the tremendous burden of trust placed upon us by the Brothers and Sisters in Christ that we saw on our trip? So destitute and torn were they by the circumstances of an oppression that one day may even be ours. Nevertheless, our duty (and there should be no alternative) is this (and we can bear their load): ". . . visiting the prisoner and those who are bound down" or by ". . . helping the captive to go free" as Isaiah commands.

We wish God's love will make more tender the hearts of all who read this dairy. It is only through His power that the needs of these people can be met.

In Gospel Bonds and God's Blessings Upon All of You—John & Nana Gill.

CRIES IN THE NIGHT

(From my Diary in Honduras)

DANLI, HONDURAS, *March 16, 1986.*

The testimonies you are about to read are true.

These declarations were given by refugees from Nicaragua that tell of torture, suffering, and abuse at the hands of their own countrymen. Many were perplexed as to why this happened and were dismayed as to what their future might be. Although they lost family members, their homes, all they owned, and their country, they despaired not of the hope, the tender love, and mercy of their heavenly Father.

I am an American citizen who went to Central America to see, touch, understand, and care for the refugees from Nicaragua. Within a 21 day sojourn into the territory of their present exile, I met thousands of agonizing souls struggling to stay alive and understand what Communism did to them and their land.

Today, a few weeks after the last trip, I am again in Honduras and have just met a group of 500 Nicaraguan refugees who have been starving at a place of refuge in the mountains. After hearing hours of their testimonies and with a heart torn and bleeding in love, I have yielded to fatigue of body.

Lying here in the dark of the night at a Christian mission house, as a few of their leaders rest also, I can hear belabored breathing interrupted by tormented cries. I rehearse in my mind the stories of these persecuted ones. For sure, cries of personal pain, affliction of loved ones, and distress of their people, I know, are heard by others—the angels of heaven. I pray they assist and minister with a soothing salve upon these hearts, souls, and minds in defense from an infection of inhumane treatment suffered at the hands of their fellowmen.

Even as they cry out, I witnessed that their hearts forgive. They knew what their Christ said, "Forgive them Father for they know not what they do."

In Gospel Bonds,

NANA A.J. GILL.

The following are some example testimonies smuggled out of one of the U.N. camps. The refugees begged us to bring their stories back to the people in the United States—Nana A.J. Gill.

Letter No. 1

TO THE PRESIDENT: I want you and all the people of the United States to know the sufferings that we lived in in Nicaragua.

There is no freedom of expression there, they do not respect your rights, they are actually taking people's lives away unjustly: they treat us like dogs. The communist beasts don't have any feelings toward the people. We emigrated from Nicaragua because there were signs of death over there and every place you could go and at each moment.

Here in Honduras as refugees we have a lot of needs (for things such as] medicines, food, and clothing. We are all 100 percent sick because we do not have good medical

attention. Ninety percent are undernourished because there is not enough food because the different organizations like the Catholic Relief Organization and the Red Cross do not provide all the necessary food for us. We don't have good nutrition. Almost 80 percent of us have only half a suit of clothing and they do not allow us to work here to earn money or have a way to earn clothing. What I just listed is just a bare introduction to what our needs really are as refugees over here.

Please be careful with these Communist people. It is a Nicaraguan refugess that signs this. I am in exile in Honduras. I will not put my name on this paper for reasons of security, because here among the refugees there are many infiltrated communists and if they find out that we write these messages, they might make arrangements to take our lives away. We are very seriously threatened inside the refugee center. We beg you to please do something for us, as we cannot do anything to help ourselves. Thanks, brothers.

Letter No. 2

TEUPACENTI, EL PARAISO,
HONDURAS,
February 7, 1986.

DEAR BROTHERS: In these moments of testing, that we pass through in exile, for the honor and glory of God, receive our most fruitful blessings in our Lord Jesus Christ. Brethren, I give infinite thanks to the Holy Spirit of God, that in this moment impels me to give testimony of our heavenly Father.

As it is known to all of you that in our suffering country of Nicaragua, now one cannot live with Christian dignity, owing to the great persecutions without truces, imprisonments, unjust tortures, mass killings, indiscriminate rationings of food, astronomical economic inflation and some of the greatest repressions—freedom of worship, freedom of press, complete violations of human rights, and the forced obligation of being organized in state entities—that in history like those which are employed by the Communist system which actually now governs Nicaragua. Principally to the Christians, Sons of God (Evangelicals) who with great sacrifices and hard tests we brought to a head the doctrine of our Lord Jesus Christ, and the preaching of the Word of God, for which we, obeying the Word of God, in the command of God which says. Go ye therefore throughout the world and preach the gospel to all living people. (Mark 16:15). We see ourselves obliged, and with the direction of the Holy Spirit we looked for a way to leave our mutilated country, as across mountains and fields of battle where recording themselves the most hard battles of the country, and only by the immense mercy of God could He get us out of "Oven of Iron", Nicaragua. Today we find ourselves in the character of refugees in sister republic of Honduras, and under tests and struggle the Church continues walking forward preaching the Word of God.

Brethern, I do not complain of suffering all this because such it is written that we should all suffer for the cause of Christ. When this type of government is exercising its power over the earth, I lament that being affected principally the children.

Administering the little bit of weekly food, and making great sacrifices, hurriedly the week adjusts itself, and the worst of it is that we do not have permission to venture out around the town to try and get some food stuffs to try to complement the daily diet that can be little worth civilized people; on the other hand it has to be kept in mind that the food stuffs are donated, great quantities of products. Basically, in the refugee camps such donations are unknown.

We give infinite thanks to our Lord Jesus Christ for having sent you to us to put in the light all of the cruelties and violations as of our rights as humans and Christians as we are.

We have faith in our Lord Jesus Christ that you are servants of God sent by His immense mercy, and that you will do everything possible so that the Nicaraguan community in exile changes circumstances and so that we are considered as human beings.

Without further ado and trusting in our heavenly Father that He will concede the petitions of our hearts, may you receive abundant blessings from the Lord Jesus.

Letter No. 3

February 1986.

To the reader of this letter: I hope you find yourself finding out what the campesinos of Nicaragua are suffering. In 1982, thousands and thousands came here. I am a farmer and I left my country because of the violent attacks of the Sandinistas. I left on the seventh of September, 1983. We suffered a lot of hunger and when we entered Honduras the same thing happened. We know the situation of our country. We were tortured by the regime in Nicaragua. I'm from Managua. I'm a farmer and I grew up in Neva Segovia Mura.

The regime fools a lot of people because all the reporters are Marxists. The Sandinistas come and invite them to come in, men who have good aims and who would like to see the needs of the people, but the Sandinistas do not take them to where the needy people are. They take them to the luxurious mansions that are left inside Nicaragua.

I have seven children and I'm suffering a lot. Now that I am a refugee, I need a lot. Before, I had enough to keep my children, but not inside the refugee camp, I cannot do anything for myself, much less for my family. They give me five pounds of corn for eight days, seven ounces of sugar for eight days. My children are undernourished. We get beans, two ounces of coffee, we have no clothing. We are naked. We have no shoes. Thank you very much.

We are not like the birds who are free and can fly in the air and live off other things. We are men who live off the land.

Letter No. 4

TEUPACENTI, EL PARAISO,
HONDURAS.

TO WHOM IT MAY CONCERN: I am a Nicaraguan. I came the 6th of November of '82. I came from Murra N—S—. We came by way of the mountains until we arrived here in Honduras. I came on foot with my family, nothing more, my wife and my children, leaving the rest of the family behind. The motive for my leaving was that they wanted to take my sons away from me for the military service, and they accumulated (evidence) against me as a counter-revolutionary (translator's note: the sense here is of false evidence, false accusations). I left behind my property and my houses—I had two-houses—and my animals—I had 70 animals, between beasts and cows; I don't know what kind of an end my animals came to. Now we are here in the midst of a great calamity, because they give us food, but it is very limited. They give us 1 lb. of beans per person for 8 days, 1 lb. of rice per person for 8 days. Corn they give us 5 lbs. per person. When they give us meat it's half a pound—and cheese, half a pound per person for 8 days, and sugar, they give us 8 oz. per person; flour (or meal) ½ lb., also milk, ½ lb. Soap they give us half a bar per person—but how good it would be if it were a big bar of soap; but it is very cheap soap and the bar is very small; if you do a load of laundry there isn't enough soap left with which to take a bath. Salt, they give us 12 oz. for 6 people. How do we do that? We can't get used to it; the salt is what bothers us the most. We sell the rice to buy salt and sugar. But we hope that you will do all that is possible to help us to be able to return to our republic, but that it not be with the current regime, because we have seen the gross things that the Sandinistas have done in our home town. There near our home town, they killed 17 Evangelists. They killed them because they were in parochial school. They (the Sandinistas) took them (the Evangelists) out of the house that they were in and they brought them out above the town and they killed them close to the town. Various people saw them, because they weren't buried well. The Sandinistas made the Evangelists make their own hole, then they killed them, leaving them almost outside. And the animals, they killed the husband and 3 sons of a woman from Doradito murra, and the woman was going around like a crazy person, because they (the Sandinistas) said to her that they (her family) were in Quilal, it's another town of Segovia, and when she went to look for them she looked down the road where they had gone from her house, she saw that by the side of the road there was something like a sepulcher, and she came closer, and she says that there was a man's leg outside of it, and by the clothing on it, it was her son. And of these things we have seen several. We won't recount more because the piece of paper is getting to be small. I sign together with all of my family.

Letter No. 5

THE FOLLOWING ARE MY CHILDREN

For the American Brothers: I send a very, very warm greeting in the name of our Lord Jesus Christ and I pray to the Lord to bless you all very abundantly. Now I continue the following

Brothers, the reason I write you these very humble words is to communicate with you all and tell you what my own needs are and what I am suffering. I need shoes for my husband and my little girls. We need clothing, we need blankets and if you really help us in this way, God is going to multiply in a great manner for you all. I live in house number—. If you could only come and see that the food they give us is not enough, that it doesn't last long enough!

We are not here because we want to be here. We came to avoid being put to death. We left our parents as if we had thrown them away because the Sandinistas persecuted us and tried to kill us Christians like animals because the communist beasts don't believe in God. Their god is arms. When they are able to get their hands on a Christian, they skin him alive, they take his eyes out, they pluck his fingernails out, break out his teeth, and they torture and then kill him. The young men are armed and sent to the battle front from the age of 10 up. They take them away from their mothers to put them as bait, to send them to the front line to battle.

This is all I have to say for now.

EPILOGUE

Nana and John each flew back to Honduras on special humanitarian missions.

In March Nana traveled to Honduran-Nicaraguan mountain areas and experienced heart rending interviews with Nicaraguan exiles who had recently risked the land mines and perils of escape from their homeland.

Johnny returned in July to acquire additional need-letters from new families and from others that were missing due to the extraordinary circumstances they were under. It was important to secure these letters as the United Nations officials in charge of the refugee camps insist that every family in a camp receive a parcel in order for an outside contributor to be able to work for its improvement. Among other details, he also wanted to organize logistics involved in the delivery of parcels that were being prepared and boxed within the United States and Canada.

There was special interest for Johnny in making sure that the Teupasenti Refugee Camp got their need-letters completed. At this camp he also wanted to get a better photographic representation.●

THE NATIONAL COUNCIL ON ALCOHOLISM

● Mr. DODD. Mr. President, we have spent a great deal of time over the past several weeks focusing on the crisis presented by childhood alcohol and drug abuse. Both the Democratic Task Force on Drug Abuse on which I serve and the bipartisan working group have highlighted the importance of education in preventing youthful substance abuse.

I am happy to report that citizens in my State of Connecticut have taken the lead in efforts to educate our youth about the Nation's No. 1 drug problem, alcohol abuse. One specific effort I would like to draw the Senate's attention to has been undertaken by the National Council on Alcoholism. This council and its local affiliates are working nationwide on a voluntary basis to prevent and reduce alcoholism and alcohol related problems.

In April 1986, the National Council on Alcoholism [NCA] launched an educational campaign to prevent children from drinking. The theme of the campaign is, "Say No, and Say Yes to Your Life." The message is that alcohol is a potentially addictive drug, drinking is "uncool" and there are ways to say "no" or "not now" to alcohol.

The NCA developed the campaign following a 1983 survey by Weekly Reader, which found that about 30 percent of fourth graders—9 year olds—said kids their age pressure each other to drink. Several other studies point to the fact that children are abusing alcohol at an earlier age and the number of adolescents with serious drinking problems is increasing.

The Say No, and Say Yes to Your Life Program is reaching children and their parents in classrooms and communities from Connecticut to California. Moreover, younger and other Americans are now hearing public service warnings about the risks of alcohol abuse on radio, seeing them on TV, and reading them in newspapers and magazines. This public awareness campaign has been developed for the NCA by the N.W. Ayer Agency.

Thus, NCA has started the first nationwide effort to combat drinking among children between the ages of 8 and 14 by conveying a simple, unambiguous message about the dangers of alcohol. The NCA campaign is dramatic and sending a very clear message about the dangers of drinking.

The Nation's oldest newspaper in the schools, Weekly Reader, has developed with NCA a series of educational materials for students in grades 3 through 6, their parents, and teachers, which support the "Say No, and Say Yes to Your Life" message. Last May, such Weekly Reader/NCA supplements reached 100,000 classrooms and nearly 4 million children. This fall, the NCA/Weekly Reader focus will shift to parents and teachers through special supplements prepared in conjunction with Prevention Institute of Lexington, KY.

The "Say No, and Say Yes to Your Life" campaign is being carried out at the grassroots level by NCA's 184 State and local affiliates. These affiliates have been promoting frequent use of media spots on local television and radio stations and in consumer publications. Community health, education, and social service groups across the country have been encouraged to order the NCA/Weekly Reader supplements and posters through local NCA affiliates.

The NCA prevention program will also study the effectiveness of a variety of warning messages in teaching students and parents guidelines for reducing the risks of alcohol abuse. The NCA messages and curricula seek to delay the onset of drinking, to increase abstinence, and to decrease high-risk drinking.

In closing, Mr. President, the NCA youth prevention campaign focuses attention on alcohol, the most widely used and abused drug in this country. I am pleased to report on this important campaign designed to reach children at a time when the Senate is considering a variety of strategies to combat alcohol and drug abuse amount younger and older Americans.●

TRANSFER TO AIRPORT PROPERTY IN ALGONA, IA

● Mr. GRASSLEY. Mr. President, I urge the passage of the bill (H.R. 4492) to permit the transfer of certain airport property in Algona, IA, as amended.

The city of Algona received its airport land from the Federal Government in 1947. When the city received the land, the deed stipulated that all of the land must be used for airport purposes. In 1976, the Congress enacted a law that permitted a release of the airport land from the usage requirements if two conditions are met; namely that fair market price must be obtained from the sale of transfer of the land and that the proceeds of the sale must be used for airport purposes. The legislation before us would enable the city of Algona to transfer 10 acres of land without complying with the two conditions.

We have been told that the airport will not interfere with operation or future development of the airport. The transfer will meet local community economic needs and allow the land to be economically and efficiently used to benefit Algona's citizens. I truly believe that these local interests exceed what very little come before the interest the Federal Government would have in limiting the use of all the airport land solely to airport purposes.

There are many reasons why this exchange has merit. The existing National Guard Armory is located in a congested area. There is inadequate training area, and parking space and the need for more land to expand is great. If the armory were located at the airport, not only would the parking and training problem be solved, but the expansion would warrant a significant increase in personnel. This would benefit the entire community. It is equally important to see that such a transfer is indeed in our national interest. Clearly, the National Guard Reserve units contribute significantly to our defense capability while reducing defense costs to the taxpayer. The expansion of this particular unit would serve a much wider population than Algona; it would indeed serve the Nation's interest.

In the bill now before us, the unconditional release is limited to the land being transferred for the armory. This will preserve the release conditions for the rest of the airport.

I urge my colleagues to pass this legislation.●

COOPERSTOWN CONFERENCE AWARD TO SENATOR PRESSLER

● Mr. PELL. Mr. President, several months ago the Eastern Railroads General Managers' Association, an organization comprised of railroads which operate throughout the country, held its ninth annual conference in Newport, RI. The Cooperstown Conference, as this meeting is called, provides Government and industry officials with an opportunity to meet and exchange ideas regarding the critical issues facing the railroad industry.

Each year the association presents the Railroader of the Year Award to a Government official recognized as making significant contributions to the continued vitality of the railroad industry. Mr. President, I am pleased to report that one of our colleagues, the distinguished senior Senator from South Dakota, Senator PRESSLER, is this year's recipient of the Railroader of the Year Award. Senator PRESSLER is the first U.S. Senator ever to receive this award. He was honored in particular for his leadership in developing and pursuing a policy to encourage the development of regional and shortline railroads to preserve service on light density rail lines as an alternative to abandonment. He has become the premier spokesman in this body for developing this as a national policy, and has done an impressive job thus far. Knowing Senator PRESSLER, I am certain we can expect to see much more from him on this issue in the years ahead.

I might add that we in Rhode Island are fortunate to have Senator PRESSLER back in our State later this month. As Chairman of the Senate Subcommittee on Business, Trade and Tourism, he will be speaking at the Rhode Island tourism conference which I will be hosting on October 20.

Mr. President, I ask that a statement by John Snow, president and CEO of CSX Rail Transport be inserted in the RECORD immediately following my remarks. Mr. Snow presented the Railroader of the Year Award to Senator PRESSLER. I feel his words best describe the valuable contribution our distinguished colleague has made in this important area.

The statement follows:

REMARKS OF JOHN SNOW, PRESIDENT AND CEO OF CSX RAIL TRANSPORT

It is a pleasure for me to have been asked to present the Cooperstown Conference Railroader of the Year Award to United States Senator Larry Pressler.

Senator Pressler received his undergraduate training at the University of South Dakota. There he earned a Rhodes Scholarship at Oxford University. He then did a tour of duty in Vietnam; came back to the United States to get both a Masters and Law degree at Harvard; and then worked in the Kissinger State Department until he was elected to Congress in 1974. After two terms, he was elected to the Senate in 1978 and was just reelected for his second term as South Dakota's senior Senator.

The Cooperstown Conference is unique in our industry. It is a place where policy makers from government and railroad executives and operating people meet once a year to look at the future of transportation. Each year we honor one individual from the government side who has made a significant contribution to the development of sound policy that promotes an efficient private sector national rail transportation system. Tonight that award goes to the outstanding legislator of the year, Senator Larry Pressler.

I have had the privilege of getting to know Larry much better over the last year. I suppose you could say Elizabeth Dole brought us together, and I thank her for that. One of the things I have come to admire most about Larry Pressler is his independent spirit and his ability to identify and ask the questions that need to be answered. He came into the Conrail process for example, with an open mind, and he did ask the tough questions—of both sides. He gradually developed issues that neither side was talking about in the beginning of the process. And it was those very issues, and his arguments, which ultimately carried the day when they were subsequently echoed in the House of Representatives.

Larry Pressler is the first United States Senator to receive the Cooperstown Conference Award. He is being honored for his work on a number of rail issues, and in particular for his foresight in the development of a policy to allow regional railroads to preserve service on light density lines, and to encourage their development as creative alternatives to abandonment in this era of deregulation.

Larry has not always been on the same side as some of the railroads in this room. But with us or against us, he has always been an effective Senator. in 1980, Larry Pressler was an opponent of the Staggers Act which deregulated our industry. He was representing constituents in South Dakota who were greatly concerned that deregulation would lead to abandonment of service in rural areas. Indeed, following enactment of the Staggers Act, a major railroad in his state filed to abandon several hundred miles of its South Dakota line. Senator Pressler fought us and won. He successfully led the opposition to that abandonment, and it was denied by the Interstate Commerce Commission.

Many elected officials would have been pleased with that success and dropped the issue. Not Senator Pressler. He knew that the ICC decision had only bought them time. Thus, Senator Pressler worked with that railroad and the shippers in the state to find a different kind of solution. He rode the line, and conducted many meetings with shippers and railroad people. He became convinced that the only long-term alternative to abandonment would be the development of a regional railroad with operating efficiencies and employees and management close to the community. He got the job done. The Class I—the Chicago & North Western—is now on the verge of a transaction which will result in the creation of a new 1,000 mile system known as the Dakota, Minnesota and Eastern.

In the creation of the Dakota railroad, he has seen an opportunity to develop a new policy initiative that can preserve rail service in light density areas throughout the United States.

Senator Pressler will conduct hearings later this month before the Senate Subcommittee on Surface Transportation on the creation of regional railroads. He has announced that he intends to explore all of the important issues. He is going to look at ratemaking and contractural relationships between Class I's and the smaller carriers. He is giong to explore the costs of insurance and the appropriateness to small railroads of the Federal Employers Liability Act (FELA). He intends to open up politically sensitive issues that others refuse to touch. Senator Pressler has announced his intention to craft a policy that will allow shortline and smaller regional railroads to compete effectively in a deregulated environment.

In my opinion, the leadership being asserted by Senator Pressler in this area is far-sighted, and the initiative he has begun may well be the most important development in the railroad industry for the next five years. It is also of enormous importance to the major carriers such as CSX who must streamline their systems to survive this new age that we have so boldly entered in the last five years.

We look forward to working with Senator Pressler and his colleagues over the next two years in developing this important policy initiative.

Finally, I return to an issue that has occupied all of our attention the last year—the sale of Conrail. The Administration proposal to sell Conrail to the Norfolk Southern divided the Congress and the railroad industry. Senator Pressler's work on this issue is a good example of this effectiveness as a legislator. Since I was in 100 percent personal agreement with the Senator, I will assert my prerogative to talk about it a bit more.

Senator Pressler was the first legislator of either body to recognize that the sale of Conrail is not a Northeast regional issue, but a national issue with important ramifications for the Midwest sector of this country. Following hearings of the Senate Commerce Committee and numerous private meetings in his office, Senator Pressler concluded that a sale to Norfolk Southern was anti-competitive and bad for the Midwest. He successfully urged Commerce Committee Chairman Danforth to hold hearings on the impact the proposed merger would have on the Midwest. The Senator was relentless in his pursuit of information about this transaction and its impacts. He spearheaded a drive that independently produced thousands of computer statistics on the impact of the sale on shippers and communities. He insisted that exactly the same high standards be used in the methodology that produced these statistics as were being simultaneously used by the Justice Department in analyzing the Santa Fe/Southern Pacific merger proposal. Few who are involved in the Conrail sale—including, I dare say, the Secretary of Transportation and the Attorney General of the United States—will soon forget Senator Pressler and the "Pittman methodology" as applied to the Conrail sale.

In my view it was Senator Pressler's arguments and concern that made the Conrail sale a national issue. I believe he was personally responsible for seeing that the Senate gave the sale proposal the serious deliberation it deserved.

Senator Pressler prevented a rush to judgment that would have been unfair and wrong from my perspective. The vote in the Senate was surprisingly close. But even through our view did not prevail there, it was the very issues which Senator Pressler defined and the very arguments he developed which were used to kill the Norfolk Southern merger proposal in the House.

In the House of Representatives, on April 29, Chairman John Dingell of the House Commerce Committee announced that the sale of Norfolk Southern was "mired in a hopeless swamp of confusion and controversy" and called for a public sale. There is little question in my mind that it was the long hard march of Senator Pressler on this issue that has led to the growing opposition this transaction has encountered in the House of Representatives. Although this war is not over, I confidently predict that Senator Pressler's position in favor of a public sale of Conrail will yet win this Congress. That is, I predict he will win the war.

Senator, it has been my special privilege to get to know you over the past year. We thank you for your outstanding leadership and your contributions as a most effective legislator. The people of South Dakota are fortunate to have you in their corner. I am happy to now present you with the Cooperstown Conference Railroader of the Year Award for 1986.●

EMPLOYMENT OPPORTUNITIES FOR DISABLED AMERICANS ACT

● Mr. SIMON. Mr. President, the Employment Opportunities for Disabled Americans Act will remove a major disincentive to employment for individuals with disabilities who face the loss of health care coverage they are receiving under the Supplemental Security Income Program. This bill will make permanent section 1619 of the Social Security Act, which was enacted in 1980 as a temporary demonstration program to allow working SSI recipients to continue receiving SSI cash payments and Medicaid coverage. It will also ensure that potentially eligible recipients will be made aware of these provisions and that Social Security Administration staff will be trained in their implementation.

The effect of these amendments will be to increase the number of SSI recipients who are aware of the possibility of their keeping necessary SSI and Medicaid benefits while they are working. Since they will also have the assurance that these benefits will not be lost through an expiration of this authority, they will have greater incentive to participate.

As pollster Lou Harris told us early this year, two-thirds of all disabled Americans, between age 16 and 64, are not working. Two-thirds of those not working say that they want to work. Close to 20 percent of those who want to work say that fear of a loss of benefits is an important reason why they are not working full time. The amendments we are adopting today will not solve all of the employment problems for persons with disabilities, but they should make a major improvement, and it is a step that we should be taking.

I commend Senator DOLE for his leadership on this matter in the Senate, and my former colleague on the House Subcommittee on Select Education, Representative STEVE BARTLETT, for his persistence and determination in seeing that this measure is finally enacted. I am pleased to be an original cosponsor of the Senate bill, and urge my colleagues to support it.●

NAUM AND INNA MEIMAN: THE EDGE OF DARKNESS

● Mr. SIMON. Mr. President, I welcome the news of the release of several prominent Soviet human rights activists in the last few months. Despite this good news, we must not forget that there are thousands of refuseniks and dissidents still held within the Soviet Union. According to the international law adopted in the Helsinki agreements, all people wishing to emigrate from one country to another should be permitted to do so. I look forward to the day when the Soviets change their policies and adhere to agreements to which they have agreed.

My friends Naum and Inna Meiman are still being held in the Soviet Union. Inna is a 54-year-old woman who is dying of cancer. After the removal of four malignant tumors from her neck, the Soviet doctors find that they can do no more for her fifth and most recent tumor. Fortunately, there is experimental treatment available to Inna in the West.

For every day that goes by without the required exit permission, Inna comes closer to dying an unnecessary death. This situation has gone on too long.

The meeting tomorrow between President Reagan and Secretary General Gorbachev presents the perfect opportunity for the Soviets to resolve this case. In the name of human decency and common understanding, I ask the Soviet Union to allow the Meimans to emigrate to Israel while Inna still has a chance to live.●

BIRTHDAY CELEBRATED BY DAME ELSA DE BRUN

● Mr. PELL. Mr. President, this Saturday, October 11, 1986, marks an important milestone in the life of Dame Elsa de Brun, one of our finest artists and also a dear friend. Dame Elsa, who is known professionally as "Nuala," will celebrate her 90th birthday and I want to take this opportunity to wish her well.

Dame Elsa came to the United States from Sweden over 70 years ago and did not begin a serious career as an artist until she was 50 years old. But her beautiful pastel and oil works quickly became noticed by galleries, museums, and collectors in both Europe and the United States.

Her works have now been viewed in over 30 solo exhibitions and have appeared in 26 museums including the Hirshhorn Museum and Sculpture Garden here in Washington.

In June 1985, Dame Elsa married Patrick Farrell in New York City after an extraordinary 50-year courtship. They are a truly remarkable couple. My warmest congratulations go to Dame Elsa—also known as "Nuala"—on her upcoming 90th birthday.●

ORDER OF PROCEDURE

The PRESIDING OFFICER (Mr. PACKWOOD). The majority leader.

Mr. DOLE. Mr. President, I will take just a moment.

First of all let me indicate that we will have the Senate amendment on the prepared drug bill. I believe in nearly every instance it is totally a bipartisan effort with maybe one or two exceptions which the staff is still working on. One involves a provision of Senator WILSON, that Senator BIDEN has an interest in. Another is the level of funding for State and local enforcement.

The amendment that we will offer does not contain the death penalty but the death penalty is in an amendment coming from the House so it will be part of it.

Again, I am not certain how we can dispose of that. Cloture will be filed. We will not have a pro forma session tomorrow. So the cloture vote will occur on Wednesday, which will give us Tuesday, hopefully to dispose of reconciliation, which I know the presently Presiding Officer will be happy to dispose of. It is down to one or two items. It involves the distinguished Presiding Officer, Senator PACKWOOD, chairman of the Finance Committee, and Senator LONG. It is a bipartisan opposition to a certain provision that the House still insists on dealing with unemployed parents in an AFDC provision. That is the one provision that is holding up the entire reconciliation package.

The President has indicated in a letter transmitted to me by some electronic device, I guess, from Reykjavik, Iceland, last night that he would veto reconciliation if that provision were in it. So I hope we can resolve that.

I believe we have made progress on the continuing resolution.

I have indicated to a White House representative that I did not see much purpose in some of us staying here to midnight to watch to see if they made enough progress before we acted on the continuing resolution. I think, if I am correct on the time, it would be about 4 a.m. in the morning in Iceland. I am not certain they would want us to call them at 4 a.m. in the morning. So they are calling them now to see if we might be able to resolve that difference.

As I understood the President when he left, he did not talk to me directly, but as I understood the President's concern before he left for Iceland, his primary concern was in the defense area. As the minority leader has observed earlier on the floor that matter has been resolved.

There has been a compromise, some give and take on each side, with the outstanding work by Senators WARNER and NUNN on behalf of the Senate working with Republicans and Democrats in the other body and with administration officials.

It is a compromise. I guess you could say the House won on ASAT; the administration prevailed primarily on SALT. Nuclear testing will depend on whether or not they can agree on verification procedures. But the President did indicate he will submit the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty at the start of the 100th Congress.

□ 1750

If we cannot get an agreement on verification, then there will be appropriate reservations on verification and the agreement will not go into effect until those procedures are agreed to. So I would guess in that area it was again a compromise.

SALT II incorporates the Senate Department of Defense authorization bill language. It is a sense of the Senate that the United States should observe sublimits but that we should not be bound to abide by a treaty that the Soviets are violating. And that, I think, is a major step in the right direction as far as the President was concerned.

Chemical weapons. Binary weapons production goes forward, but Bigeye, the one we had a vote on here, is put off.

SDI funding and MX procurement again were more or less compromised, splitting the difference.

I read that Mr. Speakes, speaking on behalf of the President, indicated the President is grateful for this show of unity. I understand the Speaker of the House and the majority leader have talked to the President about an hour ago, hour and a half ago, by telephone.

So it would seem to me the big stumbling block in getting the continuing resolution put together is behind us. I am advised by a number of members on the Appropriations Committee that they believe they can finish their work tonight on the big CR. Something could happen. I understand there are a couple of absentees that might cause problems. But even if they did finish tonight, it would take 2 to 3 days to enroll the measure.

So I will advise the distinguished minority leader as soon as I have word. It would seem to me we ought to lay down the Senate amendment on drugs, we ought to pass the CR, and go home. That would be the logical, sensible, reasonable thing to do, which probably means we will do something else. [Laughter.]

In any event, that is the course we are pursuing. I thank the distinguished minority leader for yielding. I will advise him as soon as I have word from representatives of the President.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

IMMIGRATION REFORM

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1200.

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. 1200) entitled "An Act to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, and for other purposes," and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees:

From the Committee on the Judiciary, for consideration of the entire Senate bill and House amendment: Mr. RODINO, Mr. KASTENMEIER, Mr. SEIBERLING, Mr. MAZZOLI, Mr. SYNAR, Mr. FRANK, Mr. SCHUMER, Mr. SMITH of Florida, Mr. BERMAN, Mr. BOUCHER, Mr. BRYANT, Mr. FISH, Mr. MOORHEAD, Mr. LUNGREN, Mr. MCCOLLUM, Mr. SHAW, and Mr. DEWINE.

From the Committee on Agriculture, solely for consideration of sections 121-125, 202(h), 203, and 304 of the Senate bill and sections 116, 121, 204, 301-305, and 701 of the House amendments: Mr. PANETTA, Mr. HUCKABY, and Mr. MORRISON of Washington.

From the Committee on Education and Labor, solely for consideration of sections 101(d), 121-125, 202(h), 203, 304, 402, and 604 of the Senate bill, and sections 101, 121, 201(h), 204, 301-305, 316(d), 402, 403, and 701 of the House amendments: Mr. HAWKINS, Mr. FORD of Michigan, and Mr. JEFFORDS.

From the Committee on Energy and Commerce, solely for consideration of sections 125(b), 202(h), 203, 304, and 404 of the Senate bill, and sections 121, 201(d), 201(h), 204, 404, and that portion of section 302(a) inserting subsection 210(f) in the Immigration and Nationality Act: Mr. DINGELL, Mr. WAXMAN, and Mr. DANNEMEYER.

From the Committee on Ways and Means, solely for the consideration of sections 121(a), 121(g), 121(h), 124(c), 125(b), 202(h), 203, 304, 404, and 602 of the Senate bill and sections 121, 201(h), 204, 302(b), 402, 404, 407, 601, 701, and that portion of section 302(a) inserting subsection 210(f) in the Immigration and Nationality Act: Mr. FORD of Tennessee, Mr. PEASE, and Mr. DAUB.

From the Committee on Rules, solely for the consideration of section 604(b) of the Senate bill and section 811 of the House amendments, and modifications committed to conference: Mr. BEILENSON and Mr. TAYLOR.

As an additional conferee, solely for consideration of title VIII of the House amendment, and modifications committed to conference: Mr. MOAKLEY.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendment and agree to the conference requested by the House and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer [Mr. HECHT] appointed Mr. THURMOND, Mr. SIMPSON, Mr. DENTON, Mr. MATHIAS, Mr. KENNEDY, Mr. SIMON, and Mr. METZENBAUM conferees on the part of the Senate.

OMNIBUS DRUG ENFORCEMENT EDUCATION, AND CONTROL ACT

Mr. DOLE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5484.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

(The amendment of the House is printed in the RECORD of October 8, 1986, beginning at page 29608.)

Mr. DOLE. Mr. President, I move to concur in the amendment of the House with a further amendment which I send to the desk.

AMENDMENT NO. 3275

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

In lieu of the language of the House amendment insert the following:

"That this Act may be cited as the Anti-Drug Abuse Act of 1986."

MODIFICATION OF AMENDMENT NO. 3275

Mr. DOLE. Mr. President, I send a modification of the amendment to the desk.

The PRESIDING OFFICER. The amendment is so modified.

(The modification of amendment No. 3275 will be printed later in the RECORD.)

□ 1840

Mr. DOLE. Mr. President, let me indicate that this, probably, with one large exception, is a bipartisan piece of legislation.

Mr. CHILES. I agree that the Senate amendment, with the one exception cited by the distinguished majority leader, is a bipartisan package.

Mr. DOLE. That is right. Mr. President, I thank all Senators on both sides of the aisle. I am not suggesting that there are not some differences that may have to be resolved by amendments. The Senator from Louisiana has indicated to me and the minority leader, that he has a problem with one of the very good provisions. He does not feel quite as I do about it.

There are differences among Senators on both sides. It is bipartisan—it

was, when it left here. The House has made some changes and we have made some changes and modifications, and I hope we can move quickly on this.

There is one major difference among Senators—not Republicans or Democrats, necessarily; but there are Members on each side of the aisle who feel strongly both ways about imposition of the death penalty. There is an indication that that may be debated at length.

CLOTURE MOTION

Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion will be stated.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment with a further amendment to H.R. 5484, the omnibus anti-drug bill.

Bob Dole, Strom Thurmond, Paul Trible, W.D. Armstrong, Mitch McConnell, Malcolm Wallop, Paula Hawkins, Chic Hecht, Don Nickles, Paul Laxalt, Al Simpson, Pete Wilson, Orrin G. Hatch, J. Warner, Chuck Grassley, James T. Broyhill, and Lawton Chiles.

Mr. CHILES. Mr. President, I concur with the minority leader and hope we will be able to get passage of this. I think it would be tragic if we do not, having gone this far on a very far-reaching piece of legislation. It deals with eradication; interdiction; increases for law enforcement, both at the State and local levels; penalty provisions, with mandatory penalties especially dealing with crack cocaine; an increased effort for education and treatment; as well as providing additional prison space. We covered the gamut.

I know that this will be of tremendous assistance to my State and every other State in the Nation that is facing the incursion of drugs we are facing.

It would be tragic if we lost this bill and lost a year in being able to work on this problem. The continuing resolution conference is proceeding, to come up with a funding mechanism for this bill, and I hope that next week we will be able to complete passage of it.

Mr. DOLE. I thank the Senator from Florida and I thank the distinguished minority leader and members of his staff and other staff members on both sides, who have been working on this matter for the past 24 hours.

I think it is fair to say that we do not intend to leave here until we have completed action on the Anti-Drug Abuse Act.

Mr. CHILES. I am glad to hear that.

Mr. DOLE. I know there is a major difference. There must be some way to resolve that to the satisfaction of Members on both sides of that issue. Notwithstanding that, we should not let one provision derail the entire drug package.

Mr. CHILES. I agree with that very much.

I know that the minority leader can support the death penalty; I certainly can; I know the majority leader can. I think the three of us would agree that that is not to say we have to have that at the expense of losing this bill. On the other hand, it is a feature that I think would be an addition and help, and I wish we had it. There is so much good in this bill and so much that would be of help to my State and to every other State that I hope we are going to get it passed one way or the other.

Mr. DOLE. I indicate to those who have a different view than that of the three of us with reference to the death penalty that they should not misunderstand our willingness to try to work out some compromise. It will have to be a compromise. We are not talking about surrender, because I would guess—guess only—that probably two-thirds or more of the Senators support the death penalty provision that is in the last House-passed amendment.

We have been in preliminary discussions with Members on the other side of this issue. There may be a way to have a separate vote on that issue. If we can work something out along those lines, I think it might satisfy those who hold the view that the Senator from Florida, the Senator from Kansas, and the Senator from West Virginia hold.

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.

□ 1850

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

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

MAINLAND TOUR BOAT FACILITY AT FORT SUMTER NATIONAL MONUMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 967 (S. 2534), dealing with Fort Sumter National Monument.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

Mr. BYRD. Mr. President, reserving the right to object, and I will not object, Mr. THURMOND has been to see me at least, I believe, five times today about this measure, and I have long since forgotten how many times yesterday, or the day before, so I surrender.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2534) to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, South Carolina, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic):

S. 2534

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to provide for needed facilities for vistors to Fort Sumter National Monument, including a tour boat dock and associated facilities, and an interpretive and museum facility in cooperation with the State of South Carolina and the city of Charleston, the Secretary of the Interior (in this Act referred to as the "Secretary"), is authorized to acquire by purchase with donated or appropriated funds, donation, or exchange, not to exceed 8.91 acres of lands, including submerged lands, and interests in lands, within the area generally depicted on the map entitled "Dockside II, Proposed Site, Tourboat Facility," which map shall be on file and available for public inspection in the office of the National Park Service. When acquired, lands, including submerged lands and interests in lands, depicted on such map shall be administered by the Secretary as a part of Fort Sumter National Monument, subject to the laws and regulations applicable to such monument and subject to the provisions of this Act.

SEC. 2. (a) With respect to the lands, including submerged lands, and interests in lands acquired pursuant to the first section of this Act, the Secretary is authorized—

(1) to convey, notwithstanding the provisions of section 5 of Public Law 90-400 (82 Stat. 356) and subject to the provisions of subsection (b), a leasehold interest in not to exceed one and a half acres to the State of South Carolina or the city of Charleston or either of them for development by either of them or their agents or lessees of a marine museum and associated administrative facilities;

(2) to grant covenants or easements for ingress, [egress, and vehicular parking] *and egress* to the State of South Carolina, the city of Charleston, and to other parties as the Secretary may deem necessary to facilitate public use; and

(3) to enter into cooperative agreements with the State of South Carolina, the city of Charleston, and other parties as the Secretary may deem necessary, pursuant to which construction, maintenance, and use of buildings, utilities, parking facilities, and other improvements may be shared among the parties to the agreement.

(b) Any coveyance made pursuant to subsection (a)(1) and any renewal thereof may be for a period of up to 50 years, and may include the option to purchase the property in fee by the lessee within the first 10 years, upon payment by the lessee of the cost of

the property to the United States plus interest based on the average yield of United States Treasury notes with maturities of one year. The Secretary may convey title to the property in fee in the event such option to purchase is exercised, subject to the condition that the property is used for a public marine museum and associated administrative facilities. Notwithstanding any other provision of law, any leasehold interest conveyed pursuant to subsection (a)(1) shall be conveyed without monetary consideration. The proceeds from any conveyance of property in fee pursuant to subsection (a)(1) shall be deposited in the Land and Water Conservation Fund in the Treasury of the United States.

SEC. 3. Section 117 of Public Law 96-199 (94 Stat. 71) is hereby repealed.

SEC. 4. (a) Notwithstanding any other provision of law, sums heretofore appropriated but not, on the date of enactment of this Act, obligated for construction of a tourboat facility at the Broad Street site, and for the acquisition and construction of the Fleet landing site for Fort Sumter National Monument, which was authorized by section 117 of Public Law 96-199 (94 Stat. 71) are hereby made available for obligation for the acquisition of the lands including submerged lands, and interests in lands identified in the first section of this Act and for construction of necessary facilities thereon, and to the extent that sums heretofore appropriated for land acquisition of the Fleet landing site are not sufficient to cover the cost of acquisition of the properties identified in the first section of this Act, sums heretofore appropriated for construction of facilities at the Broad Street site and the Fleet landing site may be obligated for the purposes of acquisition as authorized in the first section of this Act.

(b) In addition to the sums made available under subsection (a), there is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 5. The Secretary of the Interior shall transfer administrative jurisdiction over the Federal property, consisting of approximately 1 acre, known as the Broad Street site, to the Secretary of the Department in which the Coast Guard is operating, who shall transfer to the Secretary of the Interior, subject to such reservations, terms, and conditions as may be necessasry for Coast Guard purposes, administrative jurisdiction over the Federal property, consisting of approximately 1 acre located near Fort Moultrie on Sullivan's Island for purposes of maintenance workshop, storage, and seasonal housing in connection with the administration and protection of the Fort Sumter National Monument.

Mr. BYRD. Mr. President, when these two South Carolina Senators gang up on you, you feel like you have been hit with a 10-ton truck. I have had not only the battering from the left, but the battering from the right, and that means the Hollings-Thurmond duo have just about, together with the aid of a cold, put me in the bed for the evening.

Mr. THURMOND. Mr. President, I rise today along with my colleague from South Carolina, Senator HOLLINGS, in support of S. 2534, legislation authorizing the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument in Charleston, SC.

Fort Sumter is one of the most historic landmarks in our Nation, and each year almost 180,000 tourists from throughout South Carolina and the Nation visit this unique fortress which stands on a small island at the mouth of Charleston Harbor. It was at this fort that the first shots of the Civil War were fired, when Union troops, under the leadership of Maj. Robert Anderson, refused to surrender Fort Sumter to Confederate Gen. Pierre Beauregard.

In 1948, Fort Sumter was designated a Civil War Memorial and also became part of the National Park Service system. Since 1948, tens of thousands have been ferried in boats from the Peninsula of Charleston to the fortress island and the number continues to grow each year.

Despite the busy traffic between the city and the fort, the National Park Service has never had a permanent dock from which boats can launch to take visitors to and from the island. Instead, the Park Service has utilized space in the city marina for this purpose. Unfortunately, this option will not be available within the next 2 years as construction of an expressway is planned for the site from where the boats currently launch.

Recognizing the eventual need for a new location for the boat dock on the Charleston Peninsula, Congress in 1978 appropriated $5,581,000 to construct an appropriate welcome center and boat dock at what is known as the Broad Street site. This site was deemed inappropriate, however, when city officials persuaded the National Park Service that locating the dock at Broad Street would greatly inhibit and inconvenience the future growth of the tourist industry within the city.

To remedy this situation, Congress in 1980 enacted legislation authorizing the National Park Service to purchase the Fleet Landing Site, and in 1982 Congress appropriated an additional $368,000 to pay for this property. However, subsequent consideration of the Fleet Landing Site revealed that each year a significant amount of money would be needed to dredge and maintain the boat dock area, making the site a poor investment for the Federal Government. Furthermore, locating the boat dock on this property would cause congestion in one of the most historic districts of Charleston. Since 1982, the National Park Service has considered four other sites, but each one was determined to be unacceptable.

I am pleased to report, however, that the Park Service, with the cooperation of the city of Charleston and especially George Campsen, the current Fort Sumter Tours Concessionaire, has finally identified a potential site known as the Dockside II property. This parcel of land passes the tests that the others failed—its location does not create a traffic congestion problem and the natural features of the property preclude a significant amount of dredging. In addition, the local community highly endorses the Dockside II site as the best possible site for the tour boat facility.

Mr. President, I am confident that pursuing the Dockside II site alternative is in the best interest of the Federal Government. I believe the American taxpayers would prefer to have a site with ample parking and little dredging costs. To affect this change in the Fort Sumter tour boat project, Senator HOLLINGS and I have introduced S. 2434.

This legislation would allow a major portion of the money which was originally designated for the construction of the facility to be used instead for the acquisition of property. The change is necessitated largely because initial plans called for the acquisition of a much smaller parcel of land upon which a parking garage would be constructed. In the revised plan, a larger parcel of land would be acquired. In fact, the new tract will be large enough to accommodate a flat level parking area, and as a result, an expensive parking garage will not be required.

In addition, this legislation would expand the 1978 law by allowing the city of Charleston to lease or purchase from the National Park Service a portion of the site upon which an aquatic museum could be built. I believe this museum would add greatly to the Fort Sumter facility, as visitors, especially school groups, would be able to combine the experience of an historic monument and an aquarium.

Furthermore, this legislation would give the Park Service authority to grant and accept easements and covenants over the property. This provision would allow the Park Service to enter into agreements to share portions of the parking area with the city and other local parties. In return, the city would perform routine services such as lawn maintenance and refuse removal. Of course, any convenant or easement which the Park Service grants would require the recipients to strictly comply with National Park Service standards.

Mr. President, in conclusion, I would like to emphasize two important facts. First, this legislation does not appropriate any new funds but merely reprograms money already provided for in previous legislation, and allows the Park Service to purchase the Dockside II site rather than the Fleet Landing Site. Second, both the National Park Service and the city of Charleston strongly support Dockside II as the best possible location for the Fort Sumter facility. Although it has taken six different sites and nearly 10 years, I am pleased that these two parties

have mutually agreed that the provisions of S. 2534 meet and exceed their individual expectations and requirements.

Mr. President, in short, S. 2534 authorized the National Park Service to purchase and develop the only remaining piece of property in Charleston which can adequately house the type of welcome center and tour boat facility which the Fort Sumter National Monument deserves. This legislation will ensure convenient access for visitors to Fort Sumter for many years to come, and; therefore, I urge my colleagues in the Senate to approve S. 2534.

Mr. HOLLINGS. Mr. President, it is a great pleasue to join my senior colleague in urging enactment of S. 2534. I join him in appreciation of the chairman of the Committee on Energy and Natural Resouces [Mr. MCCLURE], the distinguished chairman of the subcommittee [Mr. WALLOP], and the help of the distinguished ranking minority member, Senator JOHNSTON. They readily realized the need for this legislation and expeditiously processed it through the committee. I also want to thank the committee staff for their sympathetic help to a very urgent requirement.

This bill will grant the necessary legislative authority to the agreement worked out by the National Park Service, the city of Charleston, and the operator of the Fort Sumter tour boat with regard to location of the dock for the tour boat. This has, admittedly, been a long struggle, but now that we have finally secured agreement among the three parties, I urge the Senate to move quickly on this bill. The situation in Charleston has become critical since the present tour boat dock lies close by the impending construction of the new James Island Bridge.

As the Senate may recall, in 1976 it was determined that the tour boat should be moved from the city marina to a better location. In 1978, I secured the appropriation of $5,581,000 for a new dock. Later we enacted a rider to delay that appropriation due to a dispute with the National Park Service who had proposed a Broad Street location of the facility. The city of Charleston preferred a location at the Fleet Landing site in connection with the development of new tourist facilities. In 1980, the city and the Park Service came to agreement on utilizing the former Fleet Landing site and Congress enacted my amendment as part of Public Law 96-199 authorizing the purchase of the Fleet Landing site. In late 1982 we provided $368,000 to acquire the Fleet Landing site.

However, the operator of the tour boats was not part of that agreement and in the ensuing years, we have seen several additional sites proposed and rejected by the various parties. Finally they have now all come to agreement on a site adjacent to the Dockside II condominiums development.

Not only do we have the three interests in agreement, but as sometimes happens when things are delayed, we have a better location for the tour boat facility. Furthermore, we will have a superior project in that it will be contigious to a proposed city marine science museum, or aquarium and a restaurant that will provide a more enjoyable visit to the thousands of persons who visit Fort Sumter each year. The new site is much more accessible to the highways serving Charleston and will provide sufficient parking for cars and buses. In addition, the city will provide shuttle service to historic Charleston and the Cooper River location will enable the tour boats to stop at Patriots Point. The concept and location for the new facility has been widely discussed and endorsed by the local media, citizens, committees, and preservation groups.

Mr. President, Charleston is a unique city and in the long struggle to locate the tour boat facility, we have always kept uppermost in our minds our great tradition of historic preservation. Mayor Joseph Riley has maintained that tradition, while providing outstanding economic progress in Charleston. He recently received the City Livability Award, which is just another tribute to Charleston's fidelity to our heritage. Similarly, the city has worked to accommodate the ever-increasing number of visitors with as little disruption as possible. The Dockside II location conforms to that policy and I commend Mayor Riley, the National Park Service, George Campson, and the tour boat operators for working out this proposal.

Mr. President, the committee has added two amendments that improve the bill. The first one deletes "vehicular" parking from section 2(a)(2). This is at the suggestion of the Park Service that the more appropriate way to share the use of parking facilities is under a cooperative agreement pursuant to section 2(a)(3) of the bill. The second amendment authorizes the transfer of two Charleston properties between the Park Service and Coast Guard. This merely conforms the jurisdiction over these properties to the agencies that are actually using the parcels.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been reading the third time, the question is, Shall it pass?

So the bill (S. 2534) was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1900

ORDERS FOR TUESDAY, OCTOBER 14, 1986

ADJOURNMENT UNTIL 10 A.M.

Mr. President, I ask unanimous consent that once the Senate completes its business today it stand in adjournment until the hour of 10 a.m. on Tuesday, October 14, 1986.

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

Mr. DOLE. The Senate will not be in session on Monday.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, following the recognition of the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 11 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

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

PROGRAM

Mr. DOLE. Mr. President, at the conclusion of morning business, the Senate will resume consideration of the House message to accompany H.R. 5484, the drug bill. The Senate may also turn to the continuing resolution or the conference report to accompany the budget reconciliation, as well as any other legislative or executive items cleared for action. I would guess votes can be expected anytime after 2 or 3 o'clock on Tuesday.

Mr. President, I ask unanimous consent that once the Senate reconvenes on Tuesday, October 14, the reading of the Journal be dispensed with, no resolutions come over under the rule, the call of the calendar be dispensed with, and following the recognition of the two leaders under the standing order, there be a period for the transaction of routine morning business, not to extend beyond the hour of 11 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each; provided further that the morning hour be deemed to have expired.

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

FURTHER CONTINUING APPROPRIATIONS, 1987

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate

turn to the consideration of House Joint Resolution 751, the short-term continuing resolution.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 751) making further continuing appropriations for the fiscal year ending September 30, 1987, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

H.J. RES. 751

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102(c) of the joint resolution of October 9, 1986 (Public Law 99-464) is hereby amended by striking out "October 10, 1986" and inserting in lieu thereof "October 15, 1986".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, let me just indicate briefly that this will now go to the President. It will be his option whether or not he wishes to sign it. But it seems to me that there has been significant progress made in the major block to adjournment sine die, and that is the continuing resolution.

They are meeting at this very hour and they will be meeting for the next several hours. They may or may not reach total agreement tonight, but they have come a long way.

So it will be the President's decision now whether or not he should sign this major. I assume he will be keeping in touch with Senator HATFIELD and others on the appropriations conference to determine whether or not he will sign or not sign the short-term continuing resolution.

ADJOURNMENT TO TUESDAY, OCTOBER 14, 1986

Mr. DOLE. Mr. President, I move that the Senate stand in adjournment until 10 a.m. on Tuesday, October 14, 1986.

The motion was agreed to; and, at 7:07 p.m., the Senate adjourned until Tuesday, October 14, 1986, at 10 a.m.

OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT

(The text of amendment No. 3275, as modified, to the motion by Mr. DOLE to concur in the amendment of the House of Representatives to the amendment of the Senate to the bill H.R. 5484, is as follows:)

AMENDMENT NO. 3275—AS MODIFIED

I move to concur in the amendment of the House to the amendment of the Senate with a further amendment as follows:

In lieu of the language of the House amendment insert the following:

"That this Act may be cited as the Anti-Drug Abuse Act of 1986."

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 5484) entitled "An Act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Drug Abuse Act of 1986".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Compliance with Budget Act.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

Sec. 1001. Short title.
Sec. 1002. Controlled Substances Act penalties.
Sec. 1003. Other amendments to the Controlled Substances Act.
Sec. 1004. Elimination of special parole terms.
Sec. 1005. Amendment to the Comprehensive Crime Control Act of 1984.
Sec. 1006. Miscellaneous technical amendments.

Subtitle B—Drug Possession Penalty Act of 1986

Sec. 1051. Short title.
Sec. 1052. Penalty for simple possession.

Subtitle C—Juvenile Drug Trafficking Act of 1986

Sec. 1101. Short title.
Sec. 1102. Offense.
Sec. 1103. Technical amendments.
Sec. 1104. Manufacturing a controlled substance within 1,000 feet of a college.
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Subtitle D—Assets Forfeiture Amendments Act of 1986

Sec. 1151. Short title.
Sec. 1152. Department of Justice Asset forfeiture fund.
Sec. 1153. Substitute assets.

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

Sec. 1201. Short title.
Sec. 1202. Treatment of Controlled Substance Analogues.
Sec. 1203. Definition.
Sec. 1204. Clerical Amendment.

Subtitle F—Continuing Drug Enterprise Act of 1986

Sec. 1251. Short title.
Sec. 1252. Increased penalties.
Sec. 1253. Continuing criminal enterprise enhanced penalties.

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Sec. 1301. Short title.
Sec. 1302. Enhanced penalties.

Subtitle H—Money Laundering Control Act of 1986

Sec. 1351. Short title.
Sec. 1352. New offense for laundering of monetary instruments.
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Sec. 1355. Seizure and civil forfeiture of monetary instruments and related provisions.
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Sec. 1357. Penalty provisions.
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Sec. 1359. Banking regulatory agency supervision of recordkeeping systems.
Sec. 1360. Change in Bank Control Act amendments.
Sec. 1361. Change in Savings and Loan Control Act amendments.
Sec. 1362. Amendments to definitions.
Sec. 1363. International information exchange system; study of foreign branches of domestic institutions.
Sec. 1364. Effective dates.
Sec. 1365. Predicate Offenses.
Sec. 1366. Forfeiture.
Sec. 1367. Severability clause.

Subtitle I—Armed Career Criminals

Sec. 1401. Short title.
Sec. 1402. Expansion of predicate offenses for armed career criminal penalties.

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Sec. 1451. Authorization of appropriations.

Subtitle K—State and Local Narcotics Control Assistance

Sec. 1551. Short title.
Sec. 1552. Bureau of Justice Assistance drug grant programs.

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

Sec. 1601. Study required.

Subtitle M—Narcotics Traffickers Deportation Act

Sec. 1751. Amendment to the Immigration and Nationality Act.

Subtitle N—Freedom of Information Act

Sec. 1801. Short title.
Sec. 1802. Law enforcement.
Sec. 1803. Fees and Fee waivers.
Sec. 1804. Effective dates.

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Sec. 1821. Short title.
Sec. 1822. Offense.
Sec. 1823. Effective date.

Subtitle P—Manufacturing Operations
Sec. 1841. Manufacturing operation.
Subtitle Q—Controlled Substances Technical Amendments
Sec. 1861. Duties of Director of Administrative Office and authorizations.
Sec. 1862. Amendment to section 608 of the Tariff Act.
Sec. 1863. Amendments to section 616 of the Tariff Act.
Sec. 1864. Cross reference corrections.
Sec. 1865. Warrants relating to seizure.
Sec. 1866. Minor technical amendments.
Sec. 1867. Modification of cocaine definition for purposes of Schedule II.
Sec. 1868. Authority of Attorney General to enter into contracts with State and local law enforcement agencies.
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Sec. 1901. Precursor and essential chemical review.
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Sec. 1932. Establishment of the Conference.
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Sec. 2005. Restrictions on the provision of United States assistance.
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Sec. 2008. Extradition to the United States for narcotics-related offenses.
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SEC. 3. COMPLIANCE WITH BUDGET ACT.

Notwithstanding any other provision of this Act, any spending authority and any credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 and the term "credit authority" has the meaning provided in section 3(10) of the Congressional Budget Act of 1974.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Narcotics Penalties and Enforcement Act of 1986

SEC. 1001. SHORT TITLE.

This subtitle may be cited as the "Narcotics Penalties and Enforcement Act of 1986".

SEC. 1002. CONTROLLED SUBSTANCES ACT PENALTIES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking out subparagraphs (A) and (B) and inserting the following in lieu thereof:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(B) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a viola-

tion after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 1003. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1) In subsection (b), paragraph (1)(D), as redesignated, is amended by—

(A) striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual";

(B) striking out "a fine of not more than $100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual"; and

(C) inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24):

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

SEC. 1004. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" wherever it appears and inserting "term of supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 1005. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"SEC. 225. Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 1006. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (c) of section 3583 of title 18, United States Code, is amended—

(A) so that the catchline reads as follows: "Modification of conditions or revocation.";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title," and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of rule 32.1 of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Paragraph (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release".

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1978 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

On page 28, insert the following after line 15:

SEC. 1007. AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE.

(a) Section 3553 of title 18, United States Code, is amended by adding the following at the end thereof:

"(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.".

(b) The amendment made by this section shall take effect on the date of the taking

effect of section 3553 of title 18, United States Code.

SEC. 1008. AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.

Section 994 of title 28 of the United States Code is amended by—

(1) inserting the following after subsection (m):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively.

SEC. 1009. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence.

(b) The amendment made by this section shall take effect on the date of the taking effect of rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

Subtitle B—Drug Possession Penalty Act of 1986

SEC. 1051. SHORT TITLE.

This subtitle may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 1052. PENALTY FOR SIMPLE POSSESSION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"PENALTY FOR SIMPLE POSSESSION

"SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this title or title III, or a prior conviction for any drug or narcotic offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this title or title III, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

"(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

"(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

"(c) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.".

Subtitle C—Juvenile Drug Trafficking Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1102. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER 18 YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this title or title III; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this title or title III by any Federal, State, or local law enforcement official.

"(b) Any person who violates subsection (a) is punishable by a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both, and at least twice any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(c) Any person who violates subsection (a) after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(d) Any person who violates section 405B(a) (1) or (2)

"(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.

"(f) Except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by striking out "or 405A" and inserting in lieu thereof ", 405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

"405B. Employment of minors in controlled substance trafficking.".

SEC. 1104. MANUFACTURING A CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF A COLLEGE.

(a) Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended by inserting "or manufacturing" after "distributing" wherever it appears and by striking out "a public or private elementary or secondary school" wherever it appears and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

(b) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by striking out "involving the same controlled substance and schedule".

(c) Section 405A(b) of the Controlled Substance Act (21 U.S.C. 845a(b)) is amended by striking out "(1) by" and all that follows through the end and inserting the following in lieu thereof:

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both, and (2) at least three times any special parole term authorized by section 401(b) of this title for a first offense.".

SEC. 1105. IMPRISONMENTS.

(a) Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year.".

(b) Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.".

(c) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.".

Subtitle D—Assets Forfeiture Amendments Act of 1986

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the "Department of Justice Assets Forfeiture Fund Amendments Act of 1986".

On page 37, strike out all beginning with line 14 through line 2 on page 39 and insert in lieu thereof the following:

SEC. 1152. ASSET FORFEITURE FUNDS.

(a) DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Subsection (c) of section 524 of title 28, United States Code, is amended—

(1) in paragraph (1) before subparagraph (A) by striking out "in such amounts as may be specified in appropriations acts";

(2) by inserting at the end of subparagraph (A) of paragraph (1) the following: "Such payments may also include those, made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than 90 percent of which use will be program related), training, printing, contracting for services directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;";

(3) by inserting after subparagraph (A) of paragraph (1) the following new subparagraph and renumbering the subsequent subparagraphs appropriately;

(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States;";

(4) by amending newly designated subparagraph (F) of paragraph (1) to read as follows:

(F) for equipping for drug law enforcement functions any government-owned or leased vessels, vehicles, and aircraft available for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service; and";

(5) by striking out in paragraph (4) "remaining after payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))";

(6) by striking out paragraph (8) and renumbering paragraph (9) as paragraph (8); and

(7) by adding at the end of the subsection the following new paragraph:

"(9)(A) If any funds deposited in the Department of Justice Assets Forfeiture Fund or the Customs Forfeiture Fund (19 U.S.C. 1613a, 1613b) are not expended or obligated prior to thirty days after the end of the fiscal year, 90 percent of such funds shall be transferred into a Special Forfeiture Fund.

"(B) The funds in the Special Forfeiture Fund shall be disbursed, during the fiscal year in which they are transferred into the Special Fund, by the Attorney General, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Education, to enhance the following efforts:

"(i) Federal drug law enforcement agencies and programs;

"(ii) Federal drug abuse agencies and programs relating to drug abuse education, prevention, treatment, rehabilitation, and research;

"(iii) State, local, and nonprofit agencies with drug abuse responsibilities; and

"(iv) State and local law enforcement agencies for drug law enforcement efforts, under subtitle M of title I of the Omnibus Crime Control and Safe Streets Act of 1986 (42 U.S.C. 3721 et seq.).

"(C) Funds disbursed from the Special Forfeiture Fund shall not be used to supplant existing funds, but shall be used to supplement funds that are otherwise available.

"(D) The Attorney General shall report annually to the Congress on all disbursements made under the authority of subparagraph (B).".

(b) CUSTOMS FORFEITURE FUND.—

(1) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) as added by Public Law 98-473, is amended—

(A) in subsection (a) before paragraph (1) by striking out "in such amounts as may be specified in appropriations Acts";

(B) by amending paragraph (3) of subsection (a) to read as follows:

"(3) for equipping for law enforcement functions any government-owned or leased vessels, vehicles, and aircraft available for official use by the United States Customs Service; and"; and

(C) by striking out subsection (h).

(2) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) as added by Public Law 98-573, is repealed.

(c) FUNDS NOT COUNTED FOR PURPOSES OF ALLOCATION LIMITS IN SECTION 302 OF THE CONGRESSIONAL BUDGET ACT OF 1974.—Notwithstanding any other provision of law or any rule of the House of Representatives or the Senate, amounts available in the Customs Forfeiture Fund or the Department of Justice Assets Forfeiture Fund shall not be counted in determining the allocation of totals under subsections (a) and (b) of section 302 of the Budget Act of 1974.

SEC. 1153. SUBSTITUTE ASSETS.

(a) Section 1963 of title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

Subtitle E—Controlled Substance Analogue Enforcement Act of 1986

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Controlled Substance Analogue Enforcement Act of 1986".

SEC. 1202. TREATMENT OF CONTROLLED SUBSTANCE ANALOGUES.

Part B of the Controlled Substances Act is amended by adding at the end the following new section:

"TREATMENT OF CONTROLLED SUBSTANCE ANALOGUES

"SEC. 203. A controlled substance analogue all or part of which is intended for human consumption shall be treated, for the purposes of this title and title III as a controlled substance in schedule I.".

SEC. 1203. DEFINITION.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end thereof the following:

"(31)(A) Except as provided in subparagraph (B), the term 'controlled substance analogue' means a substance—

"(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II; or

"(ii) which was specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in schedule I or II.".

"(B) Such term does not include—

"(i) a controlled substance;

"(ii) any substance for which there is an approved new drug application;

"(iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

"(iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.".

"For purposes of this paragraph, section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

"(32) The term 'human consumption' includes application, injection, inhalation, or ingestion.".

SEC. 1204. CLERICAL AMENDMENT.

The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 202 the following new item:

"Sec. 203. Treatment of controlled substance analogues.".

Subtitle F—Continuing Drug Enterprise Act of 1986

SEC. 1251. SHORT TITLE.

This subtitle may be cited as the Continuing Drug Enterprises Act of 1986".

SEC. 1252. INCREASED PENALTIES.

Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(2) by striking out "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual,".

SEC. 1253. CONTINUING CRIMINAL ENTERPRISE ENHANCED PENALTIES.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

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

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(B) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelvemonth period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(B) of this Act."

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

SEC. 1301. SHORT TITLE.

This subtitle may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986.".

SEC. 1302. ENHANCED PENALTIES.

(a) Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting the following in lieu thereof:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, imposed a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(2) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

Subtitle H—Money Laundering Control Act of 1986

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Control Act of 1986".

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

"(A) with the intent to promote the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to promote the carrying on of specified unlawful activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $500,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both

"(3) Whoever conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate or facilitate a violation of section 7201 or 7206 of the Internal Revenue Code of 1954 shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the term 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States

or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

"(7) the term 'specified unlawful activity' means—

"(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 543 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), section 2 (relating to criminal penalties) of the Export Administration Act of 1979 (50 U.S.C. App. 2401), section 203 (relating to criminal sanctions) of the International Emergency Economic Powers Act (50 U.S.C. 1702), or section 3 (relating to criminal violations) of the Trading with the Enemy Act (50 U.S.C. App. 3).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. Such authority of the Secretary of the Treasury shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new items:

"1956. Laundering of monetary instruments".

SEC. 1353. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) CLARIFICATION OF RIGHT OF FINANCIAL INSTITUTIONS TO REPORT SUSPECTED VIOLATIONS.—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following new sentences: "Such information may include only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 1354. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirement prohibited

"No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited.".

SEC. 1355. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS AND RELATED PROVISIONS.

(a) CUSTOMS AUTHORITY TO CONDUCT SEARCHES AT BORDER.—Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.".

(b) FAILURE TO REPORT EXPORT OR IMPORT OF MONETARY INSTRUMENT.—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.".

SEC. 1356. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) SUMMONS POWER.—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) GENERAL POWERS OF SECRETARY.—" before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following new paragraphs:

"(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end the following new subsections:

"(b) LIMITATIONS ON SUMMONS POWER.—

"(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

"(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

"(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

"(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) CONTUMACY OR REFUSAL.—

"(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.".

(b) CONFORMING AMENDMENTS.—

(1) Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

(2) The heading of section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by striking out the item relating to section 5318 and inserting in lieu thereof the following:

"5318. Compliance, exemptions, and summons authority.".

SEC. 1357. PENALTY PROVISIONS.

(a) CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.".

(b) INCREASE IN AMOUNT OF PENALTY FOR FINANCIAL INSTITUTIONS.—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by striking out "$10,000" and inserting in lieu thereof "the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000"; and

(2) by striking out "section 5315" each place such term appears and inserting in lieu thereof "sections 5314 and 5315".

(c) SEPARATE CIVIL MONEY PENALTY FOR VIOLATION OF SECTION 5314.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (4) (as added by subsection (a) of this section) the following new paragraph:

"(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates any provision of section 5314.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

"(i) in the case of violation of such section involving a transaction, the greater of—

"(I) the amount (not to exceed $100,000) of the transaction; or

"(II) $25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

"(I) an amount (not to exceed $100,000) equal to the balance in the account at the time of the violation; or

"(II) $25,000.".

(d) SEPARATE CIVIL MONEY PENALTY FOR NEGLIGENT VIOLATION OF SUBCHAPTER.—Section 5321(a) of title 31, United States Code, is amended by inserting after paragraph (5) (as added by subsection (d) of this section) the following new paragraph:

"(6) NEGLIGENCE.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.".

(e) EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.—Section 5321(b) of title 31, United States Code, is amended to read as follows:

"(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

"(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

"(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

"(A) the date the penalty was assessed; or

"(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.".

(f) CLARIFICATION OF RELATIONSHIP BETWEEN CIVIL PENALTY AND CRIMINAL PENALTY.—Section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.".

(g) AMENDMENTS TO CRIMINAL PENALTY FOR CERTAIN OFFENSES.—Section 5322(b) of title 31, United States Code, is amended—

(1) by striking out "illegal activity involving transactions of" and inserting in lieu thereof "any illegal activity involving";

(2) by striking out "5 years" and inserting in lieu thereof "10 years".

(h) CONFORMING AMENDMENT.—Section 5321(c) of title 31, United States Code, is amended by striking out "section 5317(b)" and inserting in lieu thereof "subsection (c) or (d) of section 5317".

SEC. 1358. MONETARY TRANSACTION RECORDKEEPING AND REPORTING AMENDMENTS.

(a) AMENDMENTS RELATING TO REPORTS ON EXPORTS OR IMPORTS OF MONEY:

(1) CLOSELY RELATED EVENTS.—Section 5316 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term 'at one time' for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).".

(2) INCHOATE OFFENSE.—Section 5316(a)(1) of title 31, United States Code, is amended—

(A) by striking out "or attempts to transport or have transported,", and

(B) by inserting ", is about to transport," after "transports".

(3) TECHNICAL AND CONFORMING AMENDMENT.—Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1359. BANKING REGULATORY AGENCY SUPERVISION OF RECORDKEEPING SYSTEMS.

(a) INSURED BANKS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the re-

quirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF BANK TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured bank by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured bank.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured bank—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such bank which was previously reported to the bank by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such bank to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 8(i)(2)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)(i)) is amended by striking out "subsection (b) or (c)" and inserting in lieu thereof "subsection (b), (c), or (s)".

(b) INSTITUTIONS REGULATED BY THE BANK BOARD.—

(1) IN GENERAL.—Section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) is amended by adding at the end thereof the following new paragraph:

"(16) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(A) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) EXAMINATIONS OF ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(i) IN GENERAL.—Each examination of an association by the Board shall include a review of the procedures required to be established and maintained under subparagraph (A).

"(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

"(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an association—

"(i) has failed to establish and maintain the procedures described in subparagraph (A); or

"(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Board,

the Board shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 5(d)(8)(B)(i) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(8)(B)(i)) is amended by striking out "paragraph (2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (16)".

(c) INSURED THRIFT INSTITUTIONS.—

(1) IN GENERAL.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Corporation shall prescribe regulations requiring insured institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured institution by the Corporation shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured institution.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Corporation determines that an insured institution—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such institution which was previously reported to the institution by the Corporation,

the Corporation shall issue an order in the manner prescribed in subsection (e) or (f) requiring such institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 407(k)(3)(A) of the National Housing Act (12 U.S.C. 1730(k)(3)(A)) is amended by striking out "subsection (e) or (f) of this section shall forefit" and inserting in lieu thereof "subsection (e), (f), or (s) of this section shall forfeit".

(d) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

"(q) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF CREDIT UNIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the credit union.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an insured credit union—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 206(k)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)(A)) (as in effect on September 1, 1986) is amended by striking out "subsection (e) or (f)" and inserting in lieu thereof "subsection (e), (f), or (q)".

SEC. 1360. CHANGE IN BANK CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the agency, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the agency's judgment, any material information submitted is substantially inaccurate;

"(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such in-

vestigation. The agency shall retain such written report as a record of the agency.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

"(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency, unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(2) by inserting after paragraph (14) the following new paragraph:

"(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1361. CHANGE IN SAVINGS AND LOAN CONTROL ACT AMENDMENTS.

(a) ADDITIONAL REVIEW TIME.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the Corporation, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the Corporation's judgment, any material information submitted is substantially inaccurate;

"(C) the Corporation has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the Corporation determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) NOTICE TO STATE AGENCY.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the Corporation shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) REPORT.—The Corporation shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The Corporation shall retain such written report as a record of the Corporation.".

(c) PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended by adding after subparagraph (C) (as added by subsection (b) of this section) the following new subparagraph:

"(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the Corporation shall, within a reasonable period of time—

"(i) publish the name of the insured institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the institution proposed to be acquired is located, before final consideration of such notice by the Corporation, unless the Corporation determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such institution.".

(d) INVESTIGATIONS AND ENFORCEMENT.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18), respectively; and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The Corporation may exercise any authority vested in the Corporation under paragraph (2) or (3) of subsection (m) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the Corporation, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the Corporation that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the Corporation under subparagraph (A) as such courts have under paragraph (2) or (3) of subsection (m).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 1362. AMENDMENTS TO DEFINITIONS.

(a) UNITED STATES AGENCIES INCLUDES THE POSTAL SERVICE.—Section 5312(a)(2)(U) of title 31, United States Code (defining financial institutions) (as redesignated by subsection (a)) is amended by inserting before the semicolon at the end the following: ", including the United States Postal Service".

(b) UNITED STATES INCLUDES CERTAIN TERRITORIES AND POSSESSIONS.—Section 5312(a)(5) of title 31, United States Code, is amended by inserting "the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands," after "Puerto Rico".

SEC. 1363. INTERNATIONAL INFORMATION EXCHANGE SYSTEM; STUDY OF FOREIGN BRANCHES OF DOMESTIC INSTITUTIONS.

(a) DISCUSSIONS ON INTERNATIONAL INFORMATION EXCHANGE SYSTEM.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) REPORT ON DISCUSSIONS REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of discussions initiated pursuant to subsection (a).

(c) STUDY OF MONEY LAUNDERING THROUGH FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS REQUIRED.—The Secretary of the Treasury, in consultation with the Attorney General and the Board of Governors of the Federal Reserve System, shall conduct a study of—

(1) the extent to which foreign branches of domestic institutions are used—

(A) to facilitate illicit transfers of coins, currency, and other monetary instruments (as such term is defined in section 5312(a)(3)) of title 31, United States Code) into and out of the United States; and

(B) to evade reporting requirements with respect to any transfer of coins, currency, and other monetary instruments (as so defined) into and out of the United States;

(2) the extent to which the law of the United States is applicable to the activities of such foreign branches; and

(3) methods for obtaining the cooperation of the country in which any such foreign branch is located for purposes of enforcing the law of the United States with respect to transfers, and reports on transfers, of such monetary instruments into and out of the United States.

(d) REPORT ON STUDY OF FOREIGN BRANCHES REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate on the results of the study conducted pursuant to subsection (c).

SEC. 1364. EFFECTIVE DATES.

(a) The amendments made by sections 1354, 1358(b), and 1358(c) shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

(b) The amendments made by sections 1355(b), 1355(c), and 1357(a) shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

(c) The amendments made by section 1357 (other than subsection (a) of such section) shall apply with respect to violations committed after the date of the enactment of this Act.

(d) Any regulation prescribed under the amendments made by section 1358(a) shall apply with respect to transactions completed after the effective date of such regulation.

(e) The regulations required to be prescribed under the amendments made by section 1359 shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act.

(f) The amendments made by sections 1360 and 1361 shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act.

SEC. 1365. PREDICATE OFFENSES.

(a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)," after "section 1955 (prohibition of relating to business enterprises of gambling),".

SEC. 1366. FORFEITURE.

(a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 or 1957 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer or employee thereof."

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or emission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

"(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General or the Secretary of the Treasury, as the case

may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 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.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall, to the extent provided by treaty, apply:

"(1) Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may, with the concurrence of the Secretary of State, equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set. Transfers may be made under this subsection during a fiscal year to a country that is subject to paragraph (1)(A) of section 481(h) of the Foreign Assistance Act of 1961 (relating to restrictions on United States assistance) only if there is a certification in effect with respect to that country for that fiscal year under paragraph (2) of that section.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(j) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 or 1957 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)—(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

"46. Forfeiture ..... 981".

SEC. 1367. SEVERABILITY CLAUSE.

If any provision of this subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.

Subtitle I—Armed Career Criminals

SEC. 1401. SHORT TITLE.

This subtitle may be cited as the "Career Criminals Amendment Act of 1986".

SEC. 1402. EXPANSION OF PREDICATE OFFENSES FOR ARMED CAREER CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 924(e)(1) of title 18, United States Code, is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a violent felony or a serious drug offense, or both,".

(b) DEFINITIONS.—Section 924(e)(2) of title 18, United States Code, is amended by striking out subparagraph (A) and all that follows through subparagraph (B) and inserting in lieu thereof the following:

"(A) the term 'serious drug offense' means—

"(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the first section or section 3 of Public Law 96-350 (21 U.S.C. 955a et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law; or

"(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law; and

"(B) the term 'violent felony' means any crime punishable by imprisonment for a term exceeding one year that—

"(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

"(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.".

Subtitle J—Authorization of Appropriation for Drug Law Enforcement

SEC. 1451. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration, $60,000,000; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center: "Provided, That the existing El Paso Intelligence Center shall remain in Texas.".

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $124,500,000, of which $96,500,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $5,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $5,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $31,000,000.

(i) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the United States Marshals Service, $17,000,000.

"(j) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts agreed to in the conference agreement reached on Title I of H.J. Res. 738."

(k) In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation	*$2,000,000*
Secret Service	*$5,000,000.*

(l) This section may be cited as the "Drug Enforcement Enhancement Act of 1986".

Subtitle K—State and Local Narcotics Control Assistance

SEC. 1551. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1986".

SEC. 1552. BUREAU OF JUSTICE ASSISTANCE DRUG GRANT PROGRAMS.

(a) Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended—

(1) by redesignating part M as part N,

(2) by redesignating section 1301 as section 1401, and

(3) by inserting after part L the following new part:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"FUNCTION OF THE DIRECTOR

"SEC. 1301. The Director shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF DRUG LAW ENFORCEMENT GRANT PROGRAM

"SEC. 1302. The Director is authorized to make grants to States, for the use of States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.), and to—

"(1) provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons who violate State and local laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons;

"(2) provide additional personnel, equipment, facilities (including upgraded and additional law enforcement crime laboratories), personnel training, and supplies for more widespread prosecution of persons accused of violating such State and local laws and to pay operating expenses in connection with such prosecution;

"(3) provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State and local laws, to pay operating expenses in connection with such adjudication, and to provide quickly temporary facilities in which to conduct adjudications of such cases;

"(4) provide additional public correctional resources for the detention of persons convicted of violating State and local laws relating to the production, possession, or transfer of controlled substances, and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State and local laws;

"(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted;

"(6) provide programs which identify and meet the needs of drug-dependent offenders; and

"(7) conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move these offenders expeditiously through the judicial system.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1303. To request a grant under section 1302, the chief executive officer of a State shall submit to the Director an application at such time and in such form as the Director may require. Such application shall include—

"(1) a statewide strategy for the enforcement of State and local laws relating to the production, possession, and transfer of controlled substances;

"(2) a certification that Federal funds made available under section 1302 of this title will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for drug law enforcement activities;

"(3) a certification that funds required to pay the non-Federal portion of the cost of each program and project for which such grant is made shall be in addition to funds that would otherwise be made available for drug law enforcement by the recipients of grant funds;

"(4) an assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 60-day period beginning on the date such application or amendment is so submitted); and

"(5) an assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

Such strategy shall be prepared after consultation with State and local officials whose duty it is to enforce such laws. Such strategy shall include an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Director or to the State, as the case may be, a performance report concerning the activities carried out pursuant to section 1302 of this title.

"REVIEW OF APPLICATIONS

"SEC. 1304. (a) The Bureau shall provide financial assistance to each State applicant under section 1302 of this title to carry out the programs or projects submitted by such applicant upon determining that—

"(1) the application or amendment thereto is consistent with the requirements of this title; and

"(2) before the approval of the application and any amendment thereto the Bureau has made an affirmative finding in writing that the program or project has been reviewed in accordance with section 1303 of this title.

Each application or amendment made and submitted for approval to the Bureau pursuant to section 1303 shall be deemed approved, in whole or in part, by the Bureau not later than sixty days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(b) Grant funds awarded under section 1302 of this title shall not be used for land acquisition or construction projects, other than penal and correctional institutions.

"(c) The Bureau shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this section without first affording the applicant reasonable notice and opportunity for reconsideration.

"ALLOCATION AND DISTRIBUTION OF FUNDS UNDER FORMULA GRANTS

"SEC. 1305. (a) Of the total amount appropriated for this part in any fiscal year, 80 per centum shall be set aside for section 1302 and allocated to States as follows:

"(1) $500,000 shall be allocated to each of the participating States.

"(2) Of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of re-

maining funds described in this paragraph as the population of such State bears to the population of all the States.

"(b)(1) Each State which receives funds under subsection (a) in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 1302 of this title that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

"(3) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

"(c) No funds allocated to a State under subsection (a) or received by a State for distribution under subsection (b) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

"(d) If the Director determines, on the basis of information available to it during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 1302 of this title, or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

"(e) Any funds allocated under subsection (a) that are not distributed under this section shall be available for obligation under section 1309 of this title.

"REPORTS

"SEC. 1306. (a) Each State which receives a grant under section 1302 of this title shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 1303 of this title;

"(2) a summary of the activities carried out in such year with any grant received under section 1309 of this title by such State; and

"(3) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

"(b) Not later than ninety days after the end of each fiscal year for which grants are made under section 1302 of this title, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of grants made under sections 1302 and 1309 of this title to such State for such fiscal year;

"(2) the amount of such grants expended for each of the purposes specified in section 1302; and

"(3) a summary of the information provided in compliance with paragraphs (1) and (2) of subsection (a).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1307. (a) A grant made under section 1302 of this title may not be expended for more than 75 per centum of the cost of the identified uses, in the aggregate, for which such grant is received to carry out any purpose specified in section 1302, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 per centum of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 per centum of a grant made under section 1302 of this title may be used for costs incurred to administer such grant.

"(c)(1) Each State which receives a grant under section 1302 of this title shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Director may require by rule to facilitate an effective audit.

"(2) The Director and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of units of local government which receive any part of a grant made under section 1302, if in the opinion of the Director or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1308. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1302 of this title; and

"(2) administering funds received under such section from the Director, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).

"DISCRETIONARY GRANTS

"SEC. 1309. The Director is authorized to make grants to public agencies and private nonprofit organizations for any purpose specified in section 1302 of this title. The Director shall have final authority over all grants awarded under this section.

"APPLICATION REQUIREMENTS

"SEC. 1310. (a) No grant may be made under section 1309 of this title unless an application has been submitted to the Director in which the applicant—

"(1) sets forth a program or project which is eligible for funding pursuant to section 1309 of this title; and

"(2) describes the services to be provided, performance goals, and the manner in which the program is to be carried out.

"(b) Each applicant for funds under section 1309 of this title shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this title and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Director.

"ALLOCATION OF FUNDS FOR DISCRETIONARY GRANTS

"SEC. 1311. Of the total amount appropriated for this part in any fiscal year, 20 per centum shall be reserved and set aside for section 1309 of this title in a special discretionary fund for use by the Director in carrying out the purposes specified in section 1302 of this title. Grants under section 1309 may be made for amounts up to 100 per centum of the costs of the programs or projects contained in the approved application.

"LIMITATION ON USE OF DISCRETIONARY GRANT FUNDS

"SEC. 1312. Grant funds awarded under section 1309 of this title shall not be used for land acquisition or construction projects.".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1308, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Director.
"Sec. 1302. Description of drug law enforcement grant program.
"Sec. 1303. Applications to receive grants.
"Sec. 1304. Review of applications.
"Sec. 1305. Allocation and distribution of funds under formula grants.
"Sec. 1306. Reports.
"Sec. 1307. Expenditure of grants; records.
"Sec. 1308. State office.
"Sec. 1309. Discretionary grants.
"Sec. 1310. Application requirements.
"Sec. 1311. Allocation of funds for discretionary grants.
"Sec. 1312. Limitation on use of discretionary grant funds.

"PART N—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and L" and inserting in lieu thereof "L, and M",

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $350,000,000 for fiscal year 1987, $350,000,000 for fiscal year 1988, and

$230,000,000 for fiscal year 1989, to carry out the programs under part M of this title.", and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and M".

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

SEC. 1601. STUDY REQUIRED.

(a) Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide to the Attorney General—

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; and, the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle M—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by subsections (a) and (b) of this section shall apply to convictions occurring before, on, or after the date of the enactment of this section, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this section.

(d) Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end the following new subsection:

"(d) In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

"(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

"(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

"(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.".

(e)(1) From the sums appropriated to carry out this Act, the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the computer capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject to criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

(2) At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded.

Subtitle N—Freedom of Information Act

SEC. 1801. SHORT TITLE.

This subtitle may be cited as the "Freedom of Information Reform Act of 1986".

SEC. 1802. LAW ENFORCEMENT.

(a) EXEMPTION.—Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;".

(b) EXCLUSIONS.—Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f) respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

SEC. 1803. FEES AND FEE WAIVERS.

Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public

interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.".

SEC. 1804. EFFECTIVE DATES.

(a) The amendments made by section 1802 shall be effective on the date of enactment of this Act, and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

(b)(1) The amendments made by section 1803 shall be effective 180 days after the date of enactment of this Act, except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia; or

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Public Law 91-513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and primarily intended for use with tobacco products, including any pipe, paper, or accessory.

SEC. 1823. EFFECTIVE DATE.

This subtitle shall become effective 90 days after the date of enactment of this Act.

Subtitle P—Manufacturing Operations

SEC. 1841. MANUFACTURING OPERATION.

(a) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ESTABLISHMENT OF MANUFACTURING OPERATIONS

"SEC. 416. (a) Except as authorized by this title, it shall be unlawful to—

"(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

"(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

"(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than $500,000, or both, or a fine of $2,000,000 for a person other than an individual.".

(b) Section 405A of the Controlled Substances Act is amended—

(1) in subsection (a) by inserting after "section 401(a)(1)" the following: "or section 416"; and

(2) in subsection (b) by inserting after "section 401(a)(1)" the following: "or section 416".

Subtitle Q—Controlled Substances Technical Amendments

SEC. 1861. DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE AND AUTHORIZATIONS.

(a) SHORT TITLE.—This section may be cited as the "Drug and Alcohol Dependent Offenders Treatment Act of 1986".

(b) PERMANENT AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.—(1) The section of title 18, United States Code, that is redesignated section 3672 by section 212(a) of the Comprehensive Crime Control Act of 1984 is amended by adding at the end thereof:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating his dependence on alcohol or addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under subsection (b) or (c) of section 3552, except for studies conducted by the Bureau of Prisons.".

(2) The amendment made by this section shall take effect on the date of the taking effect of such redesignation.

(c) INTERIM AMENDMENT RELATING TO DUTIES OF DIRECTOR OF ADMINISTRATIVE OFFICE.—The second paragraph of section 4255 of title 18, United States Code, is amended to read as follows:

"The Director of the Administrative Office of the United States Courts shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, or an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). Such authority includes the authority to provide equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol dependent person, addict, or drug dependent person by eliminating that person's or addict's dependence on alcohol or addicting drugs, or by controlling that person's or addict's dependence and susceptibility to addiction. Such Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).".

(d) REAUTHORIZATION OF CONTRACT SERVICES.—Section 4(a) of the Contract Services for Drug Dependent Federal Offenders Act of 1978 is amended—

(1) by striking out "and $6,000,000" and inserting "$6,500,000" in lieu thereof; and

(2) by striking out the two periods at the end and inserting in lieu thereof ": $12,000,000 for the fiscal year ending September 30, 1987; $14,000,000 for the fiscal year ending September 30, 1988; and $16,000,000 for the fiscal year ending September 30, 1989.".

SEC. 1862. AMENDMENT TO SECTION 608 OF THE TARIFF ACT.

(a) Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended by striking out "$2,500" and inserting in lieu thereof "$5,000".

(b) Section 608 of such Act, as enacted by Public Law 98-473, is repealed.

SEC. 1863. AMENDMENTS TO SECTION 616 OF THE TARIFF ACT.

(a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616a(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of such Act, as enacted by Public Law 98-473, is repealed.

SEC. 1864. CROSS REFERENCE CORRECTIONS.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended—

(1) in subsection (c) and in the second subsection (h), by striking out "subsection (o)" and inserting "subsection (n)" in lieu thereof;

(2) in subsection (f) by striking out "subsection (f)" and inserting "subsection (e)" in lieu thereof;

(3) in subsection (i)(1), by striking out "this chapter" and inserting "this title" in lieu thereof; and

(4) by redesignating the second subsection (h) as subsection (k).

SEC. 1865. WARRANTS RELATING TO SEIZURE.

Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4), by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 1866. MINOR TECHNICAL AMENDMENTS.

(a) Section 403(a)(2) of the Controlled Substances Act (21 U.S.C. 843(a)(2)) is amended by striking out the period at the end and inserting a semicolon in lieu thereof.

(b) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by striking out "special term" and inserting "term of supervised release" in lieu thereof.

(c) Section 405A(c) of the Controlled Substances Act (21 U.S.C. 845a(c)) is amended by striking out "section 4202" and inserting "chapter 311" in lieu thereof.

(d) Section 1008(e) of the Controlled Substances Import and Export Act (21 U.S.C. 958(e)) is amended by striking out "section" the first place it appears and inserting "sections" in lieu thereof.

(e) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

(f) The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(1) by inserting after the item relating to section 405 the following:

"Sec. 405A. Manufacture or distribution in or near schools.

"405B. Employment of minors in controlled substance trafficking.";

and

(2) by inserting after the item relating to section 414 the following:

"Sec. 415. Alternative fine.".

SEC. 1867. MODIFICATION OF COCAINE DEFINITION FOR PURPOSES OF SCHEDULE II.

Subsection (a)(4) of schedule II of section 202(c) the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) Coca leaves (except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed); cocaine, its salts, optical and geometric isomers, and salts of isomers; and ecgonine, its derivatives, their salts, isomers, and salts of isomers.".

SEC. 1868. AUTHORITY OF ATTORNEY GENERAL TO ENTER INTO CONTRACTS WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this title.".

SEC. 1869. AUTHORITY OF ATTORNEY GENERAL TO DEPUTIZE STATE AND LOCAL LAW ENFORCEMENT OFFICERS FOR CONTROLLED SUBSTANCES ENFORCEMENT.

Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended—

(1) by inserting "(a)" before "Any officer or employee";

(2) by inserting after "Drug Enforcement Administration" the following: "or (with respect to offenses under this title or title III) any State or local law enforcement officer"; and

(3) by adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

SEC. 1870. CLARIFICATION OF ISOMER DEFINITION.

The second and third sentences of section 102(14) of the Controlled Substances Act (21 U.S.C. 802(14)) are each amended by striking out "the" after "the term 'isomer' means" and inserting in lieu thereof "any".

Subtitle R—Precursor and Essential Chemical Review

SEC. 1901. PRECURSOR AND ESSENTIAL CHEMICAL REVIEW.

(a) STUDY AND REPORT.—The Attorney General shall—

(1) conduct a study of the need for legislation, regulation, or alternative methods to control the diversion of legitimate precursor and essential chemicals to the illegal production of drugs of abuse; and

(2) report all findings of such study to Congress not later than the end of the 90th day after the date of enactment of this subtitle.

(b) CONSIDERATIONS.—In conducting such study the Attorney General shall take into consideration that—

(1) clandestine manufacture continues to be a major source of narcotic and dangerous drugs on the illegal drug market;

(2) these drugs are produced using a variety of chemicals which are found in commercial channels and which are diverted to illegal uses;

(3) steps have been taken to deny drug traffickers access to key precursor chemicals, including that—

(A) P2P, a precursor chemical used in the production of amphetamines and methamphetamines was administratively controlled in schedule II of the Controlled Substances by the Drug Enforcement Administration;

(B) a variety of controls were placed on piperidine, the precursor for phencyclidine, by the Psychotropic Substance Act of 1978; and

(C) the Drug Enforcement Administration has maintained a voluntary system in cooperation with chemical industry to report suspicious purchases of precursors and essential chemicals; and

(4) despite the formal and voluntary systems that currently exist, clandestine production of synthetic narcotics and dangerous drugs continue to contribute to drug trafficking and abuse problems in the United States.

Subtitle T—White House Conference for a Drug Free America

SEC. 1931. SHORT TITLE.

This subtitle may be cited as the "White House Conference for a Drug Free America".

SEC. 1932. ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference for a Drug Free America". The members of the Conference shall be appointed by the President.

SEC. 1933. PURPOSE.

The purposes of the Conference are—

(1) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(2) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(3) to highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse; and

(4) to examine the essential role of parents and family members in preventing the basic causes of drug abuse and in successful treatment efforts.

SEC. 1934. RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(1) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solicitation of illicit drugs and the need to provide greater coordination among such programs;

(2) the impact of drug abuse upon American education, examining in particular—

(A) the effectiveness of drug education programs in our schools with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(B) the role of colleges and universities in discouraging the illegal use of drugs by student-athletes; and

(C) the relationship between drug abuse by student-athletes and college athletic policies, including eligibility and academic requirements, recruiting policies, athletic department financing policies, the establishment of separate campus facilities for athletes, and the demands of practice and lengthy playing seasons;

(3) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs;

(4) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs; and

(5) the circumstances contributing to the initiation of illicit drug usage, with particular emphasis on the onset of drug use by youth.

SEC. 1935. CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections 1933 and 1934, the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(1) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, Secretary of Transportation, and the Director of ACTION;

(2) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and Mayors of Cities;

(3) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(4) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, primary, secondary, and post-secondary education, and law enforcement.

SEC. 1936. ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. 1937. FINAL REPORT AND FOLLOW-UP ACTIONS.

No later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections 1933 and 1934. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

SEC. 1938. AUTHORIZATION.

There are hereby authorized to be appropriated $2,000,000 for fiscal year 1988 for purposes of this subtitle.

Subtitle U—Death Penalty for Certain Offenses

SEC. 1951. DEATH PENALTY FOR CERTAIN CONTINUING CRIMINAL ENTERPRISE DRUG OFFENSES.

(a) ELEMENTS OF OFFENSE.—Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "(a) Any" and inserting "(a)(1) Except as otherwise provided in this section, any" in lieu thereof;

(2) by striking out "; except that if" and inserting ". If" in lieu thereof; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and thereby knowingly causes the death of any other individual, the individual so engaging shall be subject to the death penalty in accordance with this section.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH PENALTY.—Section 408 of the Controlled Substances Act is amended by adding at the end the following:

"HEARING REQUIRED WITH RESPECT TO THE DEATH PENALTY

"(f) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"NOTICE BY THE GOVERNMENT IN DEATH PENALTY CASES

"(g)(1) Whenever the Government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"HEARING BEFORE COURT OR JURY

"(h)(1) When the attorney for the Government has filed a notice as required under subsection (f) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(i) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (l) and (m), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (m), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information

may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(j) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (m), found to exist. If one of the aggravating factors set forth in subsection (m)(1) and another of the aggravating factors set forth in subsection (m) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of any aggravating or mitigating factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (m)(1) is not found to exist or an aggravating factor set forth in subsection (m)(1) is found to exist but no other aggravating factor set forth in subsection (m) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagraph (m)(1) and one or more of the other aggravating factors set forth in subsection (m) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(k) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(l) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than 18 years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS

"(m) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim; or

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (a)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) The violation of this chapter in relation to which the conduct described in subsection (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(8) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(10) The defendant committed the offense against a judge, a law-enforcement officer, or an employee of a penal or correctional institution, while that victim was performing official duties or because of that victim's status as a public servant of the United States, or a State or political subdivision of the United States. For purposes of this paragraph the term 'law-enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(n) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(o) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.".

"APPEAL IN CAPITAL CASES

"(p)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with the failure to find sufficient mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

Subtitle .—Common Carrier Operation Under the Influence of Alcohol or Drugs

SEC. . OFFENSE.

(a) Part I of title 18, United States Code, is amended by inserting after chapter 17, the following:

"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.
"341. Definitions.
"342. Operation of a common carrier under the influence of alcohol or drugs.
"343. Presumptions.

"§ 341. Definitions

"As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than $10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively

presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.".

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs

Subtitle .—Federal Drug Law Enforcement Agent Protection Act of 1986

SEC. . SHORT TITLE.

This subtitle may be cited as the "Federal Drug Law Enforcement Agent Protection Act of 1986".

SEC. . AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by—

(1) inserting after "(e)" the following: "(1)";

(2) redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively and

(3) striking out the matter of following subparagraph (D), as redesignated, and inserting in lieu thereof the following:

"(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

"(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

"(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

"(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A).".

Strike out title II of the House amendment and insert in lieu thereof the following:

TITLE II—INTERNATIONAL NARCOTICS CONTROL

SEC. 2001. SHORT TITLE.

This title may be cited as the "International Narcotics Control Act of 1986".

SEC. 2002. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

Section 482(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$75,445,000 for the fiscal year 1987"; and

(2) by adding at the end the following: "In addition to the amounts authorized by the preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress a detailed plan for the expenditure of those funds, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less than $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under chapter 8 of part I of this Act (22 U.S.C. 2291 et seq.; relating to international narcotics control). These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts and shall be available primarily for use in Latin America.".

SEC. 2003. AIRCRAFT PROVIDED TO FOREIGN COUNTRIES FOR NARCOTICS CONTROL PURPOSES: RETENTION OF TITLE AND RECORDS OF USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program) is amended by adding at the end the following new sections:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft which, at any time after the enactment of this section, are made available to a foreign country under this chapter, or are made available to a foreign country primarily for narcotics-related purposes under any other provision of law, shall be provided only on a lease or loan basis.

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to a foreign country under this chapter, including aircraft made available before the enactment of this section.

"(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.".

SEC. 2004. PILOT AND AIRCRAFT MAINTENANCE TRAINING FOR NARCOTICS CONTROL ACTIVITIES.

(a) EARMARKING OF FUNDS.—Not less than $2,000,000 of the funds made available for fiscal year 1987 to carry out chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.; relating to international military education and training) shall be available only for education and training in the operation and maintenance of aircraft used in narcotics control interdiction and eradication efforts.

(b) RELATIONSHIP TO INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.—Assistance under this section shall be coordinated with assistance provided under chapter 8 of part I of the Act (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(c) WAIVER OF SECTION 660.—Assistance may be provided pursuant to this section notwithstanding the prohibition contained in section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2420; relating to police training).

SEC. 2005. RESTRICTIONS OF THE PROVISION OF UNITED STATES ASSISTANCE.

(a) Section 481(h) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(h)(1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country—

"(A) 50 percent of United States assistance allocated for such country notified to Congress in the report required under section 653(a) of this Act shall be withheld from obligation and expenditure;

"(B) on or after March 1, 1987, and on March 1 of each succeeding year, the Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of their respective institution to or for such country; and

"(C) on or after March 1, 1987, and March 1 of each succeeding year, the President shall deny to all products of such country tariff treatment under title V of the Trade Act of 1974 (the Generalized System of Preferences), the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment.

"(2)(A) The assistance withheld by paragraph (1)(A) may be obligated and expended and the provisions of clauses (A) and (B) of paragraph (1) shall not apply if the President determines, and so certifies to the Congress, at the time of the submission of the report required by subsection (e), that—

"(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

"(ii) for a country that would not otherwise qualify for certification under subclause (i), the vital national interests of the United States require the provision of such assistance, financing, or preferential treatment to such country.

"(B) If the President makes a certification pursuant to clause (A)(ii), he shall include in such certification—

"(i) a full and complete description of the vital national interests placed at risk should assistance, financing, or preferential tariff treatment not be provided such country; and

"(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combatting narcotics or to take adequate steps to combat narcotics on its own.

"(3) In making the certification required by paragraph (2) of this subsection, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of il-

licit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

"(i) the enactment and enforcement of laws prohibiting such conduct, and

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(4)(A) The provisions of paragraph (1) shall apply without regard to paragraph (2) if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (2), joint resolution disapproving the determination of the President contained in such certification.

"(B)(i) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(ii) For the purpose of expediting the consideration and enactment of joint resolution under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5) Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive United States assistance as defined by subsection (i)(4) of this section, the financing described in (1)(B) of this subsection or and the preferential tariff treatment described in (1)(C) of this subsection unless—

"(A) the President makes a certification under paragraph (2) and the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (2) with respect to such country and the Congress enacts, in accordance with the procedures of paragraph (4), a joint resolution approving such certification.".

(b) Section 481(e) of such Act is amended by striking out "February" and inserting in lieu thereof "March".

(c) Section 481(i) of such Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.".

(d) The amendments made by this section shall take effect October 1, 1986.

SEC. 2006. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. 2007. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) REQUIREMENT FOR INVESTIGATION.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) REPORTS TO CONGRESS.—

(1) PERIODIC REPORTS.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) FINAL REPORT.—Not later than March 1, 1988, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

SEC. 2008. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relating to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.".

SEC. 2009. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (1), by striking out in the first sentence "engage or participate in any direct police arrest action in any foreign country" and inserting in lieu thereof "directly make an arrest in any foreign country as part of any foreign police action";

(2) by amending paragraph (2) to read as follows:

"(2) Nothing in paragraph (1) prevents such employee or officer—

"(A) from being present at the scene of an arrest or otherwise assisting foreign officers in making an arrest; or

"(B) from taking direct action to protect life or safety if exigent circumstances arise in the course of an arrest which are unanticipated and which pose an immediate threat to United States or foreign officers or to members of the public."; and

(3) by adding at the end thereof the following new paragraph:

"(3) The provisions of this subsection shall apply to all countries, unless the President certifies to the Congress a specific country or countries for which it would be against the national interests of the United States to do so.

"(4) With the agreement of a foreign country, paragraph (1) shall not apply to maritime law enforcement operations in the territorial sea of such country.".

SEC. 2010. ISSUANCE OF DIPLOMATIC PASSPORTS FOR DRUG ENFORCEMENT ADMINISTRATION AGENTS ABROAD.

The Congress commends the decision of the Secretary of State to issue diplomatic passports, rather than official passports, to officials and employees of the Drug Enforcement Administration who are assigned abroad. The Secretary shall report to the Congress before making any change in this policy.

SEC. 2011. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) NEED FOR COMPREHENSIVE INFORMATION SYSTEM.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) ESTABLISHMENT OF SYSTEM.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. 2012. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a) OPERATION BLAST FURNACE.—(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz Estenssoro government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) CONDITIONS ON ASSISTANCE.—Paragraph (2) of section 611 of the International Security and Development Cooperation Act of 1985 is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has either met in calendar year 1986 the eradication targets for the calendar year

1985 contained in its 1983 narcotics agreements with the United States or has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond (including numerical eradication targets) and is making substantial progress toward the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

"In the certification required by suparagraph (B), the President shall explain why the terms of the 1983 agreement proved unattainable and the reasons why a new agreement was necessary.".

(c) RELATION TO OTHER PROVISIONS.—Nothing in the amendment made by subsection (b) shall be construed as superseding any provision of section 481 of the Foreign Assistance Act of 1961.

SEC. 2013. REPORTS AND RESTRICTIONS CONCERNING CERTAIN COUNTRIES.

(a) REPORTS.—Not later than 6 months after the date of enactment of this Act and every 6 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each major illicit drug producing country and each major drug-transit country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and identities of officials whose activities caused such country to be so listed.

(b) RESTRICTIONS.—No United States assistance may be furnished to any country listed under subsection (a)(1), and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of any country listed under subsection (a)(1), unless the President certifies to the Congress that—

(1) overriding vital national interests require that provision of such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country had made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) RELATION TO OTHER PROVISIONS.—The restrictions contained in subsection (b) are in addition to the restrictions contained in section 481(h) of the Foreign Assistance Act of 1961 or any other provision of law.

(d) DEFINITIONS.—For purposes of this section, the terms "major illicit drug producing country", "major drug-transit country", and "United States assistance" have the same meaning as is given to those terms by section 481(i) of the Foreign Assistance Act of 1961.

SEC. 2014. COMBATING NARCOTERRORISM.

(a) FINDING.—The Congress finds that the increased cooperation and collaboration between narcotics traffickers and terrorist groups constitutes a serious threat to United States national security interests and to the political stability of numerous other countries, particularly in Latin America.

(b) IMPROVED CAPABILITY FOR RESPONDING TO NARCOTERRORISM.—The President shall take concrete steps to improve the capability of the executive branch—

(1) to collect information concerning the links between narcotics traffickers and the act of terrorism abroad, and

(2) to develop an effective and coordinated means for responding to the threat which those links pose.

Not later than 90 days after the date of enactment of this Act, the President shall report to the Congress on the steps taken pursuant to this subsection.

(c) ADMINISTRATION OF JUSTICE PROGRAM.—Of the amounts made available for fiscal year 1987 to carry out section 534 of the Foreign Assistance Act of 1961 (22 U.S.C. 2346c; relating to the administration of justice program), funds may be used to provide to Colombia or other countries in the region such assistance as they may request for protection of judicial or other officials who are targets of narcoterrorist attacks.

(d) REWARD CONCERNING JORGE LUIS OCHOA VASQUEZ.—It is the sense of the Congress that the authority of section 36(b) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708)b)), as amended by section 502(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399; enacted August 27, 1986), should be used expeditiously to establish a reward of up to $500,000 for information leading to the arrest or conviction of Jorge Luis Ochoa Vasquez for narcotics-related offenses.

SEC. 2015. INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY.

(a) FINDING.—The Congress finds that—

(1) the interdiction by the United States Coast Guard of vessels suspected for carrying illicit narcotics can be a difficult procedure when the vessel is of foreign registry and is located beyond the customs waters of the United States;

(2) before boarding and inspecting such a vessel, the Coast Guard must obtain consent from either the master of the vessel or the country of registry; and

(3) this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days.

(b) NEGOTIATIONS CONCERNING INTERDICTION PROCEDURES.—

(1) The Congress urges the Secretary of State, in consultation with the Secretary of the department in which the Coast Guard is operating, to increase effects to negotiate with relevant countries procedure which will facilitate interdiction of vessels suspected of carrying illicit narcotics.

(2) If a country refuses to negotiate with respect to interdiction procedures, the President shall take appropriate actions directed against that country, which may include the denial of access to United States ports to vessels registered in that country.

(3) The Secretary of State shall submit reports to the Congress semiannually identifying those countries which have failed to negotiate with respect to interdiction procedures.

SEC. 2016. INTELLIGENCE SUPPORT TO COMBATING THE DRUG PROBLEM.

(a) It is the sense of the Congress that the Intelligence Community can play a key role in United States efforts to prevent the importation of illegal drugs into the United States. It is also the sense of the Congress that the drug problem is sufficiently important that monitoring the production of illegal drugs and providing support to efforts to halt the trafficking in illegal drugs should be a high priority for the United States intelligence program.

(b) In order to improve the strategic international narcotics control program of the United States and to assist the reporting requirements of section 481(e) of the Foreign Assistance Act of 1961, the Congress directs the Director of Central Intelligence to improve the collection and analysis of foreign drug production sufficiently to produce highly reliable data on drug cultivation, harvest, and yields for each major illicit drug producing country (as defined by section 481(i) of the Foreign Assistance Act of 1961).

(c) The Congress also directs the Director of Central Intelligence (hereafter in this paragraph referred to as the "DCI") to make support to anti-drug efforts a Level One Priority in his National Foreign Intelligence Strategy and to reflect this priority in the National Foreign Intelligence Program. The Congress understands that—

(1) a copy of the DCI's National Foreign Intelligence Strategy will be provided to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, with the DCI's budget request for fiscal year 1988; and

(2) the DCI will address Intelligence Community support to anti-drug efforts and the coordination of these efforts within the Intelligence Community in his presentation of the National Foreign Intelligence Strategy to the Committees.

SEC. 2017. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. 201. POLICY TOWARD MULTILATERAL DEVELOPMENT BANKS.

Section 481(a) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) In order to promote international cooperation in combatting international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implementation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.".

SEC. 2019. MULTILATERAL DEVELOPMENT BANK ASSISTANCE FOR DRUG ERADICATION AND CROP SUBSTITUTION PROGRAMS.

(a) MDB ASSISTANCE FOR DEVELOPMENT AND IMPLEMENTATION OF DRUG ERADICATION PROGRAM.—The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that all possible assistance be provided to each major illicit drug producing country for the development and implementation of a drug eradication program, including technical assistance, assistance in conducting feasibility studies and economic analyses, and assistance for alternate economic activities.

(b) INCREASES IN MULTILATERAL DEVELOPMENT BANK LENDING FOR CROP SUBSTITUTION PROJECTS.—The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to initiate discussions with other Directors of their respective banks and to propose that each such bank increase the amount of lending by such bank for crop substitution programs which will provide an economic alternative for the cultivation of production of illicit narcotic drugs or other controlled substances in major illicit drug producing countries, to the extent such countries develop and maintain adequate drug eradication programs.

(c) NATIONAL ADVISORY COUNCIL REPORT.—The Secretary of the Treasury shall include in the annual report to the Congress by the National Advisory Council on International Monetary and Financial Policies a detailed accounting of the manner in which and the extent to which the provisions of this section have been carried out.

(d) DEFINITIONS.—For purposes of this section—

(1) MULTILATERAL DEVELOPMENT BANK.—The term "multilateral development bank" means the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank.

(2) MAJOR ILLICIT DRUG PRODUCING COUNTRY.—The term "major illicit drug producing country" has the meaning provided in section 481(i)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(2)).

(3) NARCOTIC DRUG AND CONTROLLED SUBSTANCE.—The terms "narcotic drug" and "controlled substance" have the meanings given to such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 2020. DRUGS AS A NATIONAL SECURITY PROBLEM.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization in cooperative drug programs.

SEC. 2021. FINDINGS CONCERNING GREATER INTERNATIONAL EFFORT TO ADDRESS DRUG THREAT.

The Congress finds that—

(1) in response to the growing narcotics threat to the international community—

(A) the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending that Convention, and the Convention on Psychotropic Substances were adopted under United Nations asupices, and

(B) the United Nations has created various entities to deal with drug abuse control and prevention; and

(2) a greater international effort is required to address this threat, such as additional or increased contributions by other countries to the United Nations Fund for Drug Abuse and Control and greater coordination of enforcement and eradication efforts.

SEC. 2022. INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING.

(a) CONGRESSIONAL SUPPORT.—The Congress hereby declares its support for United Nations General Assembly Resolution 40/122 adopted on December 13, 1985, in which the General Assembly decided to convene in 1987, an International Conference on Drug Abuse and Illicit Trafficking in order to generate universal action to combat the drug problem in all its forms at the national, regional, and international levels, and to adopt a comprehensive outline of future activities.

(b) UNITED STATES PARTICIPATION.—With respect to United States participation in the International Conference on Drug Abuse and Illicit Trafficking, the Congress calls on the President—

(1) to appoint the head of the United States delegation well in advance of the conference; and

(2) to ensure that necessary resources are available for United States preparation and participation.

(c) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress on the status of United States preparations for the International Conference on Drug Abuse and Illicit Trafficking, incuding the status of naming the delegation, the issues expected to arise, and United States policy initiatives to be taken at the conference.

SEC. 2023. EFFECTIVENESS OF INTERNATIONAL DRUG PREVENTION AND CONTROL SYSTEM.

(a) STUDY.—The United States should seek to improve the program and budget effectiveness of United Nations entities related to narcotics prevention and control by studying the capability of existing United Nations drug-related declarations, conventions, and entities to heighten international awareness and promote the necessary strategies for international action, to strengthen international cooperation, and to make effective use of available United Nations funds.

(b) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress any recommendations that may result from this study.

SEC. 2024. NARCOTICS CONTROL CONVENTIONS.

The Congress—

(1) urges that the United Nations Commission on Narcotic Drugs complete work as quickly as possible, consistent with the objective of obtaining an effective agreement, on a new draft convention against illicit traffic in narcotic drugs and psychotropic substances, in accordance with the mandate given the Commission by United Nations General Assembly Resolution 39/141; and

(2) calls for more effective implementation of existing conventions relating to narcotics.

SEC. 2025. MEXICO-UNITED STATES INTERGOVERNMENTAL COMMISSION.

(a) NEGOTIATIONS TO ESTABLISH.—In accordance with the resolution adopted by the 26th Mexico-United Interparliamentay Conference which recommended that the Government of Mexico and the Government of the United States establish a Mexico-United States Intergovernmental Commission on Narcotics and Psychotropic Drug Abuse and Control, the President should direct the Secretary of State, in conjunction with the National Drug Enforcement Policy Board, to enter into negotiations with the Government of Mexico to create such a joint intergovernmental commission.

(b) MEMBERSHIP.—The commission, which should meet semiannually, should include members of the Mexican Senate and Chamber of Deputies and the United States House of Representatives and Senate, together with members of the Executive departments of each Government responsible for drug abuse, education, prevention, treatment, and law enforcement.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Secretary of State shall report to the Congress on the progress being made in establishing a commission in accordance with subsection (a).

SEC. 2026. OPIUM PRODUCTION IN PAKISTAN.

(a) FINDINGS.—The Congress finds that—

(1) the production of opium in Pakistan is expected to more than double in the 1985-1986 growing season, posing an increased threat to the health and welfare of the people of Pakistan and the people of the United States; and

(2) despite past achievements, the current eradication program in Pakistan, which employs manual eradication of opium poppies, has proven inadequate to meet this new challenge.

(b) NEED FOR MORE EFFECTIVE DRUG CONTROL PROGRAM.—The Congress urges that the Government of Pakistan adopt and implement a comprehensive narcotics control program which would provide for more effective prosecution of drug traffickers, increased interdiction, and aerial eradication of opium poppies.

(c) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress not later than 67 days after the date of enactment of this Act with Respect to the adoption and implementation by the Government of Pakistan of a comprehensive narcotics control program in accordance with subsection (b).

SEC. 2027. OPIUM PRODUCTION IN IRAN, AFGHANISTAN, AND LAOS.

The Congress calls on the President to instruct the United States Ambassador to the United Nations to request that the United Nations Secretary General raise with delegations to the International Conference on Drug Abuse and Illicit Trafficking the problem of illicit drug production in Iran, Afghanistan, and Laos, the largest opium poppy producing countries which do not have narcotics control programs.

SEC. 2028. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons programs and international visitor programs involving students, educators, and scientists.

SEC. 2029. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be pursuant to section 126(b)(2) of that Act for additional

activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. 2030. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies.

SEC. 2031. SUGAR QUOTA.

(a) Notwithstanding any other provision of the law: The President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the U.S. in narcotics enforcement activities as defined in section 2002 as determined by the President.

SEC. 2032. NARCOTICS CONTROL EFFORTS IN MEXICO.

(a) CONGRESSIONAL FINDINGS.—The Congress finds—

(1) in their meeting in August 1986, President de la Madrid Hurtado and President Reagan recognized the unique relationship between our two countries and the importance and the desire to respect the sovereignty of each nation;

(2) further, the United States government has actively worked to support the Mexican government in easing its international debt burden;

(3) Both presidents pledged their cooperation in drug eradication, enforcement and education;

(4) This pledge of cooperation has not been realized fully because of the inadequate response of the Mexican government in:

(A) fully investigating the 1985 murders of U.S. Drug Enforcement Administration agent Enrique Camarena Salazar and his pilot, Alfedo Zavala Avelar;

(B) fully investigating the 1986 detention and torture of U.S. Drug Enforcement Administration agent Victor Cortez, Junior;

(C) bringing to trial and effectively prosecuting those responsible for the Camarena and Zavala murders and those responsible for the detention and torture of Cortez;

(D) using effectively and efficiently the fleet of aircraft provided by the United States government for drug eradication and interdiction; and

(E) preventing drug trafficking and drug-related violence on the U.S.-Mexican border.

(b) Therefore, it is the sense of Congress that unless substantial progress is demonstrated in the near future on the issues described in subparagraph (A)(4), the President should consider taking one or more of the following measures:

(1) imposition of a mandatory travel advisory for all of Mexico;

(2) restrictions on foreign assistance (including further disbursements from the Exchange Stabilization Fund and Federal Reserve Bank);

(3) denial of favorable tariff treatment for Mexican products;

(4) denial of favorable U.S. votes in multilateral development banks.

TITLE III—INTERDICTION

SEC. 3001. SHORT TITLE.

This title may be cited as the "National Drug Interdiction Improvement act of 1986".

SEC. 3002. FINDINGS.

The Congress hereby finds that—

(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

(A) increased investigations of large networks of drug smuggler organizations;

(B) source country drug eradication;

(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

(D) increased emphasis on drug education programs in the schools and workplaces;

(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, natonal drug interdiction program;

(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) system, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) in 1981, the Department of Defense has assisted in the effort to interdict drugs, but they can do more.

SEC. 3003. PURPOSES.

It is the purpose of this title—

(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act, for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States and

(3) to improve other drug interdiction programs of the Federal Government.

Subtitle A—Department of Defense Drug Interdiction Assistance

SEC. 3051. SHORT TITLE.

This subtitle may be cited as the "Defense Drug Interdiction Assistance Act".

SEC. 3052. AUTHORIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS FOR ENHANCED DRUG INTERDICTION ACTIVITIES.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for enhancement of drug interdiction assistance activities of the Department as follows:

(1) For procurement of aircraft for the Navy, $138,000,000, to be available for (A) the refurbishment and upgrading, for drug interdiction purposes, of four existing E-2C Hawkeye surveillance aircraft or any other aircraft of the Navy which the Secretary considers better suited than E-2C Hawkeye surveillance aircraft to perform the drug interdiction mission, and (B) the procurement of four replacement aircraft (of the same type of aircraft refurbished and upgraded under the authorization in this paragraph) and related spares for the Navy.

(2) For procurement of seven radar aerostats, $99,500,000.

(3) For procurement of eight Blackhawk helicopters, $40,000,000.

(b) LOAN OF EQUIPMENT TO LAW ENFORCEMENT AGENCIES.—(1)(A) The Secretary of Defense shall make two of the existing aircraft refurbished and upgraded under section (a)(1) available to the Customs Service and the other two of such existing aircraft available to the Coast Guard.

(B) The Customs Service and the Coast Guard shall each have the responsibility for operation and maintenance costs attributable to the aircraft made available to the Customs Service and the Coast Guard, respectively, under subparagrah (A).

(2) The Secretary of Defense shall make the radar aerostats acquired under subsection (a)(2) and the helicopters acquired under subsection (a)(3) available to agencies of the United States designated by the Chairman of the National Drug Enforcement Policy Board established by the National Narcotics Act of 1984.

(3) Aircraft and radar aerostats shall be made available to agencies under this subsection subject to the provisions of chapter 18 of title 10, United States Code.

(c) LIMITATION ON PROCUREMENT.—Amounts appropriated or otherwise made available to the Department of Defense for procurement for fiscal year 1987 or any prior fiscal year may be obligatied for equipment for enhancement of authorized drug enforcement activities of the Department of Defense under subsection (a) or any other provision of law only if the equipment—

(1) is fully supportable within the existing service support system of the Department of Defense; and

(2) reasonably relates to an existing military, war reserve, or mobilization requirement.

SEC. 3053. COAST GUARD ACTIVITIES.

(a) FUNDING FOR PERSONNEL ON NAVAL VESSELS.—Of the funds appropriated for operation and maintenance for the Navy for fiscal year 1987, the sum of $15,000,000 shall be transferred to the Secretary of Transportation and shall be available only for members of the Coast Guard assigned to duty as provided in section 379 of title 10, United States Code (as added by subsection (b)).

(b) ENHANCED DRUG INTERDICTION ASSISTANCE.—(1) Chapter 18 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board appropriate surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who

are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Transportation, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(a)(1) of this title.

"(d) In this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.".

(3) Effective on the date of the enactment of this Act, section 1421 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 750), is repealed.

(c) USE OF DEPARTMENT OF DEFENSE FUNDS FOR THE COAST GUARD.—In addition to any other amounts authorized to be appropriated to the Department of Defense in fiscal year 1987, $45,000,000 shall be authorized to be appropriated for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft. Any modifications of existing aircraft pursuant to this subsection shall comply with validated requirements and specifications developed by the Coast Guard.

(d) INSTALLATION OF 360-DEGREE RADAR ON COAST GUARD SURVEILLANCE AIRCRAFT.—The Secretary of Defense is authorized to use $45,000,000 for the installation of 360-degree radar systems on Coast Guard long-range surveilliance aircraft. Funds to carry out this subsection shall be derived as described in section 3052(b). Any modifications of existing aircraft pursuant to this subsection shall comply with validated requirements and specifications developed by the Coast Guard.

SEC. 3054. REPORT ON DEFENSE DRUG EDUCATION ACTIVITIES.

Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of—

(1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse,

(2) the types of drug education programs that are currently being provided in such schools,

(3) whether additional drug education programs are needed in such schools, and

(4) the extent to which drug education for youth in grades kindergarten through 12 include or should include preventive peer counseling classes.

SEC. 3055. DRIVING WHILE IMPAIRED.

Section 911 of title 10, United States Code, is amended by inserting "or while impaired by a substance described in section 912a(b) of this title (article 112a(b))," after "manner,".

SEC. 3056. ASSISTANCE TO CIVILIAN LAW ENFORCEMENT AND EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL

(a) ASSISTANCE TO CIVILIAN LAW ENFORCEMENT.—Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws".

(b) EMERGENCY ASSISTANCE.—Section 374(c) of such title is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory, commonwealth, or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory, commonwealth, or possession of the United States) for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials if the Secretary of Defense, the Attorney General, and the Secretary of State jointly determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a) would be seriously impaired if such use of equipment were not permitted. Such use of equipment may continue into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft where such pursuit began outside such land area.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interest of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

SEC. 3057. ADDITIONAL DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Congress the following:

(A) A detailed list of all forms of assistance that shall be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

(B) A detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, a description of the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Congress receives the list and plan submitted under such subsection, the Committees on Armed Services of the Senate and the House of Representatives shall submit their approval or disapproval of such list and plan to the Secretary of Defense. Upon receipt of such approval or disapproval, the Secretary shall immediately convene a conference of the heads of the Federal Government agencies with jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance to be made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such assistance.

(c) EQUIPMENT SUBJECT TO SECTION 3052(d).—Equipment identified in this section is subject to the provisions of section 3052(d).

(d) APPLICABILITY.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(e) REVIEW BY GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsec-

tions (a) and (b). Not later than 90 days after the date on which the conference is convened under subsection (b), the Comptroller General shall transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

SEC. 3058. GRADE OF DIRECTOR OF DEPARTMENT OF DEFENSE TASK FORCE ON DRUG ENFORCEMENT.

During fiscal year 1987, the number of officers of the Marine Corps authorized under section 525(b) of title 10, United States Codes, to be on active duty in grades above major general is increased by one during any period that an officer of the Marine Corps is serving as the Director of the Department of Defense Task Force on Drug Enforcement. An additional officer in a grade above major general by reason of this section may not be in the grade of general.

SEC. 3059. CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Civil Air Patrol, the all-volunteer civilian auxiliary of the Air force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and

(2) the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—In addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, out of any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986 which are carried forward into fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) REPORTS.—(1) The Secretary of the Air Force shall submit to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives quarterly reports which contain the following information:

(A) A description of the manner in which any funds are used under subsection (b).

(B) A detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(2) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of the enactment of this Act.

Subtitle B—Customs Enforcement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART 1—AMENDMENTS TO THE TARIFF ACT OF 1930

SEC. 3111. DEFINITIONS.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by inserting ", and monetary instruments as defined in section 5312 of title 31, United States Code" before the period in subsection (c);

(2) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term";

(3) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel;

"(B) has received merchandise while in the customs waters beyond the territorial sea; or

"(C) has received merchandise while on the high seas;

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place."; and

(4) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given that term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

"(1) an appropriate license or permit; or

"(2) the Controlled Substances Import and Export Act.".

SEC. 3112. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

"(1) depart from the port, place, or airport of arrival; or

"(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.".

SEC. 3113. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) FOR VIOLATIONS OF ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.—Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with section 433;

"(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or

"(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than $2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 584, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.".

(b) INCREASE IN PENALTIES FOR DEPARTURE BEFORE REPORT OR ENTRY.—Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 3114. PENALTIES FOR UNAUTHORIZED UNLOADING OF PASSENGERS.

Section 454 (19 U.S.C. 1454), is amended by striking out "$500 for each" and inserting "$1,000 for the first passenger and $500 for each additional".

SEC. 3115. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) AMENDMENT.—Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally violates any provision of subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) REPEAL.—Section 460 is repealed.

SEC. 3116. PENALTIES FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—(1) Any article which—

"(A) is not included in the declaration and entry as made; and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article; and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 3117. EXAMINATION OF BOOKS AND WITNESSES.

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) is amended—

(1) by striking out ", required to be kept under section 508 of this Act," in subsection (a)(2) and inserting ", as defined in subsection (c)(1)(A),"; and

(2) by amending subsection (c)(1)(A) to read as follows:

"(A) The term 'records' includes statements, declarations, or documents—

"(i) required to be kept under section 508; or

"(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.".

SEC. 3118. FALSE MANIFESTS; LACK OF MANIFEST.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000";

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000";

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500"; and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 3119. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" wherever it appears and inserting "$10,000"; and

(2) by amending subsection (e)—

(A) by striking out "one league of the coast of the United States" and inserting "customs waters"; and

(B) by striking out "2 years" and inserting "15 years".

SEC. 3120. AVIATION SMUGGLING.

Part V of title IV of the Tariff Act of 1930 is amended by adding after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

"(b) SEA TRANSFERS.—It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)), or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

"(c) CIVIL PENALTIES.—Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 497(b).

"(d) CRIMINAL PENALTIES.—In addition to being liable for a civil penalty under subsection (c), any person who intentionally commits a violation of any provision of this section is, upon conviction—

"(1) liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or

"(2) liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

"(e) SEIZURE AND FORFEITURE.—

"(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.

"(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier."

"(f) DEFINITION OF MERCHANDISE.—As used in this section, the term 'merchandise' means only merchandise the importation of which into the United States is prohibited or restricted.

"(g) INTENT OF TRANSFER OF MERCHANDISE.—For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

"(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

"(3) The failure to identify correctly—

"(A) the vessel by name or country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority.

"(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

"(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

"(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

"(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

"(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.".

SEC. 3121. SEIZURES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft; or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

"(1) on the person;

"(2) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(3) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) PROHIBITED MERCHANDISE ON CONVEYANCE.—If any merchandise the importation of which is prohibited is found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) and other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

"(e) COSTS AND EXPENSES OF SEIZURE.—When a common carrier has been seized in accordance with the provisions of subsection (c) and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.".

SEC. 3122. SEARCHES AND SEIZURES.

Section 595(a) of the Tariff Act of 1930 (19 U.S.C. 1595(a)) is amended to read as follows:

"(a) WARRANT.—(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

"(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

"(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

"(C) any document, container, wrapping, or other article which is evidence of a violation of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

"(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.".

SEC. 3123. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "the proviso to" in subsection (a) and inserting "subsection (b) or (c) of";

(2) by striking out "shall" in subsection (a) and inserting "may"; and

(3) by adding at the end thereof the following new subsection:

"(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.".

SEC. 3124. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 605, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 3125. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"(a) IN GENERAL.—If—

"(1) any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person; and

"(2) such detection and seizure or such information leads to a recovery of—

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) FORFEITED PROPERTY NOT SOLD.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this

section may not exceed $250,000 for any case.

"(d) SOURCE OF PAYMENT.—Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.".

SEC. 3126. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by inserting before the period at the end thereof the following: ", or to comply with international obligations".

SEC. 3127. EXCHANGE OF INFORMATION WITH FOREIGN AGENCIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 628. EXCHANGE OF INFORMATION.

"(a) IN GENERAL.—The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

"(4) an action comparable to any of those described in paragraphs (1) through (4) undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.".

"(b) NONDISCLOSURE AND USES OF INFORMATION PROVIDED.—

"(1) Information may be provided to foreign customs and law enforcement agencies under subsection (a) only if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Secretary.

"(2) No information may be provided under subsection (a) to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (1).".

SEC. 3128. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is further amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) IN GENERAL.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) FUNCTIONS AND DUTIES.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) COMPLIANCE.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry within the customs territory of the United States.

"(d) SEIZURES.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory to the United States to be proceeded against under the customs law.

"(e) STATIONING OF FOREIGN CUSTOMS OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) APPLICATION OF CERTAIN LAWS.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) sections 111 and 1114 of title 18, United States Code, shall apply as if the officials were designated in those sections; and

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.".

PART 2—UNDERCOVER CUSTOMS OPERATIONS

SEC. 3131. UNDERCOVER INVESTIGATIVE OPERATIONS OF THE CUSTOMS SERVICE.

(a) CERTIFICATION REQUIRED FOR EXEMPTION OF UNDERCOVER OPERATIONS FROM CERTAIN LAWS.—With respect to any undercover investigative operation of the United States Customs Service (hereinafter in this section referred to as the "Service") which is necessary for the detection and prosecution of offenses against the United States which are within the jurisdiction of the Secretary of the Treasury—

(1) sums authorized to be appropriated for the Service may be used—

(A) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(i) sections 1341 and 3324 of title 31, United States Code,

(ii) sections 3732(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22),

(iii) section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255),

(iv) the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), and

(v) section 304(a) and (c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a) and (c)), and

(B) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(2) sums authorized to be appropriated for the Service and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code; and

(3) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code;

only upon the written certification of the Commissioner of Customs (or, if designated by the Commissioner the Deputy or an Assistant Commissioner of Customs) that any action authorized by paragraph (1), (2), or (3) of this subsection is necessary for the conduct of such undercover operation.

(b) LIQUIDATION OF CORPORATIONS AND BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation under paragraph (1)(B) of subsection (a) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his designee determines is practicable, shall report the circumstances to the Secretary of the Treasury and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) DEPOSIT OF PROCEEDS.—As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under paragraphs (2) and (3) of subsection (a) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(d) AUDITS.—(1) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year, and

(A) submit the results of the audit in writing to the Secretary of the Treasury; and

(B) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(2) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(A) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(B) the number, by programs, of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

(C) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

(e) DEFINITIONS.—For purposes of subsection (d)—

(1) The term "closed" refers to the earliest point in time at which—

(A) all criminal proceedings (other than appeals) are concluded, or

(B) covert activities are concluded, whichever occurs later.

(2) The term "employees" means employees, as defined in section 2105 of title 5 of the United States Code, of the Service.

(3) The terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation of the Service—

(A) in which—

(i) the gross receipts (excluding interest earned) exceed $50,000, or

(ii) expenditures (other than expenditures for salaries of employees) exceed $150,000; and

(B) which is exempt from section 3302 or 9102 of title 31, United States Code;

except that subparagraphs (A) and (B) shall not apply with respect to the report required under paragraph (2) of subsection (d).

PART 3—CUSTOMS SERVICE AUTHORIZATIONS AND FORFEITURE FUND

SEC. 3141. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1987 FOR THE UNITED STATES CUSTOMS SERVICE.

(a) AUTHORIZATIONS.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended as follows:

"(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

"(A) $749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

"(B) $80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

"(C) $171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

"(i) $93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

"(ii) $350,000 is for a feasibility and application study for a low-level radar detection system in collaboration with the Los Alamos National Laboratory.

"(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

"(A) not less than 2,500 merchandise entries (including informal entries) were made; and

"(B) not less than $1,500,000 in customs revenues were assessed.".

(b) SPECIAL EFFECTIVE DATE RULE.—If the bill H.R. 5300 (providing for reconciliation of the budget for fiscal year 1987) is enacted and includes an amendment to section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 which is identical to the amendment made by subsection (a) of this section, then the amendment made by subsection (a) shall have no effect.

SEC. 3142. CUSTOMS FORFEITURE FUND.

(a) AMENDMENT.—Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) is amended—

(1) by amending subsection (a)—

(A) by striking out "1987" in the first sentence and inserting "1991";

(B) by inserting "(including investigative costs leading to seizures)" after "seizure" in paragraph (1);

(C) by inserting "and" after the semicolon at the end of paragraph (4);

(D) by striking out paragraph (5);

(E) by redesignating paragraph (6) as paragraph (5); and

(F) by amending the last sentence to read as follows:

"In addition to the purposes described in paragraphs (1) through (5), the fund is available for—

"(i) purchases by the Customs Service of evidence of—

"(I) smuggling of controlled substances, and

"(II) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, United States Code, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

"(ii) the equipping for law enforcement functions of any vessel, vehicle, or aircraft available for official use by the Customs Service;

"(iii) the reimbursement, at the discretion of the Secretary, of private citizens for expenses incurred by them in cooperating with the Customs Service in investigations and undercover law enforcement operations; and

"(iv) the publicizing of the availability of rewards under section 619."; and

(2) by amending subsection (f) to read as follows:

"(f)(1) There are authorized to be appropriated from the fund for each of the fiscal years beginning with fiscal year 1987 not more than $20,000,000.

"(2) At the end of each of fiscal years 1987, 1988, 1989, and 1990, any amount in the fund in excess of $20,000,000 shall be deposited in the general fund of the Treasury. At the end of fiscal year 1991, any amount remaining in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 1986.

PART 4—MISCELLANEOUS CUSTOMS AMENDMENTS

SEC. 3151. RECREATIONAL VESSELS.

Section 12109(b) of title 46, United States Code, is amended by adding at the end the following: "Such vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such a pleasure vessel shall be subject to all applicable customs regulations.".

SEC. 3152. ASSISTANCE FOR CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes of the United States (19 U.S.C. 507) is amended to read as follows:

"SEC. 3071. (a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government; and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If a person, without reasonable excuse, neglects or refuses to assist a customs officer upon proper demand under paragraph (2), such person is guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 3153. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code, is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

PART 5—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 3161. POSSESSION, MANUFACTURE, OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATION.

(a) AMENDMENT TO ACT.—Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "POSSESSION," in the heading;

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall";

(3) by striking out "This section" and inserting in lieu thereof "(c) This section";

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a); and

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

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States, to—

"(1) manufacture or distribute a controlled substance; or

"(2) possess a controlled substance with intent to distribute.".

(b) CONFORMING AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 3201. SHORT TITLE.

This subtitle may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 3202. IMPROVEMENT OF PUBLIC LAW 96-350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350; 94 Stat. 1159) is amended by striking all after the enacting clause and inserting in lieu thereof the following: "That this Act may be cited as the 'Maritime Drug Law Enforcement Act'.

"SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) For purposes of this section, a 'vessel of the United States' means—

"(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c)(1) For purposes of this section, a 'vessel subject to the jurisdiction of the United States' includes—

"(A) a vessel without nationality;

"(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

"(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

"(D) a vessel located within the customs waters of the United States; and

"(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(2) For purposes of this section, a 'vessel without nationality' includes—

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

"(3) For purposes of this section, a claim of nationality or registry only includes:

"(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(B) flying its flag nation's ensign or flag; or

"(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"SEC. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).".

Subtitle D—Coast Guard

SEC. 3251. COAST GUARD DRUG INTERDICTION ENHANCEMENT.

(a) ADDITIONAL AUTHORIZATIONS FOR THE COAST GUARD.—

(1) There are authorized to be appropriated for Acquisition, Construction, and Improvements of the Coast Guard, $89,000,000.

(2) There are hereby authorized to be appropriated for Operating Expenses of the Coast Guard, $39,000,000. This amount shall be used to increase the full-time equivalent strength level for the Coast Guard for active duty personnel for fiscal year 1987 to 39,220, and to increase the utilization rate of Coast Guard equipment.

(b) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized to be appropriated for the Coast Guard by this section are in addition to any amounts otherwise authorized by law.

(c) AUTHORIZATION ENHANCEMENT.—Nothing in this Act shall require the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment except to the extent that—

(1) additional appropriations are made available in appropriations Acts for that purpose; or

(2) funds are transferred to the Secretary of Transportation for that purpose pursuant to this Act.

Subtitle E—United States-Bahamas Drug Interdiction Task Force

SEC. 3301. ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.—(A) There is authorized to be established a United States-Bahamas Drug Interdiction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act, immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3141, and (ii) any training and personnel enhancements authorized in this section and section 3141.

(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

(2) AMOUNTS AUTHORIZED.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this title, $10,000,000 for the following:

(A) $9,000,000 for 3 drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

(3) COAST GUARD-BAHAMAS DRUG INTERDICTION DOCKING FACILITY.—(A) There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Baha-

mas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

(B) The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this paragraph as may be necessary to establish a repair, maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

(b) CONCURRENCE BY SECRETARY OF STATE.—Programs authorized by this section may be carried out only with the concurrence of the Secretary of State.

Subtitle F—Command, Control, Communications, and Intelligence Centers

SEC. 3351. ESTABLISHMENT OF COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I).

There are authorized to be appropriated $25,000,000 for the establishment of command, control, communications, and intelligence (C-3I) centers, including sector operations centers and a national command, control, communications, and intelligence (C-3I) center, in locations within the United States. The coordination of the establishment and location of such C-3I centers shall be conducted by the Commissioner of Customs; the Commandant of the Coast Guard; the Attorney General of the United States; and the National Narcotics Border Interdiction System (NNBIS).

Subtitle G—Transportation Safety

SEC. 3401. AIR SAFETY.

(a)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. App 1472(b)) is amended by adding at the end the following:

"(3)(A) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who in connection with an act described in subparagraph (B) and with knowledge of such act—

"(i) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate;

"(iii) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate;

"(ii) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft; or

"(iv) obtains an aircraft registration certificate from the administrator by knowingly and willfully falsifying, concealing or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.

"(B) The act referred to in subparagraph (A) is the transportation by aircraft of any controlled substance, or the aiding or facilitation of a controlled substance offense, where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401) is amended by adding at the end the following new subsection:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate of registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 501. Registration of aircraft nationality."

is amended by adding at the end the following:

"(g) Inspection by law enforcement officers.".

(b)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such a capacity;

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity;

"(E) to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation or anticollision lights; and

"(F) to knowingly operate an aircraft with a fuel tank or fuel system that has been installed or modified on the aircraft, unless such tank or system and the installation or modification of such tank or system is in accordance with all applicable rules, regulations, and requirements of the Administrator.

"(2) The act referred to in paragraph (1) is the transportation by aircraft of any controlled substance or the aiding or facilitating of a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) A person who, in connection with transportation described in paragraph (2), operates an aircraft on which a fuel tank or fuel system has been installed or modified and does not carry aboard the aircraft any certificate required to be issued by the Administrator for such installation or modification shall be presumed to have violated subparagraph (F) of paragraph (1).

"(5) In the case of a violation of subparagraph (F) of paragraph (1), the fuel tank or fuel system and the aircraft involved shall be subject to seizure and forfeiture. The provisions of law relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;

"(B) the disposition of such property or the proceeds from the sale thereof;

"(C) the remission or mitigation of such forfeitures; and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures;

shall apply to seizures and forfeitures under this paragraph. The Secretary may authorize such officers and agents as are necessary to carry out seizures and forfeitures under this paragraph and such officers and agents shall have the powers and duties given to customs officers with respect to the seizure and forfeiture of property under the customs laws.

"(6) For purposes of this subsection, the term 'controlled substance' has the meaning given to such term by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 902. Criminal penalties."

is amended by striking the item relating to subsection (q) and inserting the following:

"(q) Violations in connection with transportation of controlled substances.".

(c) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

"(1) by striking "$500" each place it appears and inserting in lieu thereof "$5,000";

(2) by inserting after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109(b) and (c) of this Act, the owner or person in charge of such aircraff shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidence, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In the case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(d)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale,

transfer, or conveyance of such ownership interest, file with the Secretary of the Treasury within 15 days after such sale, conditional sale, transfer or conveyance such notice as the Secretary of the Treasury may by regulation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements under section 501 or 503 of this Act.".

(2) Within 30 days after the date of enactment of subsection (f) of section 1109 of the Federal Aviation Act of 1958 as added by this subsection, the Secretary of the Treasury shall promulgate regulations establishing guidelines by which persons or classes of persons may apply for exemptions from the filing requirements of subsection (f) of section 1109. The Secretary of the Treasury may exempt such persons or classes of persons pursuant to such regulations.

(3) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under this side heading

"Sec. 1109. Application of existing laws relating to foreign commerce."

is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership.".

SEC. 3402. DRUG AND HIGHWAY SAFETY.

(a) STUDY.—The Secretary of Transportation shall conduct a study to determine the relationship between the usage of controlled substances and highway safety. Such study shall include a simulation of driving conditions, emergency situations, and driver performance under various drug and dosage conditions. Such study shall determine the incidence of controlled substance usage in highway accidents resultng in fatalities and the dosage levels for controlled substances which are most likely to result in impairment of driver performance.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report on the results of the study conducted under subsection (a).

SEC. 3403. SAVINGS PROVISION.

In any proceeding under section 11344 of title 49, United States Code, involving an application by a rail carrier (or a person controlled by or affiliated with a rail carrier) to acquire a motor carrier, the Interstate Commerce Commission, and any Federal court reviewing action of the Commission, shall follow the standards set forth in the Commission decision in Ex Parte No. 438 if the applicant rail carrier, between July 20, 1984, and September 30, 1986 (1) filed an application with the Commission to acquire a motor carrier, (2) entered into a contract or signed a letter of intent to acquire a motor carrier, or (3) made a public tender offer to acquire a motor carrier.

Subtitle H—Department of Justice Funds for Drug Interdiction Operations in Hawaii

SEC. 3451. COMMUNICATIONS.

The Federal Communications Commission shall revoke any license issued to any person under the Communications Act of 1934 (47 U.S.C. 151 et seq.) who is found to have willfully used said license for the purpose of distributing, or assisting in the distribution of, any controlled substance in violation of any provision of Federal law. In addition, the Federal Communications Commission shall, upon the request of an appropriate Federal law enforcement agency, assist in the enforcement of Federal law prohibiting the use or distribution of any controlled substance where communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 is willfully being used for purposes of distributing, or assisting in the distribution of, any such substance.

Subtitle A—Treatment and Rehabilitation

SEC. 4001. SHORT TITLE; REFERENCE.

(a) This subtitle may be cited as the "Alcohol and Drug Abuse Amendments of 1986".

(b) Except as otherwise specifically provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Public Health Service Act.

SEC. 4002. EXTENSION OF ALCOHOL, DRUG, ABUSE, AND MENTAL HEALTH BLOCK GRANT.

(a) Section 1911 is amended—

(1) by striking out "the purpose of grants and allotments under section 1913" and inserting in lieu thereof "purposes of carrying out this part";

(2) by striking out "$576,000,000" and inserting in lieu thereof "$736,000,000"; and

(3) by adding at the end thereof the following new sentence: "If the total amount appropriated under the preceding sentence for fiscal year 1987 exceeds $500,000,000, 27 percent of the amount of such excess shall be added to and included with the amounts otherwise available under this part for allotments to States under section 1913 for such fiscal year, 67 percent of the amount of such excess shall be available for allotments to States under section 1921 for such fiscal year, and 6 percent of the amount of such excess shall be available for transfer to the Administrator of Veterans' Affairs under section 1923.".

(b)(1) Title XIX is amended by inserting after section 1920A the following new sections:

"SPECIAL ALLOTMENTS TO STATES FOR ALCOHOL ABUSE AND DRUG ABUSE TREATMENT AND REHABILITATION PROGRAMS

"SEC. 1921. (a)(1) The allotment of a State under this section for a fiscal year shall be the sum of the amounts allotted to such State under paragraphs (2) and (3).

"(2) Twenty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted in accordance with this subsection. The allotment of a State under this subsection for a fiscal year shall be an amount which bears the same ratio to the total amount required pursuant to the preceding sentence to be allotted under this subsection for such fiscal year as the population of such State bears to the population of all States.

"(3) Seventy-five percent of the amount available for allotment under this section for a fiscal year shall be allotted by the Secretary to States on the basis of the need of each State for amounts for programs and activities for the treatment and rehabilitation of the alcohol abuse and drug abuse. In determining such need for each State under this subsection, the Secretary shall consider—

"(A) the nature and extent, in the State and in particular areas of the State, of the demand for effective programs and activities for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(B) the number of individuals in the State who abuse alcohol or drugs, who are seeking treatment, and the capacity of the State to provide treatment and rehabilitation for such individuals (as determined by the Secretary on the basis of the number of individuals who requested treatment for alcohol abuse and drug abuse in the State during the most recent calendar year ending prior to the date on which a statement is submitted by the State under subsection (c);

"(C) the commitment of the State to the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse (as determined by the Secretary after an evaluation of the expenditures of the State for such services during the calendar year described in subparagraph (B) and of the ability of the State to meet the need for such services); and

"(D) the availability in the State of Federal, State, and local public resources to satisfy the needs in such State for services described in subparagraph (C).

"(b)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under subsection (a) from amounts appropriated for that fiscal year.

"(2) Any amount paid to a State under paragraph (1) for a fiscal year and remaining unobligated at the end of such fiscal year shall remain available to such State for the purposes for which it was made for the next fiscal year.

"(c) In order to receive an allotment for a fiscal year under subsection (a), each State shall include with the application submitted to the Secretary under section 1916 a separate statement requesting an allotment under this section. Each such statement shall contain—

"(1) such information as the Secretary may prescribe, including information necessary for the Secretary to consider the matters specified in subparagraphs (A) through (F) of subsection (a)(3);

"(2) a description of the manner in which programs and activities conducted with payments under subsection (b) will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs;

"(3) assurances that, in the preparation of any application under this section, the State will consult with local governments and public and private entities, including community based organizations, involved in the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(4) a description of the manner in which the State will evaluate programs and activities conducted with payments made to the State under subsection (b) and assurances that the State will report periodically to the Secretary on the results of such evaluations; and

"(5) assurances that payments made to the State under subsection (b) will supplement and not supplant any State or local expenditures for the treatment and rehabilitation of alcohol abuse and drug abuse that would have been made in the absence of such payments.

"(d)(1) Except as provided in subsections (e), (f), and (i), amounts paid to a State under subsection (b) may be used by the State for alcohol abuse and drug abuse treatment and rehabilitation programs and activities, including—

"(A) activities to increase the availability and outreach of programs provided by major treatment centers and regional branches of such centers which provide services in a State in order to reach the greatest number of people;

"(B) activities to expand the capacity of alcohol abuse and drug abuse treatment and rehabilitation programs and facilities to provide treatment and rehabilitation serv-

ices for alcohol abusers and drug abusers who have been refused treatment due to lack of facilities or personnel; and

"(C) activities to provide access to vocational training, job counseling, and education equivalency programs to alcohol abusers and drug abusers in need of such services in order to enable such abusers to become productive members of society.

"(2) A State may request the Secretary to waive the provisions of section 1915(b)(1) (as such section applies to this section pursuant to subsection (i) of this section) in order to permit such State to conduct model programs for the provision of inpatient hospital services for alcohol abuse and drug abuse treatment, and the Secretary may grant such a waiver.

"(e) A state shall use 5 percent of the total amount paid to a State under subsection (b) for a fiscal year to carry out the programs described in section 1922.

"(f) Of the total amount paid to any State under subsection (b) for a fiscal year, not more than 2 percent may be used for administering the funds made available under such subsection. The State will pay from non-Federal sources the remaining costs of such administering such funds.

"(g) The Secretary may provide training and technical assistance to States in planning and operating activities to be carried out under this section.

"(h) The Secretary may conduct data collection activities to enable the Secretary to carry out this section.

"(i) Except as provided in subsection (d)(2), the provisions of subsections (a) and (d) and paragraphs (1) through (5) of subsection (b) of section 1917 and the provisions of sections 1914(b), 1915(b), 1918, 1919, and 1920 shall apply to this section in the same manner as such provisions apply to payments made under section 1914 from allotments made under section 1913.

"STATE PROGRAMS FOR HIGH RISK YOUTH

"SEC. 1922. A State shall use the amounts required by sections 1916(c)(8) and 1921(e) to be used under this section for model, innovative, community based programs to provide multiple coordinated services for alcohol abuse and drug abuse prevention, treatment, and rehabilitation directed toward high risk youth. For purposes of this paragraph, the term 'high risk youth' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is identified as a child of a substance abuser;

(2) is a victim of physical, sexual, or psychological abuse;

(3) has dropped out of school;

(4) has become pregnant;

(5) is economically disadvantaged;

(6) has committed a violent or delinquent act;

(7) has experienced mental health problems;

(8) has attempted suicide; or

(9) is disabled by injuries.

"TRANSFER TO THE ADMINISTRATOR OF VETERAN'S AFFAIRS

"SEC. 1923. The Secretary shall transfer to the Administrator of Veterans' Affairs the amount which, under the second sentence of section 1911, is available for such transfer. The amount transferred pursuant to the preceding sentence shall be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug abuse dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.

"TREATMENT PROGRAM EVALUATIONS

SEC. 1924. One percent of the total amount appropriated under section 1911 for any fiscal year may be used by the Secretary, acting through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, to develop and evaluate alcohol and drug abuse treatment programs to determine the most effective forms of treatment. Such programs may be developed and evaluated through grants, contracts, and cooperative agreements provided to nonprofit private entities. In carrying out this section, the Secretary shall assess the comparative effectiveness of various treatment forms for specific patient groups.".

SEC. 4003. REVISION OF ALLOTMENT PROCEDURES APPLICABLE TO INDIAN TRIBES.

(a) Section 1902(d)(1) is amended to read as follows:

"(d)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

(b) Section 1913(b)(1) is amended to read as follows:

"(d)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

SEC. 4004. REVISION OF CERTAIN BLOCK GRANT EARMARKS.

(a) Section 1916(c) is amended—

(1) by striking out "35" each place it appears in subparagraphs (A) and (B) of paragraph (7) and inserting in lieu thereof "25";

(2) by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 80 percent of such amount for treatment and rehabilitation programs for individuals who abuse alcohol or drugs."; and

(3) by adding at the end thereof the following new paragraph:

"(16) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 5 percent of such amount for programs described in section 1922.".

SEC. 4005. SENSE OF THE SENATE WITH RESPECT TO POSSESSION OR DISTRIBUTION OF DRUGS UNDER STATE LAW.

It is the sense of the Senate that, if the possession or distribution of a drug is an offense under the Controlled Substances Act, the laws of the States should not be amended or revised to provide that the possession or distribution, respectively, of such drug is not a criminal offense.

SEC. 4006. ADVISORY COUNCILS.

(a) Part A of title V is amended by redesignating sections 505 and 506 as sections 506 and 507, respectively, and by inserting after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the national research institute for which it was appointed on—

"(A) matters relating to the activities carried out by and through the institute and the policies respecting such activities; and

"(B) matters relating to activities carried out by the Secretary and the National Institutes respecting the disease, disorder, or other aspect of human health with which the advisory council is concerned.

"(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for—

"(A) study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established;

"(B) the acquisition of grounds for the institute; or

"(C) the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research;

"(ii) shall review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 507(e)(2), and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge; and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the national research institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of ex officio members and not more than 12 members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the national research institute for which the advisory council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific

disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

"(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy, economics, and management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be 2 years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least 3 times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) Section 217 is amended—

(1) by striking out subsections (a), (b), (c), and (d);

(2) by striking out "(e)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "(2)" and inserting in lieu thereof "(b)";

(4) by striking out "(3)" and inserting in lieu thereof "(c)";

(5) by striking out "(4)" and inserting in lieu thereof "(d)"; and

(6) by redesignating clauses (A) and (B) of subsection (c) (as redesignated by the amendment made by paragraph (4) of this subsection) as clauses (1) and (2), respectively.

SEC. 4007. PUBLIC HEALTH EMERGENCIES.

Part A of title V (as amended by section 4006 of this Act) is further amended by adding at the end thereof the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 508. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of Food and Drugs, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of a national research institute constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year.".

SEC. 4008. RESEARCH AUTHORIZATION.

(a) Section 513 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart $69,000,000 for fiscal year 1987.".

(b) Section 517 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart $129,000,000 for fiscal year 1987.".

SEC. 4009. STUDIES ON HEALTH WARNING LABELS FOR ALCOHOLIC BEVERAGES.

(a) The Senate finds that—

(1) the most abused drug in America is alcohol;

(2) alcohol abuse costs the American economy nearly $120,000,000,000 per year, including increased medical expenses and decreased productivity;

(3) in 1984, 53 percent of the traffic fatalities in the United States, accounting for more than 23,500 deaths, were related to the consumption of alcohol;

(4) over 12,000,000 American adults have one or more symptoms of alcoholism, and this represents an 8.2 percent increase in problem drinking since 1980;

(5) in 1984, almost 3,300,000 individuals between the ages of 14 and 17 experienced serious problems at home, in school, or with the law because of alcohol consumption;

(6) fetal alcohol syndrome is the third leading cause of birth defects, and is the only preventable cause of birth defects among the top three causes;

(7) nearly 5,000 babies per year are born with birth defects related to fetal alcohol syndrome;

(8) the statistics cited in the preceding paragraphs of this subsection indicate that many Americans are not aware of the adverse effects that the abuse of alcoholic beverages may have on health;

(9) it is necessary to undertake a serious national effort to educate the American people of the serious consequences of alcohol abuse; and

(10) carefully drafted warning labels on the containers of alcoholic beverages concerning serious health consequences resulting from the abuse of alcohol may assist in providing such education.

(b) Therefore, it is the sense of the Senate that—

(1) the Public Health Service should focus attention on the problem of educating the American people on the serious health consequences of alcohol abuse;

(2) the Public Health Service should conduct studies on the most effective means of providing such education, including health warning labels on the containers of alcoholic beverages; and

(3) the Public Health Service should transmit a report to the Congress within 6 months after the date of enactment of this Act concerning any studies described in paragraph (2) which have been conducted, and should include in such report any findings concerning the labels described in such paragraph and recommendations for specific language for such labels.

SEC. 4010. SUICIDE.

(a) Section 501 is amended by adding at the end thereof the following new subsection:

"(i) The Secretary shall—

"(1) develop and publish information respecting the causes of suicide among individuals under the age of 21 and the means of preventing suicide among such individuals, and

"(2) make such information generally available to the public and health professionals.".

(b) Within one year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on the activities undertaken under section 501(i) of the Public Health Service Act and shall include in such report an assessment of the effectiveness of such activities.

SEC. 4011. PREPARATION OF PUBLIC SERVICE ANNOUNCEMENTS.

(a) The Secretary of Health and Human Services shall increase and expand activities conducted under paragraphs (1) and (4) of section 503(d) of the Public Health Service Act.

(b) Section 503(d)(4) is amended—

(1) by inserting "and documentary films" after "television"; and

(2) by inserting "and films" before the period.

SEC. 4012. NATIONAL PLAN TO COMBAT DRUG ABUSE.

By October 1, 1988, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report which sets forth a comprehensive national plan to combat drug abuse. The report shall include—

(1) a description of a model program for activities to be conducted by the States to combat drug abuse;

(2) an analysis of the social and economic costs of drug abuse to the Nation, including amounts expended by public agencies and private organizations—

(A) for the treatment of individuals for drug abuse, including a division of such amounts among the types of settings in which such treatment is provided;

(B) for treatment of individuals for health problems resulting from drug abuse; and

(C) to meet other costs resulting from drug abuse, such as costs resulting from lost employee productivity;

(3) an assessment of current treatment and rehabilitation needs and the current integration and financing of drug treatment and rehabilitation into the Nation's health care system;

(4) recommendations for the National Institute on Drug Abuse for research on, and plans for the development of, chemical antidotes and narcotic antagonists for use in the treatment of cocaine and heroin addiction;

(5) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

(6) a statement of specific goals and objectives to meet the Nation's current treatment, rehabilitation, and personnel needs in the area of drug abuse;

(7) estimates of public and private resources needed to accomplish the goals and objectives referred to in paragraph (6) and estimates of savings in resources that can be anticipated from the achievement of such goals and objectives.

SEC. 4013. CLEARINGHOUSE.

(a) The Secretary of Health and Human Services, through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, health and drug treatment and rehabilitation networks, and the general public. The clearinghouse shall—

(1) disseminate publications by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the Department of Education concerning alcohol abuse and drug abuse;

(2) disseminate accurate information concerning the health effects of alcohol abuse and drug abuse;

(3) collect and disseminate information concerning successful alcohol abuse and drug abuse education and prevention curricula; and

(4) collect and disseminate information on effective and ineffective school-based alcohol abuse and drug abuse education and prevention programs, particularly effective programs which stress that the use of illegal drugs and the abuse of alcohol is wrong and harmful.

(b) The Secretary of Health and Human Services shall ensure that the clearinghouse established under subsection (a) coordinates its activities with similar activities conducted by the Secretary of Education.

SEC. 4014. EXPANSION OF DRUG ABUSE RESEARCH.

Section 515(a)(5) is amended to read as follows:

"(5) effective methods of drug abuse prevention, treatment, and rehabilitation, particularly methods of intervention to treat abuse of specific drugs.".

SEC. 4015. NATIONAL INSTITUTE OF MENTAL HEALTH.

Section 504(c) is amended by adding at the end thereof the following: "Special consideration shall be given to programs for training and research on the mental health needs of the elderly.".

SEC. 4016. INFANT FORMULAS.

(a) Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (g), (h), and (i), respectively,

(2) by amending the last sentence of paragraph (1) of subsection (g) (as so redesignated) to read as follows: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.",

(3) by striking out "(a) and (b)" in the first sentence of subsection (h)(1) (as so redesignated) and inserting in lieu thereof "(a), (b), and (c)",

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(e)(1)",

(5) by striking out "(e)(1)(B)" in such sentence and inserting in lieu thereof "(d)(1)(B)",

(6) by striking out "(a) and (b)" in subsection (h)(2) (as so redesignated) and inserting in lieu thereof "(a), (b), and (c)", and

(7) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(1) such infant formula does not provide nutrients as required by subsection (i),

"(2) such infant formula does not meet the quality factor requirements prescribed by the Secretary under subsection (b)(1), or

"(3) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under subsection (b)(2).

"(b)(1) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (i).

"(2)(A) The Secretary shall by regulation establish good manufacturing practices for infant formulas, including quality control procedures that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this subsection and subsection (i) and is manufactured in a manner designed to prevent adulteration of the infant formula.

"(B) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (A) shall include requirements for—

"(i) the testing, in accordance with paragraph (3) and by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for each nutrient required by subsection (i) before the distribution of such batch,

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas to ensure that such formulas are in compliance with this section,

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula, and

"(iv) the conduct by the manufacturer of an infant formula or an agent of such manufacturer of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (A).

In prescribing requirements for audits under clause (iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3)(A) At the final product stage, each batch of infant formula shall be tested for vitamin A, vitamin B1, vitamin C, and vitamin E to ensure that such infant formula is in compliance with the requirements of this subsection and subsection (i) relating to such vitamins.

"(B) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required by subsection (i) which is contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(C) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula by subsection (i) for which testing has not been conducted pursuant to subparagraph (A) or (B). Testing under this subparagraph shall be conducted to—

"(i) ensure that each batch of such infant formula is in compliance with the requirements of subsection (i) relating to such nutrients, and

"(ii) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(D) If the Secretary adds a nutrient to the list of nutrients in the table in subsection (i), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with subparagraph (A), (B), or (C).

"(E) For purposes of this paragraph, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(4)(A) The Secretary shall by regulation establish requirements respecting the retention of records. Such requirements shall provide for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under paragraph (2), including records containing the results of all testing required under paragraph (2)(B),

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers,

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis,

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula, and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C),

"(v) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under paragraph (2)(B)(iv), and

"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas which may reveal the possible existence of a hazard to health.

"(B)(i) Records required under subparagraph (A) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii), such records shall be made available to the Secretary for review and duplication upon request of the Secretary.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by paragraph (2)(B)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(c)(1) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(A) such person has, before introducing such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula, and

"(B) such person has at least 90 days before marketing such new infant formula, made the submission to the Secretary required by subsection (d)(1).

"(2) For purposes of paragraph (1), the term 'new infant formula' includes—

"(A) an infant formula manufactured by a person which has not previously manufactured an infant formula, and

"(B) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this paragraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(d)(1) A person shall, with respect to any infant formula subject to subsection (c), make a submission to the Secretary which shall include—

"(A) the quantitative formulation of the infant formula,

"(B) a description of any reformulation of the formula or change in processing of the infant formula,

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (b)(1) and (i), as demonstrated by the testing required under subsection (b)(3), and

"(D) assurances that the processing of the infant formula complies with subsection (b)(2).

"(2) After the first production of an infant formula subject to subsection (c), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(B)(iii), (b)(3)(A), (b)(3)(C), and (i).

"(3) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, before the first processing of such formula, make the submission to the Secretary required by paragraph (1).

"(e)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (i), or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(f)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2) and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2), and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment for such time that the Secretary determines necessary to inform the public of such recall.".

(b)(1) Subsection (i) of such section (as so redesignated) is amended—

(A) by inserting "(1)" after "(i)",

(B) by striking out "subsection (a)" and inserting in lieu thereof "paragraph",

(C) by striking out the colon and inserting in lieu thereof a period, and

(D) by adding at the end the following:

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in this subsection, and

"(B) revise the required level for any nutrient required by the table.".

(2) Section 302(s) of the Federal Food, Drug, and Cosmetic Act is amended to read as follows:

"(s) The failure to provide the notice required by section 412(c) or 412(d), the failure to make the reports required by section 412(f)(1)(B), the failure to retain the records required by section 412(b)(4), or the failure to meet the requirements prescribed under section 412(f)(3).".

SEC. 4017. STUDY ON ALKYL AND BUTYL NITRITES.

The Secretary of Health and Human Services, through the Commissioner of Food and Drugs, should conduct a study on alkyl and butyl nitrites and report to the appropriate committees of the Congress recommendations concerning whether alkyl and butyl nitrites should be treated as a drug under the Food, Drug, and Cosmetic Act.

SEC. 4018. EFFORTS OF THE ENTERTAINMENT AND WRITTEN MEDIA INDUSTRY.

It is the sense of Congress that—

(1) whereas illegal drug and alcohol consumption and the trafficking in those illegal drugs and alcohol is a major problem in the United States,

(2) whereas the problem of alcohol abuse is particularly prevalent among and harmful to the Nation's young people, and

(3) whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country,

the entertainment and written media industry should refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol and the entertainment and written media industry should develop films, television programs, records, videos, and advertising which discourage the use of illegal drugs and alcohol.

SEC. 4019. SENSE OF THE CONGRESS URGING THE CATEGORIZATION OF FILMS WHICH PROMOTE ALCOHOL ABUSE AND DRUG USE.

(a) FINDINGS.—The Congress finds that—

(1) the abuse of alcohol and the use of drugs has become a societal problem of epidemic proportions,

(2) it is in the interest of all citizens to contribute to the reduction of alcohol abuse and drug use, particularly among youth,

(3) the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts alcohol abuse and drug use in a benign, even glamorous way,

(4) the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth, and

(5) the motion picture industry has recognized the need to inform parents about the contents of movies regarding violence, sex, language, and nudity and therefore currently employs a voluntary rating system.

(b) CATEGORIZATION.—It is the sense of the Congress that the Motion Picture Association of America should incorporate a new rating in its voluntary movie rating system to clearly identify films which depict alcohol abuse and drug use.

Section 4043 of the House amendment is amended to read as follows:

SEC. 4020. SENSE OF THE SENATE WITH RESPECT TO POSSESSION OR DISTRIBUTION OF DRUGS UNDER STATE LAW.

It is the sense of the Senate that if the possession or distribution of a drug is an of-

fense under the Controlled Substances Act, the laws of the States should provide that the possession or distribution, respectively, of such drug is a criminal offense.

SEC. 4021. EXPANSION OF DRUG ABUSE RESEARCH.

Section 515(a)(5) of the Public Health Service Act (42 U.S.C. 290cc(a)(5)) is amended to read as follows:

"(5) effective methods of drug abuse prevention, treatment, and rehabilitation, particularly methods of intervention to reduce the incidence of drug abuse or the severity of addiction to specific drugs.".

SEC. 4022. ALKYL NITRITES.

In the administration of the Federal Food, Drug, and Cosmetic Act, alkyl nitrites and their isomers shall be treated as a drug under such Act unless alkyl nitrites and their isomers are not manufactured, processed, distributed, or sold for use by individuals.

SEC. 4023. ADMINISTRATOR OF VETERANS' AFFAIRS.

There is authorized to be appropriated for fiscal year 1987 to the Administrator of Veterans' Affairs $6,000,000 for the purpose of providing outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.

Subtitle B—Drug-Free Schools and Communities Act of 1986

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools and Communities Act of 1986".

SEC. 4102. FINDINGS.

The Congress finds that:

(1) Drug abuse education and prevention programs are essential components of a comprehensive strategy to reduce the demand for and use of drugs throughout the Nation.

(2) Drug use and alcohol abuse are widespread among the Nation's students, not only in secondary schools, but increasingly in elementary schools as well.

(3) The use of drugs and the abuse of alcohol by students constitutes a grave threat to their physical and mental well-being and significantly impedes the learning process.

(4) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and the Nation, which can ill afford to lose their skills, talents, and vitality.

(5) Schools and local organizations in communities throughout the Nation have special responsibilities to work together to combat the scourge of drug use and alcohol abuse.

(6) Prompt action by our Nation's schools, families, and communities can bring significantly closer the goal of a drug-free generation and a drug-free society.

SEC. 4103. PURPOSE.

The purpose of this subtitle is to assist States in their efforts to educate concerning, and to prevent, drug use and alcohol abuse through school and community based programs.

PART 1—FINANCIAL ASSISTANCE FOR DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS

SEC. 4111. AUTHORIZATION OF APPROPRIATIONS.

(a) For the purpose of carrying out this subtitle, there are authorized to be appropriated $200,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(b) Appropriations for any fiscal year for payments made under this subtitle in accordance with regulations of the Secretary may be made available for obligation or expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(c) Funds appropriated for any fiscal year under this subtitle shall remain available for obligation and expenditure until the end of the fiscal year succeeding the fiscal year for which such funds were appropriated.

(d) Notwithstanding any other provision of this subtitle, no authority to enter into contracts or financial assistance agreements under this subtitle shall be effective except to such extent or in such amount as are provided in advance in appropriation Acts.

SEC. 4112. RESERVATIONS AND STATE ALLOTMENTS.

(a)(1) From the amounts appropriated or otherwise made available to carry out this subtitle for any fiscal year—

(A) $2,000,000 shall be reserved by the Secretary for programs under sections 4135 and 4136 for such fiscal year, of which $300,000 shall be for programs under section 4136 for such fiscal year;

(B) $10,000,000 shall be reserved by the Secretary for regional centers under section 4132(b) for such fiscal year;

(C) $15,000,000 shall be reserved by the Secretary for grants to and contracts with institutions of higher education under section 4131 for such fiscal year; and

(D) $7,500,000 shall be reserved by the Secretary for programs and activities under sections 4132(a) and 4134 for such fiscal year.

(2) Of the amounts appropriated or otherwise made available to carry out this subtitle for any fiscal year, $7,500,000 shall be available to the Secretary of Health and Human Services to carry out section 4134 for such fiscal year.

(b)(1) From the remainder of the amount appropriated or otherwise made available to carry out this subtitle for each fiscal year after the application of subsection (a) for such fiscal year, the Secretary may reserve up to 1 percent for allotments to territories and possessions.

(2) From the amount reserved under paragraph (1) for a fiscal year, the Secretary shall allot to each territory or possession an amount which bears the same ratio to such reserved amount as the school-age population of such territory or possession bears to the population of all territories and possessions.

(3) For purposes of this subsection, the term "territory or possession" means Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(c)(1) From the amount available to carry out this subtitle for a fiscal year after the application of subsections (a) and (b), the Secretary shall allot to each State an amount which bears the same ratio to such available amount as the school-age population of the State bears to the school-age population of all States, except that no State shall be allotted less than $800,000 under this subsection.

(2) For purposes of this subsection, the term "State" means any of the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) The Secretary may reallot any amount of any allotment to a State under subsection (b) or (c) to the extent that the Secretary determines that the State will not be able to obligate such amount within two years of allotment. Any such reallotment shall be made on the same basis as an allotment under subsection (b) or (c).

(e) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under subsection (b) or (c) from amounts appropriated for that fiscal year.

PART 2—STATE AND LOCAL PROGRAMS

SEC. 4121. USE OF ALLOTMENTS BY STATES.

(a) An amount equal to 35 percent of the total amount paid to a State from its allotment under section 4112 for any fiscal year shall be used by the chief executive officer of such State for State programs is accordance with section 4122.

(b) An amount equal to 65 percent of the total amount paid to a State from its allotment under section 4112 for any fiscal year shall be used by the State educational agency for—

(1) programs described in section 4123(b); and

(2) grants to and contracts with local educational agencies, intermediate educational agencies, and consortia for activities in accordance with sections 4123(a) and 4125.

SEC. 4122. STATE PROGRAMS.

(a) Funds made available to the chief executive officer of a State under section 4121(a) shall be used for grants to and contracts with local governments, local educational agencies, institutions of higher education, consortia, and other public or private nonprofit entities (including parent groups, community action agencies, and other community-based organizations) for the development and implementation of programs and activities such as—

(1) local broad based programs for drug and alcohol abuse prevention, early intervention, treatment and rehabilitation referral, and education for all age groups;

(2) training programs for teachers, counselors, other educational personnel, parents, local law enforcement and judicial officials, other public service personnel, and community leaders;

(3) the development and distribution of educational and informational materials to provide public information (through the media and otherwise) aimed at drug-free communities in every State;

(4) technical assistance to help community-based organizations and local and intermediate educational agencies and consortia of such agencies—

(A) in the planning and implementation of drug abuse prevention, early intervention, rehabilitation referral, and education programs; and

(B) in undertaking the coordination of such programs with related community efforts and resources; and

(C) other drug abuse education and prevention activities, consistent with the purposes of this subtitle.

(b) In carrying out subsection (a), the chief executive officer of a State shall ensure that model, innovative, community based programs of multiple coordinated services for high risk youth are given the highest priority. For purposes of this subsection, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is the child of a substance abuser;

(2) is a victim of physical, sexual, or psychological abuse;

(3) has dropped out of school;

(4) has become pregnant;

(5) is economically disadvantaged;

(6) has committed a violent or delinquent act;

(7) has experienced mental health problems;

(8) has attempted suicide; or

(9) is disabled by injuries.

SEC. 4123. RESPONSIBILITIES OF STATE EDUCATIONAL AGENCIES.

(a) Each State educational agency shall use 90 percent of the amounts available to such agency under section 4121(b) for grants to, and contracts with, local educational agencies, intermediate educational agencies, and consortia in the State, for the purposes described in section 4125(a), except that for fiscal years 1989 and 1990 the State educational agency shall allot to each local educational agency an amount which bears the same ratio to the amounts available for purposes of this subsection for such fiscal year as the school-age population in the local school district bears to the school-age population in the State.

(b) Each State educational agency shall use 10 percent of the amounts available under section 4121(b) for each fiscal year for programs of drug and alcohol abuse prevention, early intervention, treatment and rehabilitation referral, and education. Programs carried out under this subsection may include activities such as—

(1) training and technical assistance programs concerning drug abuse education and prevention for local and intermediate educational agencies, including teachers, administrators, athletic directors, other educational personnel, parents, local law enforcement officials, and judicial officials;

(2) the development, dissemination, implementation, and evaluation of drug abuse education curricula and teaching materials for elementary and secondary schools throughout the State;

(3) demonstration projects in drug abuse education and prevention;

(4) special financial assistance to enhance resources available for drug abuse education and prevention in areas serving large numbers of economically disadvantaged children, sparsely populated areas, or to meet other special needs;

(5) collaborative and coordinated activities, including grants to and contracts with institutions of higher education, local educational agencies, and regional centers established under section 4132(b); and

(6) administrative costs of the State educational agency in carrying out its responsibilities under this part, not in excess of 2.5 percent of the amount available under section 4121(b).

(c) Each State educational agency shall submit to the chief executive officer of the State a plan which—

(1) describes the manner in which the State educational agency will coordinate its efforts with appropriate State health, law enforcement, and drug abuse prevention agencies, including the State agency which administers the Alcohol, Drug Abuse, and Mental Health block grant under part B of title XIX of the Public Health Service Act;

(2) provides assurances that the State educational agency will provide financial assistance under this part only to local educational agencies, intermediate educational agencies, and consortia which establish and implement drug abuse education and prevention programs in elementary and secondary schools;

(3) describes how funds will be allocated among local educational agencies, intermediate educational agencies, and consortia for fiscal years 1987 and 1988 and how funds will be used under this part; and

(4) provides for an annual evaluation of the effectiveness of programs assisted under this part.

SEC. 4124. STATE APPLICATIONS.

(a) In order to receive an allotment under subsection (b) or (c) of section 4112, a State shall submit an application to the Secretary. As part of such application the chief executive officer of the State shall agree to use the funds paid to the State under this part in accordance with the requirements of this subtitle.

(b) Each application submitted under subsection (a) shall—

(1) cover a period of two fiscal years;

(2) be submitted at a time, in such manner, and contain such information, as the Secretary may require;

(3) contain assurances that the Federal funds made available under this subtitle for any period will be so used as to supplement and increase the level of State, local, and non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under this subtitle and will in no event supplant such State, local, and other non-Federal funds;

(4) provide that the State will keep such records and provide such information as may be required by the Secretary for fiscal audit and program evaluation;

(5) contain assurances that there is compliance with the specific requirements of this part; and

(6) designate the State educational agency as the agency responsible for the administration and supervision of programs assisted under this part and include the plan for use of funds under section 4123(c).

SEC. 4125. LOCAL DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS.

(a) Any amounts made available to a local educational agency, intermediate educational agency, or consortia pursuant to a grant or contract under section 4123(a) may be used by such agency or consortia for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) the development and implementation of drug abuse and alcohol abuse education curricula for elementary and secondary schools;

(B) drug abuse and alcohol abuse prevention counseling programs including peer and professional counseling;

(C) programs of drug abuse and alcohol abuse treatment referral;

(D) programs of in-service and pre-service training in drug abuse and alcohol abuse prevention for teachers, counselors, and other educational personnel, public service personnel (including law enforcement officials), and community leaders, including cooperative programs with higher education institutions;

(E) programs in primary prevention and early intervention, such as the interdisciplinary school-team approach developed by the Department of Education;

(F) community education programs and other activities to involve parents and communities in the fight against drug abuse and alcohol abuse;

(G) public education programs on drug abuse and alcohol abuse, including programs utilizing professionals, and former drug abusers and alcohol abusers and drug dependent and alcohol dependent individuals;

(H) on-site efforts in schools to enhance identification and discipline of such drug abusers and alcohol users, and to enable law officials to take necessary action in cases of drug possession and of drug and alcohol supplying to the student population; or

(I) other programs of drug abuse and alcohol abuse education and prevention consistent with the purposes of this subtitle.

(b) Not more than 2.5 percent of any grant, contract, or allotment under section 4123(a) for any fiscal year may be used for administrative costs of a local or intermediate educational agency or consortium in carrying out programs under this part.

SEC. 4126. LOCAL APPLICATIONS.

(a) A local educational agency, intermediate educational agency, or a consortia may submit an application to the State educational agency for a grant, contract, or allotment under this part. A local educational agency may receive a grant, contract, or allotment under this part for any fiscal year for which such application is certified to meet the requirements of this subsection. The State educational agency shall certify any such application if such application—

(1) sets forth a comprehensive plan for programs to be carried out by the applicant under this part;

(2) contains an estimate of the cost for the establishment and operation of such programs;

(3) as appropriate, establishes or designates a local or regional advisory council on drug abuse education and prevention composed of individuals who are parents, teachers, officers of State and local government, medical professionals, representatives of the law enforcement community, community-based organizations, and other groups with interest and expertise in the field of drug abuse;

(4) describes the manner in which the applicant will establish, implement, or augment age-appropriate, developmentally-based, drug abuse education and prevention programs in elementary and secondary schools from the early elementary level through grade 12, including a description of provisions to target education efforts to students most at risk of drug abuse and to schools with the greatest need of drug abuse prevention programs;

(5) provides assurances that the applicant enforces related rules and regulations of student conduct;

(6) describes the manner in which the applicant will coordinate its efforts under this part with other programs in the community related to drug abuse education, prevention, treatment, and rehabilitation;

(7) provides assurances that the applicant will coordinate its efforts with appropriate State and local drug and alcohol abuse, health, and law enforcement agencies, in order to effectively conduct drug and alcohol abuse education, intervention, and referral for treatment and rehabilitation for the student population;

(8) provide assurances that the Federal funds made available under this part shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in this part, and in no case supplant such funds;

(9) provide assurances of compliance with the provisions of this part;

(10) agree to keep such records and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation,

consistent with the responsibilities of the State agency under this part; and

(11) include such other information and assurances as the State educational agency reasonably determines to be necessary.

PART 3—NATIONAL PROGRAMS

SEC. 4131. GRANTS TO INSTITUTIONS OF HIGHER EDUCATION.

(a)(1) From amounts reserved by the Secretary under section 4112(a)(1)(C), the Secretary shall make grants to or enter into contracts with institutions of higher education or consortia thereof for drug abuse education and prevention programs under this section.

(2) The Secretary shall make financial assistance available on a competitive basis to institutions of higher education which apply under this section. An institution of higher education or consortia thereof which desires to receive a grant or enter into a contract under this section shall file an application with the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education (including community and junior colleges) and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give appropriate consideration to institutions of higher education of limited enrollment.

(4) Not less than 50 percent of sums available for the purposes of this section shall be used to make grants under subsection (d).

(b)(1) Training grants shall be available for—

(A) pre-service and in-service training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(B) summer institutes and workshops in instruction in the field of drug abuse education and prevention;

(C) research and demonstration programs for teacher training and retraining in drug abuse education and prevention; and

(D) training programs for law enforcement officials, community leaders, parents, and government officials.

(2) Grants shall be available for model demonstration programs to be coordinated with local elementary and secondary schools for the development and implementation of quality drug abuse education curricula. In the award of grants under this paragraph, the Secretary shall give priority consideration to joint projects involving faculty of institutions of higher education and teachers in elementary and secondary schools in the practical application of the findings of educational research and evaluation and the integration of such research into drug abuse education and prevention programs.

(c) In making grants under paragraphs (1) and (2) of subsection (b), the Secretary shall encourage projects which provide for coordinated and collaborative efforts between State educational agencies, local educational agencies, and regional centers established under section 4132(b).

(d) Grants shall be available under this subsection to develop, implement, operate, and improve programs of drug abuse education and prevention (including treatment and rehabilitation referral) for students enrolled in institutions of higher education.

SEC. 4132. FEDERAL ACTIVITIES.

(a)(1) The amount reserved by the Secretary under section 4112(a)(1)(D) for each fiscal year shall be used to carry out the activities described in paragraph (2).

(2) The Secretary of Education in conjunction with the Secretary of Health and Human Services shall carry out Federal education and prevention activities on drug abuse. The Secretary shall coordinate such drug abuse education and prevention activities with other appropriate Federal activities related to drug abuse. The Secretary shall—

(A) provide information on drug abuse education and prevention to the Secretary of Health and Human Services for dissemination by the clearinghouse for alcohol and drug abuse information established under the Public Health Service Act;

(B) develop, publicize the availability of, and widely disseminate audio-visual and other curricula materials for drug and alcohol abuse education and prevention programs in elementary and secondary schools throughout the Nation;

(C) provide technical assistance to State, local, and intermediate educational agencies and consortia in the selection and implementation of drug and alcohol abuse education and prevention curricula, approaches, and programs to address most effectively the needs of the elementary and secondary schools served by such agencies;

(D) identify research and development priorities with regard to school-based drug and alcohol abuse education and prevention, particularly age-appropriate programs focusing on kindergarten through grade 4; and

(E) collect data concerning, and evaluate, programs that reduce drug abuse and alcohol abuse among students.

(b) The Secretary shall use the amount reserved under section 4112(a)(1)(B) for each fiscal year to maintain at least 5 regional centers to—

(1) train school teams to access the scope and nature of their drug abuse and alcohol abuse problems, mobilize the community to address such problems, design appropriate curricula, identify students at highest risk and refer them to appropriate treatment, and institutionalize long term effective drug and alcohol abuse programs, including long range technical assistance, evaluation, and followup on such training;

(2) assist State educational agencies in coordinating and strengthening drug abuse and alcohol abuse education and prevention programs;

(3) assist local educational agencies and institutions of higher education in developing appropriate pre-service and in-service training programs for educational personnel; and

(4) evaluate and disseminate information on effective drug abuse and alcohol abuse education and prevention programs and strategies.

(c) The Secretary of Education in conjunction with the Secretary of Health and Human Services shall conduct, directly or by contract, a study of the nature and effectiveness of existing Federal, State, and local programs of drug abuse education and prevention and shall submit a report of the findings of such study to the President and to the Committees on Appropriations and Labor and Human Resources of the Senate and the Committees on Appropriations and Education and Labor of the House of Representatives not later than one year after the date of the enactment of this Act.

SEC. 4133. INTERAGENCY COORDINATION.

The Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, and the Director of ACTION shall each designate an officer or employee of the Departments of Education, Health and Human Services, and Labor, and ACTION, respectively, to coordinate interagency drug and alcohol abuse activities.

SEC. 4134. TRAINING, TECHNICAL ASSISTANCE, AND DATA COLLECTION.

(a) The Secretary of Health and Human Services and the Secretary of Education shall provide training and technical assistance to States and public and nonprofit private entities in planning and operating activities to be carried out under this subtitle.

(b) The Secretary of Health and Human Services and the Secretary of Education may conduct data collection and evaluation activities to assist in carrying out this subtitle.

SEC. 4135. PROGRAMS FOR INDIAN YOUTH.

(a)(1) From the amounts reserved pursuant to section 4112(a)(1)(A) and available for purposes of this section, the Secretary shall make payments and grants and enter into other financial arrangements for Indian programs in accordance with this subsection.

(2) The Secretary of Education shall enter into such financial arrangements as the Secretary determines will best carry out the purposes of this title to meet the needs of Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such arrangements shall be made pursuant to an agreement between the Secretary of Education and the Secretary of the Interior containing such assurances and terms as they determine will best achieve the purposes of this title.

(3) The Secretary of Education may, upon request of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934, enter into grants or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs which are authorized and consistent with the purposes of this title (particularly programs for Indian children who are school dropouts), except that such grants or contracts shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this paragraph.

(4) Programs funded under this subsection shall be in addition to such other programs, services, and activities as are made available to eligible Indians under other provisions of this subtitle.

(b)(1) Section 304 of the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241cc) is amended by—

(A) striking out "and" at the end of paragraph (1);

(B) striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) adding at the end the following new paragraph:

"(3) the training of counselors at schools eligible for funding under this title in counseling techniques relevant to the treatment of alcohol and substance abuse.".

(2) Section 423(a) of the Indian Education Act (20 U.S.C. 3385b) is amended by inserting "clinical psychology," after "medicine,".

(3) Section 1121 of the Education Amendments of 1978 is amended by adding at the end the following new subsection:

"(i)(1) All schools funded by the Bureau of Indian Affairs shall include within their curriculum a program of instruction relating to alcohol and substance abuse prevention and treatment. The Assistant Secretary shall provide the technical assistance necessary to develop and implement such a program for students in kindergarten and grades 1 through 12, at the request of—

"(A) any Bureau of Indian Affairs school (subject to the approval of the school board of such school); or

"(B) any school board of a school operating under a contract entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(2) In schools operated directly by the Bureau of Indian Affairs, the Secretary shall, not later than 120 days after the date of the enactment of this subsection, provide for—

"(A) accurate reporting of all incidents relating to alcohol and substance abuse; and

"(B) individual student crisis intervention.

"(3) The programs requested under paragraph (1) shall be developed in consultation with the Indian tribe that is to be served by such program and health personnel in the local community of such tribe.

"(4) Schools requesting program assistance under this subsection are encouraged to involve family units and, where appropriate, tribal elders and Native healers in such instructions.".

(4) Section 1129 of the Education Amendments of 1978 is amended by adding at the end the following new subsection:

"(e)(1) A financial plan under subsection (b) for a school may include, at the discretion of the local administrator and the school board of such school, a provision for a summer program of academic and support services for students of the school. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary of Indian Affairs shall provide for the utilization of any such school facility during any summer in which such utilization is requested.

"(2) Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (25 U.S.C. 452 et seq.) and the Indian Education Act may be used to augment the services provided in each summer program at the option, and under the control, of the tribe or Indian controlled school receiving such funds.

"(3) The Assistant Secretary of Indian Affairs, acting through the Director of the Office of Indian Education Programs, shall provide technical assistance and coordination for any program described in paragraph (1) and shall, to the extent possible, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of any such program.".

SEC. 4136. PROGRAMS FOR HAWAIIAN NATIVES.

(a) From the funds reserved pursuant to section 4112(a)(1)(A) and available for purposes of this section, the Secretary shall enter into contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this subtitle for the benefit of Hawaiian natives.

(b) For the purposes of this section, the term "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

PART 4—GENERAL PROVISIONS

SEC. 4141. DEFINITIONS.

(a) Except as otherwise provided, the terms used in this subtitle shall have the meaning provided under section 595 of the Education Consolidation and Improvement Act of 1981.

(b) For the purposes of this title, the following terms have the following meanings:

(1) The term "drug abuse education and prevention" means prevention, early intervention, treatment and rehabilitation referral, and education related to the abuse of alcohol and the use and abuse of controlled, illegal, addictive, or harmful substances.

(2) The term "Secretary" means the Secretary of Education.

(3) The term "school-age population" means the population aged five through eighteen, as determined by the Secretary on the basis of the most recent satisfactory data available from the Department of Commerce.

(4) The term "school dropout" means an individual aged five through eighteen who is not attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(5) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(6) The terms "institution of higher education", "secondary school", and "nonprofit" have the meanings provided in section 1001 of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

(7) The term "consortium" means a consortium of local educational agencies, intermediate educational agencies, State educational agencies, and institutions of higher education or a consortium of one or more such agencies or institutions.

SEC. 4142. FUNCTIONS OF THE SECRETARY OF EDUCATION.

(a) The Secretary shall be responsible for the administration of the programs authorized by this subtitle.

(b) Except as otherwise provided, the General Education Provisions Act shall apply to programs authorized by this subtitle.

SEC. 4143. PARTICIPATION OF CHILDREN AND TEACHERS FROM PRIVATE NONPROFIT SCHOOLS.

(a) To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part 2 who are enrolled in private nonprofit elementary and secondary schools, such State, agency, or consortium shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this subtitle.

(b) To the extent consistent with the number of school-age children in the State or in the school attendance area of a local or intermediate educational agency or consortium receiving financial assistance under part 2 who are enrolled in private nonprofit elementary and secondary schools, such State, State educational agency, or State agency for higher education shall, after consultation with appropriate private school representatives, make provision, for the benefit of such teachers in such schools, for such teacher training as will assure equitable participation of such teachers in the purposes and benefits of this subtitle.

(c) If by reason of any provision of law a State, local, or intermediate educational agency or consortium is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsections (a) and (b) or, if the Secretary determines that a State, local, or intermediate educational agency or consortium has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers which shall be subject to the requirements of this section. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 557(b) of the Education Consolidation and Improvement Act of 1981.

SEC. 4144. MATERIALS.

Any materials produced or distributed with amounts appropriated under this subtitle shall reflect the message that the use of illegal drugs and the abuse of alcohol and other drugs is wrong and harmful. The Secretary shall not review curricula and shall not promulgate regulations to carry out this section.

Subtitle C—Indians and Alaska Natives

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986".

PART I—GENERAL PROVISIONS

SEC. 4202. FINDINGS.

The Congress finds and declares that—

(1) the Federal Government has a historical relationship and unique legal and moral responsibility to Indian tribes and their members,

(2) included in this responsibility is the treaty, statutory, and historical obligation to assist the Indian tribes in meeting the health and social needs of their members,

(3) alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today and nothing is more costly to Indian people than the consequences of alcohol and substance abuse measured in physical, mental, social, and economic terms,

(4) alcohol and substance abuse is the leading generic risk factor among Indians, and Indians die from alcoholism at over 4 times the age-adjusted rates for the United States population and alcohol and substance misuse results in a rate of years of potential life lost nearly 5 times that of the United States,

(5) 4 of the top 10 causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent),

(6) primarily because deaths from unintentional injuries and violence occur disproportionately among young people, the age-specific death rate for Indians is approximately double the United States rate for the 15 to 45 age group,

(7) Indians between the ages of 15 and 24 years of age are more than 2 times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related,

(8) Indians between the ages of 15 and 24 years of age are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related,

(9) the Indian Health Service, which is charged with treatment and rehabilitation efforts, has directed only 1 percent of its budget for alcohol and substance abuse problems,

(10) the Bureau of Indian Affairs, which has responsibility for programs in education, social services, law enforcement, and other areas, has assumed little responsibility for coordinating its various efforts to focus on the epidemic of alcohol and substance abuse among Indian people,

(11) this lack of emphasis and priority continues despite the fact that Bureau of Indian Affairs and Indian Health Service officials publicly acknowledge that alcohol and substance abuse among Indians is the most serious health and social problem facing the Indian people, and

(12) the Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members and the resources made available under this subtitle will assist Indian tribes in meeting that responsibility.

SEC. 4203. PURPOSE.

It is the purpose of this subtitle to—

(1) authorize and develop a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members,

(2) provide needed direction and guidance to those Federal agencies responsible for Indian programs to identify and focus existing programs and resources, including those made available by this subtitle, upon this problem,

(3) provide authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level, and

(4) to modify or supplement existing programs and authorities in the areas of education, family and social services, law enforcement and judicial services, and health services to further the purposes of this subtitle.

SEC. 4204. DEFINITIONS.

For purposes of this subtitle—

(1) The term "agency" means the local administrative entity of the Bureau of Indian Affairs serving one or more Indian tribes within a defined geographic area.

(2) The term "youth" shall have the meaning given it in any particular Tribal Action Plan adopted pursuant to section 4205, except that, for purposes of statistical reporting under this subtitle, it shall mean a person who is 19 years or younger or who is in attendance at a secondary school.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "prevention and treatment" includes, as appropriate—

(A) efforts to identify, and the identification of, Indians who are at risk with respect to, or who are abusers of, alcohol or controlled substances,

(B) intervention into cases of on-going alcohol and substance abuse to halt a further progression of such abuse,

(C) prevention through education and the provision of alternative activities,

(D) treatment for alcohol and substance abusers to help abstain from, and alleviate the effects of, abuse,

(E) rehabilitation to provide on-going assistance, either on an inpatient or outpatient basis, to help Indians reform or abstain from alcohol or substance abuse,

(F) follow-up or after-care to provide the appropriate counseling and assistance on an outpatient basis, and

(G) referral to other sources of assistance or resources.

(5) The term "service unit" means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act through which the services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

PART II—COORDINATION OF RESOURCES AND PROGRAMS

SEC. 4205. INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 120 days after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

(1) determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth,

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs and Indian Health Service, and

(B) other Federal, tribal, State and local, and private resources and programs,

which would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people, including those programs and resources made available by this subtitle,

(3) develop and establish appropriate minimum standards for each agency's program responsibilities under the Memorandum of Agreement which may be—

(A) the existing Federal or State standards in effect, or

(B) in the absence of such standards, new standards which will be developed and established in consultation with Indian tribes,

(4) coordinate the Bureau of Indian Affairs and Indian Health Service alcohol and substance abuse programs existing on the date of the enactment of this subtitle with programs or efforts established by this subtitle,

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

(6) direct Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit directors to cooperate fully with tribal requests made pursuant to section 4206, and

(7) provide for an annual review of such agreements by the Secretary of the Interior and the Secretary of Health and Human Services.

(b) CHARACTER OF ACTIVITIES.—To the extent that there are new activities undertaken pursuant to this subtitle, those activities shall supplement, not supplant, activities, programs, and local actions that are ongoing on the date of the enactment of this subtitle. Such activities shall be undertaken in the manner least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and local control, in accordance with section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

(c) CONSULTATION.—The Secretary of the Interior and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a), consult with and solicit the comments of—

(1) interested Indian tribes,

(2) Indian individuals,

(3) Indian organizations, and

(4) professionals in the treatment of alcohol and substance abuse.

(d) PUBLICATION.—The Memorandum of Agreement under subsection (a) shall be submitted to Congress and published in the Federal Register not later than 130 days after the date of enactment of this subtitle. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this subtitle and the Memorandum of Agreement under subsection (a) to each Indian tribe.

SEC. 4206. TRIBAL ACTION PLANS.

(a) IN GENERAL.—The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a Tribal Action Plan to coordinate available resources and programs, including programs and resources made available by this subtitle, in an effort to combat alcohol and substance abuse among its members. Such resolution shall be the basis for the implementation of this subtitle and of the Memorandum of Agreement under section 4205.

(b) COOPERATION.—At the request of any Indian tribe pursuant to a resolution adopted under subsection (a), the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 4205, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a).

(c) PROVISIONS.—

(1) Any Tribal Action Plan entered into under subsection (b) shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director, or their representatives,

(ii) have primary responsibility for the implementation of the Tribal Action Plan,

(iii) have the responsibility for on-going review and evaluation of, and the making of recommendations to the tribe relating to, the Tribal Action Plan, and

(iv) have the responsibility for scheduling Federal, tribal or other personnel for training in the prevention and treatment of alcohol and substance abuse among Indians as provided under section 4228, and

(B) the incorporation of the minimum standards for those programs and services which it encompasses which shall be—

(i) the Federal or State standards as provided in section 4205(a)(3), or

(ii) applicable tribal standards, if such standards are no less stringent than the Federal or State standards.

(2) Any Tribal Action Plan may, among other things, provide for—

(A) an assessment of the scope of the problem of alcohol and substance abuse for the Indian tribe which adopted the resolution for the Plan,

(2) the identification and coordination of available resources and programs relevant to a program of alcohol and substance abuse prevention and treatment,

(3) the establishment and prioritization of goals and the efforts needed to meet those goals, and

(4) the identification of the community and family roles in any of the efforts undertaken as part of the Tribal Action Plan.

(d) GRANTS.—(1) The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to provide technical assistance in the development of a Tribal Action Plan. The Secretary shall allocate funds based on need.

(2) There is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal year 1987, 1988, and 1989 for grants under this subsection.

(e) FEDERAL ACTION.—If any Indian tribe does not adopt a resolution as provided in subsection (a) within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this subtitle for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a).

SEC. 4207. DEPARTMENTAL RESPONSIBILITY.

(a) IMPLEMENTATION.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, and the Secretary of Health and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this subtitle in cooperation with Indian tribes.

(b) OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.—

(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this subtitle, there is established within the Office of the Assistant Secretary of Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office shall be appointed by the Assistant Secretary on a permanent basis at no less than a grade GS-15 of the General Schedule.

(2) In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205, and

(B) serving as a point of contact within the Bureau of Indian Affairs for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this subtitle, the Memorandum of Agreement, and any Tribal Action Plan established under section 4206.

(c) INDIAN YOUTH PROGRAMS OFFICER.—

(1) There is established in the Office of Alcohol and Substance Abuse the position to be known as the Indian Youth Programs Officer.

(2) The position of Indian Youth Programs Officer shall be established on a permanent basis at no less than the grade of GS-14 of the General Schedule.

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian Youth, such Officer shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205 as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office of Alcohol and Substance Abuse as they relate to Indian youth.

SEC. 4208. CONGRESSIONAL INTENT.

It is the intent of Congress that—

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this subtitle.

SEC. 4209. FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.

(a) FACILITY AVAILABILITY.—In the furtherance of the purposes and goals of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities, property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior's jurisdiction: Provided, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) COSTS.—Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) may be borne by the Secretary of the Interior and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) furthers the purposes and goals of this subtitle, the use of funds other than those funds appropriated to the Department of the Interior or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

SEC. 4210. NEWSLETTER.

The Secretary of the Interior shall, not later than 120 days after the date of the enactment of this subtitle, publish an alcohol and substance abuse newsletter in cooperation with the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

(1) be published once in each calendar quarter,

(2) include reviews of programs determined by the Secretary of the Interior to be exemplary and provide sufficient information to enable interested persons to obtain further information about such programs, and

(3) be circulated without charge to—

(A) schools,

(B) tribal offices,

(C) Bureau of Indian Affairs' agency and area offices,

(D) Indian Health Service area and service unit offices,

(E) Indian Health Service alcohol programs, and

(F) other entities providing alcohol and substance abuse related services or resources to Indian people.

PART III—INDIAN YOUTH PROGRAMS

SEC. 4211. REVIEW OF PROGRAMS.

(a) REVIEW.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider—

(1) Federal programs providing education services or benefits to Indian children,

(2) tribal, State, local, and private educational resources and programs,

(3) Federal programs providing family and social services and benefits for Indian families and children,

(4) Federal programs relating to youth employment, recreation, cultural, and community activities, and

(5) tribal, State, local, and private resources for programs similar to those cited in paragraphs (3) and (4),

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) PUBLICATION.—The results of the review conducted under subsection (a) shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan under section 4206.

SEC. 4212. INDIAN EDUCATION PROGRAMS.

(a) PILOT PROGRAMS.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention Act of 1986. The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot programs in the school from funds appropriated for this section. For the pilot programs there are authorized to be appropriated such

sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.

(b) USE OF FUNDS.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

SEC. 4213. EMERGENCY SHELTERS.

(a) IN GENERAL.—A Tribal Action Plan adopted pursuant to section 4206 may make such provisions as may be necessary and practical for the establishment, funding, licensing, and operation of emergency shelters or half-way houses for Indian youth who are alcohol or substance abusers, including youth who have been arrested for offenses directly or indirectly related to alcohol or substance abuse.

(b) REFERRALS.—

(1) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974, under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriately licensed and supervised emergency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(2) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

(c) DIRECTION TO STATES.—In the case of any State that exercises criminal jurisdiction over any part of Indian country under section 1162 of title 18 of the United States Code or section 401 of the Act of April 11, 1968 (25 U.S.C. 1321), such State is urged to require its law enforcement officers to—

(1) place any Indian youth arrested for any offense related to alcohol or substance abuse in a temporary emergency shelter described in subsection (d) or a community-based alcohol or substance abuse treatment facility in lieu of incarceration to the extent such facilities are available, and

(2) observe the standards promulgated under subsection (d).

(d) STANDARDS.—The Assistant Secretary of Indian Affairs shall, as part of the development of the Memorandum of Agreement set out in section 4205, promulgate standards by which the emergency shelters established under a program pursuant to subsection (a) shall be established and operated.

(e) AUTHORIZATION.—For the planning and design, construction, and renovation of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. For the operation of emergency shelters or half-way houses there is authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989. The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.

SEC. 4214. SOCIAL SERVICES REPORTS.

(a) DATA.—The Secretary of the Interior, with respect to the administration of any family or social services program by the Bureau of Indian Affairs directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to the number and types of child abuse and neglect cases seen and the type of assistance provided. Additionally, such data should also be categorized to reflect those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring, and those cases which involve other minor siblings.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service service unit director who will have responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out the requirements of subsections (a) and (b), the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals.

PART IV—LAW ENFORCEMENT AND JUDICIAL SERVICES

SEC. 4215. REVIEW OF PROGRAMS.

(a) LAW ENFORCEMENT AND JUDICIAL SERVICES.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

(1) the various programs established by Federal law providing law enforcement or judicial services for Indian tribes, and

(2) tribal and State and local law enforcement and judicial programs and systems

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION OF REVIEW.—The results of the review conducted pursuant to subsection (a) shall be made available to every Indian tribe as soon as possible for their consideration and use in the development and modification of a Tribal Action Plan.

SEC. 4216. ILLEGAL NARCOTICS TRAFFIC ON THE PAPAGO RESERVATION: SOURCE ERADICATION

(a)(1) INVESTIGATION AND CONTROL.—The Secretary of the Interior shall provide assistance to the Papago Indian Tribe (Tohono O'odham) of Arizona for the investigation and control of illegal narcotics traffic on the Papago Reservation along the border with Mexico. The Secretary shall ensure that tribal efforts are coordinated with appropriate Federal Law enforcement agencies, including the United States Customs Service.

(2) AUTHORIZATIONS.—For the purpose of providing the assistance required by subsection (a), there is authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989.

(b)(1) MARIJUANA ERADICATION.—The Secretary of the Interior, in cooperation with appropriate Federal, tribal, and State and local law enforcement agencies, shall establish and implement a program for the eradication of marijuana cultivation within Indian country as defined in section 1152 of title 18, United States Code. The Secretary shall establish a priority for the use of funds appropriated under subsection (b) for those Indian reservations where the scope of the problem is most critical, and such funds shall be available for contracting by Indian tribes pursuant to the Indian Self-Determination Act.

(2) AUTHORIZATIONS.—To carry out subsection (a), there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.

PART V—BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT

SEC. 4218. BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT AND JUDICIAL TRAINING.

(a) IN GENERAL.—The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in subsection (a) shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 4228.

(b) AUTHORIZATION.—For the purpose of providing the training required by subsection (a), there are authorized to be appropriated $1,500,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4219. MEDICAL ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS.

The Memorandum of Agreement entered into pursuant to section 4205 shall include a specific provision for the development and implementation at each Bureau of Indian Affairs agency and Indian Health Service unit of a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection—

(1) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well-being,

(2) shall occur as soon as possible after the arrest or detention of an Indian youth, and

(3) shall be provided by the Indian Health Service, either through its direct or contract health service.

SEC. 4220. JUVENILE DETENTION CENTERS.

(a) PLAN.—The Secretary of the Interior shall construct or renovate and staff new or existing juvenile detention centers. The Secretary shall ensure that the construction and operation of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974.

(b) AUTHORIZATION.—For the purpose of subsection (a), there is authorized to be appropriated $10,000,000 for construction and

renovation for each of the fiscal years 1987, 1988, and 1989, and $5,000,000 for staffing and operation for each of the fiscal years 1987, 1988, and 1989.

SEC. 4221. MODEL INDIAN JUVENILE CODE.

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

SEC. 4222. LAW ENFORCEMENT AND JUDICIAL REPORT.

(a) COMPILATION OF LAW ENFORCEMENT DATA.—The Secretary of the Interior, with respect to the administration of any law enforcement or judicial services program by the Bureau of Indian Affairs, either directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to calls and encounters, arrests and detentions, and disposition of cases by Bureau of Indian Affairs or tribal law enforcement or judicial personnel involving Indians where it is determined that alcohol or substance abuse is a contributing factor.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service unit director who will have the responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals involved.

PART VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

SEC. 4224. REVIEW OF PROGRAMS.

(a) IN GENERAL.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall review and consider—

(1) the various programs established by Federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and treatment, and

(2) tribal, State and local, and private health resources and programs,

(3) where facilities to provide such treatment are or should be located, and

(4) the effectiveness of public and private alcohol and substance abuse treatment programs in operation on the date of the enactment of this subtitle,

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION.—The results of the review conducted under subsection (a) shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan.

SEC. 4225. INDIAN HEALTH SERVICE RESPONSIBILITIES.

The Memorandum of Agreement entered into pursuant to section 4205 shall include specific provisions pursuant to which the Indian Health Service shall assume responsibility for—

(1) the determination of the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Indian Health Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost,

(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse, and

(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

SEC. 4226. INDIAN HEALTH SERVICE PROGRAM.

The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

(1) prevention, through educational intervention, in Indian communities,

(2) acute detoxification and treatment,

(3) community-based rehabilitation, and

(4) community education and involvement, including extensive training of health care, educational, and community-based personnel.

The target population of such a program shall be the members of Indian tribes. Additionally, efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

SEC. 4227. INDIAN HEALTH SERVICE YOUTH PROGRAM.

(a) DETOXIFICATION AND REHABILITATION.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

(b) CENTERS.—The Secretary shall construct or renovate a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office. For purposes of the preceding sentence, the area offices of the Indian Health Service in Tucson and Phoenix, Arizona, shall be considered one area office. The regional treatment centers shall be appropriately staffed with health professionals. There are authorized to be appropriated $6,000,000 for the construction and renovation of the regional youth treatment centers, and $3,000,000 for the staffing of such centers, for each of the fiscal years 1987, 1988, and 1989.

(c) FEDERALLY OWNED STRUCTURES.—

(1) The Secretary of Health and Human Services, acting through the Indian Health Service, shall, in consultation with Indian tribes—

(A) identify and use, where appropriate, federally owned structures, suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth, and

(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary of Health and Human Services and the agency having responsibility for the structure.

(3) There are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

(d) REHABILITATION AND FOLLOW-UP SERVICES.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Indian Health Service service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

(3) For the purpose of providing the services authorized by paragraph (1), there are authorized to be appropriated $9,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4228. TRAINING AND COMMUNITY EDUCATION.

(a) COMMUNITY EDUCATION.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to the critical core of each tribal community, including political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical parties.

(b) TRAINING.—The Secretary of Health and Human Services shall, either directly or through contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Indian Health Service, and personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Indian Health Services, including supervisors of emergency shelters and half-way houses described in section 4213.

"(c)(1) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall establish at least one demonstration project to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, * * * depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

"(F) providing training and continuing education to employees of the service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) For purposes of this paragraph, the term 'health promotion' shall include:

"(A) reduction in the misuse of alcohol and drugs,

"(B) cessation of tobacco smoking.

"(C) improvement of nutrition.

"(D) improvement in physical fitness.

"(E) family planning, and

"(F) control of stress.

"(6) For purposes of this paragraph, the term 'disease prevention' shall include:

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.

"(7) Sec. 4228 is amended by adding at the end the following 'provided that $500,000 shall be made available for activities described under section 4228(c)(1).

(d) AUTHORIZATION.—There are authorized to be appropriated $4,000,000 for the fiscal year 1987 and such sums as are necessary to carry out the purposes of this section for the fiscal years 1988 and 1989.

SEC. 4229. NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM.

(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

(b) EVALUATION AND REPORT.—The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate Committees of Congress by January 1, 1990.

(c) AUTHORIZATION.—There are authorized to be appropriated for the purposes of grants under subsection (a) $300,000 for each of the fiscal years 1988, 1989, and 1990. Not more than 10 percent of the funds appropriated for any fiscal year may be used for administrative purposes.

SEC. 4230. INDIAN HEALTH SERVICE REPORTS.

(a) COMPILATION OF DATA.—The Secretary of Health and Human Services, with respect to the administration of any health program by an Indian Health Service service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents which any of the Indian Health Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

(b) REFERRAL OF DATA.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan.

(c) COMPREHENSIVE REPORT.—Each Indian Health Service service unit director shall be responsible for assembling the data compiled under this section and section 4204 into an annual tribal comprehensive report which shall be provided to the affected tribe and to the Director of the Indian Health Service who shall develop and publish a biennial national report on such tribal comprehensive reports.

Subtitle D—Miscellaneous Provisions

SEC. 4301. ACTION GRANTS.

The Domestic Volunteer Service Act of 1973 is amended—

(1) in title I by adding after section 123 the following new section:

"SPECIAL INITIATIVES

"SEC. 124. The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (including grants, contracts, conferences, public service announcements, speakers bureau, public-private partnerships and technical assistance to nonprofit and for-profit organizations). In fulfilling the authority of this section, the Director is authorized to (1) coordinate the agency efforts with the White House and other Federal agencies, and (2) accept in the name of the ACTION agency funds received through solicitation of profit and nonprofit entities.";

(2) by amending subsection (c) of section 501 to read as follows:

"(c) There is to be authorized to be appropriated to carry out programs under part C of title I of this Act $4,484,000 for the fiscal year 1987 (of which $2,500,000 shall be available for drug abuse prevention), $1,984,000 for fiscal year 1988, and $1,984,000 for fiscal year 1989."; and

(3) by amending section 504 to read as follows:

"ADMINISTRATION AND COORDINATION

"SEC. 504. There is authorized to be appropriated for the Administration of this Act, as authorized in title IV of this Act, $25,812,000 for fiscal year 1987 (of which $500,000 shall be available for support of drug abuse prevention), $25,312,000 for fiscal year 1988, and $25,312,000 for fiscal year 1989.".

SEC. 4302. ESTABLISHMENT OF NATIONAL TRUST FOR DRUG-FREE YOUTH.

(a) ESTABLISHMENT.—In order to encourage private gifts of real and personal property to assist the Secretary in carrying out the national programs of drug abuse research, education, and prevention under subtitle B, there is hereby established a charitable, nonprofit, and nonpartisan corporation to be known as the National Trust for Drug Free Youth.

(b) BOARD OF DIRECTORS.—The National Trust for Drug-Free Youth shall be under the general direction of a Board of Directors. The overall priorities, policies, and goals of the National Trust shall be determined by the Board in consultation with the Secretary. The Board shall coordinate the activities of the National Trust for Drug-Free Youth with the Secretary. The Board shall be composed of three members appointed as follows:

(1) one member shall be appointed by the President;

(2) one member shall be appointed by the Speaker of the House of Representatives; and

(3) one member shall be appointed by the Majority Leader of the Senate.

(c) PRINCIPAL OFFICE.—The National Trust shall have its principal office in the District of Columbia and for the purposes of venue in civil actions shall be considered an inhabitant and resident of the District.

(d) GENERAL POWERS.—The National Trust shall have the following general powers:

(1) to have succession until dissolved by Act of Congress, in which event title to the properties of the National Trust, both real and personal shall, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the National Trust, pass to and become vested in the United States of America;

(2) to adopt, alter, and use a corporate seal which shall be judicially noticed;

(3) to sue and be sued, complain and defend in any court of competent jurisdiction;

(4) to adopt and establish such bylaws, rules, and regulations, not inconsistent with the laws of the United States or of any State, as the Board considers necessary for the administration of its functions, including among other matters, bylaws, rules, and regulations governing administration of corporate funds;

(5) to accept, hold, and administer gifts and bequests of money, securities, or other personal property of whatsoever character, absolutely or on trust, for the purposes for which the National Trust is created;

(6) to sell, exchange, or otherwise dispose of as it may determine from time to time the moneys, securities, or other gifts given or bequeathed to it;

(7) to appoint and prescribe the duties of such officers, agents, and employees as may be necessary to carry out its functions, and to fix and pay such compensation to them for their services as the National Trust is created; and

(8) to audit the financial records of the corporation.

(e) LIMITATIONS.—The National Trust shall not have authority—

(1) to issue shares or stock or declare or pay dividends; or

(2) to loan funds to its officers or directors.

(f) Reports.—The Board shall submit an annual report and independent audit to the Congress and the President concerning the expenditure of funds under the National Trust.

SEC. 4303. INFORMATION ON DRUG ABUSE AT THE WORKPLACE.

The Secretary of Labor may collect such information as is available on the incidence of drug abuse in the workplace and efforts to assist workers, including counseling, rehabilitation and employee assistance programs. The Secretary may conduct such additional research as is necessary to assess the impact and extent of drug abuse and remediation efforts. The Secretary may submit the findings of such collection and research to the House Committee on Education and Labor and the Senate Committee on Labor and Human Services no later than two years from the date of enactment of this Act.

TITLE V—UNITED STATES INSULAR AREAS AND NATIONAL PARKS

Subtitle A—Programs in United States Insular Areas

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the "United States Insular Areas Drug Abuse Act of 1986".

SEC. 5002. PURPOSES.

The purposes of this subtitle are to improve enforcement of drug laws and enhance interdiction of illicit drug shipments in the Caribbean and Pacific territories and commonwealths of the United States and to assist public and private sector drug abuse prevention and treatment programs in United States insular areas.

SEC. 5003. ANNUAL REPORTS TO CONGRESS.

The President shall report annually to the Congress as to—

(1) the efforts and success of Federal agencies in preventing the illegal entry into the United States of controlled substances from the insular areas of the United States outside the customs territory of the United States and states freely associated with the United States and the nature and extent of such illegal entry, and

(2) the efforts and success of Federal agencies in preventing the illegal entry from other nations, including states freely associated with the United States, of controlled substances into the United States territories and the commonwealths for use in the territories and commonwealths or for transshipment to the United States and the nature and extent of such illegal entry and use.

SEC. 5004. ENFORCEMENT AND ADMINISTRATION IN INSULAR AREAS.

(a) AMERICAN SAMOA.—(1) With the approval of the Attorney General of the United States or his designee, law enforcement officers of the Government of American Samoa are authorized to—

(A) execute and serve warrants, subpoenas, and summons issued under the authority of the United States;

(B) make arrests without warrant; and

(C) make seizures of property to carry out the purposes of this subtitle, the Controlled Substances Import and Export Act (21 U.S.C. 951-970), and any other applicable narcotics laws of the United States.

(2) The Attorney General and the Secretary of Health and Human Services of the United States are authorized to—

(A) train law enforcement officers of the Government of American Samoa, and

(B) provide by purchase or lease law enforcement equipment and technical assistance to the Government of American Samoa to carry out the purposes of this subtitle and any other Federal or territorial drug abuse laws.

(3) There are authorized to be appropriated $700,000 to carry out the purposes of this subsection, to remain available until expended.

(b) GUAM.—(1) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of Guam to carry out the purposes of this subtitle and any other Federal or territorial drug abuse law.

(2) There are authorized to be appropriated $1,000,000 to carry out paragraph (1). Funds appropriated under this paragraph shall remain available until expended.

(c) THE NORTHERN MARIANA ISLANDS.—(1) With the approval of the Attorney General of the United States or his designee, law enforcement officers of the Government of the Northern Mariana Islands are authorized to—

(A) execute and serve warrants, subpoenas, and summons issued under the authority of the United States;

(B) make arrests without warrant; and

(C) make seizures of property to carry out the purposes of this subtitle, the Controlled Substances Import and Export Act (21 U.S.C. 951-970), and any other applicable narcotics laws of the United States.

(2) The Attorney General and the Secretary of Health and Human Services, as appropriate, are authorized to—

(A) train law enforcement officers of the Government of the Northern Mariana Islands, and

(B) provide, by purchase or lease, law enforcement equipment and technical assistance to the Government of the Northern Mariana Islands to carry out the purposes of this subtitle and any other Federal or commonwealth drug abuse law.

(3) There are authorized to be appropriated $250,000 to carry out the purposes of this subsection, to remain available until expended.

(4) Federal personnel and equipment assigned to Guam pursuant to subsection (b) of this section shall also be available to carry out the purposes of this subtitle in the Northern Mariana Islands.

(d) PUERTO RICO.—(1) There are authorized to be appropriated for grants to the Government of Puerto Rico—

(A) $3,300,000 for the purchase of 2 helicopters;

(B) $3,500,000 for the purchase of an aircraft; and

(C) $1,000,000 for the purchase and maintenance of 5 high-speed vessels.

Sums appropriated under this paragraph shall remain available until expended.

(2) The United States Customs Service should station an aerostat in Puerto Rico.

(3) Equipment provided to the Government of Puerto Rico pursuant to paragraph (1) of this subsection shall be made available upon request to the Federal agencies involved in drug interdiction in Puerto Rico.

(4)(A) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of Puerto Rico to carry out the purposes of this subtitle and any other Federal or commonwealth drug abuse law.

(B) There are authorized to be appropriated such sums as may be necessary to carry out subparagraph (A). Funds appropriated under this subparagraph shall remain available until expended.

(e) THE VIRGIN ISLANDS.—(1) There are authorized to be appropriated for grants to the Government of the Virgin Islands—

(A) $3,000,000 for 2 patrol vessels, tracking equipment, supplies, and agents, and

(B) $1,000,000 for programs to prevent and treat narcotics abuse, such sums to remain available until expended.

(2) The United States Coast Guard should station a patrol vessel in St. Croix, Virgin Islands.

(3)(A) The Attorney General and the Secretary of Health and Human Services of the United States may provide technical assistance and equipment to the Government of the United States Virgin Islands to carry out the purposes of this subtitle and any other Federal or territorial drug abuse law.

(B) There are authorized to be appropriated such sums as may be necessary to carry out subparagraph (A). Funds appropriated under this subparagraph shall remain available until expended.

Subtitle B—National Park Service Program

SEC. 5051. SHORT TITLE.

This subtitle may be cited as the "National Park Police Drug Enforcement Supplemental Authority Act".

SEC. 5052. NATIONAL PARK POLICE AUTHORIZATION.

In order to improve Federal law enforcement activities relating to the use of narcotics and prohibited substances in national park system units there are made available to the Secretary of the Interior, in addition to sums made available under other authority of law, $1,000,000 for the fiscal year 1987, and for each fiscal year thereafter, to be used for the employment and training of additional Park Police, for equipment and facilities to be used by Park Police, and for expenses related to such employment, training, equipment, and facilities.

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug

abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.— The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short- and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG ABUSE AND ALCOHOL ABUSE.

(a) IN GENERAL.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. 6005. SUBSTANCE ABUSE COVERAGE STUDY.

(a) STUDY.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug abusers.

(b) REPORT.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. 6006. HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) FINDINGS.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) all employers providing health insurance policies should ensure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs for individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

TITLE VII—NATIONAL ANTIDRUG REORGANIZATION AND COORDINATION

SEC. 7001. SHORT TITLE.

This title may be cited as the "National Antidrug Reorganization and Coordination Act".

SEC. 7002. FINDINGS.

The Congress finds that—

(1) the Federal Government's response to drug trafficking and drug abuse is divided among several dozen agencies and bureaus of the Government, ranging from the Department of Defense to the Department of Health and Human Services;

(2) numerous recent congressional hearings and reports, reports by the Comptroller General, and studies by Executive branch agencies have documented the waste and inefficiency caused by this division of responsibilities;

(3) interagency competition for credit and budget dollars imposes critical obstacles to efficient application of national resources in combating drug trafficking and drug abuse; and

(4) successfully combating such trafficking and drug abuse requires coherent planning that includes intelligent organization and operations of Executive branch agencies.

SEC. 7003. SUBMISSION OF LEGISLATION.

Not later than 6 months after the date of enactment of this title, the President shall submit to each House of Congress recommendations for legislation to reorganize the Executive branch of the Government to more effectively combat drug traffic and drug abuse. In the preparation of such recommendations, the President shall consult with the Comptroller General, State and local law enforcement authorities, relevant committees of the Congress, and the Attorney General and the Secretaries of State, the Treasury, Transportation, Health and Human Services, Defense, and Education.

TITLE VIII—PRESIDENT'S MEDIA COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION

SEC. 8001. SHORT TITLE.

This title may be cited as the "President's Media Commission on Alcohol and Drug Abuse Prevention Act".

SEC. 8002. ESTABLISHMENT.

There is established a commission to be known as the President's Media Commission on Alcohol and Drug Abuse Prevention (hereinafter in this title referred to as the "Commission").

SEC. 8003. DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent alcohol and drug abuse;

(2) act as an administrative and coordinating body for the voluntary donation of resources from—

(A) television, radio, motion picture, cable communications, and print media;

(B) the recording industry;

(C) the advertising industry;

(D) the business sector of the United States; and

(E) professional sports organizations and associations;

to assist the implementation of new programs and national strategies for dissemination of information intended to prevent alcohol and drug abuse;

(3) encourage media outlets throughout the country to provide information aimed at preventing alcohol and drug abuse, including public service announcements, documentary films, and advertisements; and

(4) evaluate the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. 8004. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, cable communications, and print media;

(3) the recording industry;

(4) other segments of the business sector of the United States;

(5) experts in the prevention of alcohol and drug abuse;

(6) professional sports organizations and associations; and

(7) other Federal agencies, as designated by the President, including the Director of the Agency for Substance Abuse Prevention of the Department of Health and Human Services.

(b) TERMS.—(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of 3 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(3) A member may serve after the expiration of his term until his successor has taken office.

(c) BASIC PAY AND EXPENSES.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. 8005. MEETINGS.

(a) IN GENERAL.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d) VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members at a properly called meeting.

SEC. 8006. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR AND STAFF.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. 8007. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(c) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 8008. REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

SEC. 8009. TERMINATION.

The Commission shall terminate on a date which is three years after the date on which members of the Commission are first appointed, unless the President, by Executive order, extends the authority of the Commission.

TITLE IX—BALLISTIC KNIFE PROHIBITION

SEC. 9001. SHORT TITLE.

This title may be cited as the "Ballistic Knife Prohibition Act of 1986".

SEC. 9002. PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES.

The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more than ten years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more than ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable

blade that is propelled by a spring-operated mechanism.".

SEC. 9003. NONMAILABILITY OF BALLISTIC KNIVES.

Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

The amendments made by this title shall take effect 30 days after the date of enactment of this title.

TITLE —HOMELESS ELIGIBILITY CLARIFICATION ACT

SEC. . SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. . MEALS SERVED TO HOMELESS INDIVIDUALS.

(a) DEFINITION OF FOOD.—Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) in clause (1), by striking out "and (8)" and inserting in lieu thereof "(8), and (9)";

(2) by striking out "and" at the end of clause (7); and

(3) by inserting before the period at the end thereof the following: ", and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by a public or private nonprofit shelter (approved by an appropriate State or local agency) in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals and may not request such households to pay more than the average cost of the food contained in a meal served by the establishment or shelter)".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act (7 U.S.C. 2012(i)) is amended by inserting after "battered women and children," the following: "residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,".

(c) DEFINITION OF RETAIL FOOD STORE.—Section 3(k)(2) of such Act (7 U.S.C. 2012(k)(2)) is amended by striking "and (8)" and inserting in lieu thereof "(8), and (9)".

(d) PARTICIPATION OF ESTABLISHMENTS AND SHELTERS.—Section 9 of such Act (7 U.S.C. 2018) is amended by adding at the end thereof the following new subsection:

"(g) In an area in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the participation of an establishment or shelter described in section 3(g)(9) damages the program's integrity, the Secretary shall limit the participation of such establishment or shelter in the food stamp program, unless the establishment or shelter is the only establishment or shelter serving the area.".

(e) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended—

(1) by striking out "and" after "battered women and children,"; and

(2) by inserting after "blind residents" the following: ", and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses".

(f)(1) The amendments made by this section shall become effective, and be implemented by issuance of final regulations, not later than April 1, 1987.

(2) Not later than September 30, 1988, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the program established by the amendments made by this section, including any proposed legislative recommendations.

(3) The amendments made by this section shall cease to be effective after September 30, 1990.

Subtitle B—Job Training for the Homeless

SEC. . JOB TRAINING FOR THE HOMELESS.

(a) GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN TO INCLUDE HOMELESS.—(1) Section 121(b)(1) of the Job Training Partnership Act (20 U.S.C. 1531(b)(1)) is amended by inserting after "rehabilitation agencies" a comma and the following: "programs for the homeless".

(2) Section 121(c)(3) of the Job Training Partnership Act is amended by inserting after "offenders" a comma and the following: "homeless individuals".

(b) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. . TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI PROGRAM.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective on the date of the enactment of this Act.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or the date of the enactment of this Act. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC. . SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

(a) IN GENERAL.—Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by adding at the end the following new subsection:

"Single Application for SSI and Food Stamp Benefits by SSI Pre-Release Individuals

"(j)(1) The Secretary shall provide for the establishment, maintenance, and improvement of procedures designed to ease the transition of institutionalized persons from medical, penal, and other institutions to the community, and to prevent homelessness, by permitting such persons to apply for benefits under this title prior to their discharge or release from such institutions and thereby assuring that essential support (such as housing, food, and clothing) is available to them upon such discharge or release.

"(2) Under regulations prescribed by the Secretary, the procedures described in paragraph (1) shall—

"(A) require that personnel of the district offices of the Social Security Administration, and of the appropriate State disability determination services, make regular visits to all institutions of the types involved to receive and process applications for benefits under this title and for food stamps under paragraph (3);

"(B) provide for the development of descriptive materials on such procedures for use by such district offices and by social service departments in such institutions;

"(C) provide training for employees in such district offices; and

"(D) establish time limits within which State agencies must complete their processing of applications filed pursuant to such procedures.

"(3) The Secretary and the Secretary of Agriculture shall establish special procedures under which persons applying for benefits under this title prior to their discharge or release from an institution pursuant to the pre-release procedures described in paragraphs (1) and (2) can also apply to participate in the food stamp program under the Food Stamp Act of 1977, utilizing a single application for this purpose.".

(b) EFFECTIVE DATE.—

(1) The amendment made by subsection (a) shall become effective April 1, 1987.

(2) The Secretary of Health and Human Services shall promulgate final regulations to implement the amendment made by subsection (a) not later than April 1, 1987.

SEC. . DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

Strike out title XII and insert in lieu thereof the following:

TITLE XII—COMMERCIAL MOTOR VEHICLE SAFETY

SEC. 12001. SHORT TITLE.

That this title may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

SEC. 12002. PURPOSE.

The purpose of this title is to enhance the safe operation of commercial motor vehicles on the Nation's highways by developing national uniform standards for the testing, licensing, and qualification of commercial motor vehicle operators, by providing penalties for the operation of commercial motor vehicles by persons who have used alcohol before or during the operation of such vehicles, and by increasing inspections of commercial motor vehicle operators and the equipment they operate.

SEC. 12003. DEFINITIONS.

As used in this title, the term—

(1) "alcohol" has the meaning the term alcoholic beverage had under section 158(c) of title 23, United States Code;

(2) "commence" means—

(A) trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside of the United States); or

(B) trade, traffic, or transportation in the United States which affects any trade, traffic, or transportation described in subparagraph (A);

(3) "commercial driver's license" means a license issued by a State to an individual which authorizes the individual to operate a class of commercial motor vehicle;

(4) "commercial motor vehicle" means any self-propelled or towed vehicle used in commerce to transport passengers or property if—

(A) such vehicle has a gross vehicle weight rating of twenty-six thousand and one or more pounds, or such lower weight rating (not less than ten thousand and one pounds) as the Secretary considers appropriate;

(B) such vehicle is designed to transport more than fifteen passengers, including the driver; or

(C) such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(5) "controlled substance" shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(6) "driver's license" means a license issued by a State to an individual which authorizes the individual to operate a motor vehicle on highways;

(7) "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer;

(8) "employer" means any person (including the United States, a State, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle;

(9) "felony" means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year;

(10) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on the highways other than a commercial motor vehicle; such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail;

(11) "Secretary" means the Secretary of Transportation;

(12) "serious traffic violation" means—

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law;

(C) a violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident; and

(D) any other similar violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) which the Secretary determines by regulation is serious;

(13) "State" means a State of the United States and the District of Columbia; and

(14) "United States" means the fifty States and the District of Columbia.

SEC. 12004. RESPONSIBILITIES OF THE SECRETARY.

(a) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which establish minimum Federal standards for the licensing, testing, qualifications and classification of operators of commercial motor vehicles. Such regulations shall, at a minimum—

(1) establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(2) require a driving test of each person who operates or will operate a commercial motor vehicle in commerce in the type of vehicle such person operates or will operate, except that the Secretary may, by regulation, permit any State to waive such test in the case of any such person who applies for renewal of a commercial driver's license;

(3) establish minimum scores for passing such tests;

(4) ensure that each person taking such tests is qualified to operate a commercial motor vehicle in commerce under regulations promulgated under this section, regulations contained in subpart E of part 391 of title 49 of the Code of Federal Regulations, and such other Federal Motor Carrier Safety Regulations contained in title 49 of the Code of Federal Regulations as the Secretary considers appropriate;

(5) establish requirements for the disqualification of the operator of any commercial motor vehicle who is once (A) determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, (B) found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, or (C) found to have used a commercial motor vehicle in the commission of a felony (other than a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance);

(6) establish requirements for the immediate revocation of the operator's license of any individual who is more than once (A) determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, (B) found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, or (C) found to have used a commercial motor vehicle in the commission of a felony (other than a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance);

(7) disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance;

(8) establish a system of classification for licensing that provides different minimum Federal testing standards for operation of different classes of commercial motor vehicles;

(9) provide that each commercial driver's license shall contain, at a minimum—

(A) the legal name, date of birth (including day, month and year) sex, address, and a physical description of the person to whom such license is issued;

(B) other identifying information which the Secretary considers necessary or appropriate;

(C) the type of commercial motor vehicle which such person is authorized to operate under such license;

(D) the name of the State which issued such license; and

(E) the dates between which such license is valid; and

(10) may require the issuance of a certification of fitness to operate a commercial motor vehicle to each person who passes such tests, and may require such person to have a copy of such certification in his or her possession when such person is operating a commercial motor vehicle.

(b) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which shall be in addition to regulations promulgated under subsection (a) of this section and which shall establish minimum Federal standards for the licensing, testing, qualifications and classification of any person who operates or will operate a

commercial motor vehicle carrying a hazardous material (as defined in section 103(2) of the Hazardous Materials Transportation Act (49 App. US.C. 1802(2)). Such regulations shall—

(1) ensure that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such hazardous material issued by the Secretary under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(2) establish minimum Federal standards for, and scores for passing, written tests which ensure that such person is knowledgeable regarding (A) all such regulations, (B) the handling of such hazardous mateial, and (C) the appropriate response to emergencies arising out of the transportation of such hazardous material; and

(3) establish minimum Federal standads for driving tests which ensure that such person is knowledgeable regarding the type of vehicle that such person operates or will operate and regarding the safety system of such vehicle.

The Secretary may exempt any such person from any requirement of this Act if the material to be transported is a harzardous material listed pursuant to section 306(a) of the Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation, or if the material to be transported is a consumer commodity or limited quantity hazardous material, as defined in section 171.8 of title 49 of the Code of Federal Regulations.

(c) Nowithstanding any other provision of this Act, after notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any provision of this Act or any regulation issued under this Act with respect to a class of persons or class of commercial motor vehicles if the Secretary determines that such waiver promotes the public interest and does not diminish the safe operation of commercial motor vehicles. Any waiver under this section shall be published in the Federal Register, together with reasons for such waiver.

(d) The Secretary shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirements of subsection (a)(5) and (6) and section 12005 of this Act regarding blood alcohol content level impact on operators of commercial motor vehicles who are required by their employers to be available to operate such commercial motor vehicles on short notice.

SEC. 12005. RESPONSIBILITIES OF OPERATOR OF COMMERCIAL MOTOR VEHICLES.

(a) No person may operate a commercial motor vehicle in commerce unless such person—

(1) complies with all requirements imposed by regulations promulgated under section 12004 of this title; and

(2) has a blood alcohol content level of less than 0.04 percent whiie operating a commercial motor vehicle.

(b)(1) Except as provided in paragraph (2) of this subsection, subsection (a) of this section shall become applicable with respect to any person who operates or will operate a commercial motor vehicle in commerce on the date on which the State in which such person is domiciled adopts a licensing program under section 12006(a) of this title or September 30, 1990, whichever is earlier, except that, with respect to a person to whom a commercial driver's license has been issued on or before such applicable date, who has not been found to have violated a State or local law relating to motor vehicle traffic control (other than a parking violation) in the three-year priod ending on such date, and who has not been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle in commerce or has had a commercial driver's license suspended, revoked or cancelled for cause at any time during such three-year period, subsection (a) of this section shall only take effect on the date after such date on which—

(A) such license is required to be renewed under State law,

(B) such person is found to have violated such a State or local law, or

(C) such person is disqualified pursuant to title 49 of the Code of Federal Regulations by the Secretary from operating a commercial motor vehicle in commerce and has had such person's license suspended, revoked or cancelled for cause by a State,

whichever is earliest.

(2) If any such person is not domiciled in a State that has adopted such a licensing program, the Secretary may, in accordance with regulations to be prescribed by the Secretary, permit such person to obtain a commercial driver's license from any State that has adopted such a program.

(c) Effective on July 1, 1987, no operator of a commercial motor vehicle shall at any time have more than one driver's license, except during the 10-day period beginning on the date such person is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such person to have more than one driver's license. The second exception in the preceding sentence shall not be effective after September 1, 1989.

(d)(1) Effective on July 1, 1987, each operator of a commercial motor vehicle who has a driver's license issued by a State and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in any other State shall notify a State official designated by the State which issued such license of such violation, within 30 days after the date such person is found to have committed such violation.

(2) Effective on July 1, 1987, each operator of a commercial motor vehicle who has a driver's license issued by a State and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) shall notify such operator's employer of such violation, within 30 days after the date such person is found to have committed such violation.

(3) Effective on July 1, 1987, each employee who has a driver's license suspended, revoked, or cancelled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of such suspension, revocation, cancellation, lost right, or disqualification, within 30 days after the date of such suspension, revocation, cancellation, lost right or disqualification.

(4) (A) Effective on July 1, 1987, subject to subparagraph (B) of this paragraph, each person who applies for employment as an operator of a commercial motor vehicle with an employer shall, at the time of such application, notify the employer of such persons's previous employment as an operator of a commerical motor vehicle.

(B) The Secretary shall by regulation establish the period with respect to which notice must be given under subparagraph (A) of this paragraph, except that such period shall not be less than a 10-year period ending on the date of application for employment.

SEC. 12006. RESPONSIBILITIES OF THE STATES.

On or before September 30, 1990, each State shall, at a minimum—

(1) adopt and administer a program for the issuance of commercial driver's licenses that includes testing and qualification standards for persons who operate commercial motor vehicles in commerce in accordance with all of the minimum Federal standards established by the Secretary under section 12004 of this title, which program (A) may include standards for its domiciliaries that are more stringent that the minimum Federal standards established by the Secretary under section 12004 of this title, (B) shall provide that such State shall recognize any license issued by another State if such license meets all of the Federal minimum standards established by the Secretary under section 12004 of this title, (C) shall not require any person other than its domiciliaries to obtain a commercial driver's license, and (D) provides that such State may issue a commercial driver's license to a person domiciled in another State if such person satisfied all of the requirements for such a license required of domiciliaries of such State under this Act;

(2) not issue a commercial driver's license to a person unless such person passes a written test and driving test for the operation of a commercial motor vehicle which complies with such minimum standards and complies with all requirements imposed by regulations promulgated under section 12005 of this title;

(3) ensure that each commercial driver's license contains the information described in section 12004(a)(9) of this title;

(4) until the information system established under section 12009 of this title provides a means of rapid communication of the information specified in such section—

(A) notify the Secretary, before the issuance of a commercial driver's license, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license;

(B) within 30 days after issuance of a commercial driver's license, notify the Secretary of the issuance of such a license;

(C) maintain information regarding (i) any suspension, revocation or cancellation for cause of such a license and any disqualification pursuant to title 49 of the Code of Federal Regulations of the holder of such a commercial driver's license from operating a commercial motor vehicle for a period of 60 days or more, (ii) a decision to deny for cause a license to a person applying for such a license, or (iii) the conviction of the holder of such a commercial driver's license of any of the offenses specified in section 12009(b)(2) of this title;

(D) upon the request of the Secretary, another State, or an employee requesting information regarding such employee, transmit (to the extent permitted by law) to such State, the Secretary or such employee, the information specified in subparagraph (C) of this paragraph; and

(E) at such State's option, upon the request of an employer or prospective employer, transmit (to the extent permitted by law) to such employer or prospective employer, the information specified in subparagraph (C) of this paragraph;

(5) when the information system established under section 12009 of this title allows for the rapid communication of information, comply with the requirements of all regulations within such time periods as the Secretary establishes under section 12009(d) of this title, including a requirement that the State shall respond to all requests for information from the Secretary, another State, an employee who is requesting information regarding such employee, and employers a requirement that the State shall furnish to such information system the information specified in paragraph (4)(C) of this section, and information regarding all violations of any State or local law relating to motor vehicle traffic control (other than a parking violation), and a requirement that the State shall notify the information system of the issuance of a commercial driver's license and of the disqualification of the holder of a commercial driver's license for a period of 60 days or more;

(6) before issuance of a commercial driver's license, contact any other State which has issued to such person such a license to determine the driving record of such person and, if the State determines as a result of such contact that such person has been disqualified pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle by the Secretary, or has had a license suspended, revoked or cancelled for cause for violation of an offense pursuant to section 12004(a)(5) of this title, within three years before application has been made for such a commercial driver's license, not issue such a license to such person;

(7) not issue a commercial driver's license to any person to whom such a license has been issued by any other State unless such person first returns such license issued by such other State;

(8) prior to issuing a commercial driver's license to any person, consult the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401, note) (after such Register is determined by the Secretary to be operational) to determine whether, within three years before application has been made for such a license, such person has either been disqualified from operating a motor vehicle other than a commercial motor vehicle, or has had a license other than a commercial driver's license suspended, revoked or cancelled for cause or has been convicted of any of the offenses specified in section 205(a) of the National Driver Register Act of 1982 and, if the State is informed that such person has been so disqualified or convicted or such license has been suspended, revoked or cancelled for cause, not issue a commercial driver's license to such person;

(9) impose such penalties for a violation of section 12004 of this title as the State determines appropriate, if such penalties are the same as or more stringent than the guidelines established by the Secretary in section 12008(b) of this title; and

(10) provide for disqualification, through suspension or revocation of a license, in accordance with section 12004(a) (5) and (6) of this title.

SEC. 12007. GRANTS.

(a)(1) The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to comply with all provisions of section 6 of this Act.

(2) The amount of a grant under this subsection to any State shall not be less than $100,000 in any fiscal year.

(3) The Secretary may not make a grant to any State under this subsection unless such State agrees that the aggregate expenditure of funds of the State, exclusive of Federal funds, for testing and licensing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of enactment of this Act.

(4) A State which receives a grant under this subsection may use the funds provided under such grant only for testing and licensing of operators of commercial motor vehicles.

(5) A grant made under this subsection shall be for a period of 1 year.

(6) Funds made available to carry out this subsection shall remain available for obligation by the Secretary for the fiscal year in which such funds are made available and the three fiscal years after such fiscal year.

(7) There shall be available to the Secretary to carry out this subsection—

(A) $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for each of fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) after deducting the amount permitted under section 402(c) of title 23, United States Code, $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(8) Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this subsection shall be deemed to be a contractual obligation of the United States for payment of the amount of such grant.

(b)(1) The Secretrary shall withhold highway funds from any State that is not in compliance with section 12006 of this Act after September 30, 1993.

(2) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1993, in which the State does not comply with any requirement of section 12006 of this title (other than a requirement of section 12006 (10) of this title).

(3) The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second fiscal year beginning after September 30, 1993, and the first day of each fiscal year thereafter, in which the State does not comply with any requirement of section 12006 of this title (other than a requirement of section 12006(10) of this title).

(4)(A) The Secretary shall withhold 2 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1993, in which the State does not comply with any requirement of section 12006(10) of this title.

(B) The Secretary shall withhold not less than 2 percent nor more than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second through fifth fiscal years beginning after September 30, 1993, in which the State does not comply with any requirement of section 12006(10) of this title.

(C) The Secretary shall withhold not less than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the sixth fiscal year, and each fiscal year thereafter, beginning after September 30, 1993, in which the State does not comply with any requirement of section 12006(10) of this title.

(5)(A) Any funds withheld under this subsection from apportionment to any State after September 30, 1993, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) If, before the last day of the period for which funds withheld under this subsection from apportionment are to remain available for apportionment to a State under subparagraph (A) of this paragraph, the State complies with the provisions of section 12006 of this title, the Secretary shall, on the day following the date on which such State complies, apportion to such State the withheld funds remaining available for apportionment to such State.

(C) Any funds apportioned pursuant to subparagraph (B) of this paragraph shall remain available for expenditure as follows:

(i) Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

(ii) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of title 23, United States Code, shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse.

(D) If, at the end of the period for which funds withheld under this subsection from apportionment are available for apportionment to a State under subparagraph (A) of this paragraph, the State has not complied with the provisions of section 1 of this Act, such funds shall lapse.

SEC. 12008. PENALTIES.

(a) Section 521(b) of title 49, United States Code, is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting immediately after paragraph (11) the following:

"(12) The civil penalties provided in this subsection shall apply to any violation of section 12005(d) of the Commercial Motor Vehicle Safety Act of 1986, and the provi-

sions of this subsection shall apply to any person who operates a commercial motor vehicle without a commercial driver's license after the applicable date specified in section 12005(b) of such Act and any violation of section 12005(c) of such Act, except that—

"(A) the amount to be assessed under this subsection for any such violation shall not exceed $5,000 for each such violation; and

"(B) the exceptions regarding employees in paragraphs (2) and (6) of this subsection shall not apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, but (i) in the case of paragarph (2) of this subsection, the amount to be assessed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation, and (ii) in the case of paragraph (6) of this subsection, the penalty to be imposed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation or imprisonment for a term not to exceed one year, or both.".

(b) The Secretary shall establish guidelines for civil and criminal penalties to be imposed by the States for a violation of this Act. Such penalties shall not exceed $5,000 for each such violation, and shall not provide for imprisonment of more than one year.

SEC. 12009. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM.

(a) Not later than January 1, 1989, the Secretary, after consulation with the States, shall cause to be in operation an information system pertaining to the driving status and licensing of operators of commercial motor vehicles. The information system shall serve as a clearinghouse by which the States may communicate rapidly concerning the licensing, identification and driving records of operators of commercial motor vehicles.

(b) The information system established under this section shall—

(1) provide for a depository of information that will, at a minimum, include (with respect to each operator of a commercial motor vehicle)—

(A) the birth date and physical description of such operator, and any other information which the Secretary considers necessary or appropriate to identify specifically such operator;

(B) the address of such operator; and

(C) all States in which such operator currently has a commercial dirver's license; and

(2) provide a system of communication among States that, at a minimum, shall provide exchange of information specified in paragraph (1) of this subsection and information regarding whether such operator has been denied a commercial driver's license, has been disqualified by the Secretary pursuant to title 49 of Code of Federal Regulations from operating a commercial motor vehicle, has had a license suspended, revoked or cancelled for cause, or has been convicted under the laws of any State for (A) operating a commercial motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance or with a blood alcohol content level of 0.04 percent or more; (B) violating a traffic rule or ordinance arising in connection with a fatal traffic accident, reckless driving, or racing on the highways and involving a commercial motor vehicle; (C) failing to render aid or provide identification when involved in an accident involving a commercial motor vehicle which resulted in a fatality or personal injury; or (D) committing perjury or knowingly making a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a commercial motor vehicle.

(c)(1) The operator of the information system established under this section shall, to the extent otherwise permitted by law, make available—

(A) to the Secretary such information in such information system as the Secretary may request to enable the Secretary to comply with the requirements of section 12004 (a)(5), (6) and (7) of this title;

(B) to a State such information in the information system as the State may request;

(C) to an employer or prospective employer of an employee such information in the information system relating to such employee as such employer or prospective employer may request; and

(D) to an employee such information in the information system relating to such employee as such employee may request.

(2) Any prospective employer of a person as an operator of a commercial motor vehicle shall consult the information system established under this section to determine, prior to employing such person, whether a commercial driver's license issued to such person has been suspended, revoked or cancelled for cause. If such prospective employer determines, as a result of such consultation, that such person's license has been suspended, revoked or cancelled for cause, the prospective employer shall not employ such person as an operator of a commercial motor vehicle.

(d) When the information system required by this section has become available, the Secretary shall issue regulations establishing appropriate time periods for transmission of information regarding any violation of this Act.

(e) The Secretary shall establish and the Secretary or a State, as appropriate, shall collect fees for utilization of the information system established under this section. The amount of fees collected by the Secretary or a State under this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected by the Secretary under this subsection in the general fund of the Treasury.

(f) There shall be available for fiscal year 1987 to the Secretary for purposes of establishing the information system under this section not to exceed $2,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304). Such sums shall remain available until expended.

SEC. 12010. FREQUENT INSPECTIONS.

(a) Section 402(b)(1) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)(1) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period in subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(H) with respect to any fiscal year beginning with fiscal year 1989, provides for the adoption and implementation of an effective program to conduct inspections of commercial motor vehicles, which program shall provide—

"(i) that commercial motor vehicles are inspected frequently (as determined by the Secretary), and that such inspections are conducted at roadside;

"(ii) for the administration of observations, and (with proper safeguards) for the administration of tests, to determine if the operator of a commercial motor vehicle is operating such vehicle with a blood alcohol content level of 0.04 percent or more; and

"(iii) for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined, as a result of an observation or test administered under clause (ii) of this subparagraph, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined, as a result of such an observation or test, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test.".

(b) Section 402(b) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)) is amended by adding at the end thereof the following:

"(3)(A) As part of a grant made under this subsection, the Secretary may also provide funds to encourage the States to adopt and implement programs providing for the administration of tests to determine whether the operator of a commercial motor vehicle is under the influence of a controlled substance while operating such motor vehicle.

"(B) For puposes of this subsection, the term 'controller substance' shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6)).".

SEC. 12011. TRUCK BRAKE REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Secretary shall revise the regulations of the Administrator of the Federal Highway Administration contained in section 393.42 of title 49 of the Code of Federal Regulations to require trucks and truck tractors manufactured after July 24, 1980, to have brakes operating on all wheels. The Secretary may provide for a delayed effective date (not exceeding one year) for trucks and truck tractors manufactured after July 24, 1980, and before such date of enactment.

SEC. 12012. RADAR DEMONSTRATION PROJECT.

(a) Notwithstanding any other provision of law, the Secretary, in cooperation with State and local law enforcement officials, shall conduct a demonstration project to assess the benefits of continuous use of unmanned radar equipment on highway safety on a section of highway with a high rate of motor vehicle accidents. Such project shall be conducted in northern Kentucky on a hilly section of Interstate Route I-75 between Fort Mitchell and the Brent Spence Bridge over the Ohio River during the two-year period beginning on the date of enactment of this Act.

(b)(1) Not later than eighteen months after the date of enactment of this Act, the Secretary shall transmit to the Congress an interim report on the results of the demonstration project conducted under subsection (a) of this section, together with any recommendations on whether to extend the duration of such demonstration project and whether to expand the scope of such project.

(2) Not later than 60 days after completion of the demonstration project conducted under subsection (a) of this section, the Secretary shall transmit to the Congress a final

report on the results of such project, together with any such recommendations.

SEC. 12013. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to alter or affect the authority of the Secretary to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than twenty six thousand and one pounds or such lesser gross vehicle weight rating as determined appropriate by the Secretary under section 12003(4)(A) of this title.

SEC. 12014. AUTHORIZATIONS OF APPROPRIATIONS.

Section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) is amended—

(1) by striking "$40,000,000" and inserting in lieu thereof "$50,000,000";

(2) by striking "and" after "1987,";

(3) by striking "1988." and inserting in lieu thereof "1988; not to exceed $60,000,000 in the fiscal year ending September 30, 1989; and not to exceed $60,000,000 in the fiscal year ending September 30, 1990."

TITLE XIII—ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

SEC 13001. SHORT TITLE.

This title may be cited as the "Electronic Communications Privacy Act of 1986".

Subtitle A—Interception of Communications and Related Matters

SEC. 13011. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception";

(C) by striking out "as a common carrier"; and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": Provided, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 13012. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 13013. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect

commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1,000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 13014. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 13015. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 13016. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) REIMBURSEMENT FOR ASSISTANCE.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) COMMENCEMENT OF THIRTY-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason

of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 13017. INTELLIGENCE ACTIVITIES.

(a) IN GENERAL.—Nothing in this title or the amendments made by this title constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. 13018. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 13019. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 13020. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 13021. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this subtitle shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this title.

(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section 13014 of this title shall take effect on the date of enactment of this title.

Subtitle B—Stored Wire and Electronic Communications and Transactional Records Access

SEC. 13031. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications.
"2702. Disclosure of contents.
"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704, or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by

means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis

of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3) destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or

entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access..... 2701".

SEC. 13032. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

Subtitle C—Pen Registers and Trap and Trace Devices

SEC. 13041. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.

"3121. General prohibition on pen register and trap and trace device use; exception.

"3122. Application for an order for a pen register or a trap and trace device.

"3123. Issuance of an order for a pen register or a trap or trace device.

"3124. Assistance in installation and use of a pen register or a trap and trace device.

"3125. Reports concerning pen registers and trap and trace devices.

"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

"(3) where the consent of the user of that service has been obtained.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical

assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) DEFENSE.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices..... 3121".

SEC. 13042. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this subtitle; or

(2) the date two years after the date of the enactment of this title.

SEC. 13043. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

Subtitle D—Special Rule Relating to Effect of Title

SEC. 13061. SPECIAL RULE.

If the bill H.R. 4952, the Electronic Communications Privacy Act of 1986, is enacted, this title and the amendments made by this title shall have no effect after that enactment.

TITLE XIV—CYANIDE WRONGFUL USE

SEC. 14001. STUDY AND REPORT.

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) MATTERS TO BE INCLUDED.—Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes; and

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(c) REPORT.—On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(d) DEFINITIONS.—As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

(e) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE XV—SENATE POLICY REGARDING FUNDING

SEC. 15001. STATEMENT OF POLICY.

(a) The Senate finds that—

(1) there is an urgent critical need for funds to carry out the programs and activities authorized by the preceding provisions of this Act in order to ensure a drug free America;

(2) this Act is the result of a bipartisan effort to combat our national drug abuse problem; and

(3) only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

(b) Therefore, it is the sense of the Senate that—

(1) amounts authorized to carry out the preceding provisions of this Act should be provided as new budget authority for fiscal year 1987 in H.J. Res. 738 (99th Congress, 2d Session); and

(2) such amounts should not be provided through transfers from, or reductions in, any amount appropriated by such joint resolution for any other program, project, or activity for such fiscal year.

TITLE —RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

SEC. . RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) IN GENERAL.—Subchapter B of chapter 78 of the Internal Revenue Code of 1954 (relating to general powers and duties) is amended by adding at the end thereof the following new section:

"SEC. 7624. REIMBURSEMENT TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

"(a) AUTHORIZATION OF REIMBURSEMENT.—Whenever a State or local law enforcement agency provides information to the Internal Revenue Service that substantially contributes to the recovery of Federal taxes, such agency shall be reimbursed by the Secretary for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary, and overtime) not to exceed 10 percent of the sum ultimately recovered. The Internal Revenue Service shall maintain records reflecting the receipt of information from the contributing agency, and shall notify the agency when a recovery has been effected. Following such notification, the agency shall submit a statement detailing the investigative costs incurred. Where more than 1 State or local agency has given information that substantially contributes to the recovery of Federal taxes, the Secretary shall equitably distribute the costs reimbursements among those agencies up to an aggregate sum of 10 percent of the taxes recovered.

"(b) ESTABLISHMENT OF A FUND.—The Secretary shall establish a fund for recovering that portion of recovered Federal taxes authorized under subsection (a) and intended as reimbursements for State and local law enforcement agencies. In conjunction with the fund, the Secretary shall develop guidelines on the procedures and timetables for reimbursing those law enforcement agencies which have contributed to the recoupment of Federal taxes.

"(c) REIMBURSEMENT.—Reimbursements under section (a) shall be made directly from the fund under subsection (b), as provided by appropriations acts, prior to the deposit of such funds into the Treasury of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 7624. Reimbursement to State and local law enforcement agencies.".

TITLE —ANTI-DRUG TRUST FUND

SEC. . DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to returns and records) is amended by adding at the end thereof the following new part:

"PART IX—DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND

"Sec. 6097. Designation by individuals.

"SEC. 6097. DESIGNATION BY INDIVIDUALS.

"(a) IN GENERAL.—With respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that—

"(1) any amount of an overpayment of such tax for such taxable year, or

"(2) in the absence of any overpayment of such tax, any contribution which the taxpayer includes with such return,

be paid over to the Anti-Drug Trust Fund.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made either on the 1st page of the return or on the page bearing the taxpayer's signature.

"(c) DESIGNATED AMOUNTS NOT DEDUCTIBLE.—No amount designated pursuant to subsection (a) shall be allowed as a deduction under section 170 or any other section for any taxable year.

"(d) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if late, the date the return is filed.".

(b) ESTABLISHMENT OF ANTI-DRUG TRUST FUND.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to Trust Fund Code) is amended by adding at the end thereof the following new section:

"SEC. 9505. ANTI-DRUG TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Anti-Drug Trust Fund', consisting of such amounts as may be appropriated or credited to the Anti-Drug Trust Fund as provided in this section and section 9602(b) (relating to crediting of interest, etc.).

"(b) TRANSFERS TO ANTI-DRUG TRUST FUND.—There are hereby appropriated to the Anti-Drug Trust Fund amounts equivalent to the amounts designated under section 6097 and received in the Treasury.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Anti-Drug Trust Fund shall be available as provided by appropriation Acts, for making expenditures to carry out the purposes of the Drug Enforcement Act of 1986.".

(c) CLERICAL AMENDMENTS.—

(1) The table of parts for subchapter A of chapter 61 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"PART IX. Designation of overpayments and contributions for Anti-Drug Trust Fund.".

(2) The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9505. Anti-Drug Trust Fund.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

TITLE *—NATIONAL FOREST SYSTEM DRUG CONTROL

SEC. ***1. SHORT TITLE.

This title may be cited as the "National Forest System Drug Control Act of 1986".

SEC. ***2. PURPOSE.

(a) The purpose of this title is to authorize the Secretary of Agriculture (hereinafter in this title referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances.

(b) Nothing in this title shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this title, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. ***3. POWERS.

For the purposes of this title, if specifically designated by the Secretary and specially trained, not to exceed 500 officers and employees of the Forest Service when in the performance of their duties shall have authority within the boundaries of the National Forest System to—

(1) carry firearms;

(2) conduct investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in his presence or view, or for a felony with a warrant or without a warrant if he has probable cause to believe that the person to be arrested has committed or is committing such felony;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search with or without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize with or without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. ***4. COOPERATION.

For the purposes of this title, in exercising the authority provided by section ***3—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed; and

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, both within and outside the boundaries of the National Forest System.

*SEC. ***5. PENALTY.*

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.".

*SEC. ***6. AUTHORIZATION OF APPROPRIATIONS*

There is authorized to be appropriated $10,000,000 for each fiscal year to carry out this title.

(b) Notwithstanding any other provision of law, and to the extent the sum authorized for each fiscal year by subsection (a) is not appropriated, the Secretary is authorized to fund activities under this title by using moneys received from the sale of products from or for the use of National Forest System lands. Such moneys shall be available without further appropriation.

*SEC. ***7. APPROVAL OF SECRETARY OF AGRICULTURE AND ATTORNEY GENERAL.*

The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.