SENATE—*Friday, May 18, 1990*

(Legislative day of Wednesday, April 18, 1990)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

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

Let us pray:

Blessed be God, even the Father of our Lord Jesus Christ, the Father of mercies, and the God of all comfort; Who comforteth us in all our tribulation, that we may be able to comfort them which are in any trouble, by the comfort wherewith we ourselves are comforted of God.—II Corinthians 1:3, 4.

God of all comfort, we commend to Thee today those whom we love and who need the comfort of God. We ask Your special blessing upon Dr. Narva as he undergoes bypass surgery, and we pray for Mary Jackson of the Service Department, recovering from surgery; and any others, Lord, about whom we do not know, who are hurting. Grant Thy healing to all.

We pray for our families that this weekend may be an opportunity for drawing near to each other, restoring relationships and healing. We pray for those who travel, that Thou wilt protect them in their journey, prosper them in their labors, and return them safely home. We pray for those who campaign. Give them wisdom, clarity, winsomeness. Guard them against any attitude or action which would bring reproach upon our political system.

The Lord bless you, and keep you: The Lord make His face to shine upon you, and be gracious unto you: The Lord lift up His countenance upon you, and give you peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 18, 1990.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

In my capacity as a Senator from the State of Nevada, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania [Mr. SPECTER] is recognized to speak for 30 minutes in morning business.

FEDERAL HABEAS CORPUS REFORM ACT OF 1990

Mr. SPECTER. I thank the Chair and I thank the distinguished majority leader and the distinguished Republican leader and the schedulers for arranging for this unusual block of time so that I may address a problem of great seriousness, the problem of crime in America, and there is no more important problem in our country, a country which faces many serious problems, but there is no more important problem in our country than crime in America.

In the criminal justice system, Mr. President, there is no more important issue than the lengthy delay in the imposition of the death penalty in capital cases and the effect that this delay has on the administration of justice and the deterrent effect in the criminal justice system.

I am introducing legislation today, Mr. President, captioned the Federal Habeas Corpus Reform Act of 1990. I do this today in advance of consideration by the Senate on Monday of the crime package because I intend to add this legislation as an amendment to that bill.

This bill will establish a timeframe for the imposition of the death penalty in State criminal proceedings that will again make that penalty meaningful. The scope of this problem is demonstrated by the fact that as of May 1, 1990, there were 2,327 people on death row with 125 executions having been carried out since the reinstatement of capital punishment in 1976. Those statistics demonstrate that, as a realistic matter, there is no capital punishment in the United States because the probabilities are higher that no matter what the offense, no matter what the circumnstances, the death penalty will not be carried out.

When Chief Justice Rehnquist said on Tuesday of this week that the current system for handling the death penalty in the Federal courts "verges on the chaotic," the Chief Justice was being charitable. The existing process makes a farce of the death penalty. Chief Justice Rehnquist was correct in calling for remedial legislation; but his proposal and the other pending measures do not go far enough in dealing with the core of the problem.

Today, the death penalty is the laughingstock of the criminal justice system because endless delays in Federal habeas corpus proceedings have rendered that punishment meaningless. Cases involving capital punishment are dragged through the courts for as long as 17 years.

Before a case finds its way through the court system, there are intervening decisions by the Supreme Court of the United States or other courts which grant defendants new rights. And then, before the death penalty can be imposed, there has to be a consideration of those new rights. I believe that is entirely appropriate, Mr. President, because the death penalty, after all, is the ultimate penalty and it has to be imposed with extreme and scrupulous care.

I believe that the death penalty has to be reserved for the most egregious cases as a matter of basic justice and, beyond that, as a matter of practical course. If we do not reserve the death penalty for limited use in the most egregious cases, then I believe as a society we will lose it.

The legislation which I am proposing today, Mr. President, is based on the experience I had as an assistant district attorney in the criminal courts of Philadelphia and later as the chief of the appeals division in the district attorney's office, where I handled

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

many State habeas corpus cases and Federal habeas corpus cases, and later my experience as the district attorney, where I supervised hundreds of such cases.

Mr. President, this legislation establishes a practical and just timetable for the handling of appeals after a jury has imposed the death penalty and after a State appellate court has reviewed the matter and a petition for a writ of certiorari has been submitted to the Supreme Court of the United States. It is at that stage, Mr. President, that the final judgment has been rendered in the State criminal proceeding imposing the death penalty.

My timetable for completion of all Federal habeas corpus appeals within a 1-year period. That would make the death penalty a meaningful penalty in this country once again.

First, my proposal would eliminate State habeas corpus proceedings. What is a habeas corpus proceeding? It is a term which is frequently used and virtually never understood.

Habeas corpus is a Latin expression which means produce the body. From our reliance on English common law, the great writ of habeas corpus is always available to demand the production of the body of the defendant to make a determination if his or her detention is lawful.

After a person is convicted of murder in the first degree and given the death penalty, that person has a right to go into court on a petition for a writ of habeas corpus on a contention that the detention is unlawful because there was error on the criminal proceeding.

Under existing practice, before a Federal court can take jurisdiction of an appeal in a death case, there must be an exhaustion of State remedies, and that means there must be a petition for habeas corpus filed in the State court. That petition goes back to the same court which heard the case in the first instance and imposed the death penalty. The proceedings there are virtually always pro forma, because the judge is looking at a case which either he tried before, in a small county where there is only a single judge, or where another judge in his own court tried the case; where the issues virtually always are the same as those raised before the State supreme court; and where the State supreme court has upheld the judgment of sentence of death, and has stated the case was fairly tried. So, in the common pleas court, the habeas corpus proceeding is really pro forma.

The case then, in Pennsylvania, for example, goes to the Supreme Court of Pennsylvania and the supreme court is now reviewing a case which it already decided. Here again, virtually all of the time, the same issues are raised which were raised before or could have been raised before and there is very seldom anything new in the process. The case is affirmed virtually all the time.

Then there is another petition to the Supreme Court of the United States to grant a writ of certiorari, which is very, very rarely done. Only at that stage, may the defendant go into the Federal court to seek Federal review of what had happened in the State court.

Mr. President, I suggest the lengthy processes on State habeas corpus proceedings have very little, if any, merit in our criminal justice system because they are pro forma and because there is a later opportunity for a meaningful review in the Federal system, which is a different court system, and a fresh look at the case. Then they begin the habeas corpus proceeding in what is a meaningful way.

Some would seek to deny Federal court review of any State criminal proceeding, and I believe it is important to retain the jurisdiction of the Federal courts to review what happens in State court criminal cases, especially where the death penalty is imposed.

At that stage the habeas corpus proceeding begins anew, with the United States District Court conducting an evidentiary hearing if there is a disputed question of fact. The case then goes on appeal to the Court of Appeals. By the time these two habeas corpus proceedings have run their course, years have passed under existing practices, and by this time there is very often an intervening decision by the Supreme Court of the United States which establishes a new constitutional right. As, for example, the case of Miranda versus Arizona, where the Court said that a conviction was improper unless specific warnings were given to a defendant, warnings which could not have been anticipated at the time the arrest was made so a new right is created. Or a new right may be created in terms of what protections are necessary at a lineup, where a defendant is identified.

When a new right has been created, the process must begin all over again. It cannot be brought in the Federal courts until there is an exhaustion of State proceedings, back to State habeas corpus, and all this is not only an exhaustion of State remedies but there is an exhaustion of the entire system.

Mr. President, the proceedings with State habeas corpus ought to be abolished. Then there should be a strict timetable established for what will happen in the Federal courts. An indispensable ingredient for the carrying out of this strict timetable is that any State which wishes to benefit from the new rules will have to provide competent counsel to the defendant without charge at every stage of the proceeding.

The Congress of the United States does not mandate that States do so because of our concern for federalism. But we do approach the same objective by providing that if a State wishes to have these expedited procedures the State must provide for counsel.

Under my legislation, Mr. President, the petition for a writ of habeas corpus would have to be filed in the Federal court within 30 days from the final adjudication in the State court proceeding. That is sufficient time because there is no question, as that case is going through the State criminal court system, that there will be an application for Federal review where the death penalty is handed out. And, where counsel has been provided, counsel need not wait until the final judgment in the State case to begin the preparation. But, even if counsel does so, there is ample time to prepare that petition for a writ of habeas corpus within 30 days.

Most of the issues are known. Most of the issues have been argued in the State court proceeding. If there are new issues, there are not so many that it is unwieldy to accommodate a requirement that that petition be filed within 30 days. Other pending proposals would allow up to 1 year, and there is no reason to have that kind of a timeframe.

Once the petition for a writ of habeas corpus is filed in the Federal courts, my legislation would require disposition in the U.S. district court in 110 days; 20 days for the State's attorney to file a responsive pleading, which is customary in court cases, 20 days for an answer, and then 90 days for a hearing, for briefing, and for a decision in the case.

That time is sufficient, Mr. President, so long as it is not business as usual. These cases must be given the top priority in the Federal system. These cases are sufficiently important for many reasons so that high priority ought to be accorded to these cases. It is our obligation in the Congress, Mr. President, to see to it that there are ample Federal judges to hear these cases.

Last night, there was a bill introduced to provide 77 additional Federal judges to handle the workload in the Federal courts. Whatever it takes, we have to provide, because there is no case of higher priority than this type of case.

Mr. President, after the district court concludes the case, my bill provides for 110 days for judgment in the court of appeals. That is about the same timespan which is currently provided. I expedite the docketing time from 30 days to 20 days, and then there is 90 days for briefing, argument, and a decision by the court of appeals.

The same 110-day timeframe would apply for decision by the Supreme Court of the United States. You have 30 days to file the petition, 110 days in the district court, 110 days in the circuit court, and 110 days in the Supreme Court for a total of 360 days. By giving these cases that kind of careful treatment, that kind of expedited treatment, the appropriate care can be given within that timeframe. I say that based upon my experience in having handled cases at all stages of these proceedings.

It will not be business as usual. The lawyers will have to give priority attention, just as lawyers do when a case is on trial. When a lawyer has a case on trial, he starts early, he prepares witnesses in advance of the court day. It is a strenuous day in court. After hours, there may be the preparation of legal memoranda. The judges will have to move these cases along, but it can be done and should be done.

My bill, Mr. President, does make an allowance for continuance on a showing of good cause—that is the phrase used in the law—which ought to be tightly enforced, cause ought to be allowed for a continuance only when there is very, very good reason. Then my bill would require a detailed specification by the court for the granting of such continuance.

A complex issue then arises, Mr. President, as to what happens on a subsequent petition for a writ of habeas corpus in the Federal courts, because it is not possible to lock the door with finality. This issue was discussed extensively in hearings before the Judiciary Committee.

My proposal has an unusual procedure which would prohibit the filing of a second petition for a writ of habeas corpus unless leave was first obtained by a three-judge panel of the court of appeals. If the case had been fully adjudicated through this Federal habeas corpus route, then the petitioner, the defendant, and his lawyer can get leave to file a second petition if they go before an appellate panel and show justification for doing so.

Mr. President, there is a controversy as to whether the grounds for a second petition ought to be only on the showing of innocence or ought to be broader to show some impropriety in the sentencing. My view is the broader standard has to be applied, because I think it is necessary to be very, very careful in the application of the death penalty—careful but not frivolous.

There is also controversy over whether the intervening decisions ought to be available to a defendant, a convict under the death penalty. The Chief Justice has taken the position that those intervening decisions ought not to be used by a defendant to try to escape the death penalty and I, frankly, disagree with that, because here again, we have to exercise extreme care in the application of the death penalty.

But under this restricted timeframe where, in almost all cases, the habeas corpus proceeding would be concluded within 1 year, the problem of intervening decisions will no longer be what it is today when cases stretch out for 6, 8, 10, up to 17 years.

Mr. President, there has always been debate on the deterrent effect of capital punishment. That issue really ought not to be before the Congress as we try to move through an appropriate procedure for Federal habeas corpus because 37 States in the United States have capital punishment. Their judgment of the propriety of capital punishment ought to be respected, and Congress should fashion a procedure through Federal habeas corpus proceedings which protects the rights of the defendants but does not render the State capital punishment meaningless as it works through this procedural route.

In the course of my statement, Mr. President, I have detailed my own thinking that capital punishment is an effective deterrent. The statistics go both ways on the subject. Statistics can be amassed for virtually any proposition, as we know. Ultimately, it is a judgment call.

I have seen many cases where professional robbers and burglars will not carry a weapon because they are apprehensive that a death may result and they may face capital punishment. A very interesting series of cases were collected in an opinion filed in dissent in a California case, which is set forth in detail in my prepared statement.

I do not have time to go through the entire statement now. At the conclusion of my comments, I will ask that it be printed after the comments which I am making on the floor today.

But a few of these cases are illustrative. Margaret Daly was arrested for assaulting Pete Gibbons with a knife. She stated to investigating officers: "Yeh, I cut him, and I should have done a better job. I would have killed him, but I didn't want to go to the gas chamber."

Robert Thomas was arrested for robbery with a toy pistol. When questioned by investigating officers as to the reason for using toy guns, he said real guns were too dangerous because if someone was killed in the commission of the robbery, he would get the death penalty.

Louis Turek was arrested for robbery. Again, a simulated gun. Why? He said, "I knew that if I used a real gun and that if I shot someone of the robbery, I might get the death penalty and go to the gas chamber."

As a matter of judgment, I am convinced from the experience that I have had that the penalty of death is an effective deterrent.

There is no doubt, with the death penalty being on the books in some 37 States, that the overwhelming majority of legislatures in our State system have concluded that the death penalty is an appropriate penalty and it is in society's interest, including the State of Pennsylvania's.

One case that I handled as an assistant district attorney is illustrative again of the deterrent effect of the death penalty. There were three young hoodlums named Williams, Caters, and Rivers, aged 19, 18, and 17. Williams was the ringleader and had planned the robbery of a grocery store in North Philadelphia. He picked Rivers, who was 17, because Rivers had no criminal record, so that when Rivers opened the door and left his fingerprints on the door, he would not be detected. His identity could not be determined through fingerprints because he had none on file.

Williams had a gun, and when the two younger men saw the gun, they refused to go along on the robbery because they were fearful the gun would be used and death might result and they could face death in the electric chair.

Williams said, "OK, I will not take the gun." He put it in the drawer and slammed it shut. They all got up to leave. Williams reached in, picked up the gun, unbeknownst to the two younger men, and, as you might suspect, Williams used the gun. When the storekeeper resisted, the gun was used. The storekeeper was murdered.

All three entered guilty pleas and made statements. There was no doubt about the facts, and all three were sentenced to death in the electric chair. Williams was ultimately executed in 1962, the next-to-the-last man executed in the State of Pennsylvania. The two younger men, Rivers and Caters, ultimately received life sentences, because the evidence showed that they did not have the malicious intent and were not coconspirators, although technically liable for the same penalty, and their lives were spared.

But the lesson from the case is that these two young hoodlums, 18 and 17, were smart enough to know they did not want to go along on a robbery with a gun because the gun might be used, death might result, and they might face capital punishment.

There are many, many cases like that. There is very strong authority in this country that the death penalty is an effective deterrent.

What has happened today, Mr. President, with 2,300 people on death row, the death penalty has become a joke. It is a laughing stock. With only 120-some executions since 1976, the odds are vastly in favor of someone who commits murder in the first degree in a calculated, malicious way. The odds are against being apprehend-

ed, the odds are against being convicted, the odds are against being sentenced, and even if sentenced, 2,300 people have not been executed and the delays are interminable.

This legislation will provide a realistic, practical, and just remedy by establishing a timetable which can be met. When the year has expired and the matter is still fresh, the death penalty will be a meaningful deterrent and the Federal criminal justice system will have responded to a very important problem in this country.

I see my time has expired.

Mr. President, I ask unanimous consent that the full text of my statement be printed in the RECORD. I have quoted from parts of the statement, but the remainder, the principal part of what I have had to say, has not followed the text.

So I ask unanimous consent the full text be printed in the CONGRESSIONAL RECORD.

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

STATEMENT OF SENATOR ARLEN SPECTER ON THE FEDERAL HABEAS CORPUS REFORM ACT OF 1990

This proposed legislation, "The Federal Habeas Corpus Reform Act of 1990," which I intend to add as an amendment to the crime package, establishes a timeframe for imposition of the death penalty in state criminal cases that will again make that penalty meaningful. The scope of the problem is demonstrated by the fact that as of May 1, 1990, there were 2,327 people on death row with 125 executions since the reinstatement of capital punishment in 1976.

When Chief Justice William H. Rehnquist said on Tuesday of this week that the current system for handling death penalty in the Federal courts "verges on the chaotic," he was being charitable. The existing process makes a farce of the death penalty. Chief Justice Rehnquist was correct in calling for remedial legislation; but his proposal and the other pending measures do not go far enough in dealing with the core of the problem.

Today the death penalty is the laughingstock of the criminal justice system because endless delays in Federal court habeas corpus proceedings have rendered it meaningless. Cases involving capital punishment are dragged through the courts for as long as 17 years.

Before a case finds its way through the court system, intervening decisions by the Supreme Court of the United States frequently establish new Constitutional rights which, in turn, causes the litigation process to begin anew. The great writ of habeas corpus is always available, so stays of proceedings repeatedly delay the imposition of the death penalty resulting in public scorn and criminals' contempt for a penalty which all know will probably never be imposed.

This legislative proposal is based on my experience in personally handling numerous state and Federal court habeas corpus proceedings as an Assistant District Attorney and Chief of the Appeals Division in the District Attorney's office and later supervising hundreds of such cases as District Attorney of Philadelphia.

A PRACTICAL, JUST TIMETABLE

This proposed legislation establishes a timetable for imposition of the death penalty in almost all cases within one year from the time the state courts impose the death penalty. The essential provisions are:

1. Elimination of state habeas corpus proceedings which involve enormous delays by providing for collateral attack on the judgment of sentence of death.

2. A single Federal court review, through habeas corpus proceedings, where almost all cases will be decided within one year on this schedule:

(a) Federal habeas corpus petitions must be filed within 30 days from the final action in the state court proceeding resulting in the death penalty.

(b) A final decision must be made by the United States District Court within 110 days from the filing of the habeas corpus petition.

(c) A final decision must be made by the United States Court of Appeals within 110 days after, the final judgment of the U.S. District Court.

(d) Final action on a grant or denial of certiorari by the Supreme Court of the United States must be made within 110 days from final judgment of the Court of Appeals.

3. The statutes would prohibit continuances except on the showing of good cause with a detailed specification of reasons by any court granting such continuance.

4. No subsequent Federal court habeas corpus petition shall be entertained unless specific leave for such filing is granted by the Court of Appeals for the circuit with jurisdiction.

5. The proposed expedited treatment of Federal habeas corpus proceedings would apply only in states which agree to provide free, competent legal counsel for defendants throughout the legal process in capital cases.

This compressed timeframe is both just and practical because it eliminates the long delays occasioned by state habeas corpus proceedings and establishes Federal habeas corpus death penalty proceedings as the highest priority in the Federal judicial system.

For reasons discussed in this floor statement, the death penalty is sufficiently important to be accorded this priority on the Federal court calendar with the addition of such Federal judges as may be necessary to accomplish the stipulated timetable.

The essence of effectiveness of any criminal sentence is swiftness and certainty. Today the death penalty is exactly the opposite: lengthy delays and great uncertainty. Its deterrent effect is virtually totally vitiated. Society is unprotected. The inmates on death row are unfairly held in limbo in a system which exacts a high price from them even though obviously preferable to the ultimate imposition of the death penalty.

RETROACTIVE EFFECT TO NEWLY CREATED RIGHTS

My bill accommodates two vexing issues posed by other pending legislative proposals. Sharp disagreement has arisen as to whether rights created by intervening court rulings should be given retroactive effect to prisoners whose convictions were already final and who were in the process of seeking habeas corpus relief. Under existing law where the habeas corpus proceedings have taken years to complete, it has been a frequent occurrence for the courts to interpret new Constitutional rights in the interim. On this proposed timetable for completion of Federal court habeas corpus actions within one year, that problem will be greatly reduced.

In my judgment it is neither conscionable nor realistic to carry out the death penalty where that result might be altered by a Constitutional right created by an intervening judicial opinion. My proposed legislation would allow the defendant to benefit from any newly created rights, but would greatly minimize this problem by compressing the timetable.

STANDARD FOR NEW PETITION

My proposal would eliminate much of the controversy between the recommendation of the committee chaired by former Supreme Court Justice Lewis F. Powell, Jr. which had proposed permitting successive petitions only if there was reason to doubt the defendant's guilt contrasted with the approach of the Judicial Conference which would allow a subsequent petition if the Federal judge doubted the appropriateness of the sentence of death. By establishing the Court of Appeals as the gatekeeper before leave is granted to file a subsequent petition, there would be a much tighter rein on such repetitions provisions.

Here again, it is unwise, if not unconscionable, to impose a more restrictive provision where the death penalty will be carried out. Sincew the death sentence carries with it conclusions of both guilt and sufficient aggravated circumstances to warrant that penalty, it is my judgment that the standards for allowing a subsequent petition should be broad enough to consider the appropriateness of the death sentence. Requiring leave by the circuit court before the subsequent petition may be filed provides a strong check against unmeritorious repetitive petitions.

STATE HABEAS CORPUS PROCEEDINGS SHOULD BE ELIMINATED

State habeas corpus proceedings, which provide for collateral attack on state court death penalty cases, involve lengthy delays and accomplish virtually nothing in the administration of justice. Such state habeas corpus proceedings involve a petition for a writ of habeas corpus which means in Latin to produce the body of the defendant on a showing that some error has been committed in the preceding state trial.

For example, in Pennsylvania a defendant is indicted on the charge of murder in the first degree, which is then tried before a jury in the Court of Common Pleas. If convicted of murder in the first degree, the jury then considers aggravating and mitigating circumstances to determine whether the appropriate penalty is life imprisonment or death in the electric chair. Where the jury imposes the death penalty, there is an appeal to the Supreme Court of the Commonwealth of Pennsylvania. If the conviction and death penalty are upheld by the Pennsylvania Supreme Court, the defendant may then petition the Supreme Court of the United States for a writ of certiorari which means that the United States Supreme Court then may, at its discretion, issue a writ to review the case. As a matter of practice, review by the U.S. Supreme Court occurs very, very infrequently.

After a denial by the Supreme Court of the United States of a petition for a writ of certiorari, Federal law requries the defendant to file a state habeas corpus proceeding in order to exhaust all state administrative remedies before the Federal court would have jurisdiction to review the case in a Federal habeas corpus action.

In the state court habeas corpus proceeding, the defendant then asks the Court of Common Pleas in the same county where the defendant was convicted to review the trial record on a claim that the defendant's Constitutional rights were violated in that trial. While the state habeas corpus proceeding is in the Court of Commmon Pleas of the same county, it is customary before a different judge to handle the second proceeding. Although in some lesser-populated counties where there is only one common pleas judge, the habeas corpus action comes before the same jurist.

Where questions of fact are raised in the petition, the Court will then hold an evidentiary hearing. Such hearings are virtually always perfunctory since the courts, realistically viewed, go through the motions on cases which have previoulsy been argued and adjudicated. In virtually all cases, the petitions for a writ of habeas corpus are denied because most, if not all, of the issues have already been decided against the defendant by the state Supreme Court.

After the Court of Common Pleas denies the petition for writ of habeas corpus, an appeal is then taken to the state Supreme Court which customarily affirms the lower court's denial of the petition because, here again, the state Supreme Court is reviewing a case and a defendant on which the court has already ruled. After the Supreme Court of the United States denies a petition for a writ of certiorari, the defendant then has standing to file a habeas corpus proceeding in the Federal courts.

This state habeas corpus proceeding frequently takes years because no one is in a hurry, the courts are clogged with other cases and it has become the common practice for such matters to languish since the defendant is in jail and other matters take precedence. At this juncture, the defendant may file a petition for a writ of habeas corpus in the United States District Court and the habeas corpus process is repeated. Where issues of fact arise, a hearing is held. After an adjudication by the District Court, an appeal is then taken to the United States Court of Appeals. After the decision by the Court of Appeals, a petition is filed for writ of certiorari with the Supreme Court of the United States. This Federal court process may again take years.

By the time the state and Federal court habeas corpus proceedings have been concluded, it frequently occurs that an intervening decision by the Supreme Court of the United States or other court has created (or at least the defendant may colorably argue) new defendants' rights which provides some basis for a new attack on the conviction and death sentence. Then the whole habeas corpus starts anew in the state courts to be followed by the Federal courts. At the end of that process, it again frequently occurs that some intervening decision has or appears to have established some new defendants' rights and the process can then be repeated virtually interminably.

This proposed legislation would eliminate the state habeas corpus proceeding as a precondition to the Federal habeas corpus proceeding because the state process is usually a formality; and, in any event, is unnecessary to determine any denial of Constitutional rights at trial. Any such legal issues can be adequately litigated in the Federal habeas corpus proceeding.

IMPORTANCE OF THE DEATH PENALTY—DETERRENCE

This proposed legislation would give the highest priority in the Federal courts to state capital cases because of their importance in our criminal justice system. It should really be unnecessary to prove that capital punishment is a deterrent in order to justify priority treatment in the Federal courts since 37 states impose the death penalty on their legislative judgments of its importance.

Beyond that strong statement of importance, it is my firm conclusion that the death penalty is a deterrent. My experience in this field started in 1959 when I was an assistant district attorney in the city of Philadelphia. From experience in the magistrates' courts, where I saw the full range of criminal conduct—robberies and burglaries and rapes and assaults and murders—I became convinced that the death penalty was an effective deterrent.

My later experience as district attorney further supported my judgment that the death penalty was a deterrent. Robbers, burglars and other professional criminals customarily do not carry weapons because of their concern that they use those weapons and face possible imposition of the death penalty. They reconsider the use of weapons in the course of a robbery or burglary because they do not want to face the possibility of the death penalty.

One illustrative case from the Philadelphia Criminal Courts some 30 years ago involved three young hoodlums named Williams, Caters, and Rivers. Williams was 19, Caters was 18, and Rivers was 17. Williams chose Rivers, the 17-year-old, because he did not have a criminal record and, therefore, could open the door of the grocery store they planned to rob without leaving fingerprints.

As the statements of Williams and Rivers and Caters disclosed—and they were all in agreement on the underlying planning of the robbery which resulted in murder—Williams importuned the two younger men to join him. Williams had a gun. When Williams brandished his gun, Caters and Rivers said they would not go along on the robbery if he took the gun, because they were afraid that there might be a killing and they would face the possibility of the death penalty."

So Williams put the revolver in a drawer and slammed it shut. Caters and Rivers got up and walked out of the room. Then, unbeknownst to Caters and Rivers, Williams pulled the gun out of the drawer, put it in his pocket, and, as you have suspect, Williams used the revolver on a storekeeper in north Philadelphia, and a murder resulted.

I argued the case on appeal in the Supreme Court of Pennsylvania, as an assistant district attorney in the early 1960s. Williams received the death penalty because of his calculated, malicious decision to carry the weapon in the course of a robbery which resulted in death and first-degree murder.

Caters and Rivers ultimately received life imprisonment because the facts showed that they did not have the degree of malice that Williams possessed, although technically, as a matter of law, any co-conspirator can be held to the same level of complicity.

The significant fact of this case is that a 17-year-old Rivers and and 18-year-old Caters, with marginal IQs, knew that the death penalty was a potential result of their robbery if a gun was carried. The prospect of the death penalty directly affected the conduct of Caters and Rivers.

An experienced ex-New York City police officer who serves on my staff, Tom Madine, commented about the increases in murder in New York State as a result of the death penalty having been eliminated there.

ILLUSTRATIVE CASES ON DETERRENCE

A dissenting opinion in a 1961 California case captioned *People* v. *Love* contains a summary of many cases which show the deterrent effect of capital punishment. These cases are worth citing here because the specific facts and the defendants' statements demonstrate human nature on deterrence much more vividly than dry statistics. Mr. Justice McComb wrote: "Any prosecuting attorney or criminal defense attorney or any trial judge who has sat for a substantial period in a department of the superior court devoted to the trial of felony cases knows that many felons are careful to refrain from arming themselves with a deadly weapon because they do not want to take the chance of killing anyone and suffering death as a penalty.

"A few recent examples of the accuracy of this view are to be found in the following cases involving persons arrested by officers of the Los Angeles Police Department:[1]

"(i) Margaret Elizabeth Daly, of San Pedro, was arrested August 28, 1961, for assaulting Pete Gibbons with a knife. She stated to investigating officers: 'Yeh, I cut him and I should have done a better job. I would have killed him but I didn't want to go to the gas chamber.'

"(ii) Robert D. Thomas, alias Robert Hall, an ex-convict from Kentucky; Melvin Eugene Young, alias Gene Wilson, a petty criminal from Iowa and Illinois; and Shirley R. Cofee, alias Elizabeth Salquist, of California, were arrested April 25, 1961, for robbery. They had used toy pistols to force their victims into rear rooms, where the victims were bound. When questioned by the investigating officers as to the reason for using toy guns instead of genuine guns, all three agreed that real guns were too dangerous, as if someone were killed in the commission of the robberies, they could all receive the death penalty.

"(iii) Louis Joseph Turek; alias Luigi Furchiano, alias Joseph Farino, alias Glenn Hooper, alias Jose Moreno, an ex-convict with a felony record dating from 1941, was arrested May 20, 1961, for robbery. He had used guns in prior robberies in other states but simulated a gun in the robbery here. He told investigating officers that he was aware of the California death penalty although he had been in this state for only one month, and said, when asked why he had only simulated a gun, 'I knew that if I used a real gun and that if I shot someone in a robbery I might get the death penalty and go to the gas chamber'.

"(iv) Ramon Jesse Velarde was arrested September 26, 1960, while attempting to rob a supermarket. At that time, armed with a loaded .38 caliber revolver, he was holding several employees of the market as hostages. He subsequently escaped from jail and was apprehended at the Mexican border. While being returned to Los Angeles for prosecution, he made the following statement of the transporting officers: 'I think I might have escaped at the market if I had shot one or more of them. I probably would have done it if it wasn't for the gas

[1] The cases cited are taken from the records on file in the Los Angeles Police Department.

chamber. I'll only do 7 or 10 years for this. I don't want to die no matter what happens, you want to live another day.'

"(v) Orelius Mathew Stewart, an ex-convict with a long felony record, was arrested March 3, 1960, for attempted bank robbery. He was subsequently convicted and sentenced to the state prison. While discussing the matter with this probation officer, he stated: 'The officer who arrested me was by himself, and if I had wanted, I could have blasted him. I thought about it at the time, but I changed my mind when I thought of the gas chamber.'

"(vi) Paul Anthony Brusseau, with a criminal record in six other states, was arrested February 6, 1960, for robbery. He readily admitted five holdups of candy stores in Los Angeles. In this series of robberies he had only simulated a gun. When questioned by investigators as to the reason for his simulating a gun rather than using a real one, he replied that he did not want to get the gas chamber.

"(vii) Salvador A. Estrada, a 19-year-old youth with a four-year criminal record, was arrested February 2, 1960, just after he had stolen an automobile from a parking lot by wiring around the ignition switch. As he was being booked at the station, he stated to the arresting officers: 'I want to ask you one question, do you think they will repeal the capital punishment law. If they do, we can kill all you cops and judges without worrying about it.'

"(viii) Jack Colevris, a habitual criminal with a record dating back to 1945, committed an armed robbery at a supermarket on April 25, 1960, about a week after escaping from San Quentin Prison. Shortly thereafter he was stopped by a motorcycle officer. Colervris, who had twice been sentenced to the state prison for armed robbery, knew that if brought to trial, he would again be sent to prison for a long term. The loaded revolver was on the seat of the automobile beside him and he could easily have shot and killed the arresting officer. By his own statements to interrogating officers, however, he was deterred from this action because he preferred a possible life sentence to death in the gas chamber.

"(ix) Edward Joseph Lapienski, who had a criminal record dating back to 1948, was arrested in December 1959 for a holdup committed with a toy automatic type pistol. When questioned by investigators as to why he had threatened his victim with death and had not provided himself with the means of carrying out the threat, he stated, 'I know that if I had a real gun and killed someone, I would get the gas chamber.'

"(x) George Hewlitt Dixon, an ex-convict with a long felony record in the East, was arrested for robbery and kidnapping committed on November 27, 1959. Using a screwdriver in his jacket pocket to simulate a gun, he had held up and kidnaped the attendant of a service station, later releasing him unharmed. When questioned about his using a screwdriver to simulate a gun, this man, a hardened criminal with many felony arrests and at least two known escapes from custody, indicated his fear and respect for the California death penalty and stated, 'I did not want to get the gas.'

"(xi) Eugene Freeland Fitzgerald, alias Edward Finley, an ex-convict with a felony record dating back to 1951, was arrested February 2, 1960, for the robbery of a chain of candy stores. He used a toy gun in committing the robberies, and when questioned by the investigating officers as to his reasons for doing so, he stated: "I know I'm going to the joint and probably for life. If I had a real gun and killed someone, I would get the gas. I would rather have it this way."

"(xii) Quentin Lawson, an ex-convict on parole, was arrested January 24, 1959, for committing two robberies, in which he had simulated a gun in his coat pocket. When questioned on his reason for simulating a gun and not using a real one, he replied that he did not want to kill someone and get the death penalty.

"(xiii) Theodore Roosevelt Cornell, with many aliases, an ex-convict from Michigan with a criminal record of 26 years, was arrested December 31, 1958, while attempting to hold up the box office of a theater. He had simulated a gun in his coat pocket, and when asked by investigating officers why an ex-convict with everything to lose would not use a real gun, he replied, 'If I used a real gun and shot someone, I could lose my life.'

"(xiv) Robert Ellis Blood, Daniel B. Gridley, and Richard R. Hurst were arrested December 3, 1958, for attempted robbery. They were equipped with a roll of cord and a toy pistol. When questioned, all of them stated that they used the toy pistol because they did not want to kill anyone, as they were aware that the penalty for killing a person in a robbery was death in the gas chamber."

REALISTIC TIMETABLE

It is realistic to establish a timetable for the full range of Federal habeas corpus proceedings within one year. A key factor is the requirement that the states must proivde competent free counsel to defendants in capital cases through all legal proceedings. It may be that the trial counsel would handle all stages of these unless there is a allegation of incompetency of counsel in which event new counsel would obviously have to be provided to press that claim.

It is practical to require the Federal habeas corpus petition to be filed within 30 days from the final judicial action upholding the death penalty in a state criminal proceeding. It would not be "business as usual"; but I know from my own experience in the criminal justice system that a lawyer can prepare the petition in that timeframe although it may require long hours, overtime effort or putting aside other legal matters.

If there are unusual circumstances, and it must be conceded that it is not possible in a statutory setting to anticipate every conceivable situation, the court may allow extra time on a showing of good cause with the specifications of the reasons.

Similarly, it is practical for the United States District Court to render a final decision within 110 days from the filing of the habeas corpus petition. That timeframe would allow 20 days for a responsive pleading by the public prosecutor and 90 days for hearings, briefings, argument and a decision by the district court. Again, from my own experience in the field, I know that this timetable can be observed although it would require a Federal judge to give priority to such matters and the lawyers to be diligent in processing the case. It is customary when cases go to trial that lawyers are heavily engaged not only during the hours of trial in court, but in advance of the trial day in preparing witnesses, and after court hours on legal research and the preparation of legal memoranda.

It is further practical to require a decision by the Court of Appeals within 110 days after the final judgment of the district court. This is only slightly faster than existing rules on docketing and briefing. This timetable will give the appellate court an adequate opportunity for review, reflection and decision. In the British courts, judges render immediate decision and opinions after hearing appellate argument. As a practical matter, most decisions are made by an appellate judge within a relatively brief period of time after oral arguments or submission of briefs.

It is again realistic to require final action by the Supreme Court of the United States within 110 days. This would allow 20 days for the preparation of the petition for certiorari and 90 days for decision by the court. It is currently a common practice for the Supreme Court to deny certiorari in a much shorter period of time. Here again, our nation's highest court would have to accord priority treatment to capital cases, but that is a fair requirement in the face of the urgency of the issue as articulated by Chief Justice Rehnquist.

It is inevitable that some cases will not be completed within a one-year timeframe. Some trials may be so long and so complex that this timetable will be too short. It should be noted, however, that this abbreviated timetable does not take effect until after the case has been tried in the state courts where no limitation is applied to the length of trial, time for post-trial motions or appellate review. During that process, most, if not customarily all, of the complex factual and legal issues will be organized, analyzed, and resolved.

Where this proposed timetable cannot be observed, extensions may be granted on a showing of good cause where the court will be obligated to specify the reasons for any delays. If delays are granted, the court will be under an obligation to monitor the proceeding and see to it that delays are held to a minimum.

CONCLUSION

No one can deny the seriousness of the problem of crime in America. Similarly, no one can deny the inadequacy of our criminal justice system.

At a minimum, powerful arguments support the conclusion that the death penalty is a deterrent. Even those who doubt the deterrent effect of capital punishment cannot deny the legitimacy of appropriate execution of the laws of 37 states which provide for the dealth penalty.

Currently, the federal courts are "chaotic" in dealing with such cases and the death penalty in America has become a "farce."

This legislation, establishing a timetable of one year for the disposition of almost all federal habeas corpus cases, would effectively reinstate the death penalty in America.

(Mr. KOHL assumed the chair.)

UNITED STATES-SOVIET RELATIONS AND ARMS CONTROL

Mr. DOLE. Mr. President, this week, Secretary Baker is leading the United States in ministerial discussions with the Soviet Union. High on the agenda will be discussions on arms control in preparation for the upcoming summit.

The summit is only 2 weeks away. Earlier this year, the conventional wisdom was that the summit would, among other things, wrap up the major points of a START Treaty, or even a CFE Treaty.

Now, that may or may not happen. I have no predictions to make, but I do

think it would be useful to take some time to think about United States-Soviet relations and to put arms control into perspective within that relationship.

It seems to me that we must first recognize that arms control is not the foundation of our relationship with the Soviets. Rather, it is a means to improve our security. Moreover, improved relations with the Soviets are not dependent upon arms control, but are possible only on the basis of a broad agenda that includes, among other things, human rights.

I also believe that we should not view arms control as a tool for helping President Gorbachev. While we want his reforms to succeed, we cannot afford, nor should we make concessions against our security interests for political motives.

If we recognize arms control as a means to security, not an end, and if we recognize that arms control does not constitute the basis of our relationship with the Soviet Union, we will have more realistic expectations of what the arms control process can accomplish.

It is clear that the START negotiations, in particular, have not progressed at the same pace as earlier this year. In fact, the Soviets walked back packages agreed to in February, and they have been dragging their feet ever since then.

It is hard to know what is behind the foot dragging. Maybe it is a negotiating tactic designed to win more concessions from the United States prior to the summit. If that is the case, I do not believe that President Bush is going to fall for that type of maneuvering.

After all, the U.S. objective in START is not just to make a deal, but to enhance stability and security.

One way a START Treaty can enhance stability is by reducing the number of heavy land-based ICMB's, such as the SS-18, which the Soviets, even under Gorbachev, have continued to modernize.

Mr. President, the bottom line is that we need to be careful and keep our objectives in mind. In the case of START, a conventional arms control treaty or any other arms control agreement, the goal must be stability and security. I am confident that the President and Secretary Baker will keep these objectives in mind while working for progress in arms control.

SPENDING IN AGRICULTURE

Mr. DOLE. Mr. President, I was struck by a couple of editorials today in the Washington Post. I am not certain the Washington Post is an expert on agriculture. I thought their editorial was pretty much on mark. It is called, "The Senate Hayride."

In the Senate Agriculture Committee we now see a political effort to increase spending in agriculture when we know that we are going to have to reduce spending across the board this year $60 billion.

I come from a farm State, and farmers are like other people; if you want to give them more money, they will take it. But I do not see any great demand because farmers understand that their worst enemy is inflation, high interest rates, and the Federal deficit.

So I hope that my Democratic colleagues read the editorial in the Washington Post this morning; it makes a great deal of sense. And also to take a look at what the House Agriculture Committee did yesterday, again controlled by the Democratic party. The subcommittee increased spending in agriculture by over $10 billion—$10 billion. When we have a budget crisis, here is a subcommittee, totally irresponsible in its actions, increasing spending for the farm bill by $10 billion.

Fortunately, the chairman of the committee, Congressman DE LA GARZA, said yesterday that you cannot do that. So under the chairman's leadership, yesterday in the House Agriculture Committee, they passed a 5-year program with a 5-year freeze, with a freeze on target prices, no increases. To me, that is probably the direction we will finally go. But even then those in agriculture should be aware that when this summit meeting on the budget ends, if it ends successfully, we are going to have to revisit the farm bill, whether we pass it or not, and we are going to have to accept some cuts. That is the way it works. You cannot not exempt agriculture, education, Congress, the White House, whatever, if we are going to have an effective resolution of the deficit.

Mr. President, I ask unanimous consent that the articles of which I referred be printed in the RECORD.

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

[From the Washington Post, May 18, 1990]

SENATE HAYRIDE

It is well understood that there won't be room in the budget for farm price and income supports to go up next year. The budget negotiations between the president and Congress are much more likely to force them down. The Democrats on the Senate Agriculture Committee are nonetheless proposing increases.

That's bad farm policy and fiscal policy alike. The Democrats recognize the fiscal pitfall. What they give with one hand they are careful to take back in part with the other. Their proposal delivers less than it sounds; it is as if they believe the constituents they are trying to please can't read very well.

The target prices on which supports depend were gradually reduced in the last farm bill, which expires this year. The Democrats would reverse that steady removal of the government from the market by indexing the targets—tying them to consumer prices. But the first four percentage points of inflation would not be counted, and the cost of the increase in supports would be offset in part by an increase (though in the proposal only a very small one) in the acreage that farmers would have to set aside.

The proposal might thus have only a marginal effect. But the combination of higher supports on reduced production would take farm policy in the wrong direction, deepening the federal role. The committee Republicans meanwhile think they are being set up, as they are. Nine of the 19 committee members, including five of the 10 Democrats, are up for reelection. If, as expected, the higher supports have to be dropped later in the budget process, the Democrats will still be able to say it was they who tried.

The same tired script has been allowed in the House, only there it has been bipartisan—and it seems to be over. The agriculture subcommittees voted for higher supports; now the full committee seems to be in the procss of rescinding them. Good for it. The Senators should step up to their responsibilities and do the same.

PALESTINIAN CHILDREN

Mr. DOLE. Mr. President, there was another article in the Washington Post editorial called, "Save the Palestinian Children." I ask unanimous consent that the article be printed in the RECORD.

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

[From the Washington Post, May 18, 1990]

SAVE THE PALESTINIAN CHILDREN

A Swedish child-advocacy organization called Save the Children, having conducted two years of interviews among Palestinians, reports that Israeli soldiers trying to quell the West Bank-Gaza uprising have inflicted on the children more than 150 deaths, thousands of beatings and gunfire wounds, and tens of thousands of other injuries. Israeli officials respond that the organization is biased, its perception of context skewed, its sources limited and its numbers exaggerated. But even if some part of this defense is true, you are still left with the deaths, the beatings, the wounds, the tear-gas and the rest of the carnage that has taken place since the intifada began in December 1987.

The question that arises from this latest stomach-turning account of Palestinian-Israeli confrontation is whether any halt to it is possible. The Israelis find some slackening of the intifada as their military and intelligence forces grind away to assert control. But struggle continues among a well-organized and increasingly radicalized Palestinian population seemingly little interested in diplomatic initiatives launched at the PLO leadership level. The evidence is that the West Bank popular resistance has settled down for the long haul in its home villages, schools and streets. The Israeli occupation has become routine too.

Meanwhile, both demonstrating Palestinians and defending Israelis continue to use tactics that put children at risk. The Palestinian organizers of the intifada are reluctant to weaken the central community-based character of their resistance by making the tactical changes that would help keep children out of harm's way. The Israeli

army similarly hestitates to yield its prerogatives as an occupation force, and it is often unable to enforce the military discipline that is intended to minimize casualties against a civilian population that itself has become an experienced practitioner of violence without guns.

The bottom line remains that Palestinian children are being shot and beaten by Israeli soldiers. Everyone knows that to this aspect of Israeli-Palestinian rivalry as to other aspects, there is no answer in the streets, only at the negotiating table. The Palestinians' leadership is ready for a process to begin. The Israelis still cannot bring themselves to form a government that would respond. This is finally what has to be done to save the Palestinian children.

Mr. DOLE. I hear a lot of pontificating about the tragedy in El Salvador and about the death of the Jesuit priests, and I condemn those deaths. I want justice just as much as anyone else. But I would ask the question, Is there a double standard? What about the children being killed in the intifada?

I do not see any of the liberals, who wring their hands about El Salvador, taking time on the Senate floor or the House floor or in newspaper interviews, to cry any tears for the over 150 children—children—who have been killed in the intifada. It seems to me as difficult as that situation is, the intifada, in some ways, is not much different than El Salvador.

If we are going to apply one standard to the El Salvador Government, then we ought to take a look at what we are doing with reference to the intifada. I have not heard many voices raised, not many people crying for the children, except their parents and relatives in that part of the world.

So to those who say we ought to reduce our aid, we ought to cut our aid in half in El Salvador, I ask the very fair question, is there a double standard?

THE CAPITOL GUIDE SERVICE

Mr. DOLE. Mr. President, this week marks the celebration of National Tourism Week, and on this occasion it is a pleasure to recognize the efforts of the dedicated staff of the U.S. Capitol Guide Service.

Under the direction of Tom Nottingham, chief guide, the 33 full-time tour guides, assisted by 10 college students during the summer, bring this magnificent building to life for the approximately 1.5 million visitors who come to the Capitol annually.

Citizens of the United States and visitors from throughout the world who tour the U.S. Capitol learn of its history and hear colorful accounts of the people who have walked its halls for the past 190 years. They are told a story about a Union soldier during the Civil War who allegedly tried to chop up a Senate desk for firewood. They are shown the beautiful crystal chandelier, possibly one of the best bargains ever struck by Congress when it was purchased for $1,500, which is hanging in the well section of the original building.

Visitors have the chance to see Congress in action. By observing the Senate and the House of Representatives at work, they may come away with a better understanding of the process through which needs and ideas meet to form laws.

THANKS TO THE COOPERATION OF MANY

Mr. Nottingham is ably assisted by Frances Rademaekers, deputy chief guide, Sharon Nevitt, assistant chief guide, and Ted Daniel, relief supervisor. A special thanks goes to Dee Ledlow, secretary for the Congressional Tour Office, for giving her personal attention to our constituents. Her competent assistance and spirit of cooperation are appreciated all year—and particularly during the busy summer months.

Mr. President, I invite my colleagues to join me in honoring the U.S. Capitol Guide Service and in expressing our thanks and deep appreciation during National Tourism Week.

Mr. President, I reserve the remainder of my time.

SENATORIAL ELECTION CAMPAIGN ACT

The PRESIDING OFFICER. The Senate will now proceed to the consideration of S. 137, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 137) to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees, and for other purposes.

The Senate resumed consideration of the bill.

Mr. DOLE. 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. SPECTER. 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. SPECTER. Mr. President, time for debate has been reserved to the subject of campaign reform. I am pleased to use this opportunity to express briefly my views on this subject, a matter on which I have spoken before, and a matter which has occupied a great deal of the Senate's attention in the last several years.

I believe, Mr. President, that campaign reform is necessary. Campaign reform is necessary because spending has gotten out of hand. It is enormously costly to run election campaigns in the U.S. Congress, in the Senate and the House of Representatives, because there is widespread public concern about the termination of special interest influence as bills come through the Congress.

I believe that political action committees ought to be eliminated because of that concern. When you take a look, Mr. President, at what political action committees do, I do not believe they buy votes in the Senate or in the House of Representatives. A maximum campaign contribution of $10,000 in my last Senate campaign accounted for .0012 of the total contributions made to my campaign. While it is not insignificant, it is not a dominant factor in the fundraising apparatus.

But there has grown a public concern that political action committees have extra influence beyond what they ought to have in our system. That is a deeply ingrained view. I believe that the perception is so strong and has a tendency to undermine public confidence in the Congress of the United States that we ought to take a stand once and for all and eliminate political action committees categorically—just have them gone.

The issue of spending limits is a very complicated one. I believe that it is necessary to address that subject with a constitutional amendment because as long as the decision in Buckley versus Valeo stands that any individual may spend as much of his or her money as he or she chooses in an election campaign, there is no realistic, effective way to legislate campaign limits.

The tack which has been undertaken is to condition public spending on an agreement by a candidate that the candidate will abide, on a voluntary basis, by a spending limit. But that is not effective, Mr. President. If any candidate chooses to come into the field and declines to abide by such a voluntary spending limit, then that candidate may exercise his or her constitutional right to spend as much money as he or she may choose.

So the only effective way to deal with that issue is by a constitutional amendment. I have joined Senator HOLLINGS in a proposal for such a constitutional amendment, both in the 100th Congress and now in the 101st Congress, which would say that, as to campaign financing, the Congress of the United States, and State legislatures for that matter, would have the authority to establish spending limits. It is with reluctance that I personally moved toward a constitutional amendment in the first amendment area, but that is the only way to deal with that issue directly.

My own legal judgment is that Buckley versus Valeo was incorrectly decided, but once the Supreme Court of the United States speaks on a case, that is

that. We have razorthin margins; under the nine Justices, five may have one opinion, four another, but when five have spoken, that is the law of the land.

I recall the Buckley decision with special impact because I was a candidate for the U.S. Senate when Buckley versus Valeo was handed down. That decision came down in January 1975; January 29, I believe. I had declared my candidacy a few months earlier for the U.S. Senate in the context of the election law of 1974, which limited individual expenditures, which prescribed the amount depending on the population of the State. With a State the size of Pennsylvania, an individual was permitted to spend $35,000.

I had been in private practice for a relatively short time after being district attorney of Philadelphia. That is about as much money as I had. I decided I would get into the race.

Then in the middle of an April primary in Pennsylvania—I declared in November 1975—in the middle of the campaign the Supreme Court of the United States handed down Buckley versus Valeo that said that aspect of the limitation on what a candidate could spend was unconstitutional.

It upheld the $1,000 limit on other individual contributions so that my brother, who had substantially more money than I did, was limited to $1,000 for the primary campaign. I did not get past the primary.

I felt serious enough about that case to file a petition for leave to intervene after the judgment. I am always reluctant to say what I did some 15 years ago, but I have a pretty clear recollection of having done that although I have not reviewed the legal papers lately. My petition for leave to intervene was turned down. That was that.

I now have the pleasure of serving with my opponent in that campaign. Senator HEINZ and I were contestants there, and now we serve together. But I had gone inito the decision of the Buckley case in some great detail. I believe if we are to address the issue of spending limits, we are going to have to do so in the context of the constitutional amendment. I have pressed that amendment on the Constitutional Law Subcommittee of the Judiciary Committee, on which I serve. The distinguished Presiding Officer and I serve on the Judiciary Committee together.

Mr. President, I am strongly opposed to public financing. I do not believe, given the very heavy deficits which we have in this country today, that it is an appropriate expenditure of public money to finance congressional races, Senate races and House races. S. 2, which was introduced in the 100th Congress, had a schedule which would have called for the expenditure of public moneys of $3.8 million for each candidate, $7.6 million for a Senate race for the State of Pennsylvania, and I think that kind of funding is unwarranted.

I am informed that the checkoff on the Federal tax returns is down to 20 percent now.

People want to make a voluntary contribution for the taxes they have to pay anyway, so it is not an extra dollar, it is a dollar which is being paid, and it had been considerably higher. So it is not a matter of indifference, it is a matter of a public concern of not wanting to finance Presidential campaigns. But I do not believe it wise, Mr. President, to spend the public's money on the election of Members of the House or the Senate. So I am opposed to the use of that as a coercive mechanism to achieve consent by the candidates.

As I say, the consent is really meaningless in any event as long as anyone can come in and exercise their constitutional right under Buckley versus Valeo to spend as much of his or her money as he or she may choose.

The issue of soft money Mr. President, I think is a very, very important issue because there are wide varieties of ways of making contributions to a campaign without dollars: In-kind services, the use of mail, the use of office space, the use of telephones, the use of paid personnel who will volunteer for a campaign under circumstances where there is very direct calculation and the soft money which is directed to someone's campaign is paid for in hard dollars. So that as we take a look at campaign reform, it seems to me that we have to address this issue of soft money in a head-on, direct way and get it out of the system.

Mr. President, I believe that there are material improvements which must be made in the campaign laws. I am pleased to see this matter on our agenda. There has been very considerable thought and attention given to this issue on both sides of the aisle. This is one issue where the 100 U.S. Senators all regrettably have considerable experience in this field.

It would be much better if we did not have so much experience in campaign financing. But campaigns are enormously expensive to run. They have gotten more expensive to run. They have become more expensive not only because of inflation but because of negative campaigning. Today, someone can conjure up a 30-second commercial and need not be too concerned with the fact they can have a 30-minute commercial, too, but nobody would want it. In a 30-second commercial, people have to watch because it is squeezed between something else they want to watch.

I recall, in my first campaign in 1965, where we had a 30-minute show. And it was on at 7:30 on a Philadelphia TV station and it cost $1,500. And a 30-second commercial cost $3,000. I wondered why you could buy 30 minutes at 7 o'clock—this, again, is my recollection; it has been a long time ago. There is always some hesitancy to cite facts from bygone days because someone will look at the record to see that everything we say is exactly right. But my recollection is it was $1,500 for a 30-minute commercial.

I see my distinguished colleague, Senator MCCONNELL, smiling at this.

Then I found out that it was so inexpensive because nobody watched it. Because if you are on for 30 minutes and they see ARLEN SPECTER on campaigning, who cares, go to the next channel. But when you grab 30 seconds in between two favorite shows—I would cite some, except I do not know any—it is a very expensive proposition.

But it is enormously costly. Then the 30-second negative commercial comes on. It takes a quantum of television time to go back over the record. And there is no way—having cast 3,500 votes, many of the votes are subject to gross distortion.

I remember a vote on an important good Government issue which came up in 1984 on the continuing resolution. An entire bill was added, I think it was the Superfund bill, on the 1984 continuing resolution. And if that bill had not been tabled, we never would have passed a budget. We would have just tied up the Congress and the country interminably. It was very hard to find 51 Senators who would vote to table that Superfund bill because it was a matter of vital necessity.

Now when you try to explain why you vote against Superfund on a continuing resolution, on a motion to table, on the Government being tied up, it takes a lot of explaining.

Mr. MCCONNELL. Will the Senator from Pennsylvania yield?

Mr. SPECTER. Yes.

Mr. MCCONNELL. The Senator from Pennsylvania is right on the mark when he talks about the airwaves and the importance of that in the modern competitive campaign.

I have often said that I do not favor piecemeal campaign finance reform, that it is a better to do it on a comprehensive basis. But if somebody said there is just one thing we are going to let Congress do this year to improve the system, it would be a meaningful, significant, reduction in the broadcast discount rate to allow candidates to purchase time to reach voters. And so when the Senator talks about the cost of television, he is certainly hitting on what I think is one of the most, if not the most, significant part of this overall discussion.

Mr. SPECTER. I am delighted to yield to my distinguished colleague from Kentucky for that comment. When a Senator takes the floor and makes a statement in this Chamber, it is like a sound chamber where nobody else is present. We have our captive

audience of the staff here, the reporter. It is refreshing to see some other Senator come to the floor so there could be a dialog and have some human qualities about our discussion here. We speak in the sound chamber—and there are a few people in the galleries—wondering who is watching on C-SPAN II, or if anybody will read what appears in the CONGRESSIONAL RECORD.

But to deal with the content of what Senator MCCONNELL has had to say, I have some concern, I must say, about compelling TV stations to take a lesser rate. And I have a concern because the TV channels are private property. They have established the rates. And I wonder about the propriety of the Congress—and we do have enormous power. We can do practically anything we choose to do subject only to the constitutional limitation and there may be a violation of property, and the 14th amendment which prohibits, the due process clause—the 5th amendment, pardon me; the 14th applies to the States, the 5th amendment applies to the United States, prohibiting taking property without due process of law. Stations do have an obligation to give the lowest rates. And I have had some considerable problem, in my own experience, in having those rates apply because it is impossible to figure out what is lowest rate, when it is applied, when it is preemptable, who had it first, who came in second, and who is on third.

In the middle of a campaign you cannot begin to litigate with a TV station over whether you are getting an appropriate rate or whether your opponent is getting an appropriate rate. But even if we do reduce the rates in television and if we cut down the costs, it is still going to be enormously expensive. We are still going to have to buy a lot of it, and it is a very, very expensive proposition.

There are 100 different ways the Senators got here. My own route was to run in three tough primaries in Pennsylvania, a State of 12 million people, to establish a record and establish recognition as district attorney of the city of Philadelphia. That media market was 38 percent of the State. The district attorney gets a lot more attention in the Philadelphia media than a U.S. Senator does, especially a Republican district attorney in a Democratic city where there is a lot of crime and corruption. It is like shooting fish in a barrel. There is a lot of potential. But for the balance of the State it is not an easy matter to become known. It takes a lot of speeches in a lot of cities and a lot of Rotary Clubs.

Then we have television, which is a very, very expensive item. As long as those of us here have 3,500 votes on record, and by 1992 perhaps close to 5,000 votes on record, maybe 4,200 or 4,300, it is necessary to make a lot of comments and perhaps to do some explaining. We all know that when we have to start explaining we are already in trouble. If we want to do it on television it is a very expensive operation.

So we all in this body are experts at fundraising. It would be very good if we could find a way to provide some rationality to the system so we do not have to spend so much time raising money. I believe my distinguished colleague from Kentucky has a difference with this Senator on the desirability of a constitutional amendment to provide the basis to change Buckley versus Valeo, and provide for limits.

My colleague has been on the floor now for about 10 minutes. I will not take up further time because Senator MCCONNELL has been a leader in the field, and I am sure when he addresses the Chair today he will have something new to say. That will be quite a challenge because he has made many, many, many speeches on this subject.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oklahoma [Mr. NICKLES].

Mr. NICKLES. Mr. President, I congratulate my friend and colleague from Kentucky for the outstanding work he has done on the campaign reform bill. I think it is important to delineate the major differences between the so-called Republican bill and the Democratic bill.

The Republican bill is very significant campaign reform. The Republican bill limits outside special interest money. It bans PAC's. The Democratic bill does not do that. It says it bans PAC's from contributing to individuals, but it does not ban PAC's So PAC's can contribute to national parties, they can contribute to State parties, and then the State parties and/or the national parties can give the money to candidates.

So the Democrats' bill is a laundering bill. It launders the money, it hides the money. People really do not know where it comes from. That is worse than the present situation. At least in the present situation when PAC's contribute to individuals that money is readily identified. It is reported. That would not be the case under the so-called Democrat bill.

The Republican bill, on the other hand, bans PAC's. Period. PAC's cannot give to individuals. They cannot give to party organizations. They cannot give to any of these groups. So I think there is a significant difference in the PAC situation. Also, if it is determined to be unconstitutional to ban PAC's, under the Republican provision, we reduce PAC's from $5,000 to $1,000, the same amounts individuals can give, a significant reduction of money that PAC's or special interests can give. Again, that is in the Republican provision. It is not in the Democrats' provision.

So I think it is a very significant difference between the bills.

What else do we have? Well, the Republicans limit what money can be raised out of State by saying that out of State contributors can only give $500 instead of $1,000. So we would significantly reduce the amount of input people would have by having special interest fundraisers outside their State. That is an advantage incumbents have that challengers many times do not. So that is a big change. Republicans take big steps for eliminating or limiting soft money. Unfortunately the Democrats do not do that. We limit soft money or eliminate soft money in corporations, in unions, the Democrats do not do it. They will limit party soft money. I find that really not to make a lot of sense.

Third, and possibly last, the Democrats have public financing of campaigns. Ninety percent of their money for a general election would be paid for by the taxpayers. I find that to be outrageous. In my State of Oklahoma, if a candidate is running, if they raise $110,000 they get $1 million from Uncle Sam to run for the general election. I think that is outrageous. I do not think taxpayers across the country are saying we want to pay for general elections, we want to pay for Senate races, we want to pay for House races. I do not think they are saying that. As a matter of fact, I think they would be outraged if they knew a person who raises $110,000 would qualify for $1 million of public financing. I think that is an outrage.

The Democrats also have a bill that would allow candidates to be able to mail at one-fourth the cost to normal taxpayers. That is another outrage. Mail costs are enormous. Why should the taxpayers of this country subsidize the mail costs of campaigns? In the Republican package we ban unsolicited mass mail costs for incumbents during campaign years. I think that is a very significant reform.

The Senate has already made some reforms in mass mail costs. The House has not gone along. As a matter of fact now we find the House is going to exceed its budget by almost double. The Senate is going to be within its budget on mail costs. But we have a very good provision, a real provision, one that is significant reform, in that we ban the use of franked, unsolicited mass mail by incumbents—Senators and House Members—in an election year. That is not in the Democrats' proposal.

So there are significant differences between the Democrats' and the Republicans' proposal. I happen to think the Republican proposal is a very good one. It may be improved.

I see my colleague from Oklahoma. I am hopeful maybe we can work out some differences and we can come up with a bipartisan bill, one which will have significant, real reform for the system; that it will work better; that it will reduce special interests; that it will reduce the advantage that incumbents have through the use of the frank.

Mr. President, I think that can happen. I am not necessarily so optimistic, but I look forward to the negotiations. Hopefully, they will be fruitful negotiations and we will see a workable, bipartisan campaign reform bill passed this year.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. I thank the Chair.

(The remarks of Mr. BURNS and Mr. BOREN pertaining to the introduction of S. 2653 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, we resume the floor discussion of campaign finance reform this morning. This past week the majority leader and the Republican leader have appointed the negotiating team. We will be looking forward to meeting in the near future to see if we can work out our differences. I do think it is important to continue to discuss the bill. I am glad the leader has scheduled some floor time for us to consider various aspects of this enormously complicated problem which we are hoping to legislate this year.

It is certainly the view of the Senator from Kentucky as the lead negotiator on this side that it would be far better to have a bill than to not have a bill. I do not think there are very many people in this body who do not think we ought to change the current system. It certainly has its failings.

I do think, however, it is important for us as lawmakers not to proceed to pass legislation that is blatantly unconstitutional. It is the view of the Senator from Kentucky that S. 137, and the substitute thereto, which has been suggested on the other side of the aisle, clearly does not pass constitutional muster.

Mr. President, I would like to confine my remarks, at least at the outset this morning, to the issue of the constitutionality of S. 137 and the proposed substitute which has been suggested by the other side.

Mr. President, under S. 137 and similiar proposals, senatorial candidates who agree to accept expenditure limits qualify for public funding, reduced-rate television and radio time, and special mailing rates. A senatorial candidate who does not accept the spending limits receives no public money and is not eligible for reduced-rate broadcasting time and mailing privileges. His troubles, however, do not end there.

Rather, S. 137, and similiar proposals, would give increased Federal grant money to participating candidates when expenditures made by a nonparticipating opponent exceed certain limits. Thus, if a nonparticipating senatorial candidate spends even $1 over the spending limit, S. 137 would give a participating major party opponent an additional Federal grant in an amount equal to two-thirds of the general election spending limit, an amount up to $3,666,667. The participating candidate would be free to spend this additional grant to defray expenditures in the general election without regard to the general election spending limits.

If the nonparticipating senatorial candidate presses on and goes more than one-third over the spending limit, the bill would provide an additional grant equal to one-third of the spending limit, up to $1,833,333 under S. 137. Furthermore, once an opposing candidate has gone more than one-third over the spending limit, the spending limits applicable to the participating candidate are lifted altogether. In addition, S. 137 provides that participating candidates would receive an additional grant, not subject to the aggregate spending limits, in an amount equal to the total amount of independent expenditures over $10,000 made in opposition to that candidate or on behalf of his opponent.

So, Mr. President, as a practical matter, S. 137 would force nonparticipating challengers to choose between observing the spending limits applicable to participants or facing a participating incumbent who has as much as $5,500,000—possibly even more—in Federal funds with no aggregate expenditure limitation. The bill, and others like it, thus attaches a severe penalty to the decision not to abide by Federal spending limits.

Let me just for a moment contrast that to the Presidential system, which I certainly do not support and do not think it has been good for the country. But nevertheless, we have had one Presidential candidate say over the years, "I choose not to accept the public subsidy." That candidate was John Connally, who ran back in 1980. When John Connally decided not to accept Federal money, nothing happened to him and nothing happened to any of his opponents. He was not punished, and they were not rewarded. So there was no punishment, no penalty for exercising his first amendment right to go out and participate in the process without the encumbrance of either spending limits or public finance; totally contrary to the bill that we have suggested by the other side.

This is clearly unconstitutional. The Supreme Court held in Buckley versus Valeo, that the first amendment forbids Congress from directly imposing spending limits. Political spending is pure political speech and therefore receives the strongest first-amendment protection. Under Buckley, Congress can, to a limited extent, regulate political contributions, but it cannot impose limits on spending. Even contributions can be limited only in order to avoid corruption or the appearance of corruption.

Proposals like S. 137 attach a penalty to the refusal to limit campaign spending. In this respect they are exactly like a spending limit that is enforced through criminal prosecution. The only difference is that the penalty takes the form, not of a fine, but of one-sided Federal assistance to the candidate's opponent.

It is difficult to imagine any constitutionally acceptable regulation of political speech. The interest in eliminating corruption remains the only governmental interest that the Supreme Court has recognized as sufficiently compelling to justify burdens on political speech. Expenditure limits, however, have nothing to do with corruption: a candidate may be corrupted, or may appear to be corrupted, by the source of his funds. Once money has been received, however, spending it is not corrupting.

The interest that actually underlies proposals such as S. 137 is that of equalizing political speech between candidates. That interest, however, is affirmatively forbidden by the Constitution: under the first amendment, Congress may not adopt policies designed to ensure that the contending sides in an election have equal resources. The Supreme Court said in Buckley versus Valeo that a governmental policy of limiting the political speech of some Americans "in order to enhance the relative voice of others is wholly foreign to the first amendment."

As the Court noted in Buckley, attempts to equalize political speech are especially insidious because equalization of the amount spent may not in fact equalize electoral opportunities; on the contrary, it almost certainly aids incumbents. The Court recognized that, because incumbents generally are well known going into an election, equalization will harm a challenger who lacks substantial name recognition or exposure of his views before the start of the campaign.

Mr. President, protecting incumbents is not, of course, an acceptable reason for abridging political speech.

Congress may not penalize candidates who refuse to abide by expenditure limits, Coercive, so-called voluntary schemes such as S. 137 are quite different from the system of genuinely voluntary partial public funding used in Presidential elections. Under that system, a candidate's decision whether to accept spending limits is affected

only by the inducement of public funding. If he declines to limit spending, his only cost consists in forgoing public support. The Supreme Court has made clear that the Government's offering an inducement in order to influence consitutionally protected speech is assessed under a more lenient standard than the Government's imposition of a penalty on the exercise of such choices. The imposition of a penalty will usually be plainly unconstitutional.

These proposals also penalize noncandidates who wish to make independent expenditures. Such expenditures are pure political speech and enjoy the strongest first amendment protection. It is highly doubtful whether the Government may seek to deter them by imposing the cost of additional public support for the speaker's opponent. Indeed, because equalization of resources is not a permissible governmental interest, payments designed to enable a candidate to respond to independent expenditures are probably unconstitutional for that reason alone, without regard to their inhibiting effect on independent spending.

This aspect of the spending plan may also violate the doctrine of cases such as Miami Herald Publishing Company versus Tornillo, under which the Government may not compel a speaker to subsidize the speech of his opponent. In Tornillo, the court struck down a Florida law which required newspapers to offer free space for a reply by candidates whom the newspaper had ciriticized. Under these proposals, independent spenders and contributors may trigger additional Government support for their opponents by speaking themselves. This content-based rule deters free speech and thereby raises very serious questions under the first amendment.

Thus, Mr. President, the spending limitations proposed by S. 137 would present such a host of constitutional problems that it is more suitable for an issue spotter on a law school exam than for serious consideration by this body. Moreover, such spending limitations do nothing to correct the real problems with our system of campaign finance: the power of special interest money provided by PAC's, and nonparty soft money.

Mr. President, I want to continue my remarks with some observations about soft money. There has been a lot of discussion over the last couple of years about what is now being called sewer money, and I think it important that we begin to define that and to have some facts in the RECORD upon which Senators can begin to focus as we lead toward hopefully passing new campaign finance legislation.

I want to focus for the balance of my remarks this morning on the particularly corrupting form of sewer money gushing beneath the surface of our electoral system. This sewer money poses an extreme threat to health of our democracy.

There are no limits on this sewer money. The polluters are not required to disclose to the public how much of this sewer money they are dumping into the electoral system.

I am referring, of course, to big labor's massive, unreported soft money expenditures in Federal elections. This money comes from compulsory union dues and it is spent over the objections of many union members who do not like seeing their hard-earned dollars turned into sewer money.

The scope of this sewer money is hard to pinpoint because the reporting and disclosure requirements are virtually nonexistent.

The National Right to Work Committee estimates that unions collect $5 billion annually in union dues. The U.S. Department of Labor says unions covered by Federal reporting requirements collected $3.3 billion in annual dues. Precisely how much of these billions in union dues are pouring into Federal elections is, frankly, unclear, but reports compiled by the press and a host of campaign finance experts indicate that it is at least in the tens of millions of dollars per election cycle.

This compulsory union soft money, unlike union PAC contributions, does not go directly to candidates in the form of cash contributions. Rather, this soft money comes from union treasury funds and pays for indirect, but extremely valuable assistance to political parties and campaigns.

The most obvious way in which this sewer money taints Federal elections is through contributions made directly from union treasury funds to Federal party building accounts. This type of sewer money has received a lot of attention from the press.

Brooks Jackson, in his book "Honest Graft," described how union soft money subsidized one such party-building activity of the Democratic Congressional Campaign Committee in the 1986 election cycle:

> Coelho went to the annual winter meeting of the AFL-CIO in Bal Harbour, Florida. He met with the presidents of one union after another, over breakfast, lunch, and dinner. He asked each one to pledge $100,000 to his committee during the year.
>
> The Capital Trust project represented only part of the soft money that fueled Coelho's campaign committee, but it was especially important. Indirectly, the funds subsidized the campaigns of Democratic candidates who used the party's television studio.

Brooks listed several major contributions to this party account, including $25,000 from the Carpenters Union, $25,000 from the Steelworkers Union, and $50,000 from the International Ladies Garment Workers Union.

Regulating or disclosing these direct, external contributions of union soft money has been widely discussed by Senators. However, these huge sums of sewer money pale in comparison to what is spent internally by unions on behalf of Federal candidates. These internal expenditures, comprising the vast bulk of union soft money, seem to be the least understood by many Members of Congress. There are three major categories of internal union sewer money now allowed by loopholes in the Federal Election Campaign Act.

First, a union can spend its treasury funds to pay the overhead cost of operating its political action committee. These costs include staff salaries, rent, utilities, computer expenses, postage, and mailing list maintenance. There is no limit on PAC subsidization, and no reporting and disclosure.

According to Federal Election Commission reports, labor PAC's gave nearly $36 million to Federal candidates during the last election cycle. Congressional Quarterly says that experts estimate that a company or a union spends a minimum of 50 cents for every $1 the PAC raises in contributions. This figure gives us an estimated $18 million in compulsory union soft money that subsidizes the big labor PAC's.

A second category of internal compulsory union sewer money is comprised of union communications to union members and their families. These communications can expressly advocate the election or defeat of Federal candidates. These expenditures come in the form of mailings, newsletters, phone banks, political surveys, and such. All of these epxenditures repeatedly drive home to union members and their families negative or positive messages on targeted Federal candidates.

This is the only kind of compulsory union soft money that must be disclosed to the Federal Election Commission. However, huge gaps in the reporting requirements prevent us from getting a clear picture of the magnitude of these internal advocacy messages

A National Journal article listed some of the gaps in reporting requirements on internal union advocacy mailings:

> Only communications in which more than half of the message is devoted to expressly advocating the election or defeat of a particular candidate must be reported.

So a union can slap an endorsement on the front cover of a four-page newsletter, list coming events on the next three pages and report nothing to the FEC. Nor must it report nonpartisan voter registration or get-out-the-vote efforts. Any union organization, such as a local, that spends less than $2,000 in an election does not have to report any of its spending to the FEC. And

the investments that unions make in the infrastructure needed for these communications—computer capacity, telephones, staff—need not be reported either.

Congressional Quarterly said that the $4 million in internal union communications reported to the FEC in the 1988 election cycle is "a figure that does not begin to reflect labor's value to the Democratic Party."

The third type of internal union sewer money allowed by the FECA is any money spent for supposedly nonpartisan voter education, registration, and turnout programs targeting union members and their families.

Paul Jensen, the labor liaison between the AFL-CIO and the Dukakis Presidential campaign, estimates that the value of the union's supposedly non-partisan get-out-the-vote drive to Dukakis was $20 million. Jensen told Congressional Quarterly that this money never shows up on FEC reports because a good program targets mostly Democratic votes without triggering the reporting requirements that cover internal union communications expressly advocating the election or defeat of Federal candidates.

Here are some examples of supposedly nonpartisan union phone bank operations:

The October 11, 1988, Washington Post reports:

For organized labor, the past five weeks have been a warm up. * * * Armed with nearly $40 million in cash, an army of volunteers * * * labor is moving into the critical get-out-the-vote phase of its campaign to elect Democratic Presidential nominee Michael Dukakis. Union officials said they have assembled the most sophisticated election operation in memory. * * * The CWA * * * has ordered everyone on its 200-member field staff not actively involved in contract negotiations to spend full time on the election.

And from the September 20, 1988, Wall Street Journal:

The AFL-CIO plasters its newspapers with the Dukakis message and follows with videos and millions of flyers. It expects to field 500,000 volunteers. The American Federation of Teachers sends 16-minute videos to 100 locals.

The United Auto Workers taps union publications and the mails. The Communications Workers turns to phone banks to get out Democratic votes.

From a Los Angeles Times report on the 1984 elections we learn that the volunteers referred to in these reports are often paid with compulsory dues sewer money:

A Mondale campaign official said:

The AFL-CIO in Ohio has set up 80 telephone banks with a total of 400 telephones that will be used to call every union member in the state several times before the November 6 election. At the state's biggest phone bank in Cleveland, retired and unemployed unionists are paid $4 an hour to make a total of 10,000 calls a day "They run it like a military camp up there—you have to raise your hand if you want to go get a Coke."

The results of these supposedly nonpartisan registration and get-out-the-vote drives are predictable.

Union members targeted for these drives are constantly barraged with internal union communications prior to the election.

According to Congressional Quarterly:

They will hear local union officials promote certain candidates. They will be polled about their intentions. The undecided will get literature. Many will go to the polls with union slate cards in hand.

(Mr. KERREY assumed the chair.)

Mr. McCONNELL. The problem, then, with union sewer money does not lie solely in the massive contributions made directly to Democratic Party accounts out of union treasuries. Nor is it fully addressed by an examination of the tens of millions of dollars in special interest money that goes directly to candidates from Big Labor political action committees.

To fully address the corrupting influence of this union sewer money, we must take into account the massive internal union expenditures that pay for PAC overhead, internal membership communications advocating the election or defeat of candidates, and for supposedly nonpartisan get-out-the-vote drives that have a decidedly partisan outcome.

Again, we do not know how much sewer money is involved here. The National Right to Work Committee estimates that the total value of internal union soft money is $300 million per election cycle. It could be higher. Herb Alexander, director of the Citizens Research Center, says unions spent at least $45 million on these activities in the 1988 election cycle.

The size of these expenditures is more than enough reason for the Senate to enact tougher regulation and more meaningful disclosure of this sewer money.

But the need for reform is made even more urgent by the coercive nature of these contributions, and the fundamental trampling of union members' first amendment rights that is going on in unions across the country.

I want to stress that this Senator is determined to do everything he can to rid our system of all sewer money.

However, Big Labor soft money has an even greater stigma attached to it. This is the only money collected for Federal elections over the specific and vocal objections of many of the people forced to contribute it.

Only labor unions—and the politicians who bask in Big Labor's largesse—benefit from State and Federal laws designed to automatically—with no accountability—pump money into the union's treasury.

I am sure that every other political entity in this country would like to be relieved of the burden of vigorously searching at great cost, for voluntary contributions.

The National Labor Relations Act, the Railway Labor Act and collective bargaining laws for public employees in 20 States contain provisions allowing union dues to be required as a condition of employment.

As I stated earlier, billions of dollars in annual dues are collected under this system of compulsory unionism.

This money pours into Federal elections through the three loopholes in the FECA that allow union treasury funds to be spent in limitless and undisclosed amounts of PAC subsidization, membership communications, and get-out-the-vote drives. These are the three types of internal union sewer money that I have described.

Corporations have the same three loopholes as do unions for the use of these treasury funds. However, there is an important distinction to be made between corporate treasury funds and the distinctly coercive nature of union treasury funds.

A few years ago, the Machinists Union sued the FEC to stop expenditures of corporate treasury funds in connection with Federal elections. The union argued that the use of corporate treasury funds to support a PAC's administrative expenses violates the first amendment rights of dissenting shareholders. The U.S. Court of Appeals for the District of Columbia Circuit ruled that the machinists "reach too far in equating the situation of a worker who is compelled to join a union, or to pay union dues on pain of losing his employment, with that of a shareholder in a publicly held company whose livelihood does not depend on retaining stock in a corporation involved in political activity he opposes and whose investment is tenuously linked to the establishment and operation of the corporation's PAC." While a corporation's use of soft money may be just as irresponsible and odious to its shareholders as the union's expenditures are to dissenting members, shareholders at least are free to invest their money elsewhere. They can invest in some other company.

Compulsory union members do not have this luxury. They must pay the dues that support political causes they oppose or be fired. Mr. President, losing your livelihood because of your political beliefs is too steep a price to pay for freedom, especially in a nation like ours that prides itself in protecting the freedoms of association and political expression.

While the Members of this body may have widely divergent views on taxpayers financing of elections, spending limits, broadcast rates and other campaign reform issues, I believe there is one basic issue on which we all can agree:

No one should be required to support political causes to which one is opposed. An employee should not have to contribute to the company PAC in order to keep his or her job. Nor should an employer be able to deduct a portion of the worker's salary to support political candidates of the employer's own choosing. That would be a fundamental and unconstitutional deprivation of the worker's political rights.

Similarly, a worker should not be forced to subsidize the political activities of a union if he or she objects for whatever reason. This principle of workplace freedom was embraced by the Supreme Court in the 1988 case, Communications Workers of America versus Beck. Harry Beck, a union member, did not like the fact that an untold portion of his compulsory dues were being used to pay for the union's extensive political operations. He brought suit and the Supreme Court agreed that he had a right to a refund from the union for the portion of his dues being used for political purposes.

Harry Beck and a relative handful of workers have gotten their money back—or at least some of it. But the union leadership has resisted all efforts to extend the right of political freedom in the workplace to all workers. It has stonewalled on disclosure of how much is actually spent on political activities, and it continues to refuse to inform the rank and file about the political rights to which they are entitled by law. Furthermore, the legal system requires underfinanced workers to battle an army of union attorneys through long and costly litigation. And, because most of the compulsory union dues are spent on unreported and undisclosed in-kind contributions to political candidates, the abuse of the worker's constitutional rights is often hard to track. Thus, despite the Supreme Court's clear pronouncement on this issue, workers continue to be deprived of political rights because of an intransigent and insensitive leadership.

There are many examples of this abuse of union members' political rights.

Unions spent millions of soft dollars opposing George Bush, despite the fact that large blocks of union members favored the President. One poll showed that 33 percent of union members had their vote for the President canceled by the expenditure of their forced dues to pay for soft money expenditures on behalf of Michael Dukakis.

Big Labor PAC contributions, subsidized by compulsory union sewer money, also do not always reflect the views of union members. Surveys show that 30 percent of NEA members are Republicans, yet NEA officials gave PAC money to Democrats by a ratio of 16 to 1.

According to columnist Warren Brooks, polls show that union members consistently support a balanced budget amendment by a margin of 60 to 70 percent. However, Big Labor PAC giving went to the National Taxpayers Union's 20 worst-rated Congressmen by a ratio of 70 to 1 over the National Taxpayers Union's 20 best-rated Congressmen.

And despite the legal hurdles and institutional intransigence by unions that face dissenting members, thousands of workers are suing in court to get their money back. The National Right to Work Legal Defense Foundation is litigating in 350 such cases across the country. Clearly, Mr. President, we have a serious problem in our Federal electoral system with compulsory union sewer money being spent in contradiction to the beliefs of forced dues payers.

No campaign reform proposals can be complete without addressing this outrageous abuse of union members' compulsory dues. In fact, ignoring the compulsory dues problem, while placing restrictions on other types of money in Federal elections, will reward the perpetrators of this corruption by enhancing the impact of their sewer money relative to all other participants in the Federal election system.

For this reason, the Republican campaign reform initiative contains legislation that would put a condition on the use of union membership dues for political activities such as get-out-the-vote drives, political communications to members, and the expenses of PAC fundraising.

If a union wanted to dip into the dues treasury for these purposes, it would have to inform its members of their constitutional right not to pay for such political activities. Workers would have the right to know how much of their dues were being spent for political activities, and they would have a right to a partial refund of those dues if they objected to the union's political use of their money.

Workers presently cannot be compelled to fund the political activities of their employers; they should not be forced to fund the political activities of their union if they choose not to do so. The Republican campaign reform initiative gives workers the right to decide how their union dues are spent, at least when it comes to political activity. We are not interfering here with the current labor laws authorizing unions to demand payment to cover the direct costs of collective bargaining.

The desirability of these coerced payments for collective bargaining would be the proper subject of a debate on labor laws.

This is a debate on whether or not our election laws sufficiently guard against corruption of individual liberties. We are specifically dealing with that portion of compulsory dues being spent for political candidates and causes opposed by union members. The workers must have some say in where that money goes.

The right of free speech protected by the first amendment of our Constitution assures not only the right to say whatever one wishes, but also the right to refuse to speak if one disagrees with the content of the required message. That was the principle underlying the Supreme Court's decision in Beck, and that is the principle which I ask my colleagues to uphold in supporting the Republican campaign reform initiative. We in Congress cannot rest as long as there are Americans who are forced to support political views that are not their own. That is political slavery, and we should not tolerate it anywhere in the world, and certainly not here.

Mr. President, I ask unanimous consent that several news articles referred to in my remarks be printed in the RECORD.

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

[From the Congressional Quarterly, Mar. 31, 1990]

REPUBLICANS SEEK TO REDUCE LABOR'S CLOUT AT THE POLLS

(By Chuck Alston)

Who is Harry Beck? The Portland, Ore., telephone company technician is a bit player in what is fast becoming a central drama in the partisan struggle over campaign-finance laws: the role Big Labor plays on Election Day.

Beck in 1988 won a 12-year legal struggle to force the Communications Workers of America to rebate dues it spent on activities, including electioneering, unrelated to bargaining labor contracts. His cause is now embraced within a broader GOP effort to restrict union involvement in federal elections.

Republicans want to write election laws that would make it easier for other workers to follow Beck. "We see this as a threshold issue: You can't have real campaign-finance reform unless you protect the rights of the working man," says Rep. Tom DeLay, R-Texas, sponsor of a House measure (HR 2589) he calls the "Worker's Political Rights Act."

Writing the Supreme Court's 1988 Beck decision and enforcement provisions into federal statutes would cost unions a small part of the more than $3 billion they collect annually in dues. A second GOP thrust would hit far harder. Senate Republicans plan to introduce legislation soon that would restrict unions' spending of treasury funds to register their members to vote and then turn them out on Election Day—activities long protected by federal law that are worth millions to Democrats.

These labor issues, certain to surface when the Senate considers campaign-finance legislation this spring, are at the core of the debate over what has become known as "soft money"—money raised and spent for elections that is not reported to the Federal Election Commission.

Federal law permits corporations, trade associations and unions to spend treasury funds freely, without disclosure, for nonpartisan voter education, registration and turnout programs. They can also advocate specific candidates to their members, stockholders or employees, although they have to disclose much of this spending.

"Republicans are absolutely convinced that this money, all raised off the books, does them in, and they feel it's one reason they have to raise more money on the books," says Larry Sabato, a University of Virginia political scientist who recently addressed Senate Republicans on campaign finance issues.

In the 1988 presidential primaries and general election, unions spent at least $45 million on these activities, $30 million of it in the general election and all but $5 million on activities that favored Democrats, according to Herbert Alexander, a University of Southern California political scientist who directs the Citizens' Research Foundation, an organization that studies election finances. "There is undoubtedly more money there," Alexander says.

Republicans from President Bush down have called for wider disclosure of unions' soft money since the 1988 election. Now they have stepped up the rhetoric.

"We want to regulate and restrict it, not just disclose it," says Sen. Mitch McConnell, R-Ky., head of a Senate Republican task force on campaign finance. "It's undisclosed and unlimited, and the rumors are it's out there in huge amounts, but nobody can verify that."

His Democratic counterpart, David L. Boren of Oklahoma, has indicated that Democrats will negotiate disclosure but no more.

Little wonder. Corporations and trade associations—more likely to split their efforts evenly among Democrats and Republicans—have never spent soft money to the extent that unions have.

And with the exception of the Teamsters union, most labor organizations back Democrats. What's more, unions are vigorously resisting the GOP onslaught.

"It's just a way of crippling unions," says George Gould, assistant to the president for legislative and political affairs of the National Association of Letter Carriers. "We're adversaries in the system, and if you cripple our ability to communicate with our people, you cripple our ability to play the game."

BECK SEEKS A REBATE

Beck, 48, has spent most of his adult life as an employee of what was once known as the Bell System. He now works for U.S. West, a regional Bell operating company.

Beck and 19 other workers sued the Bell system's chief union, the CWA, in 1976 with backing from the National Right to Work Legal Defense Foundation, an organization that opposes compulsory unions. The foundation now has more than 350 cases pending against unions, about half of them involving issues similar to Beck's.

Beck was not a member of the union. In lieu of dues, he was required to pay "agency fees" to the union under the labor contract it negotiated with American Telephone & Telegraph Co. Federal law permits such requirements to prevent employees from getting a free ride from union efforts, although 21 states with "right-to-work" laws ban such contractural agreements.

Beck objected to part of his fees going for politics and other non-bargaining purposes, and he sought a refund. Lower federal courts agreed with Beck, and as he awaited a Supreme Court decision, conservatives led by Jesse Helms, R-N.C., took up his cause as the Senate considered campaign-finance laws in the 100th Congress.

Eventually, the Supreme Court agreed with Beck in a 5-3 decision, holding that he couldn't be required to pay more than what the union needed to cover labor-management matters.

Bush joined in last June. "No American, not one, should be compelled to give money to a candidate against his or her will," Bush said in announcing his campaign-finance proposals.

It is unclear how much money is at stake. The Labor Department says unions covered by federal reporting requirements collect $3.3 billion in annual dues. In the Beck case, the district court found that 79 percent of assessed dues went for non-bargaining activities. That formula was later set aside, however.

The CWA says only 15 percent goes for activities beyond what it calls "representation." The union says it notifies members once a year that they are entitled to a refund.

Republican at the least want to write the court's Beck decision into a law stating compliance procedures. They also want to make the refund automatic, rather than subject to a request. Bush's campaign-finance bill (S 1727) would further allow workers' who actually join the union to also withhold a portion of their dues.

Unions, including the AFL-CIO, oppose codifying the Beck decision, even with language that goes no further than what the court already said. "We don't think it's necessary," says AFL-CIO spokesman Michael Byrne.

The postal workers Gould is more blunt: "We don't like what the court said."

Democrats might agree to write the Beck decision into law as part of a comprehensive package, says Greg Kubiak, a legislative aide to Boren. "But the Republicans always want to go beyond the Beck decision." he says.

SOFT MONEY FOR DEMOCRATS

The money Harry Beck objected to paying CWA is money many Republicans would just as soon bar from elections even if worker's didn't object to it.

Union treasury money enters elections in several ways. First, unions contribute heavily to party operations. Second, like companies, they are entitled to spend funds from their treasuries to underwrite the costs of running a political action committee (PAC). The PAC collects money from members to make donations to candidates. Experts estimate that a union or company spends a minimum of 50 cents for every $1 the PAC raises. Labor union PACs gave nearly $36 million to federal candidates during the 1988 election cycle. Democrats got $12 for every $1 given to a Republican. PAC contributions are limited to $5,000 per candidate per election.

By contrast, unions, corporations and trade associations can spend freely on soft-money activities such as voter registration, education and turnout. Because disclosure is spotty, soft money estimates vary wildly, beginning near $45 million per presidential election.

The only soft money that must be disclosed to the Federal Election Commission (FEC) is that which expressly advocates a candidate in "internal communications" to members, stockholders, employees or their families—and then only if it exceeds $2,000 in an election. There is no specific penalty for failing to disclose.

Nearly $4 million in internal union communications were reported to the FEC for the 1988 elections—a figure that does not begin to reflect labor's value to the Democratic Party.

"What unions bring to the table that really is a remarkable advantage is their membership contact program," says Paul Jensen, a Washington lawyer who in 1984 and 1988 served as the liason between the AFL-CIO and Democratic presidential contenders.

Jensen says a "valid estimate" of the value to a presidential campaign is $20 million. The money never shows up at the FEC because a good voter identification program can target mostly Democratic votes without violating the "express advocacy" provisions that force disclosure.

The efficiency is clearest in blue-collar cities such as Pittsburgh, where registering union members to vote is an election-year rite of spring. The umbrella organization for Pittsburgh's 156 AFL-CIO union locals, the Allegheny County Labor Council, contacts the unregistered among its 100,000 members. Later in the year, they will hear local officers talk up certain candidates. They will be polled about their intentions. The undecided will get literature. Many will go to the polls with slate cards in hand.

"Allegheny County is a good labor county," says Paul Stackhouse, the chairman of the council's political committee. The county, home to the headquarters of the United Steelworkers of America, went 60-40 for the Democratic presidential nominee, Massachusetts Gov. Michael S. Dukakis, over Bush.

Members of the International Association of Machinists and Aerospace Workers, a union strong in Washington state, vote 70 percent Democratic, according to William J. Holayter, the union's director of legislative and political action. Only Democrats who are "Common Cause nervous" would vote the union's turnout operation out of business, he says, referring to the public affairs lobby that has called for disclosure, but not limits, on labor and corporate soft money.

"Even Mondale got 68 percent of our vote,' Holayter says. "I go on a crusade every now and then telling [Democrats] you guys are absolutely stupid and out of your minds if you fool with this."

GOP GIRDS FOR SENATE FLOOR BATTLES

To hear Sen. Mitch McConnell, (R-Ky.) tell it, Senate Republicans left their weekend retreat March 24-25 like a football team breaking huddle—fired up, unified and ready for the Democrats on campaign-finance reform.

"I think it's safe to say we are coming behind a measure," McConnell said. "If you were summing up Republicans at the moment, there is a growing sense of unity to ax PACs and do something about non-party soft money."

So-called soft money is raised and spent outside the federal campaign-reporting system. McConnell was referring in particular to money spent by corporations, trade associations and unions for election activities as well as by tax-exempt organizations for voter-registration drives. The vast majority of money that has become the subject of controversy in the "Keating Five" scandal involves efforts by Sen. Alan Cranston, D-Calif., to raise money for tax-exempt voter-registration programs.

One of the chief concerns senators expressed at their West Virginia retreat was the way the public views the GOP on the issue. They complained that Republicans often come off as the impediment to reform because they oppose Democratic initiatives that they believe will tilt the playing field. "We need to stand on the positive side rather than just be against what the Democrats do," said Ted Stevens, R-Alaska. Even so, the size of the Democrats' majority could again put the GOP on the defensive.

McConnell said that the Republican measure would be introduced within weeks and that he hopes it will help put them back on offense by the time Senate Majority Leader George J. Mitchell of Maine brings Democratic campaign-finance legislation to the floor. Mitchell has said he will do so within weeks.

The Senate Rules and Administration Committee March 8 approved, on a 7-3 party-line vote, a Democratic measure (S. 137) that includes state-by-state spending limits for Senate campaigns and a cap on aggregate political action committees (PACs) contributions. *(Democratic bill, Weekly Report p. 725)*

President Bush has proposed eliminating all business and labor PACs. McConnell indicated that the Senate GOP conference was unwilling to go that far. He said the bill likely would seek a limit of $1,000.

Outsiders invited to address Senate Republicans on the issues showered criticism on spending limits. GOP consultants Eddie Mahe and Charlie Black both advised against them. Black said he heard little dissent for the package McConnell proposes.

Mahe said there was considerable debate on the "flexible spending limits" proposed to the Senate by a panel of outside advisers chosen by Mitchell and the Republican leader, Bob Dole of Kansas. The advisers said that money raised from people living outside a senator's home state or from PACs should be subject to spending limits but that money raised from individuals within a state should not. *(Weekly Report p. 725)*

"There was hardly any support for something like that," Mahe said.

White House Chief of Staff John H. Sununu reiterated Bush's pledge to veto a bill that includes spending limits or that otherwise appears harmful to the GOP.

McConnell offered a partisan pep talk of his own during his talk on Sunday. "What I told the caucus was that this is not an ethics bill. We passed the ethics bill last year. This is a bill about partisan advantage, and it's safe to say Republicans are not going to get rolled and let the Democrats write the rules for our democracy."

COURT: BUSINESS LIMIT OK

The Supreme Court's March 27 ruling that states can bar corporations from running independent political campaigns left unanswered where the court eventually will draw the line for non-profit corporations.

The court said in its 6-3 decision in *Austin* v. *Michigan State Chamber of Commerce* that a Michigan law requiring corporations to make their political expenditures through separate political action committees does not violate the First Amendment's protection of free speech. The case grew out of a newspaper advertisement, purchased by the chamber with treasury funds, that endorsed a candidate.

The court said corporations enjoy special legal status allowing them to accumulate vast wealth. This entitles a state to restrict their speech.

The court had said in the 1986 *Federal Election Commission* v. *Massachusetts Citizens for Life Inc.* certain small non-profit corporations could spend directly from their treasuries because they would have difficulty establishing separate funds, creating a disincentive to political speech.

The court in *Massachusetts* established a three-part test for non-profit corporations that it said the Michigan chamber failed to meet. One of these tests was its independence from the influence of business corporations.

"This is nothing more than the same decision in *Massachusetts* approached from the flip side," said Kenneth A. Gross, a Washington attorney who is a former associate general counsel at the Federal Election Commission.

[From the Bureau of National Affairs, Inc.]

APPEALS COURT REJECTS MACHINISTS' CHALLENGE TO COMPANY SOLICITATION OF EMPLOYEES FOR PAC'S

The right of corporations to solicit contributions for their political action committees from executive and senior employees is upheld by a federal appeals court, which unanimously rejects the argument of the International Association of Machinists that such contributions give corporate PACs more power than labor PACs.

In an *en banc* ruling, the U.S. Court of Appeals for the District of Columbia Circuit finds no fault with a 1976 amendment to the Federal Election Campaign Act (FECA) that broadened corporations' rights to solicit PAC contributions. An eight-judge panel, in a *per curiam* opinion, finds unpersuasive the Machinists' contention that the amendment created an "explosive" growth both in the number of corporate PACs and in their spending power, resulting in an unconstitutional imbalance in the influence of corporate and labor PACs.

The challenge was brought by the union and six individual plaintiffs, including Machinists President William Winpisinger, whose participation was based on their right as voters to challenge election law. The case went to court under special provisions for expedited review of election law questions after the Federal Election Commission rejected the union's administrative complaint on the PAC contribution and solicitation practices of 11 corporations.

Until amendments were made in 1976, federal election law permitted companies to solicit funds for PACs only from shareholders, while unions could seek contributions from members. In a 1975 advisory opinion, however, the commission said a company could solicit all its employees, as well as shareholders, for PAC funds. Congress reacted to the sweeping commission interpretation by amending the Act in 1976 to limit corporate PAC contributions to executive and administrative, or career, employees as well as shareholders.

The Machinists contended that although Congress did not intend to create an imbalance between corporate and labor PACs, the amendments had that effect. The union argued that between 1975 and 1980 corporate PACs grew in number from 139 to 1,204, and their funds from $5.8 to $34 million; in the same span labor PACs increased only from 226 to 297, and their funds from $18.5 to $26 million. The union also charged that 90 percent of corporate PAC funds are contributed by executive and administrative employees.

But the court finds that the alleged disparity "is not purely one of dollars and cents" and is not caused solely by the amendments. The panel says it is unclear how many of the career personnel were permitted to make contributions earlier as shareholders.

"Nor, taking into account that labor union PACs just a few years ago were more prevalent, wealthier, and more powerful than corporate PACs, do [the Machinists] entertain the possibility that the relative strength of corporate and labor PACs may swing pendulum-like in step with the political fortunes of the day," the courts says.

In examining the legislative history, the court finds that there was a general consensus in Congress that the amendments restored the balance between corporate and labor PACs' strength that was upset by the commission's 1975 ruling. Further, the court finds that Congress had good reason to add career employees as permissible contributors, because they "share with stockholders a stake in the corporation's well-being."

"It is unlikely Congress will ever be able to achieve a perfect balance between the relative influence of corporations and labor unions in federal elections," the court says. "In any event, the Constitution, as historically and currently interpreted, does not afford any guarantee against one person's or group's ability to fund more speech than can another." The court concludes that Congress "attempted to treat corporations and labor unions in a relatively comparable manner."

CAREER EMPLOYEES' FIRST AMENDMENT RIGHTS NOT IMPAIRED

The Machinists' second challenge—that the solicitation of funds under "inherently coercive" circumstances impairs a career employee's constitutional right to abstain from political acitvity—also is rejected by the court. "We cannot conclude that such solicitation inevitably forces career employees to compromise their political beliefs in order to avoid jeopardizing their corporate positions," the court says.

Union statistics that 90 percent of corporate PAC funds are derived from career employees do not necessarily imply coercion, the court states. "From the very same figures one could argue with equal force that career employees contribute to their corporate PACs out of a desire to further what they perceive to be their own best interests or the best interest of the corporation, and because they have the wherewithal to do so, not becuase they are coerced or intimidated," the panel says. Furthermore, Congress was aware of the possibility of employer coercion but enacted safeguards in the amendments to prevent it, the court adds.

Finally, the court rejects the union's third challenge—that the use of corporate funds to support a PAC's administrative expenses violates the First Amendment rights of dissenting shareholders. The panel finds that the union's claim "stretches beyond reasonable proportion" earlier rulings prohibiting unions from requiring members to support the union's ideological views as a condition of employment. The Machinists "reach too far in equating the situation of a worker who is compelled to join a union, or to pay union dues on pain of losing his employment, with that of a shareholder in a publicly-held company whose livelihood does not depend on retaining stock in a corporation involved in political activity he opposes and whose investment is tenuously linked to the establishment and operation of the corporation's PAC."

The opinon was signed by Chief Judge Robinson and Judges Tamm, Robb, Wilkey, Wald, Mikva, and Ginsburg.

CONCURRING OPINION FILED BY JUDGE EDWARDS

Although disagreeing with the court's rationale in rejecting the Machinists' third challenge, Judge Edwards concurs in the finding that the use of corporate funds to support PACs is not a violation of dissenting shareholders' First Amendemnt rights. However, he reasons that it is not a violation because there is no governmental requirement that the funds be spent.

By the majority's rationals, Judge Edward says, a stockholder has less right to control the political use of his investment than a union member has to control the use of his dues. "One simply cannot conclude that corporate stockholders are never coerced when the money they have invested in the hope of pecuniary return is spent for political purposes," he says. While stockholders may have a "ready market" for their corporate shares, the same may not be true for a minority stockholder in a closely held corporation, Judge Edwards contends. He continues that if the stockholder relies on dividends as a source of income, "who is to say that he is not coerced if the corporation establishes and finances a PAC that supports candidates who are antithetical to his political views?"

SUPREME COURT REVIEWING SIMILAR CASE

Joseph L. Rauh, Jr., one of the attorneys who represented the Machinists, declined comment on the court's ruling and said no decision had been made on a U.S. Supreme Court appeal, but added "the Machinists don't give up lightly."

The Court on April 15 granted review of another ruling on the same FECA provisions by the District of Columbia Circuit. In that case, the appeals court upheld the solicitation of PAC funds by the National Right to Work Committee from persons who it considered "members" by virtue of their having contributed to NRWC (1982 DLR 65:A-6).

Rauh declined to speculate whether the Machinists would seek Supreme Court review as part of the right-to-work case, stating that although the cases deal with the same provision of the election law, the applications are widely different.

(*International Association of Machinists* v. *Federal Election Commission;* CA DC, No. 81-1664, April 6, 1982).

(Decision appears in Text Section D).

LABOR LEADERS WEIGH OUTCOME

AFL-CIO President Lane Kirkland congratulated Bush in a telegram, and said the AFL-CIO "stands ready to assist you in constructive efforts to build a better nation and better lives for all Americans."

In a subsequent statement, the federation leader cited a poll conducted for the AFL-CIO by the Wilson Center of Alexandria, Va. showing that 69 percent of AFL-CIO members and 68 percent of those living in AFL-CIO union households voted for Dukakis. These results, which he noted are similar to ABC News exit polling data showing that 67 percent of the members of union households voted for Dukakis, "means that AFL-CIO support for the Dukakis-Bentsen ticket ran more than 20 percentage points ahead of the national vote.

Jack Sheinkman, president of Amalgamated Clothing and Textile Workers Union, said he was "naturally disappointed" that Dukakis did not capture the White House, but he said he was "heartened" by the results in House and Senate races.

[From the Washington Times, Mar. 22, 1990]

(By Warren Brookes)

TOUGH ON THE DEFICIT OR THE WORKER?

The willingness of workers to ignore union sanctions and cross picket lines may stem from the continued rift between big labor's politics and rank-and-file interests.

Last week, one of big labor's best friends, House Ways and Means Chairman Dan Rostenkowski, Illinois Democrat, proposed a "deficit reduction" plan that calls for $195 billion in higher taxes over the next five years. Not only do 77 percent of those higher taxes come directly from the working class (including a 20-cent per gallon gasoline tax), but they come on top of the $1,076 billion to be produced by higher revenues from economic growth from 1991 to 1995.

This means instead of being a "tough" plan to slash the deficit, the Rostenkowski plan would in fact support a spending spiral in everything by defense and Social Security.

That's because spending interests, especially big labor, still set the Capital Hill agenda. As Barron's editor Robert Bleiberg wrote last September, "Even as organized labor loses economic ground, its political clout perversely continues to mount."

At the very moment that Mr. Rostenkowski was floating his $39-billion-a-year, new-revenue honey pot, Sen. Jay Rockefeller, West Virginia Democrat, was promoting his Pepper Commission report, which calls for the eventual new spending of as much as $70 billion a year to fill the health-insurance gaps in our nation's medical-care system.

The main push for such new spending is coming from big labor and big business facing tough competition from non-union smaller companies and entrepreneurs who have either elected to go uninsured or provide less-costly coverage with larger deductibles.

Another example is child care. Last November, the House and Senate came close to passing out a program whose initial $2 billion to $4 billion price tag is only a down payment on the creation of a massive new child-care bureacracy with costs of $70 billion to $100 billion.

The main beneficiaries of that explosion would be the unions of state and county employees, human services providers and education, along with big business, which is under growing pressure from big labor to provide child care as a fringe benefit.

There are a host of other such common goals: protection of entrenched management and unions against hostile takovers and leveraged buyouts; re-regulation of some parts of the transportation industry; subsidies and quotas for the semiconductor, steel and textile industries; the gradual replacement of private health insurance with a national system.

The outcome of this mutual wish list will be higher prices and higher taxes for the American consumer, because big labor's agenda is increasingly set by the government unions, especially the National Education Association and the American Federation of State, County and Municipal Employees.

One of the very fairest congressional rating services is the National Taxpayers Union, which rates senators and representatives on how often they stand up against added spending, whether that spending be for social programs or for defense.

As such, National Taxpayers Union ratings punish conservatives for their pro-defense votes and reward liberals for their anti-defense votes. The only common interest is is how well politicians oppose the overall rise in government spending and taxes.

In 1988, the 20 congressman with the best (highest) National Taxpayers Union ratings for holding the fiscal line (an average of 63 percent of the time) received a grand total of only $23,250 from the political action committees of organized labor, only $1,163 per politician, according to an analysis by the National Right To Work Foundation. (See Table.)

By contrast, in 1988, the 20 congressman with the worst spending records—the biggest spenders, who defended taxpayers less than 11 percent of the time—received a grand total of $1,616,501, an average of $80,825 each, from the same big labor political-action committees.

In short, big labor rewarded the biggest spenders by nearly 70-to-1 over the taxpayers' best friends. Year after year, polls of union members show they support a balanced budget amendment by margins of 60 percent to 70 percent. Yet, it was big labor that killed this amendment in 1982 in the House after the Senate passed it easily.

Surveys of the membership of the NEA show 40 percent Democrat and 30 percent Republican registration. Yet the NEA gives money to Democrats at a 16-to-1 ratio over Republicans and to liberal big spenders by even larger margins.

That kind of aggressive union monetary manipulation is behind Congress' low turnover rate and its unwillingness to put taxpayers' interess first. Until the administration's embrace of Mr. Rostenkowski's proposal, taxpayers' only hope lay in President Bush's willingness to stand up against those interests. Is that hope now fading?

HOW BIG LABOR SUPPORTS BIG SPENDING

[Ratings by National Taxpayers Union]

	NTU rating (average)	Labor PAC dollars 1988 (average)
20 "Taxpayers Best Friends"	62.6	$1,163
20 "Biggest Spenders"	10.6	$80,825
Ratios (rounded)	6:1	1:70

Sources: Federal Election Commission, National Taxpayers Union, National Right to Work Foundation.

[From the Washington Times, July 5, 1988]

NEA BACKS DUKAKIS, 4 FOR NO. 2 SPOT

[By Carol Innerst]

NEW ORLEANS.—National Education Association President Mary Hatwood Futrell said yesterday the NEA has recommended four likely running mates to Massachusetts Gov. Michael Dukakis, including the Rev. Jesse Jackson.

The others listed in a letter she wrote to the likely Democratic nomninee for president are Tennessee Sen. Albert Gore Jr., Ohio Sen. John Glenn and Florida Sen. and former Gov. Robert Graham.

The NEA also endorsed overwhelmingly a proposal that each state name at least one school district a "learning laboratory" where teachers could experiment and take the lead in improving schools.

"Hot dog! You did it!" Mrs. Futrell said, after the delegates gathered for their annual convention passed her pet proposal by voice vote.

In a 45-minute keynote address before 8,227 delegates had urged teachers to estab-

lish "a national network of innovative school districts."

Such districts, she said, might do away with academic tracking, finance schools by means other than property taxes, experiment with more flexible scheduling, or anything else it wanted to try in the name of reform.

Mrs. Futrell also told the union's 8,227 convention delegates to throw their clout behind Mr. Dukakis as "the most electable and desirable candiate" going into the Democratic National Convention.

While the NEA has not traditionally endorsed for the vice presidency, the possibility exists this year, Mrs. Futrell indicated. The endorsement decisions left the NEA's black caucus unhappy over the treatment Mr. Jackson received from the NEA and the caucus could make an endorsement motion from the floor, she said.

Mr. Dukakis "is spending the holiday weekend with the Jacksons," she said. He is not at the convention because his legislature is in session, but is scheduled to address the NEA via satellite at 5 p.m. today.

There are 1,782 ethnic minorities among the 8,227 delegates to the NEA's Representative Assembly, and 1,343 of them are black teachers, according to NEA spokesman Kenneth Butler. About 12 percent of the 1.9 million membership is minority, he said.

The NEA's endorsement of Mr. Dukakis was made by the Political Action Council June 30 and approved by the Board of Directors. It does not necessarily signal the wishes of the membership.

Whom the union will endorse in the general election will be determined by a mail ballot in August. Vice President George Bush will be on that ballot although he has refused to sit down one-on-one and talk to the NEA, Mrs. Futrell said.

"We should give our members an option—it's a democratic process," she said."No party has the majority among NEA members."

The NEA's 1.9 million members are 30 percent Republican, 40 percent Democrats and 30 percent independent, she said. About 30 teachers and alternates will attend the GOP National Convention in New Orleans in August and about 400 delegates will go to the Democratic National Convention in Atlanta. She will attend both, she said.

In her keynote speech to the convention delegates, Mrs. Futrell portrayed the Reagan administration as "reactionary" and "uncaring" about children. Mr. Dukakis, she said, would be a "pro-education president."

In an interview with The Washington Times, Mrs. Futrell said the NEA would seek a meeting to discuss educational concerns with whoever wins the Oval Office.

If the victor is Mr. Bush, she said she hoped he would reflect upon the wrangling between the NEA and the Reagan administration "and take a lesson from those eight years."

Although Mr. Bush refused to submit his candidacy to the NEA's screening process, Mrs. Futrell said she was among 30 civil rights leaders invited to Mr. Bush's home recently to hear his views on various policy issues. The topic he mentioned most was education, shea said.

"I believe he would be willing to work with the education community as a whole," she said. "I think we probably will agree on more issues than people believe."

Mrs. Futrell said the vice president has talked abut learning laboratories—a proposal very similar to the one passed yesterday.

"So at least he is thinking conceptually along the same lines as the NEA. But I don't know how he would implement his learning labs. I would like the opportunity to chat with him about that, because we believe we have to expand that concept to involve teachers and to be site-based."

[From the Los Angeles Times]

LABOR'S EFFORT FOR MONDALE MAY BACKFIRE

(By Sara Fritz)

COLUMBUS, OH.—Like other union leaders in these closing days of the 1984 presidential campaign, Rex Hamlett of the Communications Workers of America is working hard to turn out the labor vote for Walter F. Mondale. And like many of his fellow workers, Hamlett is haunted by the thought that the better he does, the worse it may be for labor's chosen candidate.

"We've learned some awful hard lessons that labor can't force their membership to vote a certain way," Hamlett said recently. "How they are going to vote this year is kind of up in the air," he added, conceding that President Reagan drew half of his union members' votes in 1980—and that Reagan remains popular with the rank and file today.

So it goes all across the nation's industrial heartland. Although Mondale is depending on labor to deliver the blue-collar vote, Democratic strategists admit that labor's effort could ultimately hurt their candidate by turning out more union members favorable to Reagan than to Mondale.

"I admit I have been prepared, if we see that we were not doing too well with the labor guys, to tear down the labor effort," said Don Sweitzer, Ohio coordinator of the Mondale campaign.

By all accounts, union leaders are working harder and more enthusiastically for Mondale than they did for Jimmy Carter four years ago, or for any Democratic candidate since Hubert H. Humphrey in 1968. They are registering new voters, operating telephone banks, raising funds, printing anti-Reagan literature and bringing their members to rallies when Mondale or his running mate, Geraldine A. Ferraro, comes to town.

Nationally, organized labor is expected to spend a record amount of money to help Mondale, although the exact sum is impossible to calculate. The American Federation of State, County and Municipal Employees, for example, will spend $3.5 million this year, compared with $2 million in 1980.

Meanwhile, AFL-CIO President Lane Kirkland is touring the industrial belt on Mondale's behalf and another top AFL-CIO official, Jim Kennedy, has been deployed to work part time at Mondale headquarters in Washington.

"The labor guys are our biggest cheerleaders," said Sweitzer, who describes the labor effort as "the best I've ever seen."

MILLIONS NOT REGISTERED

Still, millions of union men and women remain unregistered. Barely more than half of the Ohio AFL-CIO's 800,000 members are registered to vote. And while they tried to register only Mondale supporters, union leaders fear that they signed up a good many Reagan supporters as well.

Without the labor vote, Mondale cannot carry the industrial states that are considered his indispensable base of support. At present, he appears to be trailing in all of those states, and a Los Angeles Times Poll completed on Oct. 15 shows the blue-collar vote almost evenly split, with 48 percent for Reagan and 46 percent for Mondale.

If the labor vote is to begin to affect the outcome, said John Thomas, spokesman for the Ohio AFL-CIO, 70 percent of union voters must cast ballots for the Democratic candidate—five points above the historic norm and 10 points more than turned out for Carter in 1980.

"You go in with 60 percent in your pocket and the battle is over the additional 10 percent," he said. "If we don't get 70 percent among trade unionists, we lose."

UNEMPLOYMENT HURTS EFFORT

Unfortunately for Mondale, the unions that appear to be doing the most to turn out their members are the growing non-industrial unions with the highest percentages of Republican members—the Communications Workers, United Food and Commercial Workers, National Education Assn. and the American Federation of State, County and Municipal Employees.

High unemployment in the smokestack industries has limited the political efforts of such staunchly Democratic industrial unions as the United Steel Workers and the United Auto Workers.

"We used to be able to call steelworkers' headquarters in Pittsburgh and they'd ship money over here by the carload," said a labor official who declined to be identified. "We can't do that anymore. The auto workers continue to talk a good game, but they don't do much either."

Although the building trades are known to be the most conservative unions in the labor movement, their leaders insist that high unemployment in construction has converted the membership into Mondale supporters. Larry Sowers, president of Carpenters Local 200, insisted that 85% of his members will vote Democratic, and Bob Merideth of Pipefitters Local 189 claimed 90% in his local will.

Four years ago, labor split during the Democratic primaries between Carter and Sen. Edward M. Kennedy (D-Mass.). "We turned off a lot of our membership on Carter when we campaigned against him in the primaries," admitted Norman Wernet, executive director of the American Federation of State, County and Municipal Employees.

This year, labor took the unprecedented step of uniting behind Mondale even before the primary season, and that effort appears to have paid off, at least in labor's campaign effort. "I see a great deal of difference from 1980 in terms of our enthusiasm and the willingness to get out and work," said Milan Marsch, Ohio, president of the AFL-CIO. "No one has been negative like in 1980."

National union registration figures are not yet available, but during the initial phase of labor's effort, which ended in early October, the unions claim to have registered an estimated 50,000 additional union members to vote in Ohio.

"We registered them until we were blue in the face," said Hamlett, whose local is made up of telephone installers and repairers. "We registered people in the cafeteria. We registered them at monthly meetings. We registered them everywhere we could find them."

MEMBERS CALLED

The AFL-CIO in Ohio has also set up 80 telephone banks with a total of 400 telephones that will be used to call every union member in the state several times before the Nov. 6 election. At the state's biggest phone bank, in Cleveland, retired and unemployed unionists are paid $4 an hour to make a total of 10,000 calls a day.

"They run it like a military camp up there—you have to raise your hand if you want to go get a Coke," said Sweitzer.

AFL-CIO officials in Washington are also stressing the need for shop stewards to talk one-on-one about Monday with union members though the million-member United Food and Commercial Workers warned its officers to avoid any arm-twisting that might spark a backlash against Mondale.

"One of the most personal things people do is vote for (a) President," said William Olwell, the union's public affairs director in Washington. "Our members tell us that they would resent any heavy-handed stuff."

But Ralph Lorenzetti, president of a Food and Commercial Workers local is ignoring the advice from Washington. He tells his members as bluntly as possible: "Look, we know a majority of you voted for Reagan last time. Vote for him again and you won't be here three years from now. If Reagan is reelected, employers are going to try to do the union in."

[From the Washington Post, Oct. 11, 1988]

LABOR TRIES TO SPARK ENTHUSIASM FOR DUKAKIS

(By Frank Swoboda)

For organized labor, the past five weeks have been a warmup. This week marks the start of the presidential election campaign.

Armed with nearly $40 million in cash, an army of volunteers and perhaps more hope of winning than at any time this decade, labor is moving into the critical "get-out-the-vote" phase of its campaign to elect Democratic presidential nominee Michael S. Dukakis.

The goal is to get 65 percent of the union members in at least 10 key states to vote for Dukakis in the Nov. 8 election.

But there is a level of frustration among many union officials, who suggest that the labor effort for Dukakis is far more organized and efficient than the national Democratic campaign.

Labor is concentrating on the states with the heaviest union membership: New York, California, Pennsylvania, Illinois, Ohio, New Jersey, Michigan, Massachusetts, Texas and Florida. At this point, however, key labor officials see Florida as a lost cause—Dukakis is running behind Republican nominee George Bush by as much as 20 points in their polls.

Labor's effort is not confined to these states, however. Union political operatives point to Washington and Oregon as states where they expect labor's efforts and organization to make a difference. In terms of organization and volunteers, said Joan Baggett, labor coordinator for the Dukakis campaign, "our campaign has an edge in the field."

Labor brings more than people and tactics. AFL-CIO spokesman Rex Hardesty said union political action funds total between $36 million and $41 million, 300 percent more than in 1984. "This election's going to be close because Dukakis can compete," he said.

Union officials said they have assembled the most sophisticated election operation in memory, to try to overcome what they see as a lackluster national campaign by Dukakis. Their concern is that it will be hard for the unions to do well in the next 30 days unless the Dukakis campaign generates more enthusiasm among the voters.

Officials from nearly all of the politically active unions contacted in recent days said a major difference between this campaign and those in 1980 and 1984 is the active involvement of local union leaders. At this stage of the campaign in both the 1980 reelection campaign of President Jimmy Carter and the 1984 campaign of former vice president Walter F. Mondale, key union officers were giving only lip service to the candidate, these officials said.

"I think there's a lot more participation as far as the [union] leadership and political people are concerned," said the political director of one union. "There's almost a sense of desperation. Labor is much more organized and focused than the [Dukakis] campaign."

Until now, said Loretta Bowen, political director of the Communications Workers of America (CWA), many union people have been "searching desperately for a spark" to help ignite rank-and-file enthusiasm about Dukakis. Now, she said, "people realize there may not be that spark."

As a result, the CWA, one of a handful of politically active unions, has ordered everyone on its 200-member field staff not actively involved in contract negotiations to spend full time on the election.

Bowen said the union was concentrating its efforts on two tiers of states where it has large membership. The top tier, where CWA membership is the largest, includes New Jersey, Ohio, Texas and Tennessee. The second tier of important states where there also is sizable membership includes California, Georgia, Michigan, North Carolina, Pennsylvania and New York.

The United Auto Workers (UAW) union, whose efforts could spell the difference for Dukakis in Michigan and other key industrial states, this week will mail more than 1 million personalized, pro-Dukakis letters to UAW members. Each letter also identifies the individuals by their employer.

The UAW is distributing anit-Bush material at plant gates in the hope that members will use the material to argue against Bush during what research shows is a general willingness to discuss politics on the job.

Political research within the union shows the membership responds to that UAW spokesman Peter Laarman calls the "squeeze issues," such as concerns that the next generation will not be able to do as well economically.

Laarman said that so far Dukakis hasn't automatically appealed to union workers who may be ready to return to the Democratic Party. But he said he senses the campaign is beginning to coalesce among UAW members. "We're building," he said. "I don't think anyone is running away from the fact that this is a real tough battle."

Sam Dawson, political director of the United Steelworkers of America, said labor's campaign effort to date was "more organized than any I've seen since 1960." Key labor officials credit Democratic National Chairman Paul G. Kirk Jr. for building up the party's state operations since 1984. They said much of the campaign organization and coordination is being handled by the state party organizations rather than the Dukakis campaign.

Dawson said that until recently few workers seemed to focus on the election and there was little enthusiasm for either Dukakis or Bush. Now there are indications the membership is beginning to turn toward Dukakis, he said. "Our people sense that it can be won. We are close enough in the states that we have to win that we think we can do it."

This year, for the first time on any scale, key unions have been using focus groups to try to determine the message their members want to hear from candidates. The results have been surprising, union leaders said. In general, the research showed that the membership wanted facts—to help them make up their minds—not the traditional party or union political rhetoric.

Perhaps the best example of this was the National Education Association which, after endorsing Dukakis, put the pictures of both Bush and Dukakis on the front of its monthly newspaper. NEA's Ken Melley said the union attempted to present a balanced assessment of the two candidates and explain why the union picked Dukakis.

[From the Wall Street Journal, Sept. 20, 1988]

LABOR LETTER: A SPECIAL NEWS REPORT ON PEOPLE AND THEIR JOBS IN OFFICES, FIELDS AND FACTORIES

(By Selwyn Feinstein)

Unions gear up for big election push for Dukakis.

With more money and enthusiasm than four years ago, the AFL-CIO launches a massive effort to get 13 million unionized workers to register and vote for Democratic nominee Michael Dukakis. "We sense this time we have a real chance," compared to 1984's futility when unions based Walter Mondale, observes Jerry Clark, political director of the American Federation of State, County and Municipal Employees.

The AFL-CIO plasters its newspaper with the Dukakis message and follows with videos and millions of fliers. It expects to field 500,000 volunteers. The American Federation of Teachers sends 16-minute videos to 100 locals. The United Auto Workers taps union publications and the mails. The Communications Workers turns to phone banks to get out Democratic votes.

But a few union officials complain their efforts are being hampered by confusion in the Dukakis camp.

[From the National Journal, Mar. 15, 1986]

MONEY IN THE SHADOWS

(By Ronald Brownstein and Maxwell Glen)

No one knows how much America spends on politics.

"We know how much we spend on deodorant," said Arizona State University political scientist Ruth S. Jones, who studies campaign finance, "but we don't know how much we spend on elections."

The only thing certain about campaign spending is that the total spent on federal elections is at least tens of millions of dollars—and in all likelihood more than $100 million—greater than the amount reported to the Federal Election Commission (FEC).

FEC data provide only a base line figure on the resources devoted to federal elections. According to the commission's final reports on the 1984 elections—after netting out transfers between political action committees (PACs), the parties, and candidates—political activities in that cycle cost $1.155 billion (*See table.*) That figure represents the total of hard money—funds subject to commission contribution limits and reporting requirements—contributed to federal elections, as well as public financing for the presidential race.

But millions of dollars of additional spending exists in the shadows of the federal election law. Many kinds of political spending—usually grouped under the heading "soft money" but encompassing a wide range of disparate activities from voter registration efforts by nonprofit organizations

to centrally organized fund-raising drives by the presidential campaigns—don't fall under the legal reporting requirements.

"One of the false premises of election law," said Republican election lawyer Jan W. Baran, "is that it will enable you to account for all of the money being spent in politics."

For years, political scientist Herbert E. Alexander of the University of Southern California, who is also the director of the Citizen's Research Foundation, has made the most thorough effort to map the unknown terrain of off-book election spending. Alexander, who produces an estimate every four years of total political spending, calculates that spending on federal races in 1984 came in at $1.24 billion and that spending on races at all levels reached $1.8 billion, a 50 per cent increase from 1980.

These figures are necessarily rough approximations, as Alexander quickly concedes. "I've got to admit it is an art more than a science," he said. "We try to be as complete as possible, but it is not perfect."

When all kinds of soft money expenditures are considered, federal election spending may well exceed even Alexander's $1.24 billion estimate. The most well-known kind of soft money, which is usually defined to mean funds not subject to FEC reporting and contribution limits, is collected by the presidential campaigns to finance voter registration and turnout programs in the States.

Those funds are substantial. In the last election, the Democrats' Victory Alliance, which funneled money to state parties, raised $6 million in soft money. (The alliance also raised $16 million in hard money, most of which it transferred to the state parties, which deposited the money in their federal election accounts; the election law requires the state parties to use that money to pay for activities directly affecting federal elections.) According to figures collected by Alexander, Republicans centrally collected and disbursed about $5.6 million in soft money to the state parties for activities related to the presidential campaign.

State parties also raised funds for their own state election accounts—the activities of which are legally not supposed to, but almost inevitably do, affect federal races. (The GOP in particular focused on helping state parties raise money themselves.) How much those parties raised is unknown because state reporting requirements vary widely.

But a look at a few states with thorough reporting requirements indicates that state parties collected significant sums for their state accounts, in addition to the $61 million that they raised for their federal election accounts and that are reported to the FEC. In Georgia, New York, Ohio, Oregon and Wisconsin, the federal election account represented 20-40 per cent of total state party spending. That range suggests that state parties raised tens of millions of dollars beyond the figures they were required to report to the FEC. And that is only the start of the spending in the shadows.

UNION DOLLARS

One of the great mysteries of American politics is how much money labor spends on elections.

Union PACs collected more than $51.1 million in 1983-84 and spent more than $47.5 million, but that represents only a part of their effort. Organized labor also makes extensive contributions to nonfederal candidates that are not reported to the FEC.

Labor's real importance to candidates, though, is not so much the PAC dollars unions contribute directly to campaigns as the expenditures they make from their treauries to lobby among their members. In each election, labor spends millions of dollars in advocating its preferred candidates before the union rank and file, but how many millions is unknown, and estimates vary widely.

The National Right to Work Committee says that organized labor spent about $200 million in union treasury funds on campaign activities in the last election cycle. "It is almost impossible to put a dollar figure on it," said Clayton Roberts, the committee's vice president for public relations. But "if you wanted to build an ideal campaign organization and you started from scratch, it would be close to what the AFL-CIO has in place."

Murray Seeger, the AFL-CIO's information director, said the Right to Work Committee's $200 million figure comes "right off the moon." But the labor federation has no estimate of its own. In fact, Seeger argues that the nature of labor's activities, which depend so heavily on volunteers, makes it impossible even to guess how much it spends. "If you have a telephone bank, all done by volunteers, say, 25 people calling for four hours, how much is it worth? Is it the minimum wage, is it what they would be earning if they were stringing electrical cable somewhere . . . ? There is no way to value it."

The FEC requires unions (and businesses) to report some information on what they spend communicating with their members. According to FEC figures, unions spent $4.5 million contacing their members for Democratic presidential nominee Walter F. Mondale or against President Reagan and $600,000 supporting House and Senate candidates.

But the huge holes in the reporting requirements make those members meaningless. Only communications in which more than half of the message is devoted to expressly advocating the election or defeat of a particular candidate must be reported. So a union can slap an endorsement on the front cover of a four-page newsletter, list coming events on the next three pages and report nothing to the FEC. Nor must it report "nonpartisan" voter registration or get-out-the-vote efforts. Any union arm, such as a local, that spends less than $2,000 in an election doesn't have to report any of its spending to the FEC. And the investments that unions make in the infrastructure needed for these communications—computer capacity, telephones, staff—need not be reported either.

"The most important things unions do—phone banks, surveys which they do for their own internal targeting, these kinds of things—have never been reported," said Michael J. Malbin, a resident fellow at the American Enterprise Institute for Public Policy Research.

The result is huge gaps in the information filed with the FEC. Only 18 international unions (there are 94 in the AFL-CIO reported partisan communications with their members in the last election; among those that didn't were two of the most politically active unions, the United Auto Workers and the United Food and Commercial Workers, although the latter spent $68,000 independently on behalf of Mondale. Of the more than 53,000 local union branches, only five reported any political communications (though some internationals reported expenditures by locals crossing the $2,000 threshold as part of their own filings.)

More information, at least for public employee unions in certain states, will become available soon because of the Supreme Court's March 4 decision on *Chicago Teachers Union* v. *Hudson*. The Court ruled that public employee unions that are allowed to assess dues on nonmembers—who benefit from the union's collective bargaining activity—must establish added safeguards to prevent that money from being spent on political activities or lobbying. The Court required the unions to account strictly for all money spent on such activities, allow nonmembers a chance to challenge their calculations and reduce nonmembers' dues by the appropriate percentage. Nowhere do reliable estimates of political spending prove more elusive than at the state and local levels.

There are, to begin with, an enormous number of elected offices: Nearly 500,000 are contested every four years, according to the Census Bureau. But the biggest obstacle lies in the varying nature of state election laws. While most states require candidates, parties and other political entities to report their financial activities, they do so with different degrees of legal stringency and regulatory enforcement.

Because of the numerous obstacles involved in calculating the sums spent on state and local politics, most observers of campaign finance have focused only on pieces of the puzzle—governorships, the legislatures and ballot issues. Only one expert, Herbert E. Alexander, director of the Citizens' Research Foundation and a political science professor at the University of Southern California, has ventured a comprehensive estimate of the dollars consumed at the state and local levels, and he concedes that his figures may have a margin of error of as much as 20 per cent.

"There's some element of magic here," Alexander said, "But the point is that nobody else has done it, and so nobody can dispute our numbers."

Alexander estimates that approximately $550 million was spent on state and local politics in the 1983-84 election cycle. His figure includes an estimate of $280 million related to statewide and legislative elections, $200 million for local races and about $70 million that he believes was spent to promote or defeat initiatives, referenda and other ballot issues during the period.

It was, of course, a cycle in which only 15 states—and not such major jurisdictions as California, New York and Texas—held gubernatorial elections. Nor were the mayors' jobs at stake in Los Angeles and New York (although Chicago Mayor Harold Washington was elected in 1983).

Yet about 5,700 state legislative seats were contested in 1984, and 23 states put major ballot issues to the vote. Nationally, Alexander estimates, spending for legislative and statewide candidates rose 6 per cent from 1980-84 and virtually doubled for ballot issues. He estimates that the amounts spent on local races were about the same in both years.

Alexander's quadrennial effort to come up with a reliable figure is, in effect, a story of campaign regulation in America. As he has found, reporting requirements for receipts and expenditures are often defined differently from one state to another. And some states require candidates to report only their spending activity related to primary elections or their receipts from special-interest groups.

But differences in legal language aren't the major hazard. "In fewer than a third of the states are the data systematically and reliably compiled," Alexander complained.

He pointed out that few state governments are willing to allocate the resources needed to gather the information in some reportable form. Another problem is that in many states, only campaign financing activity related to statewide offices is reportable to the state election authorities; even in Wisconsin, which has one of the nation's most regulated and carefully monitored political industries, legislative candidates file with the county governments.

In fact, it is the major disclosure role played by county clerks and probate judges, among other local officials, that helps to make comprehensive analysis so risky. "Even in states with disclosure requirements, the farther down on the totem pole you go, the less disclosure that's likely to take place," Alexander said.

In their efforts to compile disclosure information, a few states have made Alexander's task somewhat easier than it would be otherwise. Washington, for example, reported that almost $30.2 million was spent in the state in 1984 on nonfederal elections. California has published figures showing that legislative candidates in the 1983-84 election cycle spent $45 million, and Wisconsin's published data show that $4.4 million was spent in that period. New Jersey, which held legislative elections in 1983, said that candidates for the state Senate and General Assembly spent $3.4 million that year.

For the most part, however, the political accountant must rely on a variety of governmental and nongovernmental sources to come up with a reasonable estimate. Assorted Common Cause affiliates and such news organizations as Gannett News Service, which estimated that $8.1 million was spent on legislative races in New York in 1984, become important information purveyors. From their tallies one can begin to extrapolate, as Alexander does, and estimate for all 50 states, although even he said that "you pray, you gaze at the stars" in the process.

Based on reports filed with the states and on the estimates of political professionals, it is evident that the amounts raised and spent vary from state to state, county to county and that the levels are increasing, even if not precipitously.

Gubernatorial campaign spending reflects both trends. In 1982, for example, candidates for governor in California, New York and Texas alone spent about $67 million, according to Common Cause. Although Republican Lewis E. Lehrman's personal contribution of $8 million accounted for more than a third of the $23 million he and other candidates spent on the New York race, the $22 million raised and spent by gubernatorial candidates in California nearly tripled the amount spent by both nominees four years earlier.

But the governorship doesn't carry a high price tag in every state. In *Money and Politics in the United States* (American Enterprise Institute for Public Policy Research, 1984), Ruth S. Jones, a political scientist and state election specialist at Arizona State University, said Democrat Ted Schwinden in Montana and Republican Frank White in Arkansas each spent roughly $500,000 to win the governership in 1980; and in 1982, it cost Republican Gov. William J. Janklow of South Dakota only $116,000 to win.

Jones added that gubernatorial races cost much more than contests for other statewide offices. She cited the example of Arizona in 1982, when the state treasury spent only 15 cents per vote to win 51 per cent of the vote in the same election that saw the incumbent governor, Democrat Bruce E. Babbit, spend $3 per vote to win 62 per cent of the vote.

"Such variations in campaign expenditures within and between states," Jones wrote, "Virtually precludes any useful summary statements about campaign financing for statewide offices other than the obvious conclusions that in any given year in any particular case for any specific office, the cost of a statewide campaign is highly dependent on the immediate electoral context of that election."

Michele M. Davis, executive director of the Republican Governor's Association, speculated that the costs of gubernatorial campaigns are going up, though not as much as those for U.S. Senate seats. "When you are talking to pros in the governor's races," she said, "you are hearing enough of them saying, 'Last time we were able to run for a million [dollars], now it's two.' "

But any attempt to base 1986 projections on 1982 or 1984 results would be risky because so much depends on the match-ups. "It's like trying to speculate what your budget is going to be for snow removal," said Charles H. Dolan, Jr., Davis's counterpart at the Democratic Governors' Association.

Projections for the cost of state legislative campaigns involve similarly frustrating variables. But, as with gubernatorial races, the costs seem to be rising.

According to an unfinished survey of state leaders by the Democratic State Legislative Leaders Caucus, the average cost of a campaign for the lower chamber is expected to range this year from as little as $300 in New Hampshire to as much as $75,000 in Michigan.

But Carter Hendron, executive director of GOPAC, a political action committee (PAC) that gives campaign funds to Repubican state legislative candidates, points out that some seats in the California Assembly will cost the winning candidates as much as $750,000. Indeed, social activist Tom Hayden spent more than $1 million in 1982 to win his Assembly seat. That year, Common Cause estimates, the average California Assembly seat cost almost $500,000, or more than double the cost in 1980. A Florida House seat, the group said, ran $38,000 on the average in 1980, or 58 percent higher than in 1982.

Legislative campaign costs vary with the nature of the jurisdiction and the sophistication of campaigns waged. Jeffrey M. Wice, who is overseeing the survey of state legislative leaders, says that more candidates are turning to the electronic news media and to pollsters. "The more you try to do those things you haven't done before, the more it is going to cost," Wice said. Similarly, Jeanette Wessel, executive director of the Maryland Republican Party, said that candidates for the state's lower chamber from metropolitan Baltimore would spend nearly twice as much as those from rural counties, in large part because of the increasingly sophisticated character of legislative campaigns.

"One of our delegates pointed out that when he first ran [in 1974] he spent $2,500," Wessel said. "Now he expects his race to cost him $25,000."

Yet William P. Roesing, a GOPAC consultant, contends that the use of electronic media remains extremely rare. The degree to which big dollars are spent at this level, Roesing argues, depends in large part of the willingness of the state party organizations to commit the money for lists, polls and other sophisticated political tools.

"The budgets [for two candidates] may be the same, but a candidate who is working from the same resources can make them go a lot further based on information provided" by the state party, Roesing said.

In any event, the amount spent on state legislative races this year is likely to break records. Wice said the average budget for Democratic state legislative candidates appears to be $10,000-15,000. Similarly, Michael H. Steinmetz, president of the American Legislative Exchange Council PAC, which aids probusiness candidates, estimates that for the 6,400 seats up this year, the average Republican candidate will need $20,000 through the general election, a figure that when added to expected gubernatorial campaign costs, would guarantee a huge increase in statewide and legislative election spending over Alexander's estimate for 1984.

PAC spending in states also may surge. "We are playing catch-up" in the creation of PAC's at the state level, said Jones. "So you are seeing the growth in [the number and spending] of state PACs that you saw in 1979-81 at the federal level." In fact, said the New Jersey Election Law Enforcement Commission, the level of PAC contributions to legislative candidates in the 1983 general election was 50 per cent higher than in 1981.

In most states, candidates are permitted to receive direct contributions from the treasuries of corporations, unions or both, suggesting that further PAC growth at the state level could be contingent on changes in state election law. In a survey published in 1984, the Federal Election Commission found that 18 states permitted unlimited corporate and union contributions; 11 sanctioned unlimited contributions from unions but prohibited corporate contributions; 12 allowed unions and corporations to make limited contributions; 1 permitted unlimited gifts but limited corporate gifts; and 8 plus the District of Columbia forbade direct donations from either unions or corporations.

But it is at the local level that political spending is the hardest to count. The individually small but, in the aggregate, immense expenditures for city council members, district attorneys, mosquito abatement commissioners, county coroners and thousands of other obscure local officials virtually defy systematic calculation. As Alexander conceded, "When we get down to this level, we just wet our fingers and stick them in the air."

As they are revealed, those numbers will bring the unions' political efforts into better focus. The Communications Workers of America, under a similar court requirement in a separate case, calculated that it spent about 11 per cent of its $50 million national budget in 1984 on non-collective bargaining activities; James B. Bowie, the union's secretary-treasurer, estimates that about $2.5 million was devoted to political activities. That figure dwarfs the amount that FEC reporting requirements cover; the union in 1984 reported $121,084 is partisan communications.

For now, all that's firmly available is a question: How much did unions really spend influencing their own members? No one knows for sure, but clearly it was considerable more than the $5.1 million reported to the FEC. Before the Democratic presidential primaries, aides to Sen. John Glenn of Ohio predicted that the AFL-CIO's presi-

dential endorsement would be worth $20 million. That turned out to be about right, said Paul Jensen, who served as the Mondale campaign's liasion to organize labor.

"We scoffed at the $20 million, but what they spent on contacting members and in soft money [contributions] . . . much to my surprise was worth about $20 million" in the primaries and general election combined, said Jensen, who drew up a memo after the campaign estimating labor's contribution.

The figure may even be higher. From interviews at the time, *National Journal*, in an article by Malbin, estimated that unions spent about $11 million in the 1976 presidential race—roughly 10 times the reported communications costs. Alexander estimates that labor spent about $15 million in 1980, also roughly 10 times the reported costs. That same ratio would put the 1984 expenditure at about $45 million, but that is probably high. Alexander estimates labor's 1984 effort on behalf of the Democratic ticket at about $14 million in the general election.

Complicating the calculations is the role of union locals. In many unions, the bulk of political work is done by locals.

Very large locals, such as the food workers' Local 400 in the Washington (D.C.) area, have sophisticated political operations, complete wth their own polls, PACs and full-time political staff. Very small locals may make contributions to statewide or regional union councils that do the work. It is not unusual for union endorsement to be signed by the local president, not the international union president. "There are probably very few unions where the international president is even known by the membership," said union political consultant Victor S. Kamber. "If you're going to impact the voter, it has got to come from someone he knows, respects, trusts."

The food workers union, for example, typically will send a sample endorsement letter to a local, which will personalize it, attach the local president's name at the bottom, send it out and absorb the cost. "Most of the communications we pay for ourselves," said Local 400 president Thomas R. McNutt.

The internationals have no idea what their locals spend on politics. "No one has ever figured it out," said Rachelle Horowitz, political director of the American Federation of Teachers, which has 2,000 locals. "It is mind-boggling."

Even assuming that none of the locals spend more than $2,000 and fail to report it to the FEC or their internationals—neither of which audit the figures—it is likely that locals alone spend several times more than the amounts reported to the FEC as expenditures by all unions. As a rule of thumb, some union officials said about a third of their locals were politically active. If those locals spent an average of only $500 a year on politics, that would add up to about $18 million per election cycle above whatever the international unions spend.

Even if the over-all level of union spending is not clear, the trend is. Spending will continue to rise, as unions adopt more of the sophisticated political technology that many first seriously employed in 1984—polling, direct mail and media tools such as teleconferences for communicating with their members.

What business spends on influencing its managerial employees is also a mystery, although the effort is not anywhere as elaborate as labor's. Only six business and trade associations reported any partisan communications (to the tune of almost $94,000) during the 1983-84 election cycle.

Independent interest groups, such as environmentalists and nuclear freeze advocates, reported spending $1.1 million lobbying their members, with about $1 million of that coming from the National Rifle Association.

NONPROFIT POLITICOS

Like unions, nonprofit organizations on both sides of the ideological spectrum significantly increased their political role in the 1984 elections. That role is certain to continue growing, as party and interest-group tacticians devise new ways to employ the nonprofit status for political and quasi-political purposes. But exactly how large their role has or will become is unknown, because the groups are not required to disclose expenditures that may have political ramifications.

In the 1984 elections, the main focus of political activity by nonprofit organizations was voter registration. From the start of the presidential campaign, Democrats and liberal organizations had banked their hopes for an upset of Reagan on registering millions of dispossessed low-income, minority and women voters who presumably opposed the President and his policies.

With the Democratic Party strapped for funds, much of the voter registration work on the liberal side was undertaken by private groups financed by nonprofit foundations. In the summer of 1983, a group of traditionally left-of-center foundations set up the Ad Hoc Funders' Committee for Voter Registration and Education to funnel money to groups that were seeking to register the "underrepresented." According to the committee's own final tabulation, it distributed $6.6 million to 125 groups that were conducting voter registration drives over the two-year election cycle.

That represented the bulk of the money spent on voter registration by liberal groups, according to a source familiar with the activity. The source said three other organizations provided about $2.1 million for voter registration, bringing total private expenditures on voter registration near $9 million.

The Republican voter registration drive was the reverse of the Democatic one. Most of the effort was run directly by the party organization. The GOP organized a sophisticated $10 million voter program, financed by $4 million contributions each from the Reagan reelection campaign and the Republican National committee and $2 million raised from private sources by Leadership '84, a fund-raising company established by Joe Rodgers, who chaired the Reagan-Bush '84 primary fund-raising committee.

Rodgers also established Americans for Responsibile Government, which gave about $2 million to registration programs, aimed at groups sympathetic to the President. The two major grant recipients, and the two major conservative groups signing up new voters, were the American Coalition for Traditional Values, a coalition of conservative evangelical organizations that was financed with slightly more than $1 million from Rodgers's group, and the American Defense Foundation, which sought to sign up men and women in the armed services.

Another group Rodgers established, the Responsible Government for America Foundation, trained trade associations to conduct their own voter registration programs. Business voter registration activity was greater than is commonly assumed, said a Washington attorney familiar with the efforts, but exactly how big is another mystery. A trade association executive said their group spent more than $300,000 in registering its members and urging them to support Reagan in the 1984 election. Among the companies and groups that undertook major voter registration programs, were PepsiCo Inc., the National Federation of Independent Business and the National Association of Wholesaler-Distributors.

Sources on both sides of the spectrum say the level of nonprofit voter registration activitiy in 1986 won't be anything near that of 1984, when the presidential race attracted large donors. But conservative and liberal nonprofit groups appear committed to long-term iuvolvment in voter registration activities, and another major push is certain in 1988.

In the meantime, the use of nonprofit status for political purposes is continuing to expand in new directions. An increasing number of politicians have established nonprofit foundations to develop and promote their ideas. Critics complain that the new foundations also promote the politicians themselves.

"Political foundations are the new game," said Ellen S. Miller, executive director of the Center for Responsive Politics, which is studying the role of nonprofit groups in politics. "Current and former Members of Congress who are still operating in the political arena are using these organizations to keep their names associated with issues. Whether they are used as funnels for political funds, ways to curry favor with Members, remains to be seen. At this time, we don't know what the full roster is. I was told by one source [involved in setting them up] that there are over 200 of them."

Several likely 1988 presidential candidates have established foundations with budgets reaching into the hundreds of thousands annually. The group's activities tend to showcase their principal. The Fund for an American Renaissance, established by Rep. Jack J. Kemp, R-N.Y., paid for his recent European trip, a tour through Asia last fall and a series of Capitol Hill seminars. The Center for a New Democracy, set up by Sen. Gary Hart, D-Colo., has sponsored a series of Hart-chaired seminars around the country. American Horizons, a group associated with Arizona Democratic Gov. Bruce E. Babbitt, has done research for major Babbitt speeches on immigration, international debt and other issues. Such foundations are rapidly becoming a fixture of the extended pre-primary presidential campaign, an alternative or supplement to establishing a PAC associated with the potential candidate.

PAC COSTS

One of the clearest trends in political spending is the continued growth of PACs. As recently as the 1979-80 cycle, PACs collected about $138 million; in the 1983-84 cycle, they collected $288.7 million.

But that number doesn't represent the full spending on PACs. PACs connected to parent organizations—such as a business, union or trade associations—are not required to report the money they spend raising their funds. Those expenditures are made directly from union or corporate treasuries, and interviews indicate that they represent substantial additional hidden political spending.

PACs not connected with an organization—such as independent ideological PACs—cannot pass off their administrative and fund-raising costs to a parent body, and so much report them. Because those groups typically rely on direct mail, generally the most expensive way of raising PAC money,

their administrative costs are substantial. Some of the largest conservative PACs, for example, spend more than 80 per cent of their funds on overhead. (See NJ, 6/29/85. p. 1504.)

By and large, practitioners say, business, labor and trade associations do not spend nearly as much on administrative costs. But for some organizations, administrative expenses can approach that level.

Peter Kennerdell, director of program development at the Public Affairs Council, a business group, said a company establishing a PAC can expect to spend two or three times as much as it collects in the first year. Fixed administrative costs can also be high for smaller PACs, those in the $40,000-$50,000 range. Trade associations that use direct mail—which most unions and businesses don't—also devote significant sums to fund raising. Moreover, he said, administrative costs are large in companies that create program to involve workers in the PAC activities, such as holding advisory meetings. "As we see corporate PACs becoming more democratized," he said, "the more it is going to cost."

But for most labor and business organizations, the costs are not that large. Many unions, and some businesses, have been able to establish payroll checkoffs for their PAC contributions, which substantially reduces fund-raising costs. Other companies might produce relatively unsophisticated solicitations internally, distribute them through in-house mail and require only a clerical aide to keep the books, all at relatively low cost. And the fixed costs for staff and space are less burdensome to larger PACs.

"There's really no rule, given the undefined territory, to get any particular number (being spent) to raise PAC dollars," said Michael Colopy, manager of congressional communications for the Blue Cross & Blue Shield Association in Washington. Many organizations don't even know exactly what they spend raising PAC money.

But several PAC executives and election lawyers said a conservative estimate for the administrative costs of most PACs would be 10-20 per cent. If the unions, trade associations and businesses that raised $186 million for PACs during the past election spent an average of 15 cents on the dollar to collect the money, that would represent another $28 million in unreported political spending.

COUNTING HARD DOLLARS

How much does America spend on politics? A partial answer is the amount of money that federal candidates, political action committees and political parties absorb in contributions from the rest of society. When added to the public financing of presidential races, those numbers measure the hard dollars—money subject to Federal Election Commission (FEC) reporting requirements and contribution limits—spent on federal elections. When transfer between the committees, PACs and candidates are accounted for (an exercise not performed by the FEC), the total for the 1983-84 election cycle was $1.155 billion. All figures are in millions.

Congressional candidates:	
1984 House and Senate candidates	$397.2
1986 Senate candidates	7.6
Total congressional	404.8
Party activity:	
Democratic committees	98.6
Net transfers to state parties	−3.3
Total Democratic Party	95.3
Republican committees	297.9
Net transfers to state parties	−4.3
Total Republican Party	293.6
Total parties	388.9
Political action committees	288.7
Independent expenditures	23.4
Presidential primary expenditures	106.0
Presidential general election	80.8
Partisan communications by labor, business and groups	6.4
Net PAC contributions to House and Senate candidates	−105.3
Net PAC contributions to parties	−8.2
Net PAC contributions to presidential candidates	−1.3
Net PAC independent expenditures	−22.2
Net party contributions to House and Senate candidates	−6.6
Total hard money expenditures on federal elections	1,155.4

HONEST GRAFT

(By Brooks Jackson)

[Excerpts]

The full extent of Coelho's soft-money dependence remained secret as well. He disclosed much of his soft-money income during 1986. But much remained hidden, and he refused a request to make a full public accounting. Nevertheless, a series of memoranda from Martin Franks gave some revealing views of what was going on during the 1986 campaigns.

Franks described soft-money collections for the Capital Trust, a project begun in February 1986. Coelho went to the annual winter meeting of the AFL-CIO in Bal Harbor, Florida. He met with the presidents of one union after another, over breakfasts, lunches, and dinners. He asked each one to pledge $100,000 to his committee during the year. He called it the Florida Project at first.

The Capital Trust project represented only part of the soft money that fueled Coelho's campaign committee, but it was especially important. Indirectly, the funds subsidized the campaigns of Democratic candidates who used the party's television studio.

Coelho wanted a studio because the Republicans had one. But he couldn't pay for it the way the National Republican Congressional Committee financed its own much smaller facility years earlier. The NRCC spent only hard money to buy its electronic equipment. At the time it didn't need soft money. Besides, GOP attorneys said it would be hard to defend using "nonfederal" money to finance a studio employed solely to make television and radio commercials for use in House campaigns.

Republican lawyers weren't nearly so venturesome as Coelho. He paid for studio equipment with soft-money donations, in this case using a loophole for "building funds." Republicans has argued successfully to the FEC that money spent to renovate new office quarters for the party had no connection with any specific federal election and so didn't qualify as a campaign expenditure subject to federal limits. The GOP raised $7 million for a new headquarters building in 1977, all fully disclosed, with no donation larger than $10,000.

Mr. McCONNELL. Mr. President, I just wish to say, in conclusion, that I remain optimistic, as the discussions begin, that in the near future we will be able to craft a bipartisan campaign finance reform bill. I think everybody is going into the discussions in the spirit of cooperation. I look forward to participating on that team and reaching, hopefully, a happy conclusion sometimes in the weeks ahead.

I yield the floor.

Mr. BOREN. Mr. President, I have listened with interest as my colleagues on the other side have commented this morning. I am glad that they have come to the floor to comment, so we can have further discussion of the legislation that is pending before us. It is landmark legislation and, as one who has worked on this proposal for a number of years, I am encouraged that we now have the issue on the national agenda.

We first began this discussion several years ago, I believe it is 9 years ago now, when the distinguished senior Senator from the State of Arizona at that time, Senator Goldwater, and I made a proposal to change the way that we finance elections. We were alarmed at that time about the growing movement away from the grassroots, of the way campaign funds were raised. We were alarmed at the rapid increase in campaign spending. We were alarmed about the increase of special interest influence. We felt it was eroding the political system, the very strength of our system. We felt it was causing increased cynicism among the voters. I certainly think we have found indication after indication that that cynicism is present.

The election turnouts is congressional elections are below the 30-percent mark. We barely reach 50 percent in the Presidential election process of registered voters turning out in our country, at a time in which other nations, new democracies emerging democracies around the world, those places where there has been very little experience with democracy—we have had turnouts in places like Poland and places like Nicaragua, East Germany, in the 90, to 95 percent range of registered voters. We have had turnouts in elections, even in areas of the world which are still experiencing upheaval and violence, in El Salvador, for example, two different elections carried out under threat and intimidation of violence, loss of life, where approximately 80 percent of the registered voters, those eligible to vote, have bravely gone to the polls, even at risk of their very lives, to cast their ballots. While we here in the United States, in increasing numbers, are staying away from the polls, not participating in the political process. Many of us have been very concerned about it.

The legitimacy of our Government, the mandate for the leaders of our Government to operate, of course, rests completely on the consent of the governed and the participation of the people themselves in the political process.

What a great system of Government we have. It is a model and a beacon for the rest of the world. When the students and others who gathered in Tiananmen Square wanted to find an example, an example to hold up, a symbolic expression of what it was they were fighting for, they chose our symbol, they chose the Goddess of Liberty.

Lech Walesa, as he struggled to explain to the rest of the world the basis of the political system that they were struggling to set up in Poland, used our words, "We the people."

We want a Government where the people can govern themselves. Sadly, as I have said over the last few years, we have seen fewer and fewer people participating in their own process.

Why have fewer and fewer people chosen to participate? The nature of the election process, Mr. President, has a lot to do with that. People see the influence of money. They see that elections are more and more being determined by the amount of money that the candidates on each side can raise, rather than their position on issues, substantive proposals to solve the Nation's problems, experience, qualifications and character of the candidates. More and more those major items, those items which should be deciding elections, discussions of the issues of the day, taking positions on the issues of the day, charting a course with a vision for the future of their country, for State and local government, those matters take a back seat in the election.

Elections more and more are decided upon the basis of which candidate is able to raise the most money to finance a campaign, instead of upon the basis of which candidate has the best ideas to help this country and the best capabilities and qualifications for putting those ideas into action.

So, Mr. President, people become discouraged. They notice, for example, that in election after election well over 90 percent of those elected to office are those candidates that are able to raise the most money to do so.

They look at our system and they see the challengers are being frozen out of the process, people with new ideas, people that want to come forward and make a contribution. Why are they being frozen out of the process? Why do we have a 98 percent reelection rate in the House of Representatives in the last election cycle, and 99 percent the cycle before that?

It is because incumbents are able to raise so much more money than challengers. The facts speak for themselves. $2.05 raised by every incumbent running for reelection in Congress in the last election cycle for every $1 the challenger was able to raise.

Why is that, Mr. President? Well, it is very obvious to those who study the political system. Those Members of Congress who are incumbents, who are here already serving on the key committees, already chairing the key subcommittees, serving as ranking members of the key subcommittees and committees of the Congress, people need access to them, people need a listening ear. People need to have a sympathetic reaction from those that are already here. So those who have economic interest in legislation, for example, have the need to communicate with and have access to those that are already here, and therefore they contribute to those that are already here, occupying these positions in the Government.

There is always an opportunity for them, if the challenger happens to pull an upset and defeat an incumbent Member of Congress, to contribute to that new, winning candidate after the election, because challengers invariably have deficits when they become successful in the races to become Members of the House or the Senate.

Mr. President, to use an old-fashioned term, that is flat wrong. It is a distortion of the political system. We should not allow it to continue. This should be a system in which people have an opportunity to compete and people, new people, wanting to come into the process, with new ideas that our country needs, should he be able to have an equal chance.

They do not have an equal chance now. As long as we do not put a limit on the amount of money that can be spent in campaigns, as long as we do not stop this runaway race for money, the spending spiral ever upward, like a never ending arms race, we are never going to have a system in which challengers have a fair chance to come to the Congress of the United States or to this body, which has been called the greatest deliberative body in the history of the world.

Mr. President, we are trustees of this institution. You can look around this floor and we see guides bring tourists into this Capitol. We bring young people ourselves down on to the floor of the Senate. We look around and we point out the desks where the giants of the past have served on this floor. We point out where the Clays and the Calhouns and the Websters and the Jefferson Davises and the Tafts and the Humphreys, those who have served with distinction, and loved this country, and kept this institution strong, have served.

We are here now. We are the trustees. We have a responsibility to keep this institution strong. We cannot allow it to drift into mediocrity. We cannot allow it to drift into becoming an institution where the schedule even of the institution is set not on the basis of solving the people's problems, but on the basis of the need to raise money to run for reelection.

We are not taking votes on Friday, Mr. President. We do not take votes, usually, on Monday, not until late in the day. And, we do not have evening sessions on Monday nights. I wonder how many of the American people know why. I wonder if they know it has nothing to do with the fact that we have pressing problems facing this Nation. We have a budget deficit that is destroying this country, eating away at the heart of this country and everyone knows it.

We have the congressional leaders and the Preisdent meeting together and hopefully they will have the courage to do what is right. I hope we will have the courage to quit playing politics with it and respond, if they have the courage to come forward with a proposal that calls on all of us, all Americans, all of our constituents, to share in some fair and equitable bill to get it under control. Because we know what we are doing. We are living beyond our means, we are selling off the assets of our country and our children and grandchildren will have the privilege of working for people from other countries, who are going to own the basic industrial base of this country one of these days if we do not wake up and do something about it.

We do not meet on Mondays for votes, and we do not meet on Fridays for votes, and Monday evening to work on that problem. No, Mr. President. Why? We have to schedule fundraisers on those evenings and on those days. Because as we all know with this campaign spending, with it taking an average of $4.5 million from a small State—not a major State like New York or California, from a small State—to run successfully for the U.S. Senate, that means that a sitting U.S. Senator or a challenger has to raise an average of $15,000 in campaign contributions every single week without exception for 6 long years to raise the average amount of money that it takes to run for the U.S. Senate.

I guess, Mr. President, if we could run a tracer right now where most of our colleagues are, as we discuss this matter in this Chamber right now, we would find out quite a few of them are out trying to figure out a way to raise the $15,000 they need to raise this week in order to get ready to successfully run for reelection.

Mr. President, we are trustees of this institution. We were sent here by our people to solve the Nation's problems, not to perpetuate ourselves in office, not to raise campaign funds, but to do the people's business. We will be derelict in our duty to the Constitution we

are sworn to uphold and our duty as trustees of this institution if we fail to act this year to do something to halt the cancer that is eating away at the heart and vitality of our political system.

Yes, it is hard for challengers when incumbents can raise $2.05 for every dollar they can raise. It is very hard for them.

It is also hard when we look at the fact that 82 percent of the money from political action committees last time went to incumbents as opposed to challengers; that over half the Members of Congress elected last time received more than half of their funds from interest groups, political action committees located outside their home States, rather than from the people back home.

So the electorate looks at the facts. They look at the fact that people who raise more money invariably tend to win elections. That is what the statistics show. They look at the fact that more and more of the money is coming not from the people back home from people outside the States and the districts. They look at the fact that more and more of the money is coming from special interest groups, and they become disillusioned about the process.

Then that massive amount of money as it is spent in many campaigns is spent more and more not on a discussion of the issues, Mr. President, but to purchase 30-second negative spots in the broadcast media with actors—not the candidates themselves—with actors, and usually voices of professional actors that can be filled with indignation as they report some accusation against the other candidate that usually borders on character assassination, as one negative ad piles on another negative ad for 30-second spots during which short time you cannot possibly have a fundamental discussion of the issues facing the country.

And we are surprised that 30 percent of the people turn out in congressional elections and half the number turn out in Presidential elections in our country as turned out in countries like Nicaragua and East Germany. People in Eastern Europe have looked up to the United States and described us as a beacon of inspiration.

Mr. President, we should be. Our system deserves to be an inspiration for others. We can only be grateful for all it has provided for every American citizen, the opportunity it has given us to express ourselves, to chart our own course as a people, to determine our own destiny, to have unlimited opportunities as individuals to make choices about our own lives. Other people do not have those opportunities. We do because we have had a system that has worked, a system that has been true to the democratic process. We must not let that system atrophy and decay.

We must not allow the vitality to be drained out of a great institution like the Senate of the United States, the Congress of the United States. We owe it to the next generation. We have had parents and grandparents who cared enough about us that they made great sacrifices for us and gave us a great opportunity. We have had those who served, the giants who served in this Chamber in the past. We owe it to them, what they provided for us, to do for the next generation. We must meet our responsibilities. We must have true reform.

I am not talking about passing the bill with the title on it that says "campaign finance reform." I am not talking about the sham. I am not talking about going back to the people and say, "Well, we have passed the bill that is campaign reform this year. We can forget all about it."

Mr. President, I say it not unkindly, because I hope more than anyone we can reach a bipartisan agreement on this issue before our discussions are completed, because it is not a Democrat or Republican problem, it is an American problem. We should be ashamed of ourselves if any of us on either side of the aisle tries to write the bill the purpose of which would be to aid the Democratic Party or aid the Republican Party.

We need to pass a bill that aids this country, that saves this political process, Mr. President. That is what we need to do. That is what we must do. That is why we must not allow ourselves just for the sake of being able to go home and put out the press release and stand before audiences and say well, we passed something and it had "campaign reform" written on the title of the bill.

It will not be true campaign reform, Mr. President, unless it gets at the heart of what needs to be done to change this system. And the heart and soul of campaign reform is to get the runaway spending under control. It is to stop the money chase. It is to stop the upward spiral of spending. It is to enable us to change the Senate schedule back to conducting the people's business instead of having the schedule set by the need to raise millions and millions of dollars of campaign funds in order to get reelected.

It is the changing of the perception of this institution. Mr. President, as long as Members of the Senate have to go out and raise $3, $4, $5, $10, $20 million, there is always going to be the perception on the part of the people that they were so desperate, those candidates, to get the money, they would get it wherever they could, from people who were honest and people who were dishonest, from people they do not even know about.

There is not a Senator who is a Member of this body, Mr. President, who has not in the course of raising campaign funds, when we have to raise so many millions of dollars, had to accept contributions from people we do not know very well, personally, at all. We do not have the FBI or CIA at our disposal to go out and check the background of every person offering us a campaign contribution.

Most of us, because of economic conditions in our home States, cannot raise the amount of money needed in our home States. We have to go to other States where we do not know people very well. Members can be embarrassed when later it turns out some of the people making contributions might not be very wholesome, might have a special interest, might have an ax to grind about legislation and then it is all over the media and the front pages of the paper, and questions are raised about the integrity not only of the person making the contribution but the integrity of the public official involved because he had to accept money in order to raise those huge amounts of money needed for campaigns that he could not possibly know the identities or very much about all the people from whom the money was being accepted.

Mr. President, the people read that and they say I wonder what kind of people are serving in public office today. What kind of people are serving in Congress? Are they all corrupt? Are all the people who run for office today corrupt? And, if so, why even bother to go and vote? And that is what is happening today, Mr. President.

So we have to cleanse this system. We have to do something about it. We have to produce the bill.

We have heard the voice of the people about this. We have heard them speak by staying at home during elections. We have heard them speak through letters saying do something about it. We have heard them speak through petitions which they have signed. We have read the public opinion polls in which 80 percent of the American people say: Do something about runaway campaign spending. Stop the money chase.

Mr. President, we are ready to do that, and we have introduced the bill to do it. We have 46 Senators signed on to the substitute for S. 137. Others have verbally told me they would help us. The majority of the Senate is ready to act. Let us not stop this year the work of the Senate until we have acted, until we have passed the bill to limit the runaway spending. That is the heart of the issue.

If we try to pass a bill that says you just cannot get money from this source or this other source but you can still get it otherwise, and there is no limit on the spending. All in the

world we will do is just change where the money chase is located.

If we say only you cannot get money from political action committees or you cannot get money from certain individuals but there is no limit on how much you can get, then we will just change it. Then it will be the money race for soft money or it will be the money race to use the State party committee or someplace else. It will be like the little child who steps on that tarpaulin under which there are a lot of golf balls and jumps up and down. When they jump on this corner the other corner pops up.

We do not need the sham. We need real reform. We must do it, and the only way to get real reform is to put total spending under control. That is the only way to get us back working on the Nation's business. It is the only way to stop the perception with all the money the Members have to raise they will raise it wherever they can. It is the only way to stop the problem of challengers not having a chance. It is the only way to make sure that special interests do not give undue advantage to incumbents. That is the only way to do it. We have to get the total spending under control and do something to get it limited and we have introduced a bill to do that.

We need to change the nature of campaigns themselves. We need to encourage candidates to not just buy 30-second spots to use for character assassination of their opponents. We need to encourage them to buy longer time slots to have substantial discussion of the issues.

We have done that in our substitute for S. 137 by providing vouchers for candidates to buy longer blocks of time. We also provide, and this has been the suggestion of the Senator from Missouri [Mr. DANFORTH] from the other side of the aisle—it is the gesture of our willingness to consider and include good ideas from the other sides of the aisle—the suggestion that at the end of any spot that the candidate must asume responsibility for that particular advertisement by coming on to it and saying: I, or my campaign committee, have authorized this particular ad.

So if you have some impersonal actor assassinating the character of and slandering another candidate, at least the candidate who is paying for it, and he is responsible for it, has to come forward and he or she has to own up to it and assume responsibility for it. Maybe they would not run some of those ads if they knew they had to be proud enough of them to assume responsibility themselves. So we need to clean up the process, and we have done that.

Under our proposal we have also stopped, in terms of contributions to candidates, contributions by political action committees. Some balance has to be put back into the process. We have suggested earlier that we limit the proportion that can come from political action committees so you could not have people elected here that got 80 or 90 percent of their funds from political action committees. The most important part of it is to get some balance back into it.

I do not happen to accept political action committee contributions at all. I never have. I followed that policy all of my career. Others of my colleagues and especially if they get into close races really do not have much choice about it. I have to say, if I got into a close race, or someone filed against me who had $10 million of their own money to spend, in self-defense I probably would have to accept the PAC money, too. And there are different kinds of political action committees too. There are some, where the Members really do make the decisions, where hundreds of employees in a person's home State get together and really form this association. They really hear the candidates and they sit down and they deliberate.

Then there are other political action committees that are not so wholesome where maybe just the lobbyist in Washington decides to whom to hand the money based strictly on how they vote on the issues and their need for access to that Member of Congress.

The important thing is we shift the balance, we get more influence to the people back home, the individual contributor at the grassroots. We do that. We do not allow under our bill political action committees to continue to contribute to Federal campaigns for candidates. We also encourage, through the flexible spending limit proposal, that over and above the amount of money normally allowed to be raised and spent in campaigns, additional funds are allowed to be raised from individuals in contributions of $100 or less in the home State of that particular candidate.

So we encourage renewal of the system, participation by the small contributors to grassroots, that person who is participating by giving contributions but not by giving contributions so large that they have been an undue influence.

So, Mr. President, we do something about the incumbent challenger's problem by the spending limits; we do something abut the special interest influence; we do something about the overall spending; we do something about the nature of the campaigns to get us back on the issues. We need the help of the American people.

All 100 Members of the U.S. Senate are incumbents. It is very natural that a group of people already in office would be reluctant in terms of their own self-interest to change a system that benefits them so clearly as the present system benefits incumbents. As long as the race is on the basis of money, the ability of incumbents is always much greater. It does not matter whether they are Democrats or Republicans.

So we need to hear from the American people. We need to hear from the American people that they want change. Unless we hear from the American people, we are never going to get those who are already entrenched in office to agree to give up some of the privileges they now have in order to make the process more competitive. Forty-six of us who have introduced this substitute, S. 137, said to the American people we have heard you, we have heard your pleas to clean up this election system. We have heard your pleas to end this rotten mess. We have heard your pleas to stop the money chase, to try to squeeze some of this money out of politics and get competition back on to issues. Now we need your help. We need your help in order to pass real campaign reform through the U.S. Senate this year.

Mr. President, I have heard some of my colleagues speak this morning, and I think in many ways they have an honest misunderstanding about what is in the substitute to S. 137. The Senator from Kentucky indicated that he believed that the bill might be unconstitutional. I listened to his argument. I have to say that I do not agree with the argument. I do not believe that this bill is unconstitutional.

The Supreme Court in Buckley versus Valeo says there could not be a direct prohibition on spending above a certain level; that you could not pass a law saying no candidate for the Senate can spend over x dollars directly. It did not say you cannot give inducements to candidates to voluntarily accept spending limits. That is exactly what the Presidential system does, as the Senator from Kentucky indicated.

The Presidential system has not been overturned by the judiciary. Candidates running for President of the United States do not get the voluntary money from the checkoff system unless they abide by certain rules about private fundraising and spending. Therefore, Mr. President, I think that the court has allowed such a system of voluntry inducements and voluntary incentives to stand. I do not think we have a constitutional problem with this bill.

I heard my good friend, the Senator from Pennsylvania [Mr. SPECTER] here on the floor. I was very encouraged because he indicated he understood that too much spending is the heart of the problem, too much raising of too much money is the heart of the problem. He said he was not sure S. 137 was the way to go, but he himself supported a constitutional amendment to overturn the Buckley decision and to allow by

constitutional amendment the Congress to put on direct spending limits.

Mr. President, I do not disagree with the approach of a constitutional amendment. I myself have cosponsored a constitutional amendment from time to time to allow us to overturn the Buckley case and to impose direct limits.

I point out to my good friend, the Senator from Pennsylvania, as he reads my remarks in the RECORD, that even if a constitutional amendment were to be adopted by the people, the Congress would then have to come together and meet and vote as to what those limits would be and how those rules would be carried out. In other words, we would have to come right back together and it would probably take 6 or 7 or 10 years to get a constitutional amendment ratified by the States. And then after that, we would have to go back and do it all over again in the Congress. We would have to pass a bill patterned on something like S. 137 because we would then have to legislate what the limits would be and what the rules would be.

Mr. President, let us not delay. Let us do that job now. Let us go ahead, as we have in this bill, and establish what the limits will be and establish what the rules will be. Then, as the Senator from Pennsylvania has indicated, if he and others—and I would be happy to be a part of that effort—can get a constitutional amendment passed also, we will already have the implementing legislation. We will already have the rules set. We will already have the limits set, but we cannot wait another 10 years, Mr. President.

When I came to this Chamber 12 years ago, the average amount of money spent by a successful candidate for the U.S. Senate in an average size State was $600,000. That was 12 years ago—$600,000. Now it is $4.5 million, in the last election cycle 10 years later. In 10 years, we went from $600,000 to $4.5 million, a 400-percent increase over and above inflation.

We hear about cost of broadcasting and the rest. We are talking about a 400-percent increase over and above the costs of campaigns. That is how much they have gone up. We are talking about a sevenfold increase.

How long are we going to wait, Mr. President? Are we going to wait until it takes an average of $10 million to run for the Senate or $20 million to run for the Senate? We cannot afford to wait.

We are trustees, as I said in the beginning. We cannot afford to wait any longer. We owe it to the American people not to wait. If we do not get this enacted this year, we should go home and hang our heads in shame, and we ought to let the American people know exactly what is happening to their Congress and their Senate. It is not ours. It does not belong to incumbents.

The rules for the political system should not be written to benefit temporary occupants of these offices. These offices belong to the people, not to us. We owe them better than they have gotten from us over the last several years in terms of the rules under which campaigns are operating.

I heard my good friend and colleague, and he is my good friend, and we have worked together constructively on many, many matters, and I value that relationship. My colleague from Oklahoma said he understood our bill to be one which provides taxpayer financing, Government funds financing for candidates.

I should clear that up in this particular bill. That is under the jurisdiction of the House Ways and Means Committee and the Senate Finance Committee. They will have to set up the mechanism to provide these inducements. For example, the additional television time, lower mailing rates and other inducements would be funded. We have indicated it is our intention to fund it under a voluntary checkoff which the taxpayer would check on the tax return which would be an additional amount over and above what they already owe in taxes. That is my assumption. That is what I personally support.

If my view of it were carried out when this bill would be marked up, if we pass this legislation, it would then be the responsibility of the Finance Committee, the Ways and Means Committee and others to set the actual checkoff mechanism. If my ways of thinking was to prevail, we would not be coercing taxpayers to give the money. It would be a voluntary, additional contribution, if you want to call it that, by the American people. They can check it off and pay an additional $6 in taxes or check it and not pay.

We provide in this bill, if not enough money came in through the voluntary process, that the amount of money to help with mailing rates, television time, the rest of it going to candidates would be proportionately reduced. So it is not mandatory, appropriated Government funds that we are talking about. It is a voluntary system.

I believe, Mr. President, the American people love this system enough that they would check it off in substantial numbers. I think they would say $6 is not too much to pay for cleaning up the mess that we now have in the political process for having our Senators on the floor voting on Fridays and Mondays and maybe even being in session on Monday evening doing the peoples' work, getting rid of this appearance of special interest influence.

So it is not fair to say we are talking about mandatory appropriated tax dollars that taxpayers do not have any choice about whether to give or not. We are not talking about that. The bill makes it very clear there will be a proportional reduction in the amount going to candidates if the voluntary checkoff does not bring in sufficient funds to cover it.

Mr. President, there was also an indication from several of the speakers today—and it shows a clear misunderstanding of what our bill provides—that we have opened up some sort of a loophole for political action committees, particularly, as has been said on the other side of the aisle for labor unions—but the same would apply to corporations—to provide funds to State parties.

Mr. President, let us look at the record. Under the current law, labor unions and corporations can directly give money to State parties unless it is prohibited by State law, and in most States it is not, in unlimited amounts. It is called soft money to State party committees.

Let us say you have an election where someone is running for Governor, the legislature or State office. You have 20 State candidates in the ballot and you have Federal and State candidates. It is called mixed activity. When the State party sets up the phone bank or buys ads saying vote Republican or Democratic, that is going to benefit both the State candidates running for State office and the Federal candidates.

Under current law, corporations, labor unions, and individuals can give any amount of money to that process that they want to in terms of soft money to these State party contributions and millions of dollars have been flooding in, some say as much as $45 million to $60 million undisclosed, unreported. Some can come directly from labor unions and corporations.

Mr. President, under the proposal that has come from the other side of the aisle, they still allow it. It is so ironic. They have indicated that they think S. 137 has some sort of a loophole because we allow a labor union, a political action committee to give not more than $15,000 to a State party for mixed activity. Notice that is what we do. We limit. They can only give $15,000. They could not—a labor union or a corporation—give directly like they can now give any amount of money they want.

We say we are going to clean that up. If a labor union or corporation wants to give to a State party for mixed activity $15,000, they have to do it through their political action committee and disclose it. They cannot give it directly out of the union treasury or corporate treasury. That limits it. Yet those on the other side of the aisle have said that is some kind of a loophole. It is not a loophole. It closes a loophole. Their bill allows a labor

union to directly give money, any amount they want, to a State party organization.

I would be happy to give them technical advice on how to close that loophole. I am sure they will be astonished to know what their own bill does. They allow unions and corporations to give unlimited amount of money to State organizations. We stop it for both. I said we should not be writing a bill to help one party over another. We should not be writing a bill to help labor unions over corporations, and vice versa. We close the loophole for both.

What about sewer money? They are right. I would call it sewer money as well. There is no limitation whatsoever. What about it? We stop it. As I say, we stop it with labor unions and corporations. We put a limit on how much the individual can give to all the State party organizations in the country, and they say they cannot spend more than 30-cents-per-voter total on these kinds of mixed activities.

What do they provide on the other side? No limit. The sky is the limit. They can spend as much of the sewer money as they want on these mixed activities.

They only restate current law, which all of us know has not worked. When soft money pours into the State committee, they are supposed to allocate how much was sent to help candidates for Governor, State legislature, State auditor, and all of the other offices. If there are 25 State candidates on the ballot, one Federal, they say 25 times as much went to help the State candidate and we let the millions of dollars pour in. It is unlimited soft money under their bill, and it comes directly from labor unions and corporations. We disclose it. We put a limit on it. We put a 30-percent limit on it. We put a limit of how much an individual can give. We put a limit of how much any labor union or corporation can give and make them do it through their committees and not directly out of corporate funds.

Here is something else, Mr. President. This is very alarming. I have to hope that there are those on the other side of the aisle who have not understood what they have been doing, but they have created a situation that is far worse than current law. We have been talking about what has been going on with current law. Mr. President, they have created a situation here that is far, far worse than current law in terms of how much money wealthy individuals can give to influence the political process.

This is a reform that goes all the way back to the Watergate period. They are undoing reforms that were made in the aftermath of the Watergate period. Surely, they do not know what they have done.

Mr. President, I hope they will read, and I certainly hope that the American people will read, and I hope that the media will inform the American people, because I have not seen it anywhere, page 24 of the bill that they have introduced, S. 2595, section 122. At the current time, an individual can give only $25,000 total to a national party committee, State party committees, or to Federal candidates. So if I want to give some money to the Oklahoma Democratic or Republican Party, I want to give some money to the Democratic or Republican Senate campaign committee or the Democratic National Committee or the Republican National Committee, and I want to give some money to eight different candidates running for the Senate nationwide, I can give $25,000 a year total to all of those people, all of them combined, $25,000.

They amend the current law and they say, no, no, no longer will there be a $25,000 limitation on how much that wealthy individual can give. We will repeal current law limits and we will say you can give $20,000 to any national party committee. There are three of those. The House campaign committee, in essence, the Senate campaign committee and the national committee, Democratic and Republican. That is $60,000. Then you can give $5,000 to every single State party in addition each year. That is $5,000 times 51. You add that up. And then you can give another $25,000 to individual candidates.

So what they have done, I hope inadvertently, is taken the current law that an individual, to all these entities, can only give a total of $25,000 this year, and they have changed that to $340,000 per individual per year. That means in a 2-year election cycle a wealthy individual could give $680,000 instead of the current $25,000. It means, if his spouse will join him, the spouse and the individual together, this very wealthy couple, who can now give a maximum of only $50,000 to all these entities, under their bill, masquerading as a reform, can give $1,360,000.

That is a reform, Mr. President? That is a reform? It is not a reform. It is a loophole, one of the biggest loopholes I have ever seen in my legislative career.

When I first went to the State legislature in Oklahoma, we had an elderly Member of the legislature who read every word of every bill—probably the only member of any legislative body in history who has ever done that. We all should. He had an expression when he did find something like that—and if there was something in a bill, he would find it—he would get up and say, "I found another wooleybooger."

That is exactly what we have here, one of the worst I have ever seen. You talk about a loophole. It has to be closed.

So, Mr. President, there are problems. I think there are those on the other side who honestly misunderstood what we have talked about, the voluntary nature of inducements provided to candidates. We have not talked about mandatory appropriations of taxpayers' dollars.

I think they have understood what we have talked about in terms of soft money because we have closed the loophole. On the other hand, they have opened the loophole. If they are concerned about labor unions—and we heard them talk about labor unions for most of the time this morning—it is not our bill that allows labor unions to give unlimited amounts of money into campaigns directly out of the union treasury. No. It is theirs. They allow unlimited amounts to go just as they do from corporations. We do not. We put a $15,000 limitation on it. It is fully disclosed. We put a limitation on how much that State party can spend on mixed activities.

Mr. President, we have to hope that there have been some misunderstandings that can be cleared up. We have to hope that they did not really intend to allow that wealthy couple that is now limited to $50,000 in campaign contributions to give $1,360,000 per election cycle. We have to hope that they did not really intend that.

They have talked about constitutionality. I know they understand that the courts have at least given rulings that could be interpreted, I believe, in saying it is very difficult to limit the right of voluntarism to exist. You cannot say, for example, that the League of Women Voters or some other organization cannot exist and that they cannot communicate with their own members. It is one thing to say groups cannot spend money to influence external activities, campaigns; it is another thing to say they cannot spend money to communicate with their own members.

If you started limiting either corporations from communicating with their own employees ca or labor unions from communicating with their own members, if there is any question about the constitutionality of S. 137, the substitute for it, which I really think will pass muster, there certainly would be grave questions about the constitutionality. I do not even think a question. I think with certainty it would be unconstitutional to go in and tell a voluntary organization they could not form in this society.

I looked at the statistics since Mr. Gorbachev has allowed political organizations in the Soviet Union and since the Communist Party no longer has a monopoly on political power in this country. Approximately 20,000 new organizations have been formed

in the Soviet Union. That is remarkable.

Well, it is part of the process here that you have a right to form an organization communicating with your own members and organize for purposes you want to organize for. It is also I think our right to define ways within the bounds of the court decision to limit how much money can be used to influence an election process. But I am not sure you can put very much of a limitation on what organizations can do in terms of holding meetings and communicating with their own members to keep them informed for their purposes. I think that would be very difficult, indeed, from a constitutional point of view.

So, Mr. President, yes, we do have some differences between the bills proposed by the two sides of the aisle. Ours has spending limits. Ours does something to get spending under control. Theirs does not.

By getting spending under control, ours does something to level the playing field so that challengers will have a chance. Theirs does not. It still allows a system under which incumbents have been able to raise twice as much money as challengers.

Our proposal does something to change the nature of campaigns by encouraging longer programs, for example, broadcast programs to discuss issues, by requiring candidates to assume responsibility for negative 30-second spots, for example. Theirs does not. We both try to work on the lowest unit rate on advertising. That is a common ground. We both try to work on doing something to reduce the influence of special interest and political action committees. That is common ground.

We have an effective provision on soft money. They do not. In fact, they raise the $25,000 limit even on direct contributions to $1.36 million for wealthy couples, going in the wrong direction. They still allow soft money contributions by unions directly to State parties and directly by corporations without limit on either the spending or the amount given. We do not. We shut that off. So there are some differences.

Mr. President, there is common ground in perhaps the most important area of all. Both sides of the aisle have now recognized we have a problem. There has not been a Senator I have heard today or that I have heard in the course of this debate who has said the present campaign system is working.

Mr. President, when we first started discussing this matter, we had people coming in saying if it is not broke, do not fix it. The present system is better than anything you could think of in its place. We are not concerned; we do not want change. When we tried to pass S. 2 a couple of years ago, we had eight cloture votes, a record. The majority of the Senate, 56, 57 Members of the Senate, indicated they wanted to pass campaign reform. The other side of the aisle would not let us do it. They conducted a filibuster and they would not let us move.

Mr. President, that has changed. They have indicated they do not intend to conduct a filibuster, and I am sure that if our negotiations do not succeed in producing agreement behind closed doors; we will be out here; we will be moving forward; we will start to vote; and I assume that they do not intend to block us. I assume they intend to let us vote on the bill. I assume they will let us vote on the amendments. Win, lose, or draw, we will vote. I assume that is what will happen.

That is what the Senator wants to do, to start moving on this kind of bill, if we do not get some kind of agreement on negotiations that are ongoing. We owe it to the American people. Let the Members of the Senate come foward and vote on it. Let them say whether they want to have limits on campaign spending or not. Let the Members of this body indicate to the 80 percent of the American people plus, who according to the polls want limits on spending, want us to pass a real campaign reform bill that does something about the runaway spending, let the American people know where we stand. They have a right to know whether we are trustees of this political system in the way we should be or not.

Mr. President, it is substantial progress, however, that every Member who has spoken, every Member who has expressed himself or herself on or off the floor about the present campaign financing mechanism, has said it needs to be changed. That was not the situation 10 years ago. That was not the situation 5 years ago. It was not the situation 2 years ago. So it makes me optimistic we can get together and do something.

I believe there are many individuals on the other side of the aisle who I know every bit as well as I know Members on this side of the aisle, who I count as personal friends with a depth of attachment just as strong on that side of the aisle as this side of the aisle, who care about this institution, who care deeply.

The vast majority of Members on both sides of the aisle came here because they wanted to render a public service and because they cared about this country. Knowing the talents and abilities of many Members on both sides of the aisle, I happen to know that they could have made far more money in other professions if they had decided to do so.

I cannot help but believe—and I see the distinguished minority leader has just come to the floor, a good friend of mine—that the minority leader shares the same depth of commitment to this institution and to this country that would be felt by any person on this side of the aisle.

So, Mr. President, we have a chance to get together this year. We are going to begin negotiations next Tuesday afternoon. Negotiating teams have been appointed by both leaders to try to find a bipartisan compromise that will bring us to true campaign reform.

We will start that process next Tuesday afternoon. We will work in earnest on it. We will try as hard as we can to reach an agreement. I hope we will.

If we do not, we will have to come out on the floor and start voting up and down and see where the majority is on individual issues relating to this bill. We must move forward, but we must not fail. We must not fail this institution, and more importantly, we must not fail the American people.

We must get together and do something about it. We must put items on the table. We certainly are willing on our side to put items on the table. We are still willing to discuss, for example, just exactly what the inducement should be, what the package of benefits should be to accept voluntary spending limits, and the source of funds to provide those inducements. We are willing to talk about those things.

As I say, we have intended to close this soft money loophole. I have uncovered a huge loophole in the bill offered by the other side of the aisle, a $1.36 million loophole that has been opened. I have to think they must not have known it.

If they find provisions in our bill that have unintended consequences, we want to sit down and make it better. We want to come forward with a better proposal. We are willing to do that.

So, Mr. President, it is a time of challenge to our system that is a challenge also of opportunity, for us to sit down together and work toward an American solution.

We have in our bill a proposal that was suggested by the panel of bipartisan experts appointed by the distinguished majority leader and the distinguished minority leader, the Senators from Maine and Kansas. They appointed a panel of bipartisan experts.

In the past, we have always been hung up on this difference of opinion about spending limitations. We have always held and continue to hold that you cannot have reform without some limitation on overall spending, without stopping the money chase, and the vast majority of the American people see that as the essence of reform.

We know there are those on the other side that are concerned about overly restricting limits, about the right of people, particularly in the

home State or district, to participate in the political process by making the contribution.

This panel of experts came up with a suggestion. They called it flexible spending limits over and above any limit being set, and allowing small in-State contributions from individuals to be raised on top of any spending limit. We have put that in our proposal.

We put it in, Mr. President, as a signal to the other side of the aisle, many of whom had embraced that report when it came out, The Senator from Kentucky included. He said he thought the flexible spending limits was a promising way to get away from the roadblock and the differences of opinion we have had in the past.

We put that in our proposal, Mr. President, the proposal now offered by 46 Senators as a sign to the other side of the aisle, as a signal we want a bipartisan solution. We wanted an American solution. We are including it in the proposal the way the bipartisan panel of experts have suggested to avoid us getting into a deadlock like we have in the past.

So, Mr. President, I can only hope for the sake of the good of this political system that we will make these changes. This Chamber has been a Chamber occupied in the past by intellectual giants, by people of moral courage, by people who have made an immense contribution to this country.

We are a great nation today in part because of the caliber of the people that have served here and the ideals which they have held, and the participation above all of the people back home in going out in large numbers to participate in the election process to select those people to represent them here.

Mr. President, we are not going to have a Senate of intellectual giants in terms of moral courage, ideals, or ability in the future if we have a system that requires people to spend inordinate amounts of time raising money. I did not come to this Chamber to raise money. I did not come here to be a part-time Senator and a full-time fundraiser. I came here to be a full-time Senator, to try to do something good to help this country.

Mr. President, I feel the other 99 men and women who serve here with me had the same kind of motivation when they came. One of these days, and over a period of time—we have seen some leave already.

I remember the Senator from Maryland, the distinguished Republican Member, Senator Mathias, when he said why he was not going to run for reelection, a very distinguished Member of the Senate. He said:

> I did not want to be a full-time fundraiser and a part-time Senator. I could not face up to the fact that I would have to give months, literally years of my time raising the amount of money that it would take to run for reelection.

He decided to quit.

Mr. President, we cannot allow that continued erosion to go on any longer. We must act. We have a window of opportunity to act. We have leaders of good will on both sides of the aisle. Our negotiation teams will do our best to reach an agreement. If we cannot, we will ask our two leaders to try to sit down and reach an agreement together. If they cannot reach an agreement, which I hope and pray they can, then we will be ready to go to the floor of the Senate and see where the votes are and do our best to enact meaningful reform.

Mr. President, I thank my colleagues for their time. I express my appreciation to the majority leader for scheduling some additional time so that we might discuss these important issues this morning.

I would say to my distinguished majority leader, and to the distinguished minority leader as well, this Senator will do everything in his power to try to move the process forward, to reach a genuine bipartisan agreement on what is true campaign reform this year.

We look forward to working with all of those that are involved in the process, and we will do our very best not to let the American people down, but to meet our responsibility to be trustees of our constitutional form of Government, trustees of this institution, and pass true campaign reform this year.

Mr. President, I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I thank my colleague, the distinguished Senator from Oklahoma, and I am pleased to say that he has continued to demonstrate leadership in the area of campaign finance reform. It was my pleasure to appoint him as chairman of the group of Democratic Senators which will meet beginning next week with a group of appointed Republican Senators, appointed by the distinguished Republican leader. It is my hope that as a result of these discussions, and the discussions beginning next week, that we will have meaningful bipartisan campaign finance reform soon in the Senate.

UNITED STATES-CHINA RELATIONS

Mr. MITCHELL. I now wish, Mr. President, to address a subject, one that is relevant and very important, and one with respect to which both the President and the Senate will soon have to make an extremely important decision. That subject is United States-China relations.

Mr. President, rarely has a policy been as obvious or as complete a failure as has President Bush's policy toward China. By June 3, the President will decide whether to urge retention of most-favored-nation trading status for China.

In an ironic coincidence, June 3 will also be the first anniversary of the massacre of Tiananmen Square.

Failure is now bringing in its wake the inevitable hard choices that arise from bad policy.

A month ago, President Bush was forced to finally make good on his promise to issue an Executive order protecting the Chinese students in this country against the threat of deportation—although we were told such an order was being issued last year, when he vetoed the bill protecting Chinese students.

Four months before that, President Bush had to justify to America and the free world the presence in Beijing of high American Government officials, toasting the future of the Government of China—the same Government that sent tanks against unarmed people and crushed them, both literally and figuratively.

Then the administration had to acknowledge that contrary to its publicly announced policy, a secret Government mission had been sent to the Government of China barely a month after the massacre in Tiananmen Square.

The President's China policy has been based on secrecy, it has been inconsistent, and its outcome has been dismal failure.

I urge the President not to compound that failure by now proposing the renewal of most-favored-nation trading status for China.

Despite the recent release of 200 political prisoners, the Chinese Government itself acknowledges that another 400 remain in custody. Unofficial counts put the total much higher.

The recent revelation by a defecting Chinese official, that the Chinese Embassy here has been actively involved in a campaign of intimidation directed against Chinese students, underscores the intransigence of that Government.

The hope for freedom in China is as remote today as it was 10 months ago. And, what is worse, the administration has signalled to the Chinese leadership and to the watching world that it views their actions with complacency.

That is the wrong signal to send. It is unwise, it is profoundly inconsistent with American ideals, and it is a demonstrable failure.

To extend MFN trading status now would be to compound that failure.

I am aware of and sensitive to the interests of Hong Kong, whose trade with China comprises 30 percent of its total trade and whose entire future is tied to that of China.

But is the long-term outlook for Hong Kong going to be brighter if the Chinese leadership feels it can repress its own people with impunity?

How are Hong Kong's economic system and her people's individual liberties buttressed if its future government knows that the world's democracies will ignore repression?

National ideals must sometimes be compromised to serve national interests. Indeed, our national ideals were compromised in the interests of maintaining a relationship with China. Chinese standards of human rights and respect for political freedom were not compatible with ours.

But in the larger interests of the relationship, we accepted those differences and hoped and worked for improvement in the future.

But by its own actions, the Chinese leadership has decisively demonstrated that future improvements are an illusion to be used as a negotiating tool, not a genuine path to the future.

To suggest now that our national ideals must be so far compromised that we not only maintain a failed relationship—as the administration is already doing—but that we reward, economically and politically, the authors of brutality, goes beyond acceptance of political reality.

It becomes a betrayal of American ideals.

The administration has tried to justify its policy of placating Chinese leaders as an exercise in quiet diplomacy which will produce a relaxation in repression against the Chinese people.

A policy may initially be measured by its intentions. But it must ultimately be judged by its outcome. And the outcome of the administration's China policy is a failure, a failure that is clear and complete.

Contrary to the administration's claims of December and January, that a signal would shortly be forthcoming which would substantiate the success of its policy, the Chinese Government has sent no such signal and has not moderated its course.

To the contrary, its intransigence has intensified.

When the President sought to justify that secret mission to China by his top advisors, the only achievement he could cite was the Chinese pledge that no missile sales to the Middle East were planned.

But news stories now report that China is selling ballistic missiles to Iraq. If such sales are occurring, such exports flatly contradict the assurances that we were told had been given to President Bush's emissaries in December.

This does not reflect a "relationship that is so very important to both countries," as the President termed it last December. Instead, it reflects Chinese disdain for American concerns.

When National Security Adviser Scowcroft toasted the Chinese leaders in Beijing, he said, "* * * we come to reduce the negative influence of irritants in the relationship."

But the negative influences in the relationship are the actions of the Chinese Government. Recent months have seen no reduction in these irritants.

Instead, the Government intensified its harshness against dissidents; it cut short a $500 million program with Grumman Aviation; and it has introduced strict new controls on foreign travel in Tibet, including travel by journalists who could bring the outside world credible news of conditions there.

Despite direct requests by the President's special envoys that the Beijing government curtail military support for the Khmer Rouge, no such response has been forthcoming. Indeed, according to one recent report it may have increased its arms aid to the Khmer Rouge—the same murderous Khmer Rouge who slaughtered more than a million Cambodians just a decade ago.

Indeed, an administration official admitted on May 1 that the Chinese Government appeared to be "thumbing its nose" at the United States on Cambodia.

The conclusion of administration officials, that there is "no pattern of cooperation" forthcoming from China, is well-founded. It is time for the President to recognize what officials in his Government have already conceded.

There have been no signals of lessened intransigence.

The increased surveillance of dissidents, the mandatory expanded political indoctrination classes for students, the restrictions on overseas study, the persecution of the Roman Catholic Church and other religious groups—all these actions have been well and fully reported in our country.

The Chinese Foreign Minister, in his press conference on March 28, reiterated that it is up to the United States, not his Government, to take the initiative in improving relations between the countries.

"We * * * appreciate President Bush's remarks about putting relations back on course." he said. He rejected the idea that the administration might be disappointed at the lack of his Government's response to American overtures. He said he believed the President did not share that disappointment.

When he was asked about the fate of Fang Lizhi, who remains in hiding in our Embassy, the Foreign Minister said the "only way out for [him] is to mend his ways and plead guilty."

But the Foreign Minister was not telling the whole truth. Not only is a written confession of guilt by Fang being demanded, but other conditions have been set for our nation to meet. And, to its everlasting shame, the Bush administration met the first condition.

But when that first demand was met—American approval of some World Bank loans—the result was not Fang's release.

Instead, as so often happens, the demands escalated. The Chinese Government next demanded a resumption of United States exports of military goods and high-technology products to China.

Now the issue is most-favored-nation trading status.

The Chinese Foreign Minister has warned that a failure to renew most-favored-nation trading treatment for China could cause "major retrogression" in relations between our countries.

It is hard to see how.

Those who argue in favor of this further concession would do well to review the history of past concessions which have gained nothing but new and escalating demands.

It is time to abandon this failed policy, not to embellish it with new concessions.

President Bush says his principal concern is not to isolate China. He said last December, "I don't want to take any further steps that are going to hurt the Chinese people."

But nothing America has done has hurt the Chinese people. It is what the Chinese Government has done that is hurting the Chinese people. The President continues to ignore that distinction.

It is a fundamental confusion of responsibility to assert that when we stand up for democracy and freedom, we are more responsible for harming the people than the actions of those who are directly causing harm to the people.

Indeed, this is precisely the false assertion the Chinese leaders want us to accept. They claim that objections to butchery are interference in their country.

A year ago, Americans and people all over the world cheered the students in Tiananmen Square as they raised the statue of Goddess of Liberty.

We all hoped we were seeing the dawn of a new era in the world's most populous country. We hoped the students and workers in the square could overcome decades of sterile political dogma, that a new age of freedom would dawn for the long-suffering Chinese people.

Those hopes were dashed by the tanks the Government sent into Tiananmen Square. Armored tanks drove into students and workers. Naked, unaccountable force was unleashed against the defenseless human beings in the Square.

Force can crush unarmed people. That lesson is one we know well. But force cannot crush an idea. Force cannot dam a desire. Force cannot quell a hope.

What can crush hope is the lack of moral support.

Ours is a nation that gained strength and legitimacy from moral support.

Two hundred years ago, long before America was a world power, when American hopes and desires were a footnote in international considerations, the moral support of one of the world's leading powers, France, was an anchor to which our people clung; it was a source of strength to our forefathers.

It helped give them the confidence to confront the world's leading power of the time, Great Britain.

For the past century, America has in turn given moral support to freedom. For half a century, we supported the aspirations of Eastern Europe to be free. Beginning with President Carter and continuing under President Reagan, we have championed human rights and human freedoms as a policy goal of the United States of America.

Yet faced with the most blatant use of government force against defenseless citizens, our moral stance has been compromised by our own administration.

It is a grave error to believe that our Nation can be neutral as between freedom and oppression. It is a mistake to believe that we can as easily support the one as the other.

We cannot. It is not in our history. It is not in our people. Our choice is and must be freedom.

If we continue on our present course with respect to China, we will be compounding a mistake, for neither the oppressors nor those they seek to crush will believe us.

We will have traded our principles for the doubtful friendship of dictators. And we will betray the trust of those who seek our support in their fight for freedom.

That has never been the American way. It ought not be our way now.

Mr. CHAFEE. Mr. President, I would like to make a couple of comments, if I might, on the distinguished majority leader's remarks.

It seems to me unfortunate in this Senate that we spend so much time as we do, hectoring the administration on how to run their side of the ledger. Yet we cannot even pass aid to Panama, we cannot even pass aid to Nicaragua. Nothing happens.

We hope, and work assiduously, to have democracy in those nations; we get it, it arrives, we say we are going to help but where is the Congress of the United States on doing anything about that help?

It seems to me, we have a pretty full platter before us right here in this Congress of the United States, Mr. President, spending as much time as we do, lecturing the President on how to run the affairs of the Nation.

For example, the thing that most deeply disturbs me is that we do not tackle this competitiveness more. I know the distinguished majority leader has worked hard on these matters, but since I have his attention I would like to see something happen in the following areas. I wish we could do something about product liability. That has been kicked around. It is recognized it is a drag on our industries. We ought to do something about it, and nothing happens.

We ought to do something about those Bell Telephone companies. We have a situation where seven of the largest corporations in the United States are being run by a Federal judge, a Federal judge whose platter is full dealing with all kinds of cases. I do not think that is right.

I wish we would do something about the competitiveness of our banks. Once upon a time the U.S. banks were leaders in the world. Now we look at the list of the 15 largest banks in the world and not one of them is an American bank. We had legislation before this body 3 years ago that helped improve the competitiveness of our banks. That legislation has not emerged.

So, I appreciate the concern of the majority leader for what is taking place in China, or this part of the world, or that part of the world, but I think, Mr. President, we have a pretty full platter ourselves. I wish we could get on with some of these matters.

I would like to make one specific comment. As I understand the majority leader's points, he would not grant the most-favored-nation status to the Peoples Republic of China.

That may be. I did notice that our former Ambassador to China, Mr. Winston Lord, who opposed the President on the position that he took and favored the overriding of the veto on the Chinese students legislation said we should grant most-favored-nation status. So this is hardly a case where there is unanimity.

The PRESIDING OFFICER (Mr. BURDICK). The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are not.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent to speak as in morning business.

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

The Senator from Kansas is recognized.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM and Mr. CHAFEE pertaining to the submission of Senate Resolution 288 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

MORNING BUSINESS

Mr. WIRTH. Mr. President, I ask unanimous consent there be a period for morning business with Senators permitted to speak therein.

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

GLOBAL CLIMATE CHANGE

Mr. WIRTH. Mr. President, the issue of global climate change and global warming has been much in front of the American people and the people of the world for now almost a decade. The question is, when are we going to focus on it and start to act and start to move?

The distinguished Senator from Rhode Island was just asking, when is the Senate going to get on with its business? I am pleased to report, Mr. President, the Committee on Energy and Natural Resources has begun to move on this very important issue of global climate change.

Remarkably—and I say remarkably, Mr. President—on Wednesday a very ambitious piece of legislation on energy and global warming was reported out of the committee by a 19 to 0 vote. This, from the Energy Committee that spans the ideological, geographic, and probably just about every spectrum you can find in the U.S. Senate. This bill was reported out 19 to 0.

Initially it was sponsored by more than 33 Members of the Senate. The legislation is now picking up a number of other cosponsors, Mr. President, and we hope this legislation will be on the floor in the not too distant future.

I will be sending out to all Members of the Senate, both those who have sponsored the bill in the past and those who ought to be sponsors of the legislation now, a letter describing the legislation, where we are going, and asking for their support.

Very briefly, Mr. President, the legislation reported out is, I think, a major statement and the first one laid out anywhere in our Government about the issues of global climate change and what we can do about them, particularly in the energy area.

The goal of the legislation is virtually identical to the Nordvik Declaration on Atomospheric Pollution and Climate Change, which essentially called for the United States to become involved in the adoption of a 20-percent goal for the reduction of carbon dioxide emissions by the year 2005.

How do we achieve a goal like that? We achieve a goal like that essentially with a restatement and recommitment to energy policies which we had in this

country during the 1970's and largely abandoned during the 1980's.

The Wirth-Johnston-McClure bill reported out of the Energy Committee last Wednesday developes a mix of policies that can stabilize the generation of carbon dioxide and other greenhouse gases in the United States, investigates the feasibility and the economics of this, Mr. President, and, very important, this is a piece of legislation that has an economic rather than a regulatory base.

We direct the Secretary of Energy to submit to the Congress a least-cost national energy strategy assessing what is available to us and what makes the most sense in terms of changes for us to be making; what in production; what in conservation; what in transportation; what in building standards; where are these targets going to be most likely to be met; and what emphasis should we be pursuing?

We set up a director of an Office of Climate Protection for the first time in the Department of Energy. We develop a major National Academy of Sciences review of the causes of climate change, the trends in greenhouse gases, and we hope to put to rest that little bit of remaining controversy that is out there by some of what I would call the scientific revisionists reviewing this important issue.

The legislation, Mr. President, has an extremely important section on energy efficiency, probably the guts of the bill, moving all the way from focusing on policies that we ought to be pursuing nationally and internationally through a series of joint ventures and the establishment of five centers for demonstrating technologies around the country on energy efficiency, focusing in that title, Mr. President, on Federal facilities.

We have right in our own back yard enormously consumptive and, in many ways, wasteful energy programs within the Federal establishment. We call for shared cost savings contracts and really urge our own Federal facilities to meet the goals which we are establishing for the country overall.

The Department of Energy is called upon for developing a system of home energy ratings so that when people buy a home or are selling a home they can know how efficient that is and know what the costs of energy are going to be; to develop a program for labeling of windows and other areas for energy efficiency and develop certainly greater incentives for the energy information area.

We have provisions related to PURPA, provisions related to energy and vehicle research and some added to the bill by Senator ROCKEFELLER on the solar-powered vehicles; hydrogen, a major provision authored by our good and late friend Senator Matsunaga and added by Senator AKAKA, a new member of the committee. There is focus on fusion, coal, natural gas, and other alternative fuels.

This is a major piece of legislation, Mr. President. We should be proud of the fact that on energy conservation and energy production, methane included coal opportunities, we have for the first time a template for the rest of this country and for the 21st century and, in addition, a template for the world.

Senator DOMENICI added a number of major provisions, very important ones, related to technology transfer and our role around the world, ones which we are increasingly understanding of.

Mr. President, I am very proud of the committee. I am thankful to Senator JOHNSTON and Senator MCCLURE who took this very controversial, very ambitious piece of legislation and worked it through the thickets of the legislative process, had many, many hearings, consulting with all kinds of outside groups and reporting out, Mr. President, a global warming bill with a vote of 19 to 0.

Again, I will be sending out to all Senators who sponsored the bill in the past, and who should be sponsoring the legislation now, a summary of where we are, where we are going, and ask for their cosponsorships at this point. This has a very, very broad base of support, something we all should and must subscribe to. I hope we find our way moving through the Senate with this legislation very rapidly.

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. 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.

SENATORIAL ELECTION CAMPAIGN ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, a number of my colleagues on both sides of the aisle have talked about campaign finance reform this morning. I hope, as others have said, we are now on the right track, and we are moving toward some way to clean up the campaign finance mess.

Last week, both parties, Democrats and Republicans, introduced their own reform proposals. Both the majority leader and myself have appointed negotiating teams. I understand maybe sometime early next week they will have their first meeting. It is not going to be easy, and is not going to be settled in a week or 2 weeks, or maybe even longer.

Also, I think it is fair just to set the record straight. I have had an opportunity to review the majority leader's remarks when he introduced the Democratic campaign finance proposal. I think I should correct some of the statements that I believe are inaccurate and unfair.

One is that the majority leader said: "The Republican reaction to the Democratic substitute is no surprise. They offer no reform proposals so must depend on an attack of the Democratic approach."

Mr. President, the Republican bill offers reform. I think it is significant reform. I think it is just plain wrong that we say that our bill was totally barren of any reform. That is sort of the attitude we have had and why we cannot get together on campaign finance reform.

I just say we ban soft money; we ban PAC's; we restrict the practice of bundling; we reduce the contribution limits for-of-State residents, $1,000 in State to $500 out of State. We take a big whack at special interests by removing political action committees altogether. I can go through, and will in the statement, and point out what our bill does as compared to the Democratic bill, but I think there is a significant difference.

I know the Democrats have a fixation on spending limits. I think my own view on spending limits is one way to ensure all of us are protected, all the incumbents, but it is pretty hard on challengers.

I ask unanimous consent to print in the RECORD an article written by Roy Schotland who is a professor at Georgetown University Law Center, Washington, DC.

It is entitled "The Perversity of Campaign Reform."

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

THE PERVERSITY OF CAMPAIGN REFORM

(By Roy A. Schotland)

Campaign reform is on the floor of Congress this week. The Senate majority leadership is proposing a package deal: limits on the amount of money candidates for Congress may spend, and public financing of the expenditures candidates are permitted.

It all sounds very fair, but in fact, the legislation grossly favors incumbents—even more so since Sens. Tim Wirth (D., Colo.), Tom Daschle (D., S.D.) and Max Baucus (D., Mont.), among others, pressured the leadership into fiddling with the reform's rules over the past few weeks. As well as the unfortunate intended effects, the bill will have unfortunate unintended effects—effects that are bound to hurt almost every state, in one election or another.

Spending ceilings are among the most enduring popular of campaign reform proposals. In 1974, Congress enacted ceilings for both presidential and congressional campaigns. The constitutionality of the statute was challenged, and the Supreme Court held, in a 1976 case, Buckely v. Valeo, that while statutory limits on individual contri-

butions to campaigns are consitutional, limits on spending are not. The court did, however, permit Congress to require candidates to comply with spending limits as a condition of public funding for their campaigns. As a result, presidential candidates—who are eligible for public funding—are generally subject to spending limits, but congressional candidates are not.

Whatever the consequence of spending limits for presidential races, congressional elections would become not more competitive, but less. The more competitive the race, the more likely it will involve high spending.

Between 1982 and 1988, there were 30 highly competitive (6% margin or closer) Senate races and 65 landslides (20% margin or greater). In the 30 highly competitive races, more than 60% of the candidates spent more than the various proposals for campaign reform now before Congress would permit—even before adjusting for inflation. But in the landslides, only 15% of the candidates involved spent more than the proposals before Congress would permit. The proposed limits—which would come into effect in time for the 1992 elections—would therefore have made little or no difference in the uncompetitive races, but would have had a substantial impact on the others.

Spending limits would alter the balance of power in the Senate between those states that happened to have competitive elections in any particular year and states that didn't. Incumbents in competitive states would be held back from taking advantage of their great fund-raising edge, while their challengers would have sufficient public funds to mount strong races. Those states would probably see unprecedentedly high turnover of senators, who would accordingly build little seniority. This would cost their states bargaining power in Congress. In contrast, uncompetitive states' incumbents, with their spending untouched by the law would continue to drown challengers.

Does anyone want to increase the rewards to one-party states? Does anyone want another manipulable tool in incumbents' hands to foil challengers, in the House as well as the Senate? Of the 12 challengers who beat incumbent senators between 1982 and 1988, 10 spent more than now-proposed limits, often between two and six times as much.

Spending limits would have another perverse impact: They would ensure that state population size would, for the first time as a matter of law, affect the outcome of Senate races. So far, every formula proposed for setting spending limits state by state has treated population as the only variable differentiating the cost of politics in one state from another. But some states have lively general elections, others only lively primaries; some have expensive media, others not; and so on. The spending ceilings proposed in 1977, the first time Congress tried seriously to enact them, were so high in the biggest states that Senate races there would have been untouched by the law. In contrast, in the 26 smaller states, severe reductions in spending would have been required.

This is not to say flatly that spending ceilings cannot work: the—now discarded—March report by the advisory panel on campaign finance named by Senate Majority Leader George Mitchell and Minority Leader Robert Dole, called for "flexible" ceilings. That report is the first even quasi-official recognition that by imposing ceilings we raise "valid practical considerations of whether certain categories of candidates (challengers v. incumbents), parties (Republican v. Democratic) or campaigns (large state v. small state) would be advantaged or disadvantaged"; further, that the formula for ceilings "need[s] to reflect the disproportionate costs of running in less populated state and in those states which require advertising in adjacent state's media markets."

But I do say that Buckley was right in putting red flags in front of spending ceilings. First, they're horrendously hard to set fairly and flexibly enough, as indicated above. Second, given that difficulty, it is especially significant that if we have ceilings, they will be set not by a troop of Eagle Scouts, but by incumbents who will pick the formula and the level of the limits, and render themselves even more invulnerable at the same time they claim applause for "reform." As Sen. Joe Biden (D., Del.), a backer of campaign reform, says, this "appears very hypocritical."

Mr. DOLE. Mr. President, Roy Schotland talks about spending limits.

Finally, I will just say we are prepared to negotiate in good faith. We do reject public financing. We reject it without apology. I do not believe the taxpayers want to start paying the costs of my campaign or anyone else's campaign. They have enough problems with the deficit crisis and problems of their own without taking some of their hard-earned tax money to pay for everybody's campaign in the Senate, in the Congress, and who knows what next, and who knows how much.

That is a nonstarter. Public financing is not going anywhere. It could not pass on the Democratic side.

I will just say, despite any remarks made, that our initiative is straightforward, it is serious, it is comprehensive; I think it will go a long way toward cleaning up the campaign finance mess.

So having said that, I say again, we are prepared to negotiate. We believe we have a good negotiating team. We believe the majority leader appointed a good negotiating team, and we are prepared to start next week in earnest to see if we can reach some satisfactory conclusion.

Mr. President, the Senate is moving along on the right track when it comes to cleaning up the campaign finance mess.

Last week, Republicans and Democrats introduced their own reform proposals. Both the majority leader and myself have appointed negotiating teams. And formal negotations should begin sometime early next week.

Obviously, much more work needs to be done, but at least the Senate is in a good position to develop a serious and comprehensive reform package.

THE MAJORITY LEADER'S REMARKS

I have had the opportunity to review the distinguished majority leader's remarks when he formally introduced the Democrat campaign finance proposal last week. At the risk of sounding a bit partisan when bipartisanship is the order of the day, I would like to take a few moments to correct—what I believe—are several inaccurate—and unfair—statements that appeared in these remarks.

NO REFORM PROPOSALS?

First. The majority leader made the blanket charge that "the Republican reaction to the Democratic substitute is no surprise. They offer no reform proposals so must depend on an attack of the Democratic approach."

The Republican bill offers no reform proposals? None whatsoever?

That is just plain wrong. And I simply can't believe that the majority leader really considers the Republican bill to be totally barren of a single reform idea.

Mr. President, the Republican bill adopts the reform approach hook, line, and sinker by banning soft money, by restricting the practice of bundling, and by reducing the contribution limits for out-of-State residents by a full 50 percent—from $1,000 to $500.

The Republican bill also takes a big whack at the special interests by removing Political Action Committees from the Federal election process altogether.

No exceptions. No loopholes.

And lo and behold, the Democrat bill follows the Republican lead by banning PAC contributions to at least one group—Senate candidates.

So I am quite positive about the Republican bill. I am quite positive that the Republican is, in fact, a reform proposal. And I am quite positive that the Republican bill can hold its own when compared to the so-called Democrat reform proposal.

DE FACTO SPENDING LIMITS

Second. The majority leader states that:

> The Republican alternative does not contain the essential element of campaign finance reform—spending limits on Senate campaigns. Therefore it does nothing to limit the unending pursuit of money by Senate candidates.

The majority leader is right in one respect. The Republican bill does not contain spending limits, if he is talking about the inflexible and arbitrarily determined spending limits that reduce competition in politics, that put a cap on public participation, and that make election lawyers water at the mouth at the prospect of reaping lucrative legal fees.

This is not just my view. It is the view of just about every academic who has studied the issue. And it happens to be the view expressed in a very good op-ed piece that appeared in the Wall Street Journal earlier this week.

According to the author of the piece—Prof. Roy Schotland of the Georgetown University Law School—the spending limit proposal contained

in the Democrat bill "sounds very fair, but grossly favors incumbents." I could not agree more.

The truth is that the Republican initiative will, in fact, limit campaign spending—and limit it substantially. By banning PAC's—by reducing the contribution limits for individuals residing outside of a candidate's State—and by restricting the practice of bundling—the Republican bill imposes de facto limits on the amount of money that can be spent in a campaign. If the Republican were ever signed into law, there would be less special-interest money flowing in the campaign finance pipeline and campaign spending would—inevitably—decrease. That's a given.

BIPARTISAN PANEL RECOMMENDATION

Third. The majority leader criticizes the Republican bill for exempting contributions to the party committees from the $25,000-a-year limit on contributions to influence Federal elections.

This exemption for party contributions is not a Republican idea. It is not a partisan idea. It is a bipartisan idea. It is an idea proposed by the Mitchell-Dole bipartisan campaign finance reform panel.

The bipartisan panel understood the importance of expanding the roles of the political parties. And it understood that more party participation means less special interest influence and more participation by the people who ought to count—our constituents.

So the bipartisan panel proposed an exemption from the $25,00 annual limit for contributions to the political parties. And Senate Republicans accepted this proposal because it makes sense.

TIME TO BE SERIOUS ABOUT SOFT MONEY

Fourth. The majority leader stated that—

Soft money is often used to circumvent election law limitations.

He stated that:

These unregulated funds from corporations, unions, and wealthy individuals are spent for voter registration drives, get-out-the-vote efforts, and generic advertising often designed specifically to benefit Federal candidates.

This is all well and good, and the majority leader is right on target. But it would be helpful if the Democrat bill took the truth-in-advertising test seriously and did something—finally—about labor union soft money.

Unlike the Republican initiative, the Democrat bill does not prohibit labor unions and corporations from using Treasury funds to finance get-out-the-vote and voter registration efforts. It does not codify the Supreme Court's Beck decision, and it would allow labor unions to continue to finance the administrative expense of the party committees.

PUBLIC FINANCING

The majority leader is correct when he says that Republicans are critical of the Democrat approach.

The Republican bill rejects—outright and without apology—the idea of taxpayer-financing of politicians.

We are in the midst of a budget deficit crisis, and the last thing we need is a congressional scheme to transfer the hard-earned money of the taxpayers to the campaign coffers of congressional candidates.

When it comes to the issue of public financing, Senate Republicans simply will not budge.

CONCLUSION

Mr. President, despite the majority leader's remarks, the Republican initiative is straightforward. It is comprehensive. It is serious. And if enacted, it will go a long way toward cleaning up the campaign finance mess.

I have no doubts about that.

MFN AND CHINA

Mr. DOLE. Mr. President, I do not want to take issue with the majority leader or debate the MFN for China issue now. First of all, the President has not made up his mind whether he would request the extension on the MFN, and I have not made up my mind, but I will if the President makes that request.

The majority leader made some good points. I do think, however, we ought to keep several considerations in mind. The majority leader did mention Hong Kong, and this is an important and complex consideration. It would be a shame if we undermine Hong Kong's economy, seriously undermining it at the same time its ability to survive as a democratic capital enclave inside China after 1997. MFN is a status quo. Renewing it is keeping the status quo. We are not giving the Chinese some new benefit. Some may think this is a new benefit we are going to restore to the People's Republic of China. It is not a new benefit.

Are we hurting the Chinese hardliners? That is the tone of the majority leader's statement. There are 1.1 billion Chinese people. It seems to me they are rather important strategically, militarily, politically, and economically. However you look at it, it is a country we should not drive back into isolation.

Are we standing on the side of the Chinese reformers? Are we going to isolate them even further if we cut off ties like trade ties? And how badly will it hurt the Chinese anyway, or will it just hurt American business?

I just say I think the majority leader made some good points. I hope people do not become mixed up because they see it maybe as a partisan advantage or a way to take on President Bush who happens to know quite a bit about China and does have a good policy in China.

I think we do need some strong action and some positive action from China. The clock is ticking and time has almost run out. I would say to the leaders in the People's Republic of China, even though you release some dissidents and even though there have been other minor gestures made, the American people and the American Congress I think need to see more. We say that in an effort to bring about change in the right direction.

So I hope that before we make any final determination in the debate over the MFN with reference to the People's Republic of China, we have an opportunity for not only a full debate but hopefully there will be some appropriate response from the People's Republic of China.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska [Mr. MURKOWSKI].

Mr. MURKOWSKI. I thank the Chair.

UNITED STATES-VIETNAMESE RELATIONS

Mr. MURKOWSKI. Mr. President, as we are in the process of noting the 15th anniversary of the fall of Saigon to the Vietnamese Communist forces, it is the opinion of the Senator from Alaska it is time to review our policy toward the Socialist Republic of Vietnam—a policy that remains one of diplomatic nonrecognition and an embargo on public and private dealings with the Hanoi regime.

It is quite evident to us all that Vietnam responded to some of the concerns that led to this policy. The bulk, if not all, of the Vietnam forces that occupied Cambodia in 1979, have been withdrawn. Though results are still unacceptably slow, Hanoi has gradually become more cooperative on the painful POW-MIA issue. And there are other new realities in the region—reduction in the Soviet threat, the deterioration of United States-China relations—that must be taken into account.

In my judgment, it is not yet appropriate for the United States to normalize relations with Vietnam. The Cambodian conflict remains unresolved and I am not convinced that Vietnam has done all it can to provide the fullest possible accounting of Americans missing in action.

We should, however, be willing to consider whether a more positive approach to Vietnam might be more effective in promoting the changes that we want to see in Vietnam's foreign and domestic policy.

In particular, the steps that we can take regarding the economic aspects of

our relationship with Vietnam are what I want to talk about because they will benefit our own citizens while acknowledging that some progress has been made forward building a foundation for a future relationship between our two countries.

I am pleased to join with the senior Senator from California in introducing legislation to compensate Americans who lost property in Vietnam in 1975. It is tragic that issues relating to Vietnam remain with us to this date. But I believe it is important we deal with these issues in fairness to all concerned, and this is such an issue.

In 1975, hundreds of United States citizens and businesses remained in Vietnam, many at the urging of our Government, long after it was prudent to do so. With the fall of the Saigon government, these people lost millions of dollars' worth of property which was confiscated by the new Vietnam Government. There has never been any compensation for this loss of property.

In 1980, Congress directed the Foreign Claims Settlement Commission, an agency of the Justice Department, to adjudicate the claims of those who claimed losses. After considering each case individually in detail, the Commission declared that 192 of the claims had merit, and they stated the amounts that were due each claimant. The claims and the amount of the claims are not in controversy at this time.

At the same time that the former South Vietnamese Government fell, the United States Government blocked South Vietnam's assets in this country, mostly in the form of central bank funds and deposits in United States banks. Those funds have remained blocked to this date.

This legislation which we introduced would, in effect, permit the President to vest blocked funds and to distribute them as may be necessary to satisfy the adjudicated claims.

There is a precedent for this action, Mr. President, the Congress having vested blocked assets in several previous situations.

There is an important equity question involved. U.S. citizens have lost property, the Congress and the agencies of the U.S. Government have recognized those losses, and appropriate funds are available to satisfy them. The Congress has an opportunity to make those funds available in a way that is consistent with past practice and with established legal procedures. The claimants have already waited 15 years and the value of their claims is decreasing with each succeeding year since the law permits these claims to earn only 6 percent simple interest per annum.

As important as this issue is, I think there are legitimate concerns on the impact this legislation might have on our contacts with Vietnam. An overriding concern I have is that they not interfere with efforts under way between our Government and the Socialist Republic of Vietnam to obtain fullest possible accounting of American servicemen missing in action and resolve other humanitarian issues that are outstanding. I would not support this legislation if I thought it would interfere in any way with a full accounting of our POW's and MIA's.

I believe the legislation has been carefully drafted with that consideration in mind. It contains a provision which in effect gives the Vietnamese credit for any invested funds in any future bilateral negotiations with the United States leading up to normalization where all outstanding claims can be resolved.

In addition, I am pleased that Senator CRANSTON has agreed to my request to include a provision which gives the President the authority to delay the vesting for 1 year at a time, for the full extent of this term if, in his judgment, vesting should in any way threaten progress on humanitarian issues that are being discussed by our two countries.

This provision is designed also to address similar issues raised by the State Department. In short this legislation, has been drafted to meet a number of different legitimate concerns in a balanced and fair manner.

We need to see if we can do something for these claimants who have waited 15 years for the compensation which everyone agrees is due them. In that spirit, Mr. President, I join Senator CRANSTON in this legislation.

In addition to the legislation, I urge the administration to review the existing prohibition on trade and investment in Vietnam by private United States firms. When I say review, I mean that. I do not mean open it up. But let us take a look at it. Trade and investment in Vietnam by private firms is taking place. American businesses are complaining with increasing urgency of their inability to compete with the Thais and the Japanese, the Singaporeans, Taiwanese, the French, and other businessmen who are actively pursuing commercial ventures in Vietnam.

I believe it may be time to examine the merits of changing the procedures of allowing American businessmen to join in evaluating the opportunities in that country. Such a step will still leave in place the barriers on Government bilateral-multilateral assistance to Vietnam. Large-scale infrastructure lending can only come from public sources, so the United States will retain ample leverage over policy, particularly toward achieving an accepting able settlement to the tragic situation in Cambodia. It is time we stop requiring that American businesses bear the burden of that leverage almost entirely.

We need to take a hard constructive look at our policy toward Vietnam. I hope that the introduction of this legislation and my proposal to relax some of the constraints on U.S. businesses will provide the impetus to the Congress and the administration to conduct an appropriate review.

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

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

The legislative clerk proceeded to call the roll.

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

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

RETIREMENT OF COL. LAWRENCE WILLIAM DUGGAN, U.S. ARMY

Mr. PACKWOOD. Mr. President, most of us reach a crossroads in our lives where we know the decisions made will forever alter our destiny and determine our fate. Lawrence William Duggan of Portland, OR, reached that point at the University of Oregon in 1960 when he was commissioned a second lieutenant of infantry in the U.S. Army.

On May 1, Col. Lawrence William Duggan reached a second crossroads when he retired after 30 years of distinguished service. I am proud to take this opportunity today to commend his accomplishments and proud service to our country.

A native Oregonian, Colonel Duggan began his military career as a platoon leader and company commander at the U.S. Army Training Center in Fort Ord, CA. Since then, his service has included two tours in Vietnam and stints in Germany, Thailand, and at the Pentagon. The shining moment in this stellar career, however, came in 1985 when Colonel Duggan was named commander of the 5th Special Forces Group.

Colonel Duggan epitomizes the strength and dedication of the Special Forces soldier. Created in 1952, Special Forces troops were trained to conduct unconventional warfare that only the tenacious and dedicated could endure. Special guerrilla warfare tactics, sabotage, and escape and evasion offered a glimpse at an alternative to massive conventional intervention. Their use of the now-famous green beret symbolized their special standard of excellence and distinction, worn as a badge of courage.

In 1964, Colonel Duggan set out to become one of the elite—the toughest, most dedicated, and highly trained soldiers prepared to conduct the full range of special operations missions

worldwide. His unfailing dedication, combined with a willingness to do without some of the monetary gain, notoriety and laurels that come with other military service, enabled Colonel Duggan to meet and conquer the challenge of the Special Forces. He achieved 30 years of distinction with pride and with professionalism.

Colonel Duggan has earned an extraordinary number of physical honors and medals over his career. It is his reputation of perseverance and loyalty, however, that has earned the invaluable respect of colleagues and superiors in all branches of service.

Mr. President, Col. Lawrence William Duggan now stands at the second crossroads. It is a bittersweet juncture. A career of exemplary military service has come to an end. But the service of a great American can never be retired. As a nation, we owe him our thanks and gratitude, and offer him our congratulations for a job well done.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 1,889th day that Terry Anderson has been held in captivity in Beirut.

NATIONAL RADON ACTION WEEK

Mr. LAUTENBERG. Mr. President, on Wednesday Senator WARNER, together with 21 other Senators, joined me in introducing a Senate Joint Resolution 317 which would designate the week of October 14, 1990, as National Radon Action Week.

Radon exposure poses a serious health risk to the people of our Nation. The EPA estimates that the number of deaths per year due to radon exposure is approximately 20,000. Fortunately, elevated radon levels can be reduced successfully at relatively low cost.

Testing in homes and schools and educating people about the risks associated with radon exposure are the first steps we can take to protect ourselves and our children from the harmful effects of radon. Our resolution calls for the establishment of a National Radon Action Week to encourage these activities.

This resolution has been endorsed by a broad range of groups and associations including: the American Lung Association, the American Cancer Society, the American Academy of Pediatrics, the National Congress of Parent Teachers Associations, the National Education Association, the Consumer Federation of America, the State and Territorial Air Pollution Control Administrators, and the North American Radon Association.

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

I encourage my colleagues to consponsor this resolution and I ask unanimous consent that a copy of the Senate Joint Resolution 317 be printed in the RECORD.

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

S.J. RES. 317

Whereas exposure to radon poses a serious threat to the health of the people of this Nation;

Whereas the Environmental Protection Agency estimates that lung cancer attributable to radon exposure causes approximately 20,000 deaths a year in the United States;

Whereas the United States has set a long-term national goal of making the air inside buildings as free of radon as the ambient air;

Whereas excessively high levels of radon in homes and schools can be reduced successfully and economically with appropriate treatment;

Whereas only about 2 percent of the homes in this Nation have been tested for radon levels;

Whereas the people of this Nation should be educated about the dangers of exposure to radon; and

Whereas people should be encouraged to conduct tests for radon in their homes and schools and to make the repairs required to reduce excessive radon levels: Now, therefore be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the week of October 14, 1990, through October 20, 1990, is designated as "National Radon Action Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate ceremonies and activities.

JUST SAY NO TO DRUGS

Mr. WARNER. Mr. President, I rise to share with my colleagues an experience I had just moments ago on the steps that lead to this Chamber. There, on this beautiful spring day, I met with 150 fifth graders from the Little Creek Elementary School in Norfolk, VA, who are members of the Just Say No Club at that school. These fine young boys and girls brought me a message: A message of hope and commitment to keep drugs and alcohol out of their lives. So impressed was I with their earnest desire, and that of their teachers, to spread the message of leading drug-free lives that I came directly to the Senate floor to share with you this memorable visit. We all meet many students on the famous Senate steps, but this group will always be remembered.

I told them that we have witnessed historic changes throughout the world, especially in Europe. At no other time in the past 40 years has the possiblity of an armed conflict between our own Nation and the forces of communism been less likely than it is today. But there is another war taking place right now within our own borders. The war on drugs is as nasty and brutish a conflict as our Nation has ever experienced. The effects of drug abuse are devastating to individual, families and entire communities, particularly our young people. Perhaps the greatest hope we have to combat this scourge rests with our young people. The age of my visitors 10 to 12 is the perfect time to start.

I have seldom been more moved, nor seldom spent a more worthwhile moment as a U.S. Senator than the few minutes I spent with the children from Little Creek Elementary School. I respectfully request that their letter to me—and for all Senators—together with their pledge, stated by all of them on the Senate steps, be made a part of the official proceedings of the Congress of the United States on this day.

It serves as a call to action for their friends, teachers, and parents all across our beautiful United States of America.

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

LITTLE CREEK ELEMENTARY SCHOOL,
Norfolk, VA, May 10, 1990.

Senator JOHN W. WARNER,
U.S. Senate, Washington, DC.

DEAR SENATOR WARNER: We are members of the fifth grade Just Say No Club at Little Creek Elementary in Norfolk, Virginia. We are pleased to have this opportunity to meet you and thank you for all you have done in the fight against drugs.

We were very excited to hear your announcement that Virginia law enforcement agencies will receive a $9.2 million grant from the U.S. Department of Justice to continue and expand anti-drug efforts. This is a $6.2 million increase over last year. It will be used not only in our cities but in our rural communities as well. You said that the illicit drug trade is a very serious challenge to our sheriffs, police officers, and courts, and that this grant will help alleviate the financial strain on existing programs.

We were also very interested in your recent visit to the Little Creek Naval Amphibious Base where you spoke with local, State, and Federal narcotics officers. You told them that the international drug war is as serious as any threat of a shooting war from an enemy, and that they were fighting to rid the nation of its worst problem.

Your actions are proving that you feel the war on drugs is the Number 1 issue facing America. this country needs congressmen like you who will work toward ridding America of all drug crimes.

Sincerely,

FIFTH GRADE JUST SAY NO CLUB.

"WE SAY NO TO DRUGS" PLEDGE

I know who I am and I know that I want to stay healthy and happy.

I can stand up for myself and stick to my decision to live a drug-free life.

I can ask for support from my friends and my family.

I pledge to say "No" to drugs and alcohol.

I can help others say "No" to drugs and alcohol.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:12 a.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 and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1028. An act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the Golden Anniversary of the Mount Rushmore National Memorial;

H.R. 2761. An act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United Services Organization;

H.R. 4612. An act to amend title 11 of the United States Code regarding swap agreements and forward contracts; and

H.J. Res. 508. Joint resolution designating May 1990 as "Take Pride in America Month."

MEASURES REFERRED

The following bills and joint resolution were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1028. An act to require the Secretary of the Treasury to mint coins in commemoration of the Golden Anniversary of the Mount Rushmore National Memorial to the Committee on Banking, Housing, and Urban Affairs;

H.R. 2761. An act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United Services Organization; to the Committee on Banking, Housing, and Urban Affairs; and

H.J. Res. 508. Joint resolution designating May 1990 as "Take Pride in America Month"; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4612. An act to amend title 11 of the United States Code regarding swap agreements and forward contracts.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports and documents, which were referred as indicated:

EC-3004. A communication from the Secretary of Agriculture, transmitting drafts of proposed legislation entitled the "Plant Protection Act" and the "Animal Health Protection Act"; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3005. A communication from the chief of the Forest Service, U.S. Department of Agriculture, transmitting, pursuant to law, the final 1989 report of the Forest Service; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3006. A communication from the Director of the Office of Management and Budget, transmitting, pursuant to law, the cumulative report of the Office on rescissions and deferrals; pursuant to the order of January 30, 1975, as modified by the order of April 26, 1986 referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-3007. A communication from the Director of the Defense Security Assistance Agency, Department of Defense, transmitting, pursuant to law, a report on the Department of the Air Force's proposed letters of Offer and Acceptance to Norway for defense articles estimated to cost $50 million or more; to the Committee on Armed Services.

EC-3008. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on section 3 of the Housing and Urban Development Act of 1968; to the Committee on Banking, Housing, and Urban Affairs.

EC-3009. A communication from the general counsel of the Department of Transportation, transmitting, pursuant to law, the fiscal year 1991 budget requests of the Federal Aviation Administration to the Department; to the Committee on Commerce, Science, and Transportation.

EC-3010. A communication from the Secretary of Transportation, transmitting, pursuant to law, the eighth annual report of accomplishments under the Airport Improvement Program; to the Committee on Commerce, Science, and Transportation.

EC-3011. A communication from the chairman of the Federal Election Commission, transmitting pursuant to law, the semiannual report of the Commission's Inspector General; to the Committee on Governmental Affairs.

EC-3012. A communication from the chairman of the U.S. International Cultural and Trade Center Commission, transmitting, pursuant to law, the Commission's first annual report in compliance with the Inspector General Act Amendments of 1988; to the Committee on Governmental Affairs.

EC-3013. A communication from the Attorney General of the United States, transmitting a draft of proposed legislation entitled the "Cooperative Production Act of 1990"; to the Committee on the Judiciary.

EC-3014. A communication from the chairman of the U.S. Railroad Retirement Board, transmitting an informational report on the functions of the Board; to the Committee on Labor and Human Resources.

EC-3015. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Airport Noise Compatibility Planning Program report; to the Committee on Commerce, Science, and Transportation.

EC-3016. A communication from the Director of the Office of National Drug Control Policy, Executive Office of the President, transmitting a draft of proposed legislation entitled the "National Drug Control Strategy Implementation Act of 1990"; to the Committee on the Judicary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 1719: A bill to designate a segment of the Colorado River in the Westwater Canyon, Utah as a component of the National Wild and Scenic Rivers System (Rept. No. 101-296).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 666: A bill to enroll twenty individuals under the Alaska Native Claims Settlement Act (Rept. No. 101-297).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolution were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOLE (by request):

S. 2652. A bill to implement the National Drug Control Strategy; to the Committee on the Judiciary.

By Mr. BURNS (for himself, Mr. GRASSLEY, Mr. SYMMS, Mr. BURDICK, Mr. BOREN, Mr. PRESSLER, Mr. NICKLES, and Mr. DOLE):

S. 2653. A bill to permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer; to the Committee on Commerce, Science, and Transportation.

By Mr. HARKIN (for himself, Mr. HATFIELD, Mr. SASSER, Mr. METZENBAUM, and Mr. PELL):

S. 2654. A bill to provide for an intensified national effort to improve the health and enhance the independence of older Americans through research, training, treatment, and other means, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. STEVENS:

S. 2655. A bill to authorize a certificate of documentation for the vessel *Artic Fisher*; to the Committee on Commerce, Science, and Transportation.

S. 2656. A bill to authorize a certificate of documentation for the vessel *Pumpkin*; to the Committee on Commerce, Science, and Transportation.

By Mr. BRADLEY:

S. 2657. A bill to direct the Secretary of the Interior, acting pursuant to the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and Acts amendatory thereof and supplementary thereto, to undertake certain studies to investigate opportunities for wastewater reclamation and reuse, to conduct studies of groundwater, and for other

purposes; to the Committee on Energy and Natural Resources.

S. 2658. A bill to establish conditions for the sale and delivery of water from the Central Valley Project, CA, a Bureau of Reclamation facility, and for other purposes; to the Committee on Energy and Natural Resoures.

S. 2659. A bill to amend and supplement Federal reclamation law to eliminate abuses of the Reclamation program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BREAUX:

S. 2660. A bill to authorize a certificate of documentation for the vessel *Bounty*; to the Committee on Commerce, Science, and Transportation.

By Mr. LAUTENBERG:

S.J. Res. 320. A joint resolution designating July 2, 1990, as "National Literacy Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. KASSEBAUM (for herself, Mr. CHAFEE, Mr. INOUYE, and Mr. DOLE):

S. Res. 288. A resolution expressing the sense of the Senate regarding the reopening of universities in the West Bank and Gaza without delay; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (by request):

S. 2652. A bill to implement the national drug control strategy; to the Committee on the Judiciary.

NATIONAL DRUG CONTROL STRATEGY IMPLEMENTATION ACT

Mr. DOLE. Mr. President, today I am introducing the National Drug Control Strategy Implementation Act of 1990.

This bill was sent to the Congress by the Director of the Office of National Drug Control Policy, William Bennett, after consulting with the executive branch departments and agencies with direct authority over illicit drug supply and demand reductions.

Over the past several years, the Congress has greatly expanded the authority and funding for these agencies. At the same time, we directed Director Bennett to undertake a review of these programs and inform us of failures and successes, as well as recommending changes to existing law which would aid in the effort to eliminate drug abuse in the United States.

The bill I am introducing on behalf of the administration will add several essential tools to both supply and demand reduction.

MAJOR PROVISIONS

Mr. President, there are many important provisions in this bill, but I will highlight only a few. First, it includes a revised version of an initiative which was included in the first national drug control strategy, but which was never approved by the Congress. It requires States, as a condition on receiving Federal justice assistance funds, to conduct drug tests on a number of individuals arrested, incarcerated, or on probation or parole. As I said, this proposal has been revised to eliminate previous objections, and is necessary to define the successes and failures of our overall antidrug program. To complement State testing regimes, it imposes a similar testing requirement on the Federal criminal justice system.

Second, the bill includes another recommendation of the first national drug control strategy that the Congress has also failed to send to the President. It requires States, as a condition on receiving funds from the Alcohol, Drug Abuse and Mental Health Administration [ADAMHA], to implement statewide treatment plans to expand capacity, assess need, improve referrals, provide training and coordination. With calls for even more funds for treatment, this additional accountability for treatment providers is the least we should demand in return for the huge increases we have agreed to provide in treatment funding.

With respect to ADAMHA funding, it also prohibits States from reducing their share of drug treatment money. Historically, this has been a program of cooperation in both technical and financial resources, this bill would ensure that cooperation continues.

To more fully address the heinous nature of crimes committed by drug traffickers, the bill includes a death penalty for major drug kingpins who attempt a killing to obstruct an invesigation or prosecution of a drug offense, and those who commit a drug felony which results in a death. This provision will expand the existing Federal death penalty for drug kingpins who commit murder.

It enhances our ability to combat drugs internationally by extending certain waivers for the Andean initiative, which seeks to reduce the production of coca and coca paste in Peru and Bolivia and its refining into cocaine in Colombia and other South American countries. In addition, it would allow for the extradition from the United States drug suspects wanted by foreign countries, even if we are not obligated to extradite by treaty. As we continue to seek extradition of foreign drug lords for prosecution by U.S. courts, we shuld be willing to assist other nations in similar efforts.

Finally, a number of improvements for law enforcement and the criminal justice system are included. The Immigration and Naturalization Service would be given expedited procedures for deportation of criminal aliens and be given arrest authority, additional protection for judges, jurors, and witnesses is expanded, new sanctions for public corruption and sale of drug paraphernalia are included and new penalties added for those who fail to land aircraft and water-going vessels upon the order of law enforcement officials.

Mr. President, I ask unanimous consent that a copy of the bill and a section-by-secton analysis of the bill, and Mr. Bennett's letter of transmittal be inserted in the RECORD.

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

S. 2652

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Drug Control Strategy Implementation Act of 1990".

SECTION 21. TABLE OF TITLES.

TITLE I—DRUG TESTING, FUNDING PROGRAMS, AND TREATMENT

Subtitle A—Drug Testing and Treatment

SEC. 1101. DRUG TESTING IN THE CRIMINAL JUSTICE SYSTEM AS A CONDITION OF RECEIPT OF JUSTICE DRUG GRANTS.

(a) IN GENERAL—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end of part E (42 U.S.C. 3750-3766b) the following:

"DRUG TESTING PROGRAMS

"SEC. 523. (a) PROGRAM REQUIRED.—No funding shall be provided under this part, whether by direct grant, cooperative agreement, or assistance in any form, to any State or to any political subdivision or instrumentality of a State that has not formulated and implemented a drug testing program, subject to periodic review by the Attorney General, as specified in the regulations described in subsection (b), for targeted classes of arrestees, individuals in jails, prisons, and other correctional facilities, and persons on conditional or supervised release before or after conviction, including probationers, parolees, and persons released on bail.

"(b) REGULATIONS.—The Attorney General shall, not later than six months after the enactment of this section, promulgate regulations for drug testing programs under this section, which shall be based in part on scientific and technical standards determined by the Secretary of Health and Human Services to ensure reliability and accuracy of drug test results. In addition to specifying acceptable methods and procedures for carrying out drug testing, the regulations may include guidelines or specifications concerning—

"(1) the classes of persons to be targeted for testing;

"(2) the drugs to be tested for;

"(3) the frequency and duration of testing; and

"(4) the effect of test results in decisions concerning the sentence, the conditions to be imposed on release before or after conviction, and the granting, continuation, or termination of such release.

"(c) EFFECTIVE DATE.—This section shall take effect with respect to any State, subdivisions, or instrumentality receiving or seeking funding under this subchapter at a time specified by the Attorney General, but no earlier than the promulgation of the regulations required under subsection (b).".

"(b) AMENDMENT TO TABLE OF CONTENTS.—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 inserting at the end of the item relating to part E the following:

"Sec. 523. Drug Testing Programs.".

SEC. 1102. MAINTENANCE OF EFFORT IN ADMS BLOCK GRANTS.

Amends section 1916(c)(11) of the Public Health Service Act to read as follows:

"(11)(A)(i) The State agrees to maintain State expenditures for alcohol, drug abuse, and community mental health services at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments under section 1914; (ii) provided however that the State shall maintain State expenditures for drug abuse related services provided pursuant to this subpart at a level equal to not less than the average amount of such expenditures for the preceding two years.

"(B) The Secretary may, upon the request of a State, waive the requirement established in subparagraph (A) if the Secretary determines that extraordinary economic conditions in the State justify the waiver of the provisions contained in subsection (i) or if the Secretary determines that other extraordinary conditions in the State justify the waiver of the provisions contained in subsection (ii).

"(C) The Secretary shall promulgate regulations implementing this subsection of law which shall include, but not be limited to, the procedures by which a full or partial waiver may be granted.".

SEC. 1103. ESTABLISHMENT OF STATEWIDE DRUG TREATMENT PLANS: AMENDMENT TO CHAPTER 6A OF TITLE 42 (PUBLIC HEALTH SERVICE ACT).

Title XIX of the Public Health Service Act is amended by inserting after section 1916A the following:

"STATEWIDE DRUG TREATMENT PLAN

"SEC. 1916B. (a) NATURE OF PLAN.—In order to receive the drug abuse portion of its allotment for a fiscal year under section 1912A, a State shall develop, implement and submit as part of the application required by section 1916(a) an approved Statewide Drug Treatment Plan, prepared according to regulations promulgated by the Secretary, which shall contain the following:

"(1) the single, designated State agency for formulating and implementing the Statewide Drug Treatment Plan,

"(2) a description of the mechanism that shall be used to assess the needs for drug treatment in localities throughout the State including the presentation of relevant data,

"(3) a description of a Statewide plan that shall be implemented to expand treatment capacity and overcome obstacles that restrict the expansion of treatment capacity (such as zoning ordinances), or an explanation of why such a plan is unnecessary,

"(4) a description of performance-based criteria that shall be used to allocate funds to drug treatment facilities receiving funding under this subpart,

"(5) a description of the drug-free patient and workplace programs (all of which must include drug testing) to be utilized in drug treatment facilities and progras,

"(6) a description of the mechanism that shall be used to make funding allocations under this subpart,

"(7) a description of the actions that shall be taken to improve the referral of drug users to treatment facilities that offer the most appropriate treatment modality,

"(8) a description of the program of in-service training that shall be implemented for employees of treatment facilities receiving Federal funds, designed to permit such employees to stay abreast of the latest and most effective treatment techniques,

"(9) a description of the plan that shall be implemented to coordiante drug treatment facilities with other social, health, correctional and vocational services in order to assist or refer those patients in need of such additional services, and

"(10) a description of the plan that will be implemented to expand and improve efforts to contact and treat expectant women who use drugs and to provide appropriate follow-up care to their affected newborns.

"(b) SUBMISSION OF PLAN.—The plan required by subsection (a) shall be submitted to the Secretary annually for review and approval. The Secretary shall have the authority to review and approve or disapprove State plans, and to propose changes to them.

"(c) SUBMISSION OF PROGRESS REPORTS.—Each State shall submit such reports, in such form, and containing such information as the Secretary may, from time to time, require, and will comply with such additional provisions as the Secretary may from time to time find necessary to verify the accuracy of such reports.

"(d) WAIVER OF PLAN REQUIREMENT.—At his discretion, the Secretary may waive any or all of the requirements of this subsection upon the written request of a State, provided the State implements an alternative treatment plan that fulfills the objectives of this subsection.

"(e) DEFINITION.—For purposes of this section, the term "drug abuse portion" means the amount of a State's allotment under section 1912A that is required by this subpart, or by any other provision of law, to be used for programs or activities relating to drug abuse.".

(b) REGULATIONS AND EFFECTIVE DATE.—

(1) The Secretary shall promulgate regulations to carry out section 1916B of the Public Health Service Act no later than six months following the date of this Act.

(2)(A) Sections 1916B(a)(4) and (a)(5) of that Act are effective beginning with the second fiscal year beginning after the date final regulations are published in the Federal Register.

(B) The remainder of that section is effective beginning with the first fiscal year beginning after the date final regulations are published in the Federal Register.

SEC. 1104. RAISING THE CAP ON DISCRETIONARY GRANTS FOR JUSTICE DRUG GRANTS.

In section 511 of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351), as amended by the Anti-Drug Abuse Act of 1988 (P.L. 100-690), strike the term "$50,000,000" and insert in lieu thereof the term "$100,000,000".

Subtitle B—Drug-Testing of Defendants on Post-Conviction Release

SEC. 1201. DRUG TESTING PROGRAM.

(a) Chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following new section:

§ 3608. Drug testing of defendants on post-conviction release.

"The Director of the Administrative Office of the United States Courts shall, as soon as is practicable after the effective date of this section, establish a program of drug testing of criminal defendants on post-conviction release. In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.".

(b) The section analysis for chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following: "3608. Drug testing of defendants on post-conviction release."

SEC. 1202. DRUG TESTING CONDITION

(a) Section 3563(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking out "and";

(2) in paragraph (3), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph (4), as follows:

"(4) for a felony, an offense involving a firearm as defined in section 921 of this title, a drug or narcotic offense as defined in section 404(c) of the Controlled Substances Act (21 U.S.C. 844(c)), or a crime of violence

as defined in section 16 of this title, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated upon request of the Director of the Administrative Office of the United States Courts, or the Director's designee. No action may be taken against a defendant pursuant to a drug test administered in accordance with this paragraph or sections 3583(d) or 4209(a) of this title, unless the drug test confirmation is a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Court after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy.".

(b) Section 3583(d) of title 18, United States Code, is amended by inserting after the first sentence the following: "For a defendant convicted of a felony or other offense described in section 3563(a)(4) of this title, the court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(c) Section 4209(a) of title 18, United States Code, is amended by inserting after the first sentence the following: "If the parolee has been convicted of a felony or other offense described in section 3563(a)(4) of this title, the Commission shall also impose as a condition of parole that the parolee refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the Commission) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title."

SEC. 1203. REVOCATION OF RELEASE

(a) Section 3565(a) of title 18, United States Code, is amended by inserting in the final sentence after "3563(a)(3)," the following: "or unlawfully uses a controlled substance or refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4),".

(b) Section 3583(g) of title 18, United States Code, is amended by inserting after "substance" the following: "or unlawfully uses a controlled substance or refuses to cooperate in drug testing imposed as a condition of supervised release,".

(c) Section 4214(f) of title 18, United States Code, is amended by inserting after "substance" the following: ", or who unlawfully uses a controlled substance or refuses to cooperate in drug testing imposed as a condition of parole,".

TITLE II—SANCTIONS FOR FAILURE TO LAND OR TO BRING TO

SEC. 2101. SANCTIONS FOR FAILURE TO LAND OR TO BRING TO.

(a) Chapter 109 of title 18 of the United States Code, is amended by adding at the end thereof the following new section:

"SEC. 2237. ORDER TO LAND OR BRING TO.

"(a)(1) In the enforcement of the laws of the United States relating to controlled substances as that term is defined in 21 U.S.C. 802(6) of money laundering (18 U.S.C. 1956-57), it shall be unlawful for the pilot, operator, or person in charge of any aircraft which has crossed the border of the United States, or any aircrat subject to the jurisdiction of the United States operating outside the United States to refuse to obey the order of an authorized Federal law enforcement officer to land.

"(a)(2) The Administrator of the Federal Aviation Administration and the Commissioner of Customs, upon consultation with the Attorney General, shall promulgate regulations governing the means by which an order to land may be communicated to the pilot, operator, or person in charge of an aircraft by Federal law enforcement officers.

"(a)(3) The enactment of this section shall not be construed to limit in any way the pre-existing authority of a customs officer under 19 U.S.C. 1581(d) or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any Federal law enforcement officer under any law of the United States to order an aircraft to land or a vessel to bring to.

"(b) It is unlawful for any master, operator, or person in charge of a vessel of the United States or a vessel subject to the jurisdiction of the United States to fail to bring to that vessel on being ordered to do so by a Federal law enforcement officer authorized to issue such an order.

"(c) Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under this section 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.

"(d) For purposes of this section:

"(1) a "vessel of the United States" or a "vessel subject to the jurisdiction of the United States" has the meaning set forth in the Maritime Drug Enforcement Act (46 U.S.C. App. 1901 et seq.).

"(2) an aircraft "subject to the jurisdiction of the United States" includes—

"(A) an aircraft located over the United States or the customs waters of the United States;

"(B) an aircraft located in the airspace of a foreign nation, where that nation consents to the enforcement of United States law by the United States; and

"(C) over the high seas, an aircraft without nationality, an aircraft of United States registry, or an aircraft registered in a foreign nation where the nation of registry has consented or waived objection to the enforcement of United States law by the United States.

"(3) "bring to" means to cause a vessel to slow or come to a stop to facilitate a law enforcement boarding by adjusting the course and speed of the vessel to account for the weather conditions and sea state.

"(4) "Federal law enforcement officer" has the meaning set forth in section 115 of this title.

"(e) A person who intentionally violates the provisions of this section shall be subject to—

"(1) imprisonment for not more than two years; and

"(2) a fine as provided in this title.

"(f) Any vessel or aircraft that is used in a violation of this section may be seized and forfeited. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of 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. Any vessel or aircraft that is used in a violation of this section is also liable in rem for any fine imposed under this section.".

(b) The analysis for chapter 109 of title 18, United States Code, is amended by adding at the end the following:

"2237. Order to land or to bring to.".

SEC. 2102. FAA SUMMARY REVOCATION AUTHORITY.

Title V of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1401), is amended by adding a new section 501(e)(3) to read as follows:

"(e)(3)(A) The registration of an aircraft shall be immediately revoked upon the failure of the operator of an aircraft to follow the order of a law enforcement officer to land an aircraft, as provided in section 2237 of title 18 of the United States Code. The Administrator shall notify forthwith the owner of the aircraft that the owner of the aircraft no longer holds United States registration for that aircraft.

"(B) The Administrator shall establish procedures for the owner of the aircraft to show cause why (i) the registration was not revoked, as a matter of law, by operation of paragraph (A) of this subsection; or (ii) cricumstances existed pursuant to which the Administrator should determine that, notwithstanding paragraph (A) of this subsection, it would be in the public interest to issue a new certificate of registration to the owner to be effective concurrent with the revocation occasioned by paragraph (A) of this subsection.".

SEC. 2103. COAST GUARD AIR INTERDICTION AUTHORITY.

(a) Title 14 of the United States Code is amended by adding a new Section 152 to read as follows:

"§ 152. Air interdiction authority

"The Coast Guard may issue orders and make inquiries, searches, seizures, and arrests with respect to violations of laws of the United States occurring aboard any aircraft over the high seas and waters over which the United States has jurisdiction. Orders to land an aircraft must be communicated pursuant to regulations promulgated pursuant to section 2237 of title 18, United States Code.".

(b) The analysis of title 14, United States Code, is amended by adding, immediately after item 151,

"152. Air interdiction authority."

SEC. 2104. COAST GUARD CIVIL PENALTY PROVISIONS.

(a) Title 14 of the United States Code is amended by adding a new section 640 to read as follows:

"§ 640. Civil penalty for failure to comply with a lawful boarding or order to land

"(a) The master, operator or person in charge of a vessel or the pilot or operator of an aircraft who intentionally fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel or landing of an aircraft in violation of section 2237 of title 18, United States Code, is liable to the United States Government for a civil penalty of not more than $25,000, which may be assessed by the Secretary after notice and opportunity to be heard.

"(b) The master, operator or person in charge of a vessel or the pilot or operator of an aircraft who negligently fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel or landing of an aircraft in violation of section 2237 of title 18, United States Code, is liable to the United States Government for a civil penalty of not more than $5,000, which may be assessed by the Secretary after notice and opportunity to be heard.

"(c) Any vessel or aircraft used in violation of section 2237 of title 18, United States Code, is also liable in rem for the penalty assessed under this section.".

(b) The analysis of title 14, United States Code, is amended by adding, immediately after item 639,

"640. Civil penalty for failure to comply with a lawful boarding or order to land.".

SEC. 2105. CUSTOMS ORDERS

(a) Section 581 of the Tariff Act of 1930, as amended (19 U.S.C. 1581) is further amended by adding a paragraph (i) to read as follows:

"(i) As used in this section, the term "authorized place" includes—

"(1) with respect to a vehicle, any location in a foreign country at which United States Customs Officers are permitted to conduct inspections, examinations or searches;

"(2) with respect to aircraft to which this section applies by virtue of section 644 of this Act (19 U.S.C. 1644), or regulations issued thereunder, or section 2237 of title 18 of the United State Code, any location outside of the United States, including a foreign country at which United States Customs Officers are permitted to conduct inspections, examinations, or searches."

SEC. 2106. CUSTOMS CIVIL PENALTY PROVISIONS.

(a) The Tariff Act of 1930, as amended, is further amended by adding a new section 591 (19 U.S.C. 1591) as follows:

SEC. 1591. CIVIL PENALTY FOR FAILURE TO OBEY AN ORDER.

"(a) The pilot or operator of an aircraft who intentionally fails to comply with an order of an officer of the customs relating to the landing of an aircraft in violation of section 1581 of this title, or of section 2237 of title 18 of the United State Code, is subject to a civil penatly of not more than $25,000 which may be assessed by the appropriate customs officer.

"(b) The pilot or operator of an aircraft who negligently fails to comply with an order of an officer of the customs relating to the landing of an aircraft in violation of section 1581 of this title, or of section 2237 of title 18 of the United State Code, is subject to a civil penatly of not more than $5,000 which may be assessed by the appropriate customs officer.

TITLE III—DRUG PARAPHERNALIA AMENDMENT.

SEC. 3001. DRUG PARAPHERNALIA AMENDMENT.

(a) CIVIL FORFEITURE AND CIVIL ENFORCEMENT.—Section 1822 of the Anti-Drug Abuse Act of 1986 (P.L. 99-570; 21 U.S.C. 857) is amended—

(1) in subsection (c), by inserting "pursuant to section 413 of the Controlled Substances Act (21 U.S.C. 853)" after "subject to seizure and forfeiture";

(2) in subsection (b), by striking "not more than $100,000" and inserting "under title 18, United States Code;" and

(3) by adding the following new subsection:

"(g) CIVIL ENFORCEMENT.—The Attorney General may bring a civil action against any person who violates the provisions of this section. The action may be brought in any district court of the United States or the United States courts of any territory in which the violation is taking or has taken place. The court in which such action is brought shall determine the existence of any violation by a preponderance of the evidence, and shall have the power to assess a civil penalty of up to $100,000 and to grant such other relief including injunctions as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.".

(b) CIVIL FORFEITURE FOR DRUG PARAPHERNALIA.—Section 1822 of the Anti-Drug Abuse of 1986. (P.L. 99-570; 21 U.S.C. 857) is amended by inserting the following as a new subsection (h):

"(h) CIVIL FORFEITURE; APPLICABILITY OF THE CUSTOMS LAWS.—Any drug paraphernalia and other property, real or personal, involved in any violation of subsection (a) of this section, and any property traceable to such property, shall be subject to seizure and forfeiture. All provisions of law relating to seizure, summary and judicial forfeiture and condemnation for violation of the Customs laws, the disposition of the property forfeited or condemned or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims and award of compensation to informers in respect to such forfeitures shall apply to seizures and forfeitures incurred under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof.".

TITLE IV—INTERNATIONAL NARCOTICS CONTROL

SEC. 4101. ECONOMIC ASSISTANCE FOR ANDEAN COUNTRIES

The Foreign Assistance Act of 1961, as amended, is amended by adding a new section as follows:

"SEC. 536. ECONOMIC ASSISTANCE FOR ANDEAN COUNTRIES.—The President may provide narcotics-related assistance under this chapter and chapter 1 of part I of this Act to Bolivia, Colombia, and Peru, notwithstanding any other provision of law, except that such assistance shall be subject to sections 116, 481, 502B, and 620A of the Act.".

SEC. 4102. SUPPORT FOR LAW ENFORCEMENT

Section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2292) is amended by adding a new subsection (e):

"(e) Notwithstanding the prohibition contained in Subsection (a), funds made available under this Act and the Arms Export Control Act may be provided for training and equipment for law enforcement agencies or other units in Colombia, Bolivia, and Peru that are organized for the specific purpose of narcotics enforcement.".

SEC. 4103. WAIVER OF BROOKE-ALEXANDER AMENDMENT.

During fiscal year 1991, section 620(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(q)) and similar provisions relating to limitations on assistance to countries in default on obligations owed to the Unites States contained in an Act making appropriations for foreign operations, export financing, and related programs, shall not apply with respect to narcotics-related assistance for a country which is a major illicit drug producing country (as defined in section 418(i)(2) of the Foreign Assistance Act of 1961) because of its coca production.

SEC. 4104. ASSISTANCE FOR AGRICULTURAL AND INDUSTRIAL ALTERNATIVES TO NARCOTICS PRODUCTION

For the purpose of reducing dependence upon the production of crops from which narcotic and psychotropic drugs are derived, the President may provide assistance under chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961 to promote the production, processing, or the marketing of products which can be economically produced in those countries, notwithstanding any other provision of law.

SEC. 4105. REVISIONS OF CERTAIN NARCOTICS-RELATED PROVISIONS OF THE FORIEGN ASSISTANCE ACT.

(a) 482(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2292(b)) is amended by adding at the end thereof "except that these funds may be used to procure weapons or ammunition to arm, for defensive purposes, United States-title aircraft used in narcotics control eradication efforts, as well as personnel and agents participating in such efforts".

(b) Section 481 (h)(1)(A) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(h)(1)(A)) is amended by adding at the end thereof "except that this provision shall not apply if the President determines that its application to a particular country is contrary to the national interest".

(c) Section 484 of the Foreign Assistance Act of 1961 is amended to read as follows:

"Sec. 484. LEASE OR LOAN OF AIRCRAFT.—(a) Any aircraft that is procured with funds authorized to be appropriated by this chapter may be made available to a foreign country only on a lease or loan basis.

"(b) The President may provide aircraft under this chapter on a sale or grant basis notwithstanding subsection (a) when he determines that doing so is in the national in-

terest of the United States and so reports to the Congress."

SEC. 4106. SIZE OF THE MILITARY ASSISTANCE GROUP IN BOLIVIA AND PERU.

The third sentence of section 515(c)(1) of the Foreign Assistance Act of 1961 (relating to countries authorized to have more than 6 members of the Armed Forces assigned to carry out international security assistance programs) is amended by inserting "Bolivia, Peru," after "Colombia,".

SEC. 4107. NONAPPLICABILITY OF CERTIFICATION PROCEDURES TO CERTAIN MAJOR DRUG-TRANSIT COUNTRIES

Section 481(h) of the Foreign Assistance Act of 1961 shall not apply with respect to a major drug-transit country for fiscal year 1991 if the President certifies to the Congress, during that fiscal year, that—

(1) subparagraph (C) of section 481(i)(5) of that Act, related to money laundering, does not apply to that country;

(2) the country previously was a major illicit drug producing country but, during each of the preceding two years, has effectively eliminated illicit drug production; and

(3) the country is cooperating fully with the United States or has taken adequate steps on its own—

(A) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in section 481(h)(2)(B) of that Act) or a multilateral agreement which achieves the objectives of that section;

(B) in preventing narcotic and psychotropic drugs and other controlled substances 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

(C) in preventing and punishing bribery and other forms of public corruption which facilitates the production, processing or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts.

SEC. 4108. EXTRADITION OF U.S. CITIZENS.

(a) IN GENERAL.—Chapter 209 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"SEC. 3196. EXTRADITION OF UNITED STATES CITIZENS.

"The Secretary of State shall have the discretion to order the surrender to a foreign country of a United States citizen whose extradition has been requested by the foreign country, even if the terms of the applicable treaty or convention do not obligate the United States to extradite its citizens, if the other requirements of the applicable treaty or convention are met.".

(b) SECTION ANALYSIS.—The section analysis for chapter 209 of title 18, United States Code, is amended by adding at the end the following:

"3196. Extradition of United States citizens.".

SEC. 4109. EXPORT-IMPORT BANK FINANCING FOR SALES OF DEFENSE ARTICLES AND SERVICES FOR ANTI-NARCOTICS PURPOSES.

Section 2(b)(6)(B)(vi) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) is amended by striking out "1990" and inserting "1992" in lieu thereof.

Section 2(b)(6)(G) of the Export-Import Bank Act of 1945 is amended to read as follows:

"As used in this paragraph, the term 'defense articles and services' shall have the same meaning as under the Arms Export Control Act.".

TITLE V—DEATH PENALTY FOR DRUG KINGPINS AND OTHER CRIME CONTROL PROVISIONS.

Sec. 5001. Table of Contents.

Subtitle A—Capital Punishment for Drug Kingpins and Related Offenders.

Sec. 5101. Short title for Subtitle A.

Sec. 5102. Death Penalty Authorizations and Procedures.

Subtitle B—Protection of Witnesses, Jurors, and Court Officers.

Sec. 5201. Protection of court officers and jurors.

Sec. 5202. Prohibition of retaliatory killings of witnesses, victims, and informants.

SUBTITLE A—CAPITAL PUNISHMENT FOR DRUG KINGPINS AND RELATED OFFENDERS

SEC. 5101. SHORT TITLE FOR SUBTITLE A.

This subtitle may be cited as the "Drug Kingpin Death Penalty Act of 1990."

SEC. 5102. DEATH PENALTY AUTHORIZATIONS AND PROCEDURES.

Title 18 of the United States Code is amended—

(a) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH PENALTY

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.
"3598. Appointment of counsel.
"3599. Collateral Attack on Judgment Imposing Sentence of Death.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(a) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section;

"(b) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or member of the family or household of such a person; or

"(c) an offense constituting a felony violation of 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 Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation;

shall be sentenced to death if, after consideration of the factors set fourth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified: Provided, That no person may be sentenced to death who was less than eighteen years of age at the time of the offense.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified.

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for an offense described in section 3591, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant is punishable as a principal (as defined in section 2 of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS.—In determining whether a sentence of death is justified for an offense described in section 3591, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist—

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTIONS OF VIOLENT OFFENSES.—The defendant has previously been convicted of two or more Federal or State offense, each 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 or death upon another person.

"(3) PREVIOUS CONVICTIONS OF DRUG OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(4) PREVIOUS CONVICTIONS OF VIOLENT AND DRUG OFFENSES.—The defendant has previously been convicted of a Federal or State offense, punishable by a term of imprison-

ment of more than one year, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person, and has previously been convicted of a Federal or State offense, committed on a different occasion and punishable by a term of imprisonment of more than one year, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(5) SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(6) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

"(7) DISTRIBUTION TO PERSONS UNDER TWENTY-ONE.—The offense, or a continuing criminal enterprise of which the offense was a part, involved a violation of section 405 of the Controlled Substances Act (21 U.S.C. 845) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved a violation of section 405A of the Controlled Substances Act (21 U.S.C. 845a) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(9) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved a violation of section 405B of the Controlled Substances Act (21 U.S.C. 845b) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(10) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factors exist.

"§ 3593. Special hearing to determine whether a sentence of death is justified.

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, shall sign and file with the court, and serve on the defendant, a notice—

"(1) that the Government in the event of conviction will seek the sentence of death; and

"(2) setting forth the aggravating factor or factors enumerated in section 3592 and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, nothwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve 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 a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a)(2) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

Information presented may include the trial transcript and exhibits. 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 outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and for 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 aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for 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 an aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—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 aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concurs that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If an aggravating factor required to be considered under section 592(b) is found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist outweigh any mitigating factor or factors. The jury, or if there is no jury, the court, shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life impris-

onment without the possibility of release or furlough.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(B) the evidence and information support the special findings of the existence of an aggravating factor or factors;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case the reconsideration under section 3593 or for imposition of another authorized sentence as appropriate.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of sentence of death under this section.

"§ 3596. Implementation of sentence of death

"(a) A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) A sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed on that person, or upon a woman while she is pregnant.

"(c) No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

§ 3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such as an official employed for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§ 3598. Appointment of counsel

"(a) FEDERAL CAPITAL CASES.—

"(1) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this subsection shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) of this title has occurred.

"(2) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this subsection shall have counsel appointed for trial representation as provided in section 3005 of this title. At least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(3) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the government shall promptly notify the district court that imposed the sentence. Within 10 days of receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this subsection for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order: (A) appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel; (B) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or (C) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation. Counsel appointed pursuant to this paragraph shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(4) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this subsection, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least five years and have at least three years of experience in the litigation of felony cases in the federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(5) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this subsection, the provisions of section 3006A of this title shall apply to appointments under this subsection.

"(6) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"(b) STATE CAPITAL CASES.—The laws of the United States shall not be construed to impose any requirement with respect to the appointment of counsel in any proceeding in a state court or other state proceeding in a capital case, other than any requirement imposed by the Constitution of the United States. In a proceeding under section 2254 of title 28, United States Code, relating to a state capital case, or any subsequent proceeding on review, appointment of counsel for a petitioner who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Such appointment of counsel shall be governed by the provisions of section 3006A of this title.

"§ 3599. Collateral Attack on Judgment Imposing Sentence of Death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In any case in which a sentence of death has been imposed for an offense against the United States and the judgment has become final as described in section 3598(a)(3) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within 90 days of the issuance of the order relating to appointment of counsel under section 3598(a)(3) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. A motion described in this section shall have priority over all non-capital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion

under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings; and

"(2) the failure to raise the claim is (A) the result of governmental action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed."; and

(b) in the chapter analysis of part II, by adding the following new item after the item relating to chapter 227:

"228. Death penalty ..... 3591".

SUBTITLE B—PROTECTION OF WITNESSES, JURORS, AND COURT OFFICERS.

SEC. 5201. PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended—

(1) by designating the current text as subsection (a);

(2) by striking the words "fined not more than $5,000 or imprisoned not more than five years, or both." and inserting in lieu thereof "punished as provided in subsection (b)."; and

(3) by adding at the end thereof a new subsection (b) as follows:

"(b) The punishment for an offense under this section is—

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title;

"(2) in the case of an attempted killing, imprisonment for not more than twenty years; and

"(3) in any other case, imprisonment for not more than ten years.".

SEC. 5202. PROHIBITION OF RETALIATORY KILLINGS OF WITNESSES, VICTIMS, AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting a new subsection (a) as follows:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer; shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

"(B) in the case of an attempt, imprisonment for not more than twenty years.".

TITLE VI—JUSTICE SYSTEM IMPROVEMENTS.

SUBTITLE A—INS SYSTEM IMPROVEMENTS

SEC. 6101. INS GENERAL ARREST AUTHORITY.

Section 287 of the Immigration and Nationality Act of 1952 (66 Stat. 233) is amended by adding the following at the end thereof:

"(f)(1) Under the direction of the Attorney General, agents and officers of the Immigration and Naturalization Service are authorized to:

"(A) carry a firearm;

"(B) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;

"(C) make an arrest without a warrant for any offense against the United States committed in the officer's presence, or for a felony cognizable under the laws of the United States committed outside the officer's presence, if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

"(D) perform any other law enforcement duty that the Attorney General may designate.

"(2) The authority conferred by subsection (f)(1) of this section does not affect the investigative jurisdiction of any other federal law enforcement agency.".

SEC. 6102. DEFINITION OF AGGRAVATED FELONY.

Section 101(a)(43) (8 U.S.C. 1101(a)(43)) of the Immigration and Nationality Act of 1952 is amended to read as follows:

"(43) The term 'aggravated felony' means any crime that has as an element the use, attempted use, or threatened use of physical force against the person or property of another that is punishable by imprisonment of five years or more; any crime involving a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802) that is punishable by imprisonment of one year or more; any crime involving illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code; or any attempt or conspiracy to commit any such crime committed within the United States. For the purposes of this subsection, the term crime includes violations of federal, state and foreign laws or statutes.".

SEC. 6103. ADDITIONS TO CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION.

Section 212(a) (8 U.S.C. 1182(a)) of the Immigration and Nationality Act of 1952 is amended by adding at the end thereof the following new subsections:

"(35) Any nonimmigrant alien seeking admission who is in illicit possession of a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802);"

"(36) Any alien who has been convicted of an aggravated felony, as defined in section 101(a)(43) of this Act, or who admits having committed such a crime, or who admits committing acts which constitute the essential elements of such a crime.".

SEC. 6104. SUMMARY EXCLUSION AND DEPORTATION OF CRIMINAL ALIENS.

Section 235 (8 U.S.C 1225) of the Immigration and Nationality Act of 1952 is amended by adding at the end thereof the following new subsection:

"(d) any alien (including an alien crewman) who may appear to the examining immigration officer or to the special inquiry officer during an examination before either of such officers to be excludable under paragraphs (23), (35), or (36) of section 212(a) of this Act may be ordered summarily excluded and deported by the Attorney General without any inquiry or further inquiry by a special inquiry officer. Such summary exclusion order shall have the same effect as if the alien has been ordered excluded and deported pursuant to section 236 of this Act. Nothing in this subsection shall be regarded as requiring an inquiry before a special inquiry officer in the case of an alien crewman.".

SEC. 6105. EXPEDITIOUS DEPORTATION OF AGGRAVATED ALIEN FELONS.

Section 242A (8 U.S.C. 1252a) of the Immigration and Nationality Act of 1952 is amended by adding at the end thereof the following new subsections:

"(f) Nothwithstanding any other provision of law, an alien convicted of an aggravated felony, regardless of whether such alien is incarcerated, shall be subject to an expedited summary deportation proceeding. Such proceeding shall be conducted on the record by the Attorney General or his designee, who will make written findings as to alienage and deportability. Any order of deportation issued pursuant to this subsection shall be considered to be a final order. An alien subject to such proceeding shall not be eligible for relief from deportation under any provision of the Immigration and Nationality Act.

"(g) Upon sentencing any alien for an aggravated felon as defined in section 101(a)(43) of this Act, the federal or state court shall notify the Immigration and Naturalization Service that it has sentenced a person believed to be an alien for an aggravated felony. The federal or state court shall provide to the Immigration and Naturalization Service any and all information related to the alienage of the individual, and certified copies of any and all conviction documents."

SEC. 6106. INELIGIBILITY OF AGGRAVATED FELONS FOR ASYLUM.

Section 208(a) (8 U.S.C. 1158(a)) of the Immigration and Nationality Act of 1952 is amended by adding the following new subsection:

"(d) Any alien convicted of an aggravated felony, as defined in section 101(a)(43) of this act, shall not be eligible to apply for relief under this section."

SEC. 6107. ELIMINATION OF JUDICIAL RECOMMENDATION AGAINST DEPORTATION OF CRIMINAL ALIENS.

Subsection 241(b) (8 U.S.C. 1251(b)) of the Immigration and Nationality Act of 1952 is amended by deleting "(1)"; and by deleting ", or (2)" and all that follows, and replacing it with a period.

SEC. 6108. ELIMINATION OF SEC. 212(C) RELIEF FOR AGGRAVATED FELONS.

Section 212(c) (8 U.S.C. 1182(c) of the Immigration and Nationality Act of 1952 is amended by adding, at the end thereof, the following:

"Relief under this subsection shall not be available to any alien who has been convicted of an aggravated felony as defined in section 101(a)(43) of this Act."

SEC. 6109. ELIMINATION OF SUSPENSION OF DEPORTATION FOR CRIMINAL ALIENS IN HARDSHIP CASES.

Section 244(a) (8 U.S.C. 1254(a)) of the Immigration and Nationality Act of 1952 is amended by striking the words in the first sentence "(other than an alien described in section 241(a)(19) of this Act)" and substituting therefor the following: "(other than an alien described in section 241(a)(4)(B) or 241(a)(19) of this Act)".

Section 244(a)(2) is amended by adding after "(4)" the following: "(A)".

SEC. 6110. DEFINITION OF GOOD MORAL CHARACTER TO EXCLUDE AGGRAVATED FELONS.

Section 101(f) (8 U.S.C. 1101(f)) of the Immigration and Nationality Act of 1952 is amended by adding the following subsection:

"(9) One who at any time has been convicted of an aggravated felony as defined in section 101(a)(43) of this Act."

SEC. 6111. INELIGIBILITY OF AGGRAVATED FELONS FOR HARDSHIP WAIVERS.

Section 212(h) (8 U.S.C. 1182(h)) of the Immigration and Nationality Act of 1952 is amended:

(a) by adding at the end the following:

"Any alien convicted of an aggravated felony as defined in section 101(a)(43) of this Act is not eligible for relief under this section.";

(b) by replacing the period at the end of section 101(f)(8) with a semicolon.

SEC. 6112. ELIMINATION OF DEPORTATION RELIEF FOR ALIENS WHO ARE AGGRAVATED FELONS.

(a) Section 243(h)(2) (8 U.S.C. 1253(h)(2)) of the Immigration and Nationality Act of 1952 is amended by adding the following paragraph:

"(E) The alien has been convicted of an aggravated felony as defined under section 101(a)(43) of this Act."

(b) Section 245(c) (8 U.S.C. 1255(c)) of the Immigration and Nationality Act of 1952 is amended by replacing the period at the end thereof the following new subsection:

(5) Any alien convicted of an aggravated felony as defined under section 101(a)(43) of this Act."

(c) Section 249 (8 U.S.C. 1259) of the Immigration and Nationality Act of 1952 is amended by adding at the end the following:

"Any alien convicted of an aggravated felony as defined under section 101(a)(43) of this Act is not eligible for relief under this section."

SUBTITLE B—AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES.

SEC. 6201. AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES.

"(1) Section 5038 of title 18, United States Code, is amended by striking subsections (d), and (f), redesignating subsection (e) as subsection (d), and adding at the end thereof new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been found guilty of committing an act which if committed by an adult would be an offense described in clause (3) of the first paragraph of section 5032 of this title, the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation, Identification Division. The court shall also transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult, shall be made available in the manner applicable to adult defendants.

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure or availability of records or information, if the law of the state in which a federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure or availability is permitted under this section whenever the same circumstances exist.".

(2) Section 3607 of Title 18, United States Code, is repealed, and the corresponding reference in the section analysis for chapter 229 of Title 18 is deleted.

SUBTITLE C—NARCOTICS-RELATED PUBLIC CORRUPTION.

SEC. 6301. NARCOTICS-RELATED PUBLIC CORRUPTION.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

"§ 220. Narcotics and public corruption

"(a) Any public official who, directly or indirectly, corruptly demands, seeks, receives, or agrees to receive or accept anything of value personally or for any other person in return for—

"(1) being influenced in the performance of nonperformance of any official act; or

"(2) being influenced to commit or to aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State;

shall be guilty of a class B felony.

"(b) Any person who, directly or indirectly, corruptly gives, offers, or promises anything of value to any public official, or offers or promises any public official to given anything of value to any other person, with intent—

"(1) to influence any official act;

"(2) to influence such public official to commit or aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State; or

"(3) to influence such public official to do or to omit to do any act in violation of such official's lawful duty;

shall be guilty of a class B felony.

"(c) There shall be Federal jurisdiction over an offense described in this section if such offense involves, is part of, or is intended to further or to conceal the illegal possession, importation, manufacture, transportation, or distribution of any controlled substance or controlled substance analogue.

"(d) For the purpose of this section—

"(1) the term 'public official' means—

"(A) an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of Government;

"(B) a juror;

"(C) an officer or employee or person acting for or on behalf of the government of any State, territory, commonwealth, or possession of the United States (including the District of Columbia), or any political subdivision therof, in any official function, under or by the authority of any such State, territory, commonwealth, possession, or political subdivision; or

"(D) any person who has been nominated or appointed to be a public official as defined in subparagraph (A), (B), or (C), or has been officially informed that he or she will be so nominated or appointed;

"(2) the term 'official act' means any decision action, or conduct regarding any question, matter, proceeding, cause, suit, investigation, or prosecution which may at any time be pending, or which may be brought before any public official, in such official's capacity, or in such official's place of trust or profit; and

"(3) the terms 'controlled substance' and 'controlled substance analogue' have the meaning set forth in section 102 of the Controlled Substances Act.".

(b) CONFORMING AMENDMENTS.—(1) Section 1961(1) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "Section 201 (relating to bribery),";

(2) Section 2516(a)(c) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "section 201 (bribery of public officials and witnesses),".

(c) SECTION ANALYSIS.—The section analysis at the beginning of chapter 11, title 18, United States Code, is amended by inserting the following:

"220. Narcotics and public corruption.".

SUBTITLE D—OTHER JUSTICE IMPROVEMENTS.

SEC. 6401. ALTERNATIVE METHODS OF INCARCERATION.

In section 501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351), as amended by the Anti-Drug Abuse Act of 1988 (P.L. 100-690) (42 U.S.C. 3751(b)), is amended by deleting the period at the end of subsection (c) and inserting in lieu thereof ", and;" and by adding the following:

"(22) innovative intermediate sanctions programs, in combination with drug testing, including boot camps, house arrest, electronic monitoring, intensive supervision, and community service.".

SEC. 6402. CLOSE LOOPHOLE FOR ILLEGAL IMPORTATION OF SMALL DRUG QUANTITIES.

Section 497 (a)(2)(A) of the Tariff act of 1930 (19 U.S.C. 1497) is amended by adding "or $500., whichever is greater" after "value of the article.".

SEC. 6403. ENHANCEMENT OF PENALTIES FOR DRUG TRAFFICKING IN FEDERAL PRISONS.

Section 1791 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting before "Any" the following new sentence: "Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such a controlled substance.";

(2) in subsection (d)(1)(A), by inserting after "a firearm or destructive device" the words "or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection";

(3) in subsection (d)(1)(B), by inserting before "ammunition," the following: "marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection,";

(4) in subsection (d)(1)(C), by inserting "methamphetamine, its salts, isomers, and salts of its isomers," after "a narcotic drug,";

(5) in subsection (d)(1)(D), by inserting "(A), (B), or" before "(C)"; and

(6) in subsection (b), by striking "(c)" each place it appears and inserting in lieu thereof "(d)".

SEC. 6404. AUTHORIZATION OF FUNDING FOR TREASURY UNDERCOVER OPERATORS.

Paragraph (2) of subsection 7601(c) of the Anti-Drug Abuse Act of 1988 is amended by striking out "after December 31, 1989" and inserting "after December 31, 1991" and by striking out "before January 1, 1990" and inserting "before January 1, 1992" in lieu thereof.

TITLE VII—AMENDMENTS RELATED TO ASSET FORFEITURE AND MONEY LAUNDERING.

SUBTITLE A—SPECIAL FORFEITURE FUND.

SEC. 7101. SPECIAL FORFEITURE FUND AMENDMENT.

(a) Assets Forfeiture Fund Amendment.

Section 524(c)(9) of title 28, United States Code, is amended to read as follows:

"(9) There are authorized to be appropriated such sums as may be necessary for the purposes described in subparagraphs (A)(ii), (B), (C), (F), and (G) of paragraphs (1). For each of fiscal years 1990, 1991, 1992, and 1993, the Attorney General shall transfer not to exceed $150,000,000 in unobligated amounts available in the Fund to the Special Forfeiture Fund: *Provided,* That such amounts will be transferred on a quarterly basis: *Provided further,* That an amount not to exceed $15,000,000 or, if determined by the Attorney General to be necessary to meet asset specific expenses, an amount equal to one-tenth of the previous year's obligations, may be retained in the Fund and remain available for appropriation.".

(b) Special Forfeiture Fund Amendment.

Section 6073(b) of the Anti-Drug Abuse Act of 1988 (Public Law 100-690) is amended to read as follows:

"(b) DEPOSITS.—In each of fiscal years 1990, 1991, 1992, and 1993, there shall be transfered to and deposited in the Fund, from the Department of Justice Assets Forfeiture Fund pursuant to 28 U.S.C. 524(c)(9), not to exceed $150,000,000: *Provided,* That amounts specified in the second proviso of said section may be retained in the Assets Forfeiture Fund and remain available for appropriation.".

SUBTITLE B—FORFEITURE AMENDMENTS.

SEC. 7201. CONFORMING OF OLDER INNOCENT OWNER PROVISIONS WITH THOSE ENACTED IN THE ANTI-DRUG ABUSE ACT OF 1988.

(1) Sections 511(a)(6) and (7) of the Controlled Substances Act (21 U.S.C. 881(a)(6) and (7)) are each amended by striking "without the knowledge or consent of that owner" and inserting in lieu thereof "without the knowledge, consent, or willful blindness of the owner"; and

(2) Section 981(a)(2) of title 18, United States Code, is amended by striking "without the knowledge of that owner or lienholder" and inserting in lieu thereof "without knowledge, consent, or willful blindness, of the owner or lienholder".

SEC. 7202. ADDITION OF CONFORMING CRIMINAL FORFEITURE PROVISION FOR CASES INVOLVING CMIR VIOLATIONS.

Section 982(a) of title 18, United States Code, is amended by inserting ", 5316" after "5313(a)" in the first sentence.

SEC. 7203. CLARIFYING GRAMMATICAL CHANGES IN DEFINITION OF "FINANCIAL TRANSACTION" FOR THE MONEY LAUNDERING STATUTE.

Section 1956(c)(4) of title 18, United States Code, is amended by inserting "(A)" before "a transaction" the first place it appears, inserting "(i)" before "involving" the first place it appears, inserting "(ii)" before "involving" the second place it appears, and inserting (B) before the phrase "or a transaction."

SEC. 7204. LIMITATION OF EXCEPTION OF MONEY LAUNDERING FORFEITURES.

Section 982(b)(2) of title 18, United States Code, is amended by inserting before the period the following:

"unless the defendant, in committing the offense or offenses giving the rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000 or more in any twelve month period".

SEC. 7205. SEIZURE OF VEHICLES WITH CONCEALED COMPARTMENTS.

Sec. 1. Section 3 of the Anti-Smuggling Act of 1935 (19 U.S.C. 1703) is amended:

(a) by amending the title of such section to read as follows:

"SEC. 1703. SEIZURE AND FORFEITURE VESSELS, VEHICLES AND OTHER CONVEYANCES."

(b) by amending the title of subsection (a) to read as follows:

"(a) Vessels, vehicles and other conveyances subject to seizure and forfeiture";

(c) by amending the title of subsection (b) to read as follows:

"(b) Vessels, vehicles and other conveyances' defined";

(d) by inserting ", vehicle and other conveyance" after the word "vessel" everywhere it appears in the text of subsections (a) and (b); and

(e) by amending subsection (c) to read as follows:

"(c) Acts constituting prima facie evidence of vessel, vehicle or other conveyance engaged in smuggling;

"For the purposes of this section, prima facie evidence that a conveyance is being, or has been, or is attempting to be employed in smuggling or to defraud the revenue of the United States shall be—

"(1) in the case of a vessel, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or with a customs-enforcement area, to display lights as required by law.

"(2) in the case of a vehicle or other conveyance, the fact that a vehicle or other conveyance has any compartment or equipment that is built or fitted out for smuggling.".

Sec. 2. The table of sections for Chapter 5 if title 19, United States Code, is amended

by striking the items relating to section 1703 and inserting in lieu thereof the following:

"1703. Seizure and forfeiture of vessels, vehicles and other conveyances.
"(a) Vessels, vehicles and other conveyances subject to seizure and forfeiture.
"(b) Vessels, vehicles and other conveyances' defined.
"(c) Acts constituting prima facie evidence of vessel, vehicle or other conveyance engaged in smuggling.".

SUBTITLE C—MONEY LAUNDERING AMENDMENTS

SEC. 7301. CONTINUATION OF $10,000 CASH TRANSACTION REPORTING REQUIREMENT.

Paragraph (3) of subsection 7601(b) of the Anti-Drug Abuse Act of 1988 is amended by striking out "only during the 2-year period beginning on such date" and inserting "only during the 4-year period beginning on such date" in lieu thereof.

SEC. 7302. FINCEN TRANSFER AMENDMENT.

(b) Section 1112 of the Right to Financial Privacy Act of 1978 (Title XI of P.L. 95-630, 12 U.S.C. 3412) is amended—

(1) by deleting subsections (b), (c), and (f);

(2) by redesignating subsections (d) and (e) as (b) and (c) respectively; and

(3) by amending subsection (a) to read: "Financial records originally obtained by an agency in accordance with this chapter may be transferred to another agency without notice to the customer if the transferring agency has reason to believe that the records are relevant to a matter within the jurisdiction of the receiving agency or appropriate for analysis by the receiving agency for law enforcement purposes."

SEC. . 7303. GEORGRAPHIC TARGETING DISCLOSURE PENALTIES.

Section 5326 of title 31, United States Code, is amended by adding a new subsection (c) as follows:

"No financial institution or director, agent, officer or employee of a financial institution subject to an order under this section may disclose the existence or terms of the order to any person except as prescribed by the Secretary.".

SEC. 7304. SUSPICIOUS TRANSACTIONS REPORTING.

Section 1103(a) of the Right to Financial Privacy Act of 1978, (Title XI of Public Law 95-630, 12 U.S.C. 3403(c)), is amended by removing the period at the end thereof and adding the following:

"or for refusal to do business with any person before or after disclosure of a possible violation of law or regulation to a Government authority."

SEC. 7305. BANK SECRECY ACT CUSTOMER VIOLATIONS.

(C) Section 1113 of the Right to Financial Privacy Act of 1978, (Title XI of Public Law 95-630, 12 U.S.C. 3413), is amended by adding a new subsection (p) as follows:

"(p) Nothing in this title shall apply when a financial institution or supervisory agency, or any officer, director, employee, or agent of a financial institution or a supervisory agency, provides to the Secretary of the Treasury financial records which such financial institution or supervisory agency has reason to believe may be relevant to a possible violation of a provision of Subchapter II of Chapter 53 of title 31, United States Code.".

(d) Subsection 1117(c) of the Right to Financial Privacy Act of 1978, (Title XI of Public Law 95-630, 12 U.S.C. 3417(c)), is amended to read as follows:

"(c) Any financial institution or agent or employee thereof making a disclosure of financial records or information in good faith either in reliance upon a certificate by any Government authority pursuant to this chapter or pursuant to section 1113(1) or (p) of this chapter, shall not be liable to the customer for such disclosure under any constitution, law, or regulation of any state or political subdivision thereof.".

SEC. 7306. SEARCH OF OUTBOUND MAIL.

Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(1) For purposes of ensuring compliance with the requirements of section 5316 of this title or of sections 1956 and 1957 of title 18, United States Code, 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, including mail transmitted by the United States Postal Service which is not sealed against inspection, or which has a Customs declaration affixed by the sender, and any person entering or departing from the United States.

"(2) Notwithstanding 39 U.S.C. 3623(d), or any other provision of title 39, United States Code, with respect to any letter sealed against inspection being transmitted by the United States Postal Service, a search authorized by paragraph (1) may be conducted when a customs officer has reasonable cause to suspect that there are monetary instruments being transported in such a letter.

"(3) Nothing in this section shall be construed to limit the authority of the Secretary of the Treasury or the United States Customs Service under any other provision of law.".

TITLE VIII—MISCELLANEOUS AND TECHNICAL AMENDMENTS

SEC. 8101. TECHNICAL AMENDMENTS TO MONEY LAUNDERING OFFENSES.

(a) Paragraph (a)(2) and subsection (b) of section 1956 of title 18, United States Code, are amended by striking out "transportation" each place it appears and inserting in lieu thereof "transportation, transmission, or transfer";

(b) Subsection (a)(3) of section 1956 of title 18, United States Code, is amended by striking out "represented by a law enforcement officer" and inserting "represented".

(c) Section 7203 of the Internal Revenue Code of 1986 is amended by replacing the last sentence thereof with the following sentence: "In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting 'felony' for 'misdemeanor' and '5 years' for '1 year'."

SEC. 8102. CLARIFICATION OF APPLICABILITY OF 18 U.S.C. 1952 TO ALL MAILINGS IN FURTHERANCE OF UNLAWFUL ACTIVITY.

Section 1952(a) of title 18, United States Code, is amended—

(1) by inserting "the mail or" after "uses"; and

(2) by striking out "including the mail,".

SEC. 8103. ADDITION OF DRUG CONSPIRACY AND ATTEMPT OFFENSES COMMITTED BY JUVENILES AS WARRANTING ADULT PROSECUTION.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph by striking out an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), (3)),' and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401 or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b) (1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), or (3), or 963),"; and

(2) in the fourth undesignated paragraph—

(A) by striking out "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959)" and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401 or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act of (21 U.S.C. 841, 844, or 846), or section 1002(a), 1005, 1009, 1010(b) (1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b) (1), (2), or (3), or 963)"; and

(B) by striking out "subsection (b)(1) (A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), (3))" and inserting in lieu thereof "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1) (A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the

Controlled Substances Act (21 U.S.C. 841 (b)(1)(A), (B), or (C), (d), or (e), 844 or 846) or section 1002(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), or (3), or 963)".

SEC. 8104. GRAND JURY ACCESS TO CERTAIN RECORDS.

Section 551 of title 47, United States Code, is amended by adding at the end thereof the following new subsection:

"(i) Exception for federal grand jury proceeding Nothing in this section apply to any subpoena or court order issued in connection with proceedings before a federal grand jury.".

SEC. 8105. ADDITION OF CONFORMING PREDICATES TO MONEY LAUNDERING STATUTE.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "section 1005, 1006, or 1007 (relating to false statements of a financial institution employee), section 1014 (relating to false statements in connection with credit and loan applications)," after "section 875 (relating to interstate communications),"; and

(2) by striking "section 1344 (relating to bank fraud),".

SEC. 8106. ARREST OF FUGITIVE ABOUT TO ENTER UNITED STATES.

Section 3184 of title 18, United States, is amended by inserting "or, if there is reason to believe the person will shortly enter the United States" after "if the whereabouts within the United States of the person charged are not known".

SEC. 8107. ELIMINATION OF SUPERFLUOUS LANGUAGE IN 18 U.S.C. 510.

Section 510(b) of title 18, United States Code, is amended by striking out "that in fact is stolen or bears a forged or falsely made endorsement or signature".

SEC. 8108. CORRECTION TO REFERENCE TO NON-EXISTENT AGENCIES IN 18 U.S.C. 1114.

Section 1114 of title 18, United States Code, is amended—

(1) by striking out "any officer or employee of the Department of Health, Education, and Welfare," and inserting in lieu thereof "any officer or employee of the Department of Education, the Department of Health and Human Services,"; and

(2) by striking out "the Federal Savings and Loan Insurance Corporation,".

SEC. 8109. DISCLOSURE OF GRAND JURY INFORMATION FOR USE IN CIVIL FORFEITURE.

(a) Chapter 215 of title 18, United States Code, is amended by adding at the end a new section, as follows:

"§ 3323. Disclosure of matters occurring before grand jury for use in civil forfeiture

"(a)" A person who is privy to grand jury information—

"(1) received in the course of duty as an attorney for the government; or

"(2) disclosed under rule 6(e)(3)(ii) of the Federal Rules of Criminal Procedure; may disclose that information to an attorney for the government for use in connection with civil forfeiture proceedings under any law of the United States.

"(b) For purposes of this section, the terms 'attorney for the government' and 'grand jury information' have the meanings assigned such terms in section 3322 of this title.".

(b) Section 3322(a) of title 18, United States Code, is amended by striking out "or for use in connection with civil forfeiture under section 981 of title 18, United States Code, of property described in section 981(a)(1)(C) of such title".

(c) The table of sections for chapter 215 of title 18, United States Code, is amended by adding at the end the following:

"Section 3323. Disclosure of matters occurring before grand jury for use in civil forfeiture.".

SEC. 8110. USE OF A SEARCH WARRANT TO OBTAIN CONTENTS OF A STORED WIRE COMMUNICATION.

Section 2703(a) of title 18, United States Code, is amended by inserting "or wire" after "the contents of an electronic" both places those words appear.

SEC. 8111. AUTHORITY FOR STATE GOVERNMENT PERSONNEL TO ASSIST IN CONDUCTING COURT-AUTHORIZED INTERCEPTIONS.

Section 2518(5) of title 18, United States Code, is amended by inserting "(including personnel of a State or subdivision of a State)" after "Government personnel".

SEC. 8112. CLARIFICATION OF INAPPLICABILITY OF 18 U.S.C. 2515 TO CERTAIN DISCLOSURES.

Section 2515 of title 18, United States Code, is amended by adding at the end the following: "This section shall not apply to the disclosure by the United States, a State, or a political subdivision thereof in a criminal trial or hearing or before a grand jury of the contents of a wire or oral communication, or evidence derived therefrom, the interception of which was in violation of section 2511(2)(d).".

SEC. 8113. TECHNICAL AMENDMENT OF 31 U.S.C. 5325.

(b) Section 5325 of title 31, United States Code, is amended—

(1) by deleting the word "transaction" in subsection (a)(1);

(2) by adding the words ", as defined by the Secretary," after the word "account" in subsection (a)(1); and

(3) by deleting subsection (c).

SEC. 8114. ONDCP TRANSFER AUTHORITY.

Section 1502(d) of title 21, United States Code, enacted by section 1003(d) of the Anti-Drug Act of 1988, is amended by—

(1) deleting the word "and" at the end of subparagraph (6);

(2) deleting the period at the end of subparagraph (7)(B) and inserting in lieu thereof "; and"; and

(3) inserting a new subparagraph (8) as follows:

"(8) transfer funds from the Special Forfeiture Fund referred to in section 6073 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 1509), as well as other funds appropriated by Congress to the Office of National Drug Control Policy for assistance to high intensity drug trafficking areas, to Federal agencies and departments for the purpose of executing the National Drug Control Strategy."

"(9) transfer funds appropriated to the Office of National Drug Control Policy for a specified purpose to appropriate Federal agencies and departments for the same purpose.".

SECTION-BY-SECTION ANALYSIS OF THE NATIONAL DRUG CONTROL STRATEGY IMPLEMENTATION ACT OF 1990

TITLE I—DRUG TESTING, FUNDING PROGRAMS, AND TREATMENT

Subtitle A—Funding Programs and Treatment

Sec. 1101. Drug testing in the criminal justice system as a condition of receipt of Justice Drug Grants.

This amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 to condition receipt of Federal criminal justice funds upon States adopting drug-testing programs that will include appropriate categories of arrestees, prisoners, probationers, parolees, and those out on bail, and upon States using test results appropriately in bail, sentencing, early release, probation, and parole decisions.

Sec. 1102. Maintenance of effort in ADMS block grants.

This section of the bill amends section 1916(c)(11) of the Public Health Service Act to add language to prohibit States who receive funding from the ADMS Block grant program from reducing their non-Federal expenditures for drug-related activities.

Current law prohibits States receiving Block grant funding from reducing their own funding for alcohol, drug abuse, and mental health activities below the two-year average of their expenditures for all three programs. Since this requirement applies to the total amount spent on all three programs, States could reduce their funding for drug-abuse related programs while maintaining their overall level of expenditures. This amendment would prohibit States receiving Block grant funding from reducing their own funding for drug-abuse related activities below the average of such expenditures for the preceding two years.

Current law allows the Secretary to waive the existing requirement if a State makes a request and if the Secretary determines that there are extraordinary economic conditions in the State to justify such a waiver. This amendment would extend the Secretary's authority to waive the new requirement as well.

Sec. 1103. Establishment of statewide drug treatment plans: amendment to Chapter 6A of title 42 (Public Health Service Act).

This amends Chapter 6A of Title 42 of the United States Code (Public Health Service Act) to require States as a condition of receipt of Federal funds to develop, implement, and submit to the Secretary of HHS a Statewide Drug Treatment Plan. The amendment delineates the contents of the Plan and describes requirements related to submission of the Plan to the Secretary.

Sec. 1104. Raising the Cap on Discretionary Grants for Justice Drug Grants.

This section amends the Bureau of Justice Assistance Drug Grant Program (the Drug Control and System Improvement Grant Program) to increase the cap on funds applied to discretionary grants from $50 million to $100 million.

Subtitle B—Drug-Testing of Defendants on Post-Conviction Release

This subtitle would create a nationwide program of drug testing for federal offenders on post-conviction release, and would effectively supersede and expand the demonstration program established by section 7304 of that Anti-Drug Abuse Act of 1988 in relation to convicted defendants. Section 7304 of that Act created a two-year demonstration program including mandatory drug testing of felons on probation or post-imprisonment supervised release (but not parole) in eight districts to be selected by the Judicial Conference.

Based on prelimary data, the Administration has concluded that there is no need to await the final results of that demonstration program. The idea of a program to require defendants on post-conviction release to submit to periodic drug tests is so clearly meritorious that it should be implemented across the United States, as soon as practicable and feasible. Since the capacity to im-

plement this program depends on the availability of appropriate personnel and/or contractors necessary to ensure quality control, this section allows a degree of flexibility and grants the Administrative Office of the United States Courts the latitude necessary to phase-in the program in stages as soon as practicable and feasible.

It is estimated that more than 81,000 persons will be on some form of federal supervised release in 1990. Under the proposal, defendants placed on parole, probation or post-imprisonment supervised release will be subject to a mandatory condition that they refrain from illegal use of drugs and submit to periodic drug tests. The class of defendants subject to this mandatory condition (limited to felons under the Anti-Drug Abuse Act demonstration program) would be extended to include as well misdemeanant firearms, drug, and violent offenders. The requirement could be suspended or ameliorated upon request of the Director of the Administrative Office or his designee. No adverse action could take place for failure of a drug test unless the test was confirmed using gas chromatography/mass spectrometry techniques or other tests determined to be of equivalent reliability.

TITLE II—SANCTIONS FOR FAILURE TO LAND OR TO BRING TO

Sec. 2101. Sanctions for Failure to land or to Bring to.

Proposed Section 2237 would make it a criminal offense to fail to obey the order of an authorized Federal law enforcement officer to land an aircraft or bring to a vessel. The failure to land offense is limited to cases involving the enforcement of the laws of the United States relating to controlled substances as that term is defined in 21 U.S.C. 802(6) or money laundering (18 U.S.C. 1956–57). It is also limited to aircraft which have crossed the border of the United States, or aircraft or vessels subject to the jurisdiction of the United States operating outside the United States.

This language (together with that proposed in section 2102 below) supports the *National Drug Control Strategy*, which states:

"To address [the air interdiction] problem, the Administration will seek new legislation to provide Federal law enforcement agencies with the appropriate authority to order U.S.-registered aircraft, or any aircraft flying over the U.S. territory, to land if there is reasonable suspicion that the aircraft is in violation of a Federal criminal statute related to aviation drug smuggling. The statute would also give the Federal Aviation Administration the explicit authority to suspend or revoke, on an emergency basis, the airmen certificate of a pilot who does not comply with a lawful order to land and the registration certificate of the aircraft."

Sec. 2102. FAA Summary Revocation Authority.

The Federal Aviation Act of 1958 would be amended to authorize revocation of an aircraft's registration certificate by operation of law upon refusal to land an aircraft. The owner of the registrated aircraft would be authorized to show cause why the factual predicate did not exist to trigger the revocation of the aircraft registration certicate or why it would be in the public interest for the Administrator to issue a new certificate of registration to be effective concurrent with the revocation which occurred by operation of law.

Sec. 2103. Coast Guard air interdiction authority.

This amends title 14 of the United States Code to provide the Coast Guard with specific law enforcement authority with respect to aircraft flying over the high seas and waters over which the United States has jurisdiction. This authority is required to order an aircraft to land. Failure to obey an order issued under this section would be a violation of proposed section 2237 of title 18, United States Code (Section 2101 of this Act). Orders to land an aircraft must be communicated in a manner consistent with the regulations to be issued pursuant to proposed section 2237.

Sec. 2104. Coast Guard civil penalty provisions.

This amends title 14 of the United States Code to provide the Coast Guard with a civil penalty sanction for violations of proposed section 2237 of title 18, United States Code (Section 2101 of this Act), involving orders issued by Coast Guard commissioned officers, warrant officers, or petty officers.

Sec. 2105. Customs orders.

This amends the enforcement provisions of Section 1581 of Title 19 so as to clarify that Customs officers may exercise their enforcement authority outside of the United States, including any location in which Customs Officers are permitted to conduct inspections, examinations or searches, including any such location in a foreign country.

Sec. 2106. Customs civil penalty provisions.

This provides the Customs Service with a civil penalty sanction for violations of proposed section 2237 of title 18, United States Code (Section 2101 of this Act), involving orders issued by Customs officers.

TITLE III—DRUG PARAPHERNALIA

Sec. 3001. Drug Paraphernalia Amendment.

This section makes several changes in the drug paraphernalia statute, 21 U.S.C. 857. Under current law, 21 U.S.C. 857, it is illegal to use the mails to sell drug paraphernalia, to offer for sale such paraphernalia in interstate or foreign commerce, or to import or export such paraphernalia. Originally enacted by the Anti-Drug Abuse Act of 1986, the offense is a felony punishable by up to three years imprisonment and a $100,000 fine.

Subsection (a)(1) amends the penalty provision of the drug paraphernalia statute, 21 U.S.C. 857(c), to provide that criminal forfeiture will be accomplished in accordance with the detailed procedures of section 413 of the Controlled Substance Act (21 U.S.C. 853) which are applicable to other criminal forfeiture provisions of the act.

Subsection (a)(2) is a technical correction which restates the maximum fine amount as "under title 18, United States Code." The statute presently states the criminal fine as up to $100,000.

Subsection (a)(3) adds a civil penalty of up to $100,000 for violations of the paraphernalia statute and authorizes the Attorney General to seek injunctive relief against violators. Such injunctive relief could be sought both to halt an ongoing violation or to prevent a future offense.

Subsection (b) amends 21 U.S.C. 857(c) to add a civil forfeiture provision and conform the seizure and forefeiture of drug paraphernalia with general seizure and forfeiture authority. Contrary to normal governmental forfeiture provisions, seizure and forfeiture of drug paraphernalia under 21 U.S.C. 857(c) requires the criminal conviction of the violator. Subsection (c) provides that the provisions of the Customs laws will be applicable to civil forfeiture. This is because the Customs Service is presently investigating violations of the drug paraphernalia provisions and it is intended that Customs continue to do so.

TITLE IV—INTERNATIONAL NARCOTICS CONTROL

Sec. 4101. Economic assistance for Andean countries.

This section adds a new provision to the Foreign Assistance Act which will permit the Agency for International Development to implement economic assistance for *Peru, Bolivia and Colombia* on an expedited basis, with authorities comparable to those provided in Section 481(a)(4) of the Foreign Assistance Act. The United States Government will, thus, be able to implement narcotics control assistance and complementary economic assistance in a coordinated and timely fashion.

Sec. 4102. Support for law enforcement.

This section waives the prohibition on providing training and equipment for certain law enforcement units in Colombia, Bolivia, and Peru, to allow for implementation of the second phase of the President's Andean Strategy.

Sec. 4103. Waiver of Brooke-Alexander amendment.

This section extends to FY 1991 the waivers of Section 620(q) of the Foreign Assistance Act and Section 518 of the Foreign Operations, Export Financing, and Related Programs Appropriation Act (the Brooke-Alexander Amendment) to permit narcotics-related economic assistance to major coca producing countries which are in arrears on debt repayments to the United States government.

Sec. 4104. Assistance for agricultural and industrial alternatives to narcotics production.

This section provides waivers of existing law which imposes restrictions upon economic assistance in order to promote agricultural and industrial production alternatives to narcotics production.

Sec. 4105. Revisions of certain narcotics related provisions of the Foreign Assistance Act.

This section amends certain narcotics-related provisions of the Foreign Assistance Act. Subsection (a) amends Section 482(b) to authorize the use of funds authorized and appropriated for international narcotics control for defensive arming of U.S.-titled aircraft, and their operators, that are part of the INM Airwing Operations.

At the time that the Section 482(b) prohibition was enacted in 1978, the report of the Senate Foreign Relations Committee stated that the committee did not intend prohibition to apply to helicopters. (S. Rpt. 95–841, International Security Assistance Act of 1978, P.L. 95–384). Subsequent legislation specifically waiving the Section 482(b) prohibition in limited circumstances (involving helicopters) suggests ambiguity in the Congressional construction of the statute. Therefore, in order to remove any ambiguity and to make clear that United States assets and personnel overseas have the authority to obtain the protection that they need to perform their narcotics eradication and interdiction missions, this provision proposes explicit authorization for INM to procure directly out of its budget weapons and ammunition to be used for defensive purposes, instead of relying on other U.S. or foreign agencies to provide such support. This authorization applies to weapons and ammunition to arm aircraft and to arm the U.S. and foreign personnel who operate

them. The weapons and ammunition are to be used exclusively for defensive purposes.

Subsection (b) amends the annual narcotics certification procedure of Section 481(h)(1) to free the President from the obligation to withhold 50 percent of the assistance authorized and appropriated for a major drug-producing or drug-transit country pending the March 1 certification if he determines that it would be contrary to the national interest if the full amount of assistance were not made available in the beginning of the fiscal year for a particular country.

Subsection (c) amends Section 484 of the Foreign Assistance Act of 1961 (FAA) to restrict to aircraft procured with funds authorized to be appropriated by the International Narcotics Control chapter of the FAA, the current provision that any aircraft made available to a foreign country shall be provided only on a lease or loan basis. It also would allow the President to waive the requirement when he determines that it is in the national interest to do so, and so informs the Congress.

Sec. 4106. Size of the military assistance group in Bolivia and Peru.

This section amends the Foreign Assistance Act to permit the assigning of more than 6 members of the armed forces to Military Assistance Groups (MAG) in Bolivia and Peru. Section 4305 of the Anti-Drug Abuse Act of 1988 (P.L. 100-690) amended the Foreign Assistance Act to permit enlargement of the MAG assigned to Colombia. The greatly expanded role of the U.S. military in supporting counter-narcotics operations in Bolivia and Peru justifies enlargement of MAGs in those countries as well.

Sec. 4107. Nonapplicability of certification procedures to certain major drug-transit countries.

This section continues for FY 1991 the waiver contained in the International Narcotics Control Act of 1989 of the requirement to withhold 50 percent of annual foreign aid to certain countries as required by Section 481 of the Foreign Assistance Act. Such countries would be those which have both a fast spend-out rate for foreign assistance funds and a demonstrable record of narcotics cooperation.

Sec. 4108. Extradition of U.S. citizens.

This amendment deals with a problem that arises under some of our older extradition treaties that fail to include specific authority to extradite United States nationals who are charged with crimes in the country seeking extradition. Under prevailing case law, the United States may extradite its nationals in the absence of any limiting language in a bilateral treaty. *Charlton* v. *Kelly*, 229 U.S. 447 (1913). However, if an extradition treaty contains language which limits that authority, e.g., "neither party shall be bound to deliver up its own citizens", the Supreme Court has held that United States nationals may not be extradited unless the treaty also contains a positive grant of authority to surrender United States citizens. *Valentine* v. *United States ex rel. Neidecker*, 229 U.S. 5, 7-12 (1936). Post-*Valentine* extradition treaties of the United States uniformly contain language such as "[N]either of the contracting Parties shall be bound to deliver up its own citizen under the stipulations of this convention, *but the executive authority of each shall have the power to deliver them up, if, in its discretion, it is deemed proper to do so.*" (Emphasis added). Such a clause contains the necessary positive grant of authority to the Executive to extradite United States citizens.

However, the United States still has several pre-*Valentine* treaties in force that contain the limitation but lack a requisite grant of authority. In those instances, the United States must refuse to extradite based on the nationality of the offender. Moreover, the limitation on extradition of nationals posed by these pre-*Valentine* treaties must be remedied in light of the extradition provisions of the new U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Article 4 Paragraph 2. Under these provisions, the United States must either assure that nationality is not a bar to extradition of its citizens or establish its jurisdiction to prosecute those citizens for the drug offenses they have committed abroad. The alternative of prosecution is not feasible as a practical matter. Moreover, it would be inconsistent with our general policy against creating "universal" jurisdiction over extraterritorial crimes.

The proposed amendment would remedy the problem caused by some pre-*Valentine* treaties by expressly permitting the surrender of United States nationals notwithstanding the language of limitation in those treaties. This provision is consistent with the general policy of the United States favoring extradition of nationals to the country where the greatest harm has been suffered because of the commission of criminal acts, and against creating "universal" extraterritorial jurisdiction. It also recognizes the reality that it is not feasible to address this situation on a piecemeal basis by renegotiating all the pre-*Valentine* treaties that contain this flaw. Moreover, it would permit the United States to meet fully the important objectives of the new U.N. Convention.

Sec. 4109. Export-Import Bank financing for sales of defense articles and services for anti-narcotics purposes.

This section amends the Export-Import Bank Act to extend the Eximbank's authority to finance sales of defense articles and services for anti-narcotics purposes to September 30, 1992. The Bank's current authority to finance sales for this purpose expires on September 30, 1990.

TITLE V—DEATH PENALTY FOR DRUG KINGPINS AND OTHER CRIME PROVISIONS

Subtitle A—Capital Punishment for Drug Kingpins and Related Offenders

This subtitle would authorize capital punishment for the most aggravated drug crimes and enact necessary standards and procedures for imposing and carrying out the death penalty. It represents a continuation and extension of efforts over the past several years to restore an enforceable death penalty for the most heinous federal offenses. In the 98th Congress, for example, the Senate passed a general federal death penalty bill, S. 1765, by a vote of 63-32, and in the 100th Congress, legislation was enacted as part of the Anti-Drug Abuse Act of 1988 which authorizes capital punishment for certain drug-related killings. In the current Congress, a general proposal to restore an enforceable death penalty for aggravated federal crimes of homicide, treason, and espionage appears as title II of the President's proposed Comprehensive Violent Crime Control Act (S. 1225 and H.R. 2709).

The proposal of this subtitle goes beyond earlier legislation in authorizing capital punishment for the most serious categories of drug offenses and offenders. The constitutionality of this proposal has been fully analyzed in previous statements by the Administration. *See* Statements of Assistant Attorney General William P. Barr and Assistant Attorney General Edward S.G. Dennis, Jr., before the Subcommittee on Crime of the House Committee on the Judiciary concerning Death Penalty Legislation (March 14, 1990); Statement of Assistant Attorney General Edward S.G. Dennis, Jr., before the Senate Judiciary Committee concerning the Death Penalty (October 2, 1989).

The procedural provisions of this subtitle are largely the same as the death penalty procedures proposed in title II of the President's violent crime bill (S. 1225 and H.R. 2709). It also incorporates new provisions concerning appointment of counsel and collateral review, which are modeled on the recommendations of the Ad Hoc Committee of the Judicial Conference on Federal Habeas Corpus in Capital Cases (the "Powell Committee"), to ensure that the effectiveness of the federal death penalty is not undermined by dilatory and repetitive litigation.

The section-by-section analysis below describes and explains the various provisions of this subtitle.

Sec. 5102. Death penalty authorizations and procedures.

This section of the bill adds a new chapter 228 to title 18 of the United States Code, consisting of sections 3591 through 3599, and makes necessary technical amendments. These sections provide that the punishment for certain drug crimes may, in specified circumstances, extend to the death penalty and set forth procedures for imposing and carrying out the death penalty.

Section 3591 (Sentence of Death)

This section sets out the offenses for which the death penalty may be imposed if, after consideration of the mitigating and aggravating factors applicable to the case in a post-verdict hearing (described in subsequent sections), it is determined that the imposition of death is justified. The specific categories are as follows:

Section 3591(a). The first category of drug offenders who would be potentially eligible for capital punishment—described in proposed 18 U.S.C. 3591(a)—are offenders who are currently subject to a mandatory term of life imprisonment under 21 U.S.C. 848(b). This is the highest category of major traffickers recognized under federal law. Under the general provisions of 21 U.S.C. 848, a person is guilty of engaging in a Continuing Criminal Enterprise (CCE) if he commits a federal drug felony as part of a continuing series of federal drug violations which are undertaken in concert with at least five other persons, where the defendant is an organizer, supervisor, or manager in relation to such persons and derives substantial income or resources from the enterprise. To be subject to mandatory life imprisonment under section 848(b), a CCE violator must, in addition, be a principal organizer, leader, or administrator of such an enterprise, and must either commit a violation involving enormous quantities of drugs—e.g., 30 kilograms of heroin or 150 kilograms of cocaine—or be a principal organizer, leader, or administrator of a CCE that has gross receipts of at least $10 million in a twelve-month period.

Thus, in essence, the offenders potentially subject to capital punishment under proposed section 3591(a) consist of principal organizers, administrators, and leaders of drug enterprises including at least five subordinates where transactions involving enormous quantities of drugs are involved (e.g., 30 kilograms of heroin, 150 kilograms of cocaine) or the enterprise has annual revenues of at least $10 million.

The inclusion of the very largest traffickers in the class of persons potentially eligible for the death penalty, as proposed in section 3591(a), is a response to the human and social devastation that is threatened and actually caused by their activities. In the past, Congress has prescribed the death penalty for treason, *see* 18 U.S.C. 2381, nuclear and other forms of espionage, *see* 10 U.S.C. 906a, and aircraft piracy, *see* Act of September 5, 1961, 75 Stat. 466 (1961). The proposal reflects a recognition that the current scourge of drug abuse and of drug-related crime and violence represents a comparable threat to the security and well-being of the public, and that the use of the ultimate sanction should be available in this context.

Section 3591(b). The second category of offenders who would be potentially eligible for capital punishment—described in proposed 18 U.S.C. 3591(b)—consists of a somewhat more broadly defined class of drug kingpins who attempt to obstruct the investigation or prosecution of their activities by attempting to kill persons involved in the criminal justice process, or knowingly directing, advising, authorizing, or assisting another to attempt to kill such a person. To fall within the death-eligible class, the defendant would have to be a CCE principal organizer, administrator, or leader as defined in 21 U.S.C. 848, but would not necessarily have to satisfy the specific criteria for mandatory life imprisonment under section 848(b). Including a more broadly defined class of major traffickers—but limited to those who engage in actual attempted murders to obstruct justice—is justified by the flagrant and growing problem of extreme violence against witnesses in drug cases, as well as the increasing threat and reality of violence directed against criminal justice professionals. A CCE violator under 21 U.S.C. 848 will face, in any event, a very long term of imprisonment (20 years to life) if he is convicted, and he may feel that there is relatively little to lose by attempting to silence a witness or kill other participants in the process. The extension of the death penalty to attempted murders, in this limited context, even where death does not actually result, would send a strong message concerning the system's resolve to deal forcefully and effectively with this problem.

The applicability of proposed section 3591(d), as noted above, would be conditioned on an attempted murder by a drug kingpin to obstruct justice, committed against any public officer—such as a police officer, judge, or prosecutor—juror, or witness, or a member of the family or household of such a person. Family members (i.e., parents, spouses, children and siblings) and members of the households of such persons are included because of their exposure to victimization as targets of efforts at intimidation or reprisal by drug offenders.

Section 3591(c). The third category of potentially death-eligible drug offenders—described in proposed 18 U.S.C. 3591(c)—fills a gap in existing law. The Anti-Drug Abuse Act of 1988 enacted provisions authorizing capital punishment for certain intentional drug-related killings, *see* 21 U.S.C. 848(e), but did not cover unintentional killings resulting from aggravated recklessness, such as killings of innocent bystanders during a shoot-out among traffickers, or the death of users resulting from the knowing distribution of bad drugs.

Proposed section 3591(c) would fill this gap by authorizing the death penalty where the defendant, intending to cause death or acting with reckless disregard for human life, engages in a federal drug felony (not necessarily a continuing criminal enterprise offense), and a person dies in the course of the offense or from the use of drugs involved in the offense.

The specific standard of reckless disregard for human life in proposed section 3591(c) refers to the very high level of culpability—i.e., knowingly creating a grave risk of death to another—that the Supreme Court approved as adequate to support the imposition of capital punishment in *Tison* v. *Arizona*, 481 U.S. 137 (1987). *Tison* involved defendants who did not personally kill the victims or intend to cause their death, but who created a situation that resulted in death by freeing two highly dangerous inmates from prison, arming them, and assisting them in waylaying and handling the victims, who were actually killed by the inmates. The Court stated that "the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment. . . ." *Id.* at 157-58.

The death penalty provisions of President Bush's violent crime bill (S. 1225 and H.R. 2709) include the general principle that killings resulting from aggravated recklessness, pursuant to the *Tison* standard, may be punished by death. Proposed section 3591(c) in this bill would extend the application of this principle to drug-related killings. Moreover, in relation to deaths resulting from drug use, current law (21 U.S.C. 841) generally authorizes or requires life imprisonment where serious bodily injury results from the use of drugs distributed by an offender. This proposal would extend this approach, authorizing the possibility of a death sentence (rather than life imprisonment) where the harm resulting from the use of drugs distributed by the offender is death (rather than serious injury).

Section 3592 (Factors to be Considered in Determining Whether a Sentence of Death is Justified)

This section sets forth the statutory mitigating and aggravating factors to be considered by the jury or judge in determining whether a sentence of death is justified upon conviction of a crime described in proposed section 3591. The section also allows, consistent with Supreme Court decisions, for the consideration of any other aggravating or mitigating factor, not listed in the section, which might affect such a determination. See *Skipper* v. *South Carolina*, 476 U.S. 1 (1986); *Lockett* v. *Ohio*, 438 U.S. 586 (1978); *Barclay* v. *Florida*, 463 U.S. 939 (1983); *Zant* v. *Stephens*, 462 U.S. 862 (1983).

Subsection (a) sets forth three mitigating factors which must be considered. They are (1) that the defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired, although not so impaired as to constitute a defense to the charge; (2) that the defendant was under unusual and substantial duress although not such as to constitute a defense; and (3) that the defendant was an accomplice whose participation in the offense was relatively minor, even though he may still be charged as a principal. Subsection (a) further states that the jury or judge shall also consider any other aspect of the defendant's character or record or any other circumstance of the offense that the defendant may offer in mitigation. While the Supreme Court has held that no limitation may be placed on the defendant's introducing evidence of mitigating factors, some linkage must be established between the evidence offered in mitigation and the defendant's persona or the offense. For example, the catch-all provision in subsection (a) is not intended to allow such evidence as that on the night of the murder in New York City, unusually heavy rain had fallen in Los Angeles.

Subsection (b) sets forth aggravating factors to be considered. These factors are tailored to the conditions of drug trafficking and identify features of a defendant's conduct or background that provide particularly strong evidence of dangerousness, incorrigibility, or indifference to human life. The jury would have to find at least one of these additional factors to impose a death sentence:

Paragraphs (1)-(4) of subsection (b) set out general criminal record aggravating factors. These are prior conviction of a homicide punishable by life imprisonment, and prior conviction of at least two violent or drug felonies.

The factor in paragraph (5) of subsection (b) is prior conviction of a drug offense punishable by five or more years of imprisonment. This is nearly the same as one of the aggravating factors in the Anti-Drug Abuse Act death penalty provisions (21 U.S.C. 848(n)(10)).

The factor in paragraph (6) of subsection (b) is using or knowingly directing, advising, authorizing, or assisting another to use a firearm to threaten, intimidate, assault, or injure a person in committing the drug offense, or in furtherance of a continuing criminal enterprise (as defined in 21 U.S.C. 848) of which the offense was a part. Mere possession of a firearm in connection with drug activities would not be covered; the defendant would actually have to engage in or sanction the hostile use of a firearm against a person.

The factors in paragraphs (7)-(9) of subsection (b) involve a violation in committing the drug offense, or in furtherance of a continuing criminal enterprise, of the provisions that define aggravated offenses where trafficking is carried out in a manner that exploits or jeopardizes young people. This includes distribution to persons under twenty-one (21 U.S.C. 845), distribution near schools (21 U.S.C. 845a), and using minors in trafficking (21 U.S.C. 845b). The 1988 Anti-Drug Abuse Act death penalty provisions similarly have an aggravating factor (21 U.S.C. 848(n)(11)) for distribution to persons under twenty-one in violation of 21 U.S.C. 845. These factors would apply where the defendant directly committed such an offense, or would be liable as an accomplice in such an offense under the normal standards of 18 U.S.C. 2 (by aiding, abetting, counseling, commanding, inducing, procuring, or willfully causing the commission of the offense).

Factor (10) of subsection (b) covers cases where the offense involves importing, manufacturing, or distributing drugs that are mixed with a potentially lethal adulterant, and the defendant is aware of the presence of the adulterant. This is designed to reach situations in which the manufacturer or distributor cuts drugs with another toxic substance, such as household detergent.

Section 3593 (Special Hearing to Determine Whether a Sentence of Death is Justified)

This section sets out the procedure for a special hearing to determine whether a sentence of death is justified. At the conclusion

of the hearing the jury (except in those unusual cases where the sentencing hearing is before the judge alone) will return a binding recommendation as to whether the sentence of death is justified. If the jury returns a recommendation of the death penalty as opposed to some lesser punishment, the court must impose a sentence of death.

Subsection 3593(a) provides that if the attorney for the government believes that the circumstances of one of the offenses for which the death penalty is authorized under section 3591 justify the imposition of the death penalty, he or she must file with the court and serve on the defendant a notice of the conclusion and set forth the aggravating factors (including any not statutorily enumerated) the government proposes to show at the hearing. The notice must be filed and served on the defendant a reasonable time before trial or the accepting of a guilty plea or at such time thereafter as the court may permit upon a showing of good cause. The provision is intended to give adquate notice to the defendant so he can prepare for the post-conviction sentencing hearing and to ensure an appropriate *voir dire* that comports with applicable Supreme Court cases.

Subsection 3593(b) provides that if the attorney for the government has filed the notice required by subsection 9a) and if the defendant is found guilty, a sentencing hearing shall be conducted by the judge who presided at trial or accepted the guilty plea or by another judge if the first one is unavailable. No presentence report is to be prepared in such a case inasmuch as the issue at the hearing is the existence of aggravating or mitigating factors and the justifiability of imposing a death sentence, and the issue is to be determined on the basis of the information presented at the hearing. The hearing is to be conducted before the jury that determined the defendant's guilt, except that a jury may be impaneled for the purpose of the sentencing hearing in a case in which the defendant was convicted on a trial to the court or on a plea of guilty, in a case in which the original jury was discharged for good cause, or in a case where reconsideration of the sentence is necessary. This subsection also provides that the defendant may move that the sentencing hearing be conducted before the court alone but that the attorney for the government must concur. In the absence of this concurrence by the government, the sentencing hearing is before a jury.

Subsection 3593(c) deals with proof of the aggravating and mitigating factors. Any information relevant to the sentence may be presented. Information concerning any mitigating factor or factors, both those listed in section 3592 and those not so listed, may be introduced. Evidence of at least one aggravating factor listed in section 3592 must be introduced. As explained, the government must give the defendant notice of which aggravating factors it will seek to establish. If evidence of a statutory aggravating factor is introduced, the government may also introduce evidence of any other aggravating factor, again providing the government has given notice as to the nature of such a nonstatutory factor.

The information may include trial transcripts and exhibits or relevant parts thereof. Other evidence relevant to any mitigating or previously identified aggravating factor may be presented regardless of its admissibility under the rules of evidence, except that the court may exclude information if its probative value is outweighed by the danger of its creating unfair prejudice, confusing the issues, or misleading the jury. The burden of establishing an aggravating factor is on the government and the standard of proof for such a factor is beyond a reasonable doubt. The defendant has the burden of establishing any mitigating factor but this burden is satisfied if the defendant proves such a factor by a preponderance of the evidence.

Subsection 3593(d) deals with the return of special findings required in the sentencing hearing. It provides that the jury, or if there is no jury, the court, must consider all the information received at the sentencing hearing. The jury, or if there is no jury, the court, must return a special finding identifying each aggravating factor (both statutory and nonstatutory) which it has found. Once again, it can only find the existence of an aggravating factor for which notice was provided. The finding with respect to an aggravating factor must be unanimous. If no aggravating factor is found, the death penalty cannot be imposed and the court must impose some other sentence authorized by statute.

With respect to mitigating factors, subsection 3593(d) reflects the holding of the Supreme Court in *Mills* v. *Maryland*, 486 U.S. 367 (1988), that individual jurors may not be precluded from considering mitigating evidence regardless of the number of jurors who agree on a particular factor. Consequently, subsection (d) provides that a finding with respect to a mitigating factor may be made by one or more members of the jury.

As used throughout section 3593, the term "mitigating factor" is meant to include all mitigating evidence which the sentencer must consider before returning a sentence of death to comport with such cases as *Eddings* v. *Oklahoma*, 455 U.S. 104 (1982). Nevertheless, the jury may only consider evidence presented at trial or at the sentencing hearing. It may not speculate on the existence of some factor completely unsupported by any evidence. See *California* v. *Brown*, 479 U.S. 538 (1987). Any member of the jury who is persuaded by a preponderance of the evidence—the standard set out in subsection (c)—that a particular mitigating factor exists may consider such a factor established. That juror (even if he or she is the only one who believes the evidence and has concluded that such a factor has been established) may then weigh that evidence against any aggravating factors which have been found unanimously beyond a reasonable doubt—again, the requirement of subsection (c)—in deciding, under subsection (e), whether to return a binding recommendation for a sentence of death.

Subsection 3593(e) provides that if one or more of the statutorily required aggravating factors is found to exist (a constitutional requirement under *Zant* v. *Stephens* and *Barclay* v. *Florida, supra*) the jury, or the court if there is no jury, must then consider whether the aggravating factor or factors which it has found outweigh the mitigating factor or factors. It is the intent of this subsection that the jurors be instructed that they are to weigh and balance the aggravating factor or factors found against any mitigating evidence. As discussed above, findings of aggravating factors would require a formal determination of the whole jury, but the individual members of the jury would make their own determinations concerning the existence of mitigating factors.

If each juror found no mitigating factors or found that any mitigating factors were outweighed by the aggravating factor or factors, then the jury would be required to make a binding recommendation to impose the death penalty. This reflects the judgment that the death penalty is presumptively the appropriate penalty for the crimes described in section 3591 under the aggravated circumstances described in section 3592, and that the death penalty should be imposed in such cases unless the aggravating factors are balanced or outweighed by mitigating circumstances. The Supreme Court upheld rules requiring that the death penalty be imposed under these conditions in *Blystone* v. *Pennsylvania*, No. 88-6613 (Feb. 28, 1990), and *Boyde* v. *California*, No. 88-6613 (March 5, 1990). This approach promotes equal justice and avoids the potential for arbitrariness that would exist under an approach that gave the jury or court less guidance in imposing the death penalty.

Subsection (e) also requires an instruction to the jury that it is not to be influenced in its decision whether to recommend the death penalty by sympathy, sentiment, passion, prejudice, or any other arbitrary factor, and should make such a recommendation as the information warrants. This is substantially the same as the instruction upheld by the Supreme Court in *Saffle* v. *Parks*, No. 88-1264 (March 5, 1990). *See also California* v. *Brown*, 479 U.S. 538 (1987) (approving similar instruction). The requirement of such an instruction serves to promote equal justice by emphasizing that capital sentencing decisions are not to be influenced by legally inadmissible considerations or personal whim or caprice. Rather, what is called for is a reasoned factual and moral assessment by the jury based on the evidence presented at the trial and sentencing hearing and its conclusions concerning the existence and relative weight of pertinent aggravating and mitigating factors.

Subsection 3593(f) is designed as a special precaution against discrimination by the jury against the defendant on the basis of the defendant's or the victim's race, color, national origin, religious beliefs, or gender. It provides that in a sentencing hearing in which the death penalty is sought, the jury shall be specifically instructed that it must not consider these factors and that the jury is not to make its binding recommendation for a sentence of death unless it would recommend such a sentence no matter what the race, color, national origin, religious beliefs, or sex of the defendant or any victim may be. Moreover, the jury must return to the court a certificate signed by each juror stating that consideration of these factors was not involved in his or her individual decision, and that he or she would have made the same binding recommendation as to the sentence no matter what these particular characteristics of the defendant or victim might be.

Section 3594 (Imposition of a Sentence of Death)

This section provides that if the jury recommends a sentence of death, the court must sentence the defendant to death. If the court, rather than the jury, is the fact finder at the sentencing hearing, section 3594 requires the court to follow its own recommendation and impose the death penalty. If, however, the jury, or if there is no jury, the court, does not recommend the sentence of death, the court shall impose any sentence other than death authorized by law.

This section also provides that notwithstanding any other provision of law, life imprisonment without possibility of release or

temporary furlough is an authorized sentence for a conviction of an offense punishable by death if the maximum term of imprisonment for such an offense is life.

Section 3595 (Review of a Sentence of Death)

This section sets out the rules applicable to appeals from the imposition of the death sentence. *Subsection (a)* provides that a sentence of death shall be subject to review by the court of appeals upon an appeal of the sentence by the defendant. Notice of appeal of the sentence must be filed within the time specified for filing an appeal of the judgment of conviction and the court may consolidate the appeal of the sentence and the appeal of the conviction. The review of a case in which the death sentence has been imposed must be given priority over all other cases.

Subsection 3595(b) provides that the court of appeals must consider the entire record including the evidence submitted at trial, the information submitted during the sentencing hearing, the procedures employed at the sentencing hearing, and the special findings returned at the sentencing hearing as to the existence of the aggravating factors.

Subsection 3595(c) states that the court of appeals must affirm the sentence if it finds that the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor, and the evidence and information support the special findings of the existence of an aggravating factor or factors. See *Zant* v. *Stephens, supra* (death sentence valid even if an aggravating factor is invalidated or found inapplicable on appeal, provided at least one valid statutory aggravating factor remains). Proportionality review with other death cases is not a part of the review process. *Pulley* v. *Harris,* 465 U.S. 37 (1984). In all other cases, the court of appeals must remand the case for reconsideration under section 3593 or for imposition of another authorized sentence, as appropriate. The court of appeals must state in writing the reasons for its disposition of an appeal of a sentence of death.

Section 3596 (Implementation of a Sentence of Death)

This section is concerned with the implementation of a sentence of death. *Subsection 3596(a)* provides that a person sentenced to death shall be committed to the custody of the Attorney General pending completion of the appeal and review process. When the sentence is to be implemented, custody of the person would be given to a United States Marshal who would then supervise the implementation of the penalty in accordance with the law of the State in which the sentence is imposed. If that State has no death penalty, the court would designate another State which does have such a penalty and the execution would be carried out in the manner prescribed in that State. This subsection generally reinstates a portion of the provisions of former section 3566 of title 18 which was repealed as of November 1, 1987, by P.L. 98-473.

Subsection 3596(b) states that a sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed, or upon a woman who is pregnant. The latter limitation is to spare the unborn. Following the conclusion of the pregnancy, the sentence of death would be implemented. The former limitation is intended to implement the constitutional bar on execution of a person who is mentally incompetent but who was sane at the time of the offense and who was competent to stand trial. See *Ford* v. *Wainwright,* 477 U.S. 399 (1986). This limitation, too, would normally only postpone the implementation of the sentence of death. See *Ford* v. *Wainwright,* concurring opinion of Justice Powell, 477 U.S. at 425 and footnote 5: "The only question raised is not *whether* but *when* his execution may take place. [Emphasis in original.] [I]f petitioner is cured of his disease, the State is free to execute him."

Section 3597 (Use of State Facilities)

This section reinstitutes other parts of former section 3566 not contained in subsection 3506(a) by authorizing the United States Marshal charged with implementing the sentence of death to use State facilities and to pay the costs thereof.

Sections 3598 and 3599 (Appointment of Counsel and Collateral Attack)

Sections 3598 and 3599 would adopt improved procedures for federal death penalty litigation based on the recommendations of the Ad Hoc Committee of the Judicial Conference on Federal Habeas Corpus in Capital Cases (the "Powell Committee"), as set out in that Committee's report of August 23, 1989. Following the Committee's recommendations, a balanced approach would be adopted under which the defendant's right to appointment of counsel would be extended, but improved safeguards against dilatory tactics and repetitive litigation would also be enacted. The defendant would be afforded counsel meeting specified standards of competence from the commencement of trial proceedings until the conclusion of the litigation of an initial motion for collateral relief under 28 U.S.C. 2255. The defendant would, however, normally be limited to a single section 2255 motion, and the motion would have to be filed within a specified time period. Following the final rejection of such a motion by the courts, further litigation would be limited to extraordinary cases in which the defendant raises a claim that undermines confidence concerning his factual guilt of the offense for which the death penalty was imposed. The specific provisions are as follows:

Section 3598

Subsection (a) of proposed section 3598 would govern appointment of counsel in all federal capital cases. Paragraph (1) of subsection (a) would create a right to appointed counsel for indigent capital defendants, running from the commencement of trial proceedings until the conclusion of the litigation of an initial motion for collateral relief under 28 U.S.C. 2255, or the failure of the defendant to file or pursue a motion in a timely manner.

Paragraph (2) provides for appointment of counsel at trial in conformity with 18 U.S.C. 3005, an existing statute that entitles a federal capital defendant, or request, to two lawyers at trial. At least one lawyer so appointed would continue to represent the defendant in direct review proceedings, unless replaced by the court with other qualified counsel.

Paragraph (3) governs appointment of counsel for collateral proceedings. After the judgment has become final through the conclusion of direct review or a failure of the defendant to seek direct review in a timely manner, the government would so notify the sentencing court. The court would then proceed within 10 days to determine whether the defendant is eligible for appointment of counsel, and on the basis of that determination would issue an order appointing counsel, or denying appointment of counsel because the defendant was not indigent or refused appointment of counsel. Following the approach of the Powell Committee recommendations, counsel appointed for collateral proceedings would be different from the counsel who represented the defendant at earlier stages, absent a contrary request by the defendant and counsel. This would serve to provide a lawyer capable of taking a fresh and dispassionate look at the issues in the case, including possible errors by counsel in prior proceedings. *See* Powell Committee Report at 10, 12-13.

Paragraph (4) sets standards of competence for appointment of counsel under the section. The basic requirement would be five years' admission to the bar and three years of felony litigation experience in the federal courts. This standard is based on the appointment of counsel standard of the Anti-Drug Abuse Act death penalty provisions (21 U.S.C. 848(q)(5)-(6)). Also following the Anti-Drug Abuse Act provisions (21 U.S.C. 848(a)(7)), the court, for good cause, could appoint other counsel under the section whose background, knowledge, or experience qualified him to handle such cases, although he did not meet the specific experience requirements set out in the statute. Utilization of this authority in appropriate cases would help ensure that the class of qualified counsel available to defendants would not be unduly limited, and that delay would not occur in litigation because of the unavailability of qualified counsel to represent capital defendants. For example, it might be found that extensive criminal litigation experience in state cases, or completion of a training or certification program for capital litigation, would be an adequate substitute or partial substitute for these specific experience requirements.

Paragraph (5) provides that the provisions of the Criminal Justice Act (18 U.S.C. 3006A) would apply to appointments under subsection (a), except as otherwise provided in the subsection. Section 3006A sets general standards and procedures for appointment and reimbursement of counsel, including due allowance for waiving normal compensation limits in cases of unusual difficulty or complexity. The proviso in this paragraph to the applicability of the Criminal Justice Act—"[e]xcept as otherwise provided in this subsection"—recognizes that the standards of the subsection are in some important respects more favorable to defendants than the general section 3006A standards. For example, appointment of counsel for indigents in collateral proceedings is discretionary under section 3006A, but would be mandatory in an initial section 2255 motion under this subsection.

Paragraph (6) provides that the entitlement to counsel for collateral proceedings under subsection (a) would not create any novel right to attack capital sentences on grounds of alleged ineffectiveness of counsel at that stage. This is parallel to proposed 28 U.S.C. 2256(e) in the Powell Committee proposal. *See* Powell Committee Report at 10, 13.

Subsection (b) in proposed section 3598 relates to appointment of counsel in state cases. Appointment of counsel for indigents at trial and in an initial appeal is constitutionally required, but there is no constitutional requirement of appointment in other proceedings, such as collateral proceedings and applications for discretionary review. *See Murray* v. *Giarratano,* 109 S. Ct. 2765 (1989). Subsection (b) would make it clear that federal law does not create any additional appointment of counsel requirement

in state capital cases, beyond the constitutional requirement of appointment at trial and on the first appeal.

Subsection (b) also re-affirms the traditional rule that appointment of counsel in federal habeas corpus review of state capital cases is generally not mandatory, but discretionary with the court. In relation to review of state cases, federal habeas corpus is not a true collateral remedy that provides a means for raising claims that could not have been raised at earlier stages. Rather, it typically serves as a quasi-appellate mechanism that involves re-adjudication of the same claims that have already been fully litigated and repeatedly rejected in state proceedings. Appointment of counsel for this essentially repetitive type of review is properly conditioned on the court's determination that appointment will further the interests of justice.

Section 3599

Proposed 18 U.S.C. 3599 would be a new section governing collateral litigation—i.e., litigation of motions by federal defendants pursuant to 28 U.S.C. 2255—in capital cases.

Subsection (a) of proposed section 3599 would require that an initial section 2255 motion be filed within 90 days of the issuance of the order under proposed section 3598(a)(3) relating to appointment of counsel for collateral proceedings. The court, for good cause, could extend the time for filing for up to 60 days. A motion under the section would be given priority over all non-capital matters in the district court and the court of appeals.

Under the procedures proposed in this bill, federal defendants under sentence of death will always have legal representation for purposes of collateral (section 2255) litigation. Hence, the time allowed is properly limited to the time required for an experienced attorney to prepare and file a section 2255 motion. The 90 days time period proposed under subsection (a), subject to a possible 60 day extension if needed, is ample for that purpose.

Subsection (b) of proposed section 3599 provides essentially that execution is automatically stayed until the conclusion of litigation of an initial section 2255 motion, if such a motion is filed and pursued in conformity with the applicable time rules. This is parallel to the mandatory stay of execution provisions of the Powell Committee procedures for state cases. *See* Powell Committee Report at 13-14, 15-17.

Subsection (c) of proposed section 3599 governs further litigation following the conclusion of litigation of an initial section 2255 motion, or failure to pursue such a motion in a timely manner. Beyond this point, no court would have the authority to stay the execution or grant relief, except in an extraordinary case involving a claim based on facts which would undermine confidence in the defendant's guilt of the offense for which the death penalty was imposed, where the claim was not raised in earlier proceedings and the failure to raise the claim was the result of (a) governmental action in violation of federal law, (b) Supreme Court recognition of a new right that is retroactively applicable, or (c) based on a factural predicate that could not have been discovered in time for earlier proceedings through reasonable diligence. This is parallel to proposed 28 U.S.C. 2257(c) in the Powell Committee recommendations. *See* Powell Committee Report at 14-15, 17-18.

Subtitle B—Protection of Witnesses, Jurors, and Court Officers

Sec. 5201. Protection of court officers and jurors.

This section of the subtitle would establish more adequate penalties for obstruction of justice offenses against court officers and jurors by amending 18 U.S.C. 1503. Currently, 18 U.S.C. 1503 prohibits a range of conduct that tends to interfere with the administration of justice, including corrupting, threatening, injuring, or retaliating against "any grant or petit juror" and any "officer in or of any court of the United States." The maximum penalty for the offense defined by 18 U.S.C. 1503 is five years of imprisonment, regardless of the seriousness of the crime and the extent of resulting harm. Thus, for example, a criminal who engaged in a retaliatory murder of a juror who had voted to convict him would be exposed to no more than five years of imprisonment pursuant to this statute.

More adequate penalties appear in the statutes that define the comparable offenses of tampering with or retaliating against witnesses, victims, and informants, 18 U.S.C. 1512 (tampering) and 18 U.S.C. 1513 (retaliation). Under both of these statutes, conduct like that prohibited by 18 U.S.C. 1503 is punishable by up to ten years of imprisonment when directed against a witness. 18 U.S.C. 1512 further authorizes imprisonment for up to twenty years in the case of an attempted killing, and incorporates by reference the penalties for murder and manslaughter under 18 U.S.C. 1111 and 18 U.S.C. 1112 for cases where death results.

The proposed amendment would conform the penalties available under 18 U.S.C. 1503 to those available for obstruction of justice offenses against witnesses, thereby providing an adequate system of sanctions for comparable offenses against jurors, judges, and other judicial officers and officers serving in courts. The basic offense would be punishable by up to ten years of imprisonment, with up to twenty years of imprisonment in the case of an attempted killing, and punishment as provided in the murder and manslaughter statutes in cases where death results.

Sec. 5202. Prohibition of retaliatory killings of witnesses, victims, and informants.

This section would amend 18 U.S.C. 1513 to provide more adequate penalties for retaliatory killings and attempted killings of witnesses, victims, and informants. Currently, the companion statute, 18 U.S.C. 1512, prohibits efforts to obstruct justice by tampering or interfering with witnesses, victims, and informants, including killing, attempting to kill, and using physical force against such persons. Under section 1512, a killing is punishable by the penalties prescribed for murder and manslaughter in 18 U.S.C. 1111 and 1112—including death or life imprisonment in cases of first degree murder—while an attempted killing is punishable by up to twenty years in prison. The offense of using physical force, short of attempted murder, is punishable by a maximum of ten years' imprisonment.

18 U.S.C. 1513 makes it a ten-year felony to engage in violent retaliatory acts against the same classes of protected persons as section 1512. For no discernible reason, however, section 1513, unlike its counterpart section 1512, contains no specific prohibition or enhanced penalties for the aggravated offenses of killing or attempting to kill a witness, victim, or informant with the same retaliatory intent. The proposed amendments would close this gap by adding to section 1513 an offense of retaliatory killing or attempted killing of witnesses, victims, and informants, carrying the same penalties as the corresponding provision in 18 U.S.C. 1512(a).

TITLE VI—JUSTICE SYSTEM IMPROVEMENTS

Subtitle A—INS System Improvements

Sec. 6101. INS General Arrest Authority.

This provision would provide law enforcement authorities that will be available to agents and officers of the Immigration and Naturalization Service (INS). The authorities listed below will be available to the extent provided for by the Attorney General in implementing regulations.

(1)(A) INS officers carry firearms pursuant to an implied authority arising from their law enforcement function. This provision would make that authority explicit;

(B) INS officers currently have authority to execute warrants in immigration related cases only. This provision would allow INS officers to execute warrants in other cases as well;

(C) INS officers make over 1,000,000 arrests a year for immigration offenses. During the course of those arrests, they often encounter other violations of law, principally narcotics and customs violations. At present, INS officers can only effect a "citizen's arrest" under state law for these offenses. This provision would give INS officers general arrest authority for these offenses under Federal law; and

(D) This provision would allow the Attorney General to assign other law enforcement duties to INS officers, for example, assisting in joint narcotics interdiction task forces.

(2) This provision confirms that any additional authorities conferred upon INS officers do not affect the authorities of any other Federal law enforcement agency.

Sec. 6102. Definitionof Aggravated Felony.

This provision expands and clarifies the term "aggravated felony" as defined in the Immigration and Nationality Act, to include a broader spectrum of serious criminal activity. The need for this expansion of the term is to capture those egregious crimes of violence that are often concomitant with drug-related crimes. This definition serves as a predicate for summary exclusion and expeditious deportation provisions provided for in this legislative proposal (Sections 6104 and 6105).

Currently, the term "aggravated felony" encompasses "murder, any drug trafficking crime as defined in Section 924(c)(2) of title 18, United States Code, or any illicit trafficking in any firearms or destructive devices as defined in section 921 of such title, or any attempt or conspiracy to commit any such act, committed within the United States."

This provision would amend the definition to include crimes of physical force or threatened force against the person or property of another that are punishable by imprisonment of five years or more, which are so often associated with drug crimes. With respect to drug law violations, the provision extends the term beyond the current limitation to drug trafficking crimes as defined in section 924(c)(2) of title 18, to include feloney crimes involving a controlled substance.

The proposed definition additionally clarifies the definition of "aggravated felony" for purposes of the immigration laws to include violations of State and foreign law, as well as violations of federal law. The current definition was challenged in deporta-

tion proceedings as not encompassing violations of State statutes. *Matter of Barrett*, A37 213 802 (Baltimore), I.D. 3131 (BIA Mar. 2, 1990).

Sec. 6103. Additions to classes of aliens ineligible to receive visas and excluded from admission.

This provision amends the Immigration and Nationality Act by adding two classes of aliens who are ineligible to receive visas and who are not permitted to enter the United States. These classes are:

(1) any nonimmigrant alien seeking admission to the United States who is in illicit possession of a controlled substance; and

(2) and any alien who has committed an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act, as amended (Section 6102) of this legislative proposal).

These additional classes provide a predicate for summary exclusion and expeditious deportation provisions provided for in this legislative proposal (Sections 6104 and 6105).

Sec. 6104. Summary exclusion and deportation of criminal aliens.

The purpose of this amendment is to provide a swift and certain bar to admission to the United States, and to ensure the exclusion from entry, of aliens who:

(1) are nonimmigrant aliens in illicit possession of a controlled substance at the time of application for admission to the United States at a port of entry, and

(2) have committed an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act, as amended (Section 6102 of this legislative proposal).

This amendment mandates, for nonimmigrant aliens in illicit possession of a controlled substance and for aggravated felons, a summary exclusion process where the Attorney General or his designee, instead of an immigration judge and Board of Immigration Appeals, determine the excludability of such an alien. There would be no administrative review of the exclusion order. However, judicial review of the exclusion order is provided pursuant to Section 106 of the Immigration and Nationality Act, as amended.

The present exclusion statute and accompanying appellate processes are overly burdensome and do not add any significant procedural or substantive due process protection. Instead, the present exclusion system, by its multilayered structure, just adds to the time it takes to finally resolve a case.

In a recent General Accounting Office report entitled, "Immigration Control: Deporting and Excluding Aliens from the United States," October 1989, the GAO investigation found that exclusion cases appealed to the Board of Immigration Appeals, an appeal of right under the present exclusion process, generally took more than three years to resolve. These cases do not include those that were appealed to the District Court, also an appeal of right under the present exclusion system.

Sec. 6105. Expeditious deportation of aggravated alien felons.

The purpose of this amendment is to ensure swift and certain deportation from the United States of an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act, as amended (Section 6101 of this legislative proposal).

This amendment subjects an alien convicted of an aggravated felony to an expedited deportation process where the Attorney General, or his designee, instead of an immigration judge and Board of Immigration Appeals, determine the deportability of an alien. There would be no administrative review of the deportation order. However, judicial review of the deportation order is provided pursuant to Section 106 of the Immigration and Nationality Act, as amended.

The hearing conducted by the Attorney General's designee will be on the record so that a "trial de novo" would not be necessary or permitted. The proposed amendment requires federal and State courts to provide to the Immigration and Naturalization Service information relating to the alienage of the individual and certified copies of conviction documents.

This provision would be applicable solely to convicted aggravated felons: those who have committed and been convicted of egregious crimes involving murder, drug law violatins, violationd of the weapons control laws, and seriouis crimies involving the use of force and violence.

The present deportation statute and accompanying appellate processes are overly burdensome and do not add any significant procedural or substantive due process protection. The present deportation system, by its multilayered structure, just adds to the time it takes to finally resolve the case.

In a recent General Accounting Office report entitled, "Immigration Control: Deporting and Excluding Aliens from the United States", October 1989 the GAO investigation found that 59 percent of deportation cases in New York and Los Angeles took more than one year to complete from the time of apprehension to the immigration judge's decision. When appealed to the Board of Immigration Appeals, about 81 percent took more than two years and 21 percent took more than five years to resolve. These cases do not include those that were appealed to the Circuit Courts of Appeals, which, under the present deportation system, is an appeal of right.

Note on Sections 6106 through 6112:

Sections 6106 through 6112 of this proposed legislation address sections of the Immigration and Nationality Act which provide various avenues of administrative relief from exclusion and deportation.

The provisions deny these avenues solely to an alien convicted of an aggravated felony. Currently each of these forms of relief are often used by the alien, often successfully, in an effort to have the exclusion or deportation order waived or set aside by the adjudicating official. These avenues should not be available to the individual convicted of the egregious crimes encompassed in the definition of the term "aggravated felony."

Sec. 6106. Ineligibility of aggravated felons for asylum.

This provision statutorily disqualifies an alien who has been convicted on an aggravated felony from political asylum under section 208 of the Immigration and Nationality Act, as amended. To extend the legislative grace of political asylum to an aggravated felon is inconsistent with the President's National Drug Control Strategy and other anti-crime initiatives, and with the Congressional intent evidenced in recent legislation to remove these individuals from American society.

Pursuant to law, an alien convicted of an aggravated felony may file an application for political asylum, and have the application considered by an immigration judge in deportation hearings. The judge may grant or deny the request. However, even if the claim for asylum is patently frivolous, he is entitled to apply for it, and time and resources are expended in the adjudication of the claim.

The express purpose of this amendment is to statutorily deny this form of relief to a convicted aggravated felon, thus pretermitting the alien's application after a finding of deportability. This, in turn, would expedite the removal of the aggravated felon from the United States.

Sec. 6107. Elimination of judicial recommendation against deportation of criminal aliens.

This provision eliminates the ability of sentencing judges to recommend against the deportation of an alien convicted of an aggravated felony.

Pursuant to section 241(b) of the Immigration and Nationality Act, as amended, sentencing judges are authorized to recommend against the use of a conviction for moral turpitude in determining the deportability of an alien, even an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act, as amended (Section 6102 of this legislative proposal).

These recommendations against deportation are, in practice, treated as binding on the immigration court and are inconsistent with the President's National Drug Control Strategy and other anti-crime initiatives, and with the Congressional intent evidenced in recent legislation to remove convicted aggravated alien felons from American society.

The express purpose of this amendment is to statutorily deny this latitude and form of relief to sentencing judges in the case of a convicted felon, so that the law will ensure a swift, certain deportation, which the integrity of the system demands. This would expedite the removal of the aggravated felon from the United States.

Sec. 6108. Elimination of section 212(c) relief for aggravated felons.

This provision amends section 212(c) of the Immigration and Nationality Act to render an alien convicted of an aggravated felony ineligible for relief pursuant to this section of the law.

Section 212(c) provides relief from exclusion, and by court decision from deportation, to persons who have had an unrelinquished domicile in the United States for seven years and are excludable for all but certain subversive reasons. This discretionary relief is obtained by numerous excludable and deportable aliens, including aliens convicted of aggravated felonies, preventing the government from removing these individuals from American society.

The purpose of this amendment is to deny this form of relief from deportation to a convicted aggravated felon. This, in turn would expedite the removal of the aggravated felon from the United States. This relief is inconsistent with the President's National Drug Control Strategy and other anti-crime initiatives, and with the Congressional intent evidenced in recent legislation to remove convicted aggravated alien felons from American society.

Sec. 6109. Elimination of suspension of deportation for criminal aliens in hardship cases.

This provision amends section 244(a) of the Immigration and Nationality Act to render an alien convicted of an aggravated felony ineligible for relief pursuant to this section of the law.

Section 244(a) suspends deportation to convicted aggravated felons who possess 10 years of physical presence in the United

States, and whose removal would cause hardship to family members in the United States.

The purpose of this amendment is to deny this form of discretionary relief from deportation to a convicted aggravated felon. This, in turn, would expedite the removal of the aggravated felon from the United States. This relief is inconsistent with the President's National Drug Control Strategy and other anti-crime initiatives, and with the Congressional intent evidenced in recent legislation to remove convicted aggravated alien felons from American society.

Sec. 6110. Definition of good moral character to exclude aggravated felons.

This provision amends Section 101(f) of the Immigration and Nationality Act to bar convicted aggravated felons from establishing good moral character for purposes of the immigration laws.

Pursuant to current law, a convicted aggravated felon may establish "good moral character" for benefits under the immigration laws. This operates to permit such individuals to avail themselves of relief from deportation and other advantages. The lack of a bar to establishing good moral character by a convicted aggravated felon often renders ineffective efforts by the government to remove these felons from society.

Sec. 6111. Ineligibility of aggravated felons for hardship waivers.

This provision amends Section 212(h) of the Immigration and Nationality Act to bar convicted aggravated felons from the hardship waiver to exclusion and deportation provided for in that Section.

Section 212(h) of the Immigration and Nationality Act waives certain criminal grounds of exclusion for an alien who is the spouse, parent, or son or daughter of a United States citizen or lawful resident of the United States, if the exclusion would result in extreme hardship to the relative.

The purpose of this amendment is to deny this form of discretionary relief from exclusion and deportation to a convicted aggravated felon. This would expedite the removal of the aggravated felon from the United States. This relief is inconsistent with President's National Drug Control Strategy and other anti-crime initiatives, and with the Congressional intent evidenced in recent legislation to remove convicted aggravated alien felons from American society.

Sec. 6112. Elimination of deportation relief for aliens who are aggravated felons.

These provisions amend sections 243(h), 245, and 249 of the Immigration and Nationality Act to bar aggravated felons from relief from deportation or other benefits provided for in these sections.

The amendment to section 243(h)(2) adds a convicted aggravated felon to the list of classes ineligible for relief from deportation based upon fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

The amendment to section 245 prohibits a convicted aggravated felon from the benefit of adjustment of status in the United States from that of a nonimmigrant alien to that of an alien lawfully admitted for permanent residence.

The amendment to section 249 bars a convicted aggravated felon from recordation of admission for lawful residency, for an alien who entered the United States prior to July 1, 1924, or June 30, 1948.

These forms of relief are currently available to a convicted aggravated felon. These relief provisions are inconsistent with the President's National Drug Control Strategy and other anti-crime initiatives, and with the Congressional intent evidenced in recent legislation to remove convicted aggravated alien felons from American society.

Subtitle B—Amendments Concerning Records of Crimes Committed by Juveniles

Sec. 6201. Amendments Concerning Records of Crimes Committed by Juveniles.

The amendments in this section are part of the implementation of an element of the President's violent crime program, which calls on the states to "maintain records and report on all serious crimes committed by juveniles who frequently continue their criminal careers into adulthood, but often escape early identification as repeat offenders and recidivists because their juvenile records are not reported." White House Fact Sheet of May 15, 1989, at 6. The same point was endorsed by the Attorney General's Task Force on Violent Crime in 1981, Final Report at 82-83, which stated that states should be encouraged to make available criminal history information for juveniles convicted of serious crimes, and that such information should be entered into the FBI criminal records system.

Empirical data confirms that the unavailability of juvenile criminal records is in fact a serious concern in connection with violent and firearms offenses. For example, the Bureau of Justice Statistics has reported that 54 percent of armed robbers in state prisons in 1986 had previously been sentenced to probation or incarceration as a juvenile, and that 15 percent had a prior juvenile, but no adult, sentence. This problem would be alleviated by generally providing for the inclusion of juvenile records for serious crimes in the FBI records system, and by making corresponding changes in the rules for reporting offenses by juveniles who are federally prosecuted.

To implement this reform, the Justice Department proposes to amend 28 C.F.R. section 20.32, which generally defines the offenses that will be accepted in the FBI records system. Subsection (a) of the rule now states that information is to be included concerning "serious and/or significant offenses." Subsection (b) states that nonserious offenses are excluded, such as drunkenness, vagrancy, disturbing the peace, curfew violations, loitering, false fire alarm, nonspecific charges of suspicion or investigation, and traffic infractions. However, the second sentence of subsection (b) states a blanket exclusion of offenses committed by juveniles, unless the juvenile was tried as an adult. The proposed amendment would delete this sentence, and would make a conforming change in subsection (a), to make it clear that both adult and juvenile offenses, if serious, are to be included in the system. This would permit the FBI to receive and retain records relating to serious offenses of state juvenile offenders.

The statutory amendments in this section propose complementary changes in the provisions regarding the records of federally prosecuted juveniles. The first amendment would change 18 U.S.C. 5038, which generally governs the permissible uses of juvenile records and the circumstances in which they are to be retained. The basic change from current law is that records would routinely be retained and made available where a juvenile is convicted of a serious violent crime or drug crime that supports the exercise of federal jurisdiction pursuant to clause (3) of the first paragraph of 18 U.S.C. 5032. In contrast, the current statute limits the retention and availability of such records through the FBI records system to cases involving a second conviction of the juvenile. The amendment accordingly rejects the view of the current law that a juvenile offender is entitled to "one free bite," even if the initial "bite" is a serious violent crime or drug crime, before information is preserved concerning his offenses for later law enforcement and judicial use.

The amendment also adds a subsection to 18 U.S.C. 5038 authorizing reporting, retention, disclosure and availability of juvenile records pursuant to the law of the state in which a federal juvenile proceeding takes place, if the state law is more permissive as to such matters than the general standards of section 5038. This would generally ensure that federal law will not accord less weight than the law of the state in which the offense occurred to the public's interest in security against crime, and would also eliminate the possibility that a federal prosecutor might be inhibited from exercising federal jurisdiction in a case appropriate for federal prosecution because state law provides more effectively for retention and availability of records concerning the offender.

The second amendment repeals a statute, 18 U.S.C. 3607, that authorizes prejudgment probation for certain drug offenders, and requires expungement of records for such an offender if he was under the age of 21 at the time of the offense. This amendment is also in furtherance of the proposal's general objective of ensuring retention of accurate and complete criminal records, regardless of the age of the offender.

In its specific provisions, 18 U.S.C. 3607 now authorizes prejudgment probation for an offense under 21 U.S.C. 844 for offenders without prior drug crime convictions; 21 U.S.C. 844 generally defines the offense of unlawful possession of controlled substances, punishable by up to a year of imprisonment. If a defendant is accorded the special probationary treatment authorized by the statute, only a nonpublic record is retained of the disposition, and that record can only be used for the purpose of determining in a later proceeding whether the defendant is a first time offender for purposes of section 3607. The effect of the mandatory expungement for offenders under 21 is that all references relating to the arrest, proceedings, and disposition are removed from normal official records. Section 3607 further provides that the expungement order has the effect of restoring the defendant in contemplation of law to the status he occupied before his arrest or prosecution, and that the defendant is not subject to liability for subsequently failing to recite or acknowledge the occurrence of the arrest or prosecution in any context.

This provision implicitly presupposes that drug possession offenses under 21 U.S.C. 844 may properly have less serious consequences for the offender than other offenses carrying comparable penalties, or that knowledge of such offenses is somehow of less importance for the criminal justice system than knowledge of other prior crimes. However, the statute's implicit policy of leniency toward drug offenders through concealment of records is contrary to the concept of user accountability for such offenders, and gives short shrift to the enormous human and social costs of drug abuse. Moreover, in light of the uniquely potent role of drug abuse as a contributing factor in other criminality, knowledge of a defendant's complete record of drug offenses is at least as important as knowledge of other types of crime for law

enforcement, judicial, and correctional purposes.

Section 3607's expungement requirement for offenders under 21 compounds its costs without any offsetting justification. If the offender is a juvenile, he would enjoy in any event the benefits of the special protection of 18 U.S.C. 5038 relating to juvenile records, on the same basis as other juvenile offenders. Conversely, if the offender is an adult, he should be treated in the same way as adults who commit other types of crimes. Neither considerations relating to the offender's interests nor considerations relating to society's interests provide a valid basis for according a specially favored status to defendants who commit offenses covered by section 3607, or justify a special policy of concealment for the records of such offenses. The statute, as proposed in the second amendment, should simply be repealed.

Subtitle C—Narcotics-Related Public Corruption

Sec. 6301. Narcotics-Related Public Corruption.

This subtitle would establish more stringent penalties for drug-related bribery. The section would amend section 18 U.S.C. by inserting a new section 220 that specifically deals with narcotics-related public corruption. Under the proposed section, such corruption would be classified as a class B felony, punishable by up to 25 years of imprisonment.

Subtitle D—Other System Improvements

Sec. 6401. Alternative methods of incarceration.

This section makes explicit the desirability and appropriateness of using Bureau of Justice Assistance Drug Grant funds for innovative intermediate sanctions.

Sec. 6402. Close loophole for illegal importation of small drug quantities.

This proposal would amend section 497 of the Tariff Act of 1930, 19 U.S.C. 1497, to eliminate a loophole whereby in certain situations involving failure to declare illegal importation of small quantities of drugs, the violator is subject to a very minor penalty.

19 U.S.C. 1497 currently provides a civil penalty equal to 1,000 percent of the value of the undeclared substances. If the amount of the drugs, however, is small (e.g., a "roach" or a few pills), the resulting penalties range from $14 to $35. This statutory change would provide for a minimum penalty of $500, enhancing the deterrent effect of the statute.

Sec. 6403. Enhancement of penalties for drug trafficking in Federal prisons.

This proposal is designed to increase the penalties for drug possession and trafficking inside Federal prisons, jails, and detention facilities, as well as for smuggling or attempts to smuggle controlled substances into such institutions. The providing or possession of controlled substances in Federal prisons clearly represents a major threat to prison safety and discipline, promotes disrespect for law, and undermines the prospect for successful rehabilitation of prison inmates. Accordingly, such offenses implicate harms to society separate from and in addition to those associated with drug violations generally, and are deserving of separate and cumulative punishment.

Unfortunately, the existing statute proscribing the providing or possession of contraband in Federal prison, 18 U.S.C. 1791, fails adequately to punish these offenses. For example, section 1791 contains no requirement that the sentence for an offense under it be served consecutively to a sentence imposed for the underlying drug offense. Thus, a person convicted today under 21 U.S.C. 841 for drug trafficking by smuggling crack cocaine to a prison inmate, and under 18 U.S.C. 1791 for an offense involving that same substance, might well receive concurrent sentences reflecting no incremental punishment for the separate serious harm to the prison institution. By contrast, under the proposed amendment, any sentence imposed under 18 U.S.C. 1791 for a violation involving a controlled substance would have to run consecutively to a sentence imposed by any other court (including a State court) for an offense involving that same controlled substance.

Moreover, the maximum penalties provided in section 1791 for controlled substances with a serious potential for abuse (i.e., those in schedules I, II, and III), with only a few exceptions, are far too low. Section 1791 provides an adequate maximum of twenty years' imprisonment only for narcotic drugs (defines to include opiates and cocaine), LSD, and PCP. All other offenses involving the distribution, smuggling, or possession of controlled substances are misdemeanors that carry a maximum prison term of one year. This penalty scheme fails to reflect the seriousness of many types of controlled substances, particularly in a prison context.

Under the proposed amendment, the penalties for offenses involving controlled substances under section 1791 would generally be graduated according to the seriousness of the drug by virtue of its placement in one of the controlled substance schedules set forth in 21 U.S.C. 812. Initially, the list of most serious substances that carry a maximum twenty-year punishment would be augmented by the addition of methanamphetamine (including the variant "ice").

Congress recently amended the Controlled Substances Act (21 U.S.C. 814(b)) to add methanamphetamine to such other highly dangerous drugs as heroin, cocaine, LSD, and PCP as appropriate for minimum mandatory penalties. This proposed amendment would similarly acknowledge the dangers posed by methanamphetamine by adding it to the list of those substances carry the highest penalties under section 1791.

Next, the amendment would add other controlled substances in schedules I and II (except marijuana) to the present category of objects whose unlawful provision or possession in prison carry a ten-year maximum term; and would create a five-year maximum penalty for distributing, smuggling, or possessing schedule III controlled substances or marijuana. Marijuana, although a schedule I substance, carries only a maximum of five years' imprisonment under the Controlled Substance Act for quantities less than 50 kilograms (21 U.S.C. 841(b)(1)(D)), and it is not deemed likely that an offense involving marijuana smuggling or possession in a Federal prison would exceed that magnitude. Offenses involving schedule IV and V controlled substances would remain as one-year misdemeanors.

Finally, the amendment corrects a technical error in subsection (b), where the references should be to subsection (d) instead of (c).

Sec. 6404. Authorization of funding for Treasury undercover operations.

The provisions in this section authorize the use of appropriated funds for the conduct of undercover investigative operations. In addition, if certain approval procedures are followed, the proposed section continues to exempt such operations from federal acquisition, appropriations, property management, and government corporation laws which would otherwise be applicable to a federal agency. These exemptions may be used if complying with those federal laws would risk compromise of the undercover nature of the investigation.

TITLE VII—AMENDMENTS RELATED TO ASSET FORFEITURE AND MONEY LAUNDERING

Subtitle A—Special Forfeiture Fund

Sec. 7101. Special forfeiture fund amendment.

This section of the Bill amends provisions of the Anti-Drug Abuse Act of 1988 to make funds available to the Special Forfeiture Fund earlier than currently authorized. Current law authorizes transfers of amounts from the Department of Justice (DOJ) Assets Forfeiture Fund to the Special Forfeiture Fund at the end of fiscal years 1990, 1991, and 1992.

This section allows transfers to begin in the first quarter of FY 1990. It also extends the authorization of transfers from the DOJ Assets Forfeiture Fund through FY 1992, and makes a similar modification to the Special Forfeiture Fund to conform both sections with the sunset provision affecting the Office of National Drug Control Policy.

Subtitle B—Forfeiture Amendments

Sec. 7201. Conforming of older innocent owner provisions with those enacted in the Anti-Drug Abuse Act of 1988.

Sections 6075 and 6076 of the Anti-Drug Abuse Act of 1988 provided that in the case of a conveyance subject to forfeiture because of its involvement in a drug-related offense, forfeiture would be barred if the owner of the conveyance established that he or she had no knowledge of the offense, did not consent to the offense, and was not willfully blind to the offense.

The 1988 amendments were derived from earlier innocent owner statutes in 21 U.S.C. 881(a) (6) and (7) (relating to other personal and real property involved in drug crimes) and 18 U.S.C. 981(a)(2) (relating to property involved in money laundering). However, neither of these earlier statutes requires the owner or lienholder to prove the absence of willful blindness, and the section 981 provision does not require the owner to prove lack of consent. The proposed amendments would bring these older statutes into conformity with the innocent owner provisions enacted in 1988.

It is intended that, in order to establish the innocent owner exemption, the property owner must establish all three circumstances—i.e., that the owner lacked knowledge, consent, and willful blindness as to the offense giving rise to forfeiture. See *United States* v. *Parcel of Real Property Known as 6109 Grub Road*, 886 F. 2d 618 (3d Cir. 1989) (holding, contrary to the weight of authority, that by using the word "or" in 21 U.S.C. 881(a)(7) Congress intended to give the owner the choice of proving either lack of knowledge *or* lack of consent. The addition of the "willful blindness" wrong underscores the incorrectness of this holding, since it makes no sense that an owner could prevail by showing a lack of willful blindness to the offense even though the owner had knowledge of the offense and consented to it.

Sec. 7202. Addition of conforming criminal forfeiture provision for cases involving CMIR violations.

Section 6463(c) of the Anti-Drug Abuse Act of 1988 amended 18 U.S.C. 982 to require the forfeiture in a criminal case of any

property involved in certain anti-money laundering statutes, including the statute requiring the filing of currency transaction reports (CTRs) and the anti-structuring statute, both found in title 31. However, apparently inadvertently, the 1988 amendment failed to include criminal violations of the statute (31 U.S.C. 5316) requiring the filing of monetary instrument reports (CMIRs) with the Customs Service whenever more than $10,000 is imported into or exported from the United States. Such violations are already subject to civil forfeiture, 31 U.S.C. 5317, and should be subject to the same criminal forfeiture sanctions as are the CTR and anti-structuring offenses.

Sec. 7203. Clarifying grammatical changes in definition of "financial transaction" for the money laundering statute.

This amendment is entirely technical in nature. It is intended merely to add grammatical clarity to the definition of "financial transaction" in the money laundering statute. The clarification is consistent with the legislative history which explains that, for the purposes of this statute, a financial transaction need not involve a financial institution. See S. Rep. 99-44, 99th Cong., 2nd Sess. (1986), at p. 13.

Sec. 7204. Limitation of exception to money laundering forfeitures.

In 1988, the statute permitting forfeiture of property in criminal money laundering cases, 18 U.S.C. 982(b), was amended to authorize the forfeiture of substitute assets. Under the amendment, whenever property involved in money laundering violations cannot be located, has been placed outside the jurisdiction of the court, has been diminished in value, or otherwise is not available for forfeiture because of some action of the defendant, the government is entitled to the forfeiture of substitute property of equal value.

This provision is identical to the substitute assets provision in 21 U.S.C. 853(p) which applies to forfeitures in criminal narcotics cases with one important difference. Section 982(b)(2) provides that the substitute assets provision may not be used where the convicted money launderer was merely an "intermediary" who handled the money "only temporarily" in the course of the money laundering offense. This exception was seen as necessary to prevent an "unduly harsh" result where a person was a mere conduit for a financial transaction between other principals. See Congressional Record, daily ed., November 10, 1988, at S17365. The exception, however, should be narrowed to reflect its true intent, which was to protect the low-level or occasional participant in a money laundering offense, such as a "smurf" who carries his employer's money to a bank but retains none of it for himself, from forfeiture of money over which he never exercised exclusive control. It was not intended to preclude forfeiture of substitute assets from a professional money launderer who moves hundreds of thousands of dollars through various businesses and accounts on behalf of other criminals engaged in drug trafficking or other specified unlawful activity.

The amendment would qualify the 1988 exception by providing that substitute assets will be forfeited even by an intermediary who does not retain the laundered property if that person participates in three or more transactions involving $100,000 or more in a twelve-month period. Such a person is clearly a professional money launderer who is not deserving of the forfeiture exemption.

Sec. 7205. Seizure of vehicles with concealed compartments.

This proposal would amend the seizure and forfeiture provisions of the Anti-Smuggling Act of 1935, 19 U.S.C. 1703, to subject trucks and private automobiles to seizure if there is a concealed compartment, whether or not there is contraband or narcotics residue.

Under current law, vessels and aircraft having a hidden compartment can be seized and forfeited under 19 U.S.C. 1590 and 1703. These provisions, however, do not permit the seizure and forfeiture of automobiles, trucks, or other vehicles that are similarly equipped with hidden compartments designed to smuggle contraband. This provision would cover compartments that are specifically built of fitted for smuggling; it would not reach other compartments (e.g., glove boxes or car trunks) that are part of the normal vehicle configuration.

Subtitle C—Money Laundering Amendments

Sec. 7301. Continuation of $10,000 cash transaction reporting requirement.

This would permit federal law enforcement agencies to continue to receive information reported to the Internal Revenue Service by persons in a trade or business where these persons receive more than $10,000 in cash in a transaction. This reporting requirement applies to those transactions not subject to the title 31 reporting rules, such as the sales of automobiles, boats, and so forth. This information supplements the Currency Transaction Reports being utilized to identify and prosecute persons laundering funds obtained from the sale of drugs and other criminal activity.

Sec. 7302. FINCEN transfer amendment.

This proposal would permit agencies to transfer to FINCEN and other agencies customer account information subject to the Right to Financial Privacy Act, 12 U.S.C. 3401 et seq., without having to provide notice of such transfer.

With limited exceptions, and agency transferring customer account information to another agency is required to provide the customer notice of, and the reasons for, such transfer.

Sec. 7303. Geographic targeting disclosure penalties.

Current law (31 U.S.C. 5326) permits the Secretary of the Treasury to impose lower currency reporting limits in certain geographic areas for limited periods of time. The Secretary may order financial institutions to report any or all domestic currency transactions at a specified level for a specified time period. The Secretary, however, may only request that the financial institutions not disclose the existence of the order to customers; the purpose of the order is defeated by disclosure.

In order for geographic targeting orders to be effective, it is imperative that customers of the financial institutions subject to an order not know of the existence or terms of special reporting requirements. If they know, they will quickly move their activities outside for targeting area or below the reporting amount and frustrate the purpose of the order.

Therefore, this proposal would amend 31 U.S.C. 5326 to permit the Department of the Treasury to prohibit the disclosure of the existence of a geographic targeting order and penalize financial institutions for such disclosures.

Sec. 7304. Suspicious transaction reporting.

This proposal would amend the Right to Financial Privacy Act, 12 U.S.C. 3403, to provide that a financial institution that ceases to do business with a customer because of suspicious transactions is not subject to liability under other statutes, including the Fair Credit Reporting Act.

Exempting financial institutions from liability for refusing to conduct business on the basis of a possible violation of currency reporting requirements would encourage and facilitate cooperation by financial institutions with Federal law enforcement efforts.

Since the inception of the Right to Financial Privacy Act, pursuant to an exception in section 1103(a) (12 U.S.C. 3404(c), financial institutions have been able to report, in good faith, possible violations of law or regulation to federal authorities without notice to the suspected customer and free from civil liability under the RFPA. This provision was further clarified by the Anti-Drug Abuse Act of 1986 and 1988, to specify what information a financial institution could give regarding the customer and suspicious activity and that the protection pre-empted any state law requiring notice to the customer. These changes were added to insure that financial institutions would in no way be inhibited from reporting suspected violations, especially money laundering and Bank Secrecy Act reporting violations.

Nevertheless, financial institutions have advised that there is another concern that in some instances complicate their treatment of suspicious transactions. They fear that if they sever relations with a customer, they risk liability under the Fair Credit Reporting Act, 15 U.S.C. 1691, et seq., or for breach of contract. See *Ricci v. Key Bancshares of Maine*, 768 F.2d 456 (1st Cir. 1985). However, if they continue relations with the customers, they fear that they may be implicated in any illegal activity. In many cases, after a suspicion has been reported, Federal authorities will encourage financial institutions to continue dealing with a suspicious customer so his activities may be monitored. Financial institutions should be free to sever relations with the customer based on their suspicions or on information about a customer received from law enforcement.

Section (a) addresses this concern by extending the protection of section 1103(c) to bank that sever relations with a customer because of activities underlying a suspicious transaction report.

Sec. 7305. Bank Secrecy Act customer violations.

Section 8118 adds new subsection 1113(p) to provide that the RFPA would not apply to a financial institution providing information that it has reason to believe may be relevant to a Bank Secrecy Act violation. This is not a change in current law with respect to supervisory agencies' disclosure to Treasury of records relevant to violations of the Bank Secrecy Act. Pursuant to section 1101(6)(H) of the RFPA, Treasury is a supervisory agency for purposes of Bank Secrecy Act enforcement. Section 1113(b) sets forth that "[n]othing in this chapter [RFPA] prohibits . . . disclosure to any supervisory agency of financial records or information in the exercise of supervisory, regulatory or monetary functions with the respect to a financial institution." Under delegations from Treasury, bank supervisory agencies routinely examine institutions and report to Treasury possible Bank Secrecy Act violations by financial institutions without customer notice. Financial institutions also disclose information and records

about their own past noncompliance to Treasury, without reference to the RFPA.

Nevertheless, the amendment would make an improvement to Bank Secrecy Act enforcement. The law is not clear and an amendment to the RFPA is needed with respect to the situation in which a financial institution wishes to report possible Bank Secrecy Act violations by a customer, i.e., in situations where the bank suspects that a customer has violated 21 U.S.C. s 5224, the anti-structuring provision. If the bank is not implicated in the possible violation, disclosure to Treasury arguably would not be within the exercise of Treasury's "supervisory functions . . . with respect to a financial institution." In that case, banks only would be able to give Treasury the limited suspicious transaction information allowed by section 1103(c) of the RFPA.

The provisions set forth in section 4(d) would authorize full disclosure of information within the possession of the financial institution which the institution has reason to believe is relevant to Bank Secrecy Act violations. The phrase "reason to believe" means reasonable suspicion, and does not equate to probable cause. New paragraph would allow the financial institution to furnish information beyond the identifying data now authorized by section 1103(c), including copies of relevant documents. Disclosure would be made without any notice to the customer otherwise required by the RFPA.

Section (d) provides that a financial institution that discloses information and records relating to a customer violation of the Bank Secrecy Act under proposed 1113(p) in good faith, also would be protected from civil liability under state law. This is comparable to the protection for financial institutions that make reports of suspicious transactions in accordance with section 1103(c).

Sec. 7306. Search of outbound mail.

In Section 1355 of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (Oct. 27, 1986), Congress specified that the warrantless border search authority of the Customs Service applied to searches of "any vehicle, vessel, aircraft, or . . . any envelope or other container . . . entering or departing from the U.S." for purposes of ensuring compliance with the international reporting requirement of 31 U.S.C. 5316. However, the inclusion of outgoing letters or parcels in the U.S. mail is unclear in light of 39 U.S.C. 3623(d), a statute that otherwise prohibits warrantless searches of letter class mail. To clarify this point, section 7306 adds the words "including mail transmitted by the U.S. Postal Service" to section 5317(b).

This proposal would clarify the search authority of 31 U.S.C. 5317(b) to provide generally that outbound mail may be searched for currency and monetary instruments. Letters sealed against inspection could only be searched on the basis of reasonable suspicion. Clarification of the search authority of the U.S. Customs Service would enhance detection of illegal transfers of currency and monetary instruments.

TITLE VIII—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Sec. 8101. Technical amendments to money laundering offenses.

The amendments in part (a) that add the terms "transmission" and "transfer" are conforming in nature. Section 6471(b) of the Anti-Drug Abuse Act of 1988 added the verbs "transmits" and "transfers" to 18 U.S.C. 1956(a)(2) following the verb "transports", but failed to make conforming amendments to places later on in that provision, and in subsection (b), where the noun "transportation" appears. The amendment in part (b) eliminates superfluous language. The term "represented" is defined later in the same provision as meaning a representation "by a law enforcement officer". The amendment in part (c) would clarify an apparent drafting oversight. As enacted, the criminal penalty for violations of section 6050I is punishable by imprisonment for not more than five years. However, the penalty is a misdemeanor even though punishable by imprisonment of up to five years. In addition to being inconsistent with other criminal provisions, it is a lesser sanction since persons convicted of a felony may lose certain rights under State law that are not forfeited if the conviction is classified as a misdemeanor.

Sec. 8102. Clarification of applicability of 18 U.S.C. 1952 to all mailings in furtherance of unlawful activity.

18 U.S.C. 1952, enacted in 1961, punishes whoever travels in interstate or foreign commerce, or "uses any facility in interstate or foreign commerce, including the mails," with intent to promote any "unlawful activity", a term defined to encompass several offenses characteristic of organized crime enterprises, such as bribery, extortion, money laundering, narcotics, and prostitution. The language and history of the statute are, unfortunately, less than clear as to whether the phrase "including the mails" requires that there be an interstate mailing for federal jurisdiction, or whether any mailing suffices. Until 1989 the only appellate court interpretation supported the Department of Justice's understanding that any use of the mails was covered. *United States* v. *Riccardelli,* 794 F.2d 829 (2d Cir. 1986). However, very recently another court of appeals has now created confusion by holding that section 1952 reaches only those uses of the mails that are interstate (or foreign) in nature. *United States* v. *Barry,* 888 F.2d 1042 (6th Cir. 1989).

Although section 1952 is not often employed in situations involving intrastate mailings, making Supreme Court review unlikely, such use of the statute has been of some significance in reaching vote buying schemes in Kentucky (a state directly affected by the *Barry* decision) in which absentee ballots are mailed from one part of the state to election officials elsewhere in the state. Both on policy grounds, in order to allow continued prosecution of these cases, and because it is believed that the *Barry* ruling represents a misconstruction of section 1952, the proposed amendment would clarify the statute to include any use of the mail in furtherance of a proscribed "unlawful activity".

Sec. 8103. Addition of drug conspiracy and attempt offenses committed by juveniles as warranting adult prosecution.

This amendment would add certain "crack" cocaine and drug conspiracy and attempt offenses committed by juveniles to the list of crimes set forth in 18 U.S.C. 5032 authorizing prosecution as an adult if the Attorney General certifies that there is a "substantial federal interest in the case" that justifies adult prosecution. Currently, substantive drug offenses in 21 U.S.C. 841 (and other statutes) are predicates for such action, but attempts and conspiracies to commit such offenses are not. As some United States Attorneys have noted, this is an anomaly that should be corrected. Unfortunately, many juveniles today are members of gangs of conspirators involved in drug trafficking, and their roles may range from relatively fringe activities to leadership of the conspiracy itself. When the offense is sufficiently serious, prosecutors should have the option of proceeding against a juvenile drug conspirator as an adult, just as they now have that option with respect to a substantive drug crime; and the same holds true for attempts. Likewise, in view of the seriousness of such offenses, it is appropriate to add to the list of predicate offenses authorizing adult prosecution those involving possession of a mixture or substance containing in excess of five grams of cocaine or "crack". (See 21 U.S.C. 844.)

Sec. 8104. Grand jury access to certain records.

This proposed amendment to the cable television subscriber law would bring that statute into conformity with all other customer privacy provisions, by recognizing an exception for information sought pursuant to a federal grand jury subpoena or a court order relating to a federal grand jury proceeding. See, e.g., 12 U.S.C. 3413(i), creating a similar exception to the Right to Financial Privacy Act of 1978; and 15 U.S.C. 1618(b), containing a grand jury exception to the restrictive disclosure provisions of the Fair Credit Reporting Act. Because the grand jury is the constitutionally prescribed sole means of bringing felony charges in the federal justice system, it is a basic and vital principle that a federal grand jury subpoena should be able to reach any type of record, subject only to a valid claim of privilege on the part of the record custodian. In this regard, the provisions of 47 U.S.C. 551 are anomalous and troublesome, for they prohibit the disclosure of cable television subscriber information to any governmental entity, including even a federal grand jury, save through a court order and an adversary proceeding at which the subscriber must be notified and have an opportunity to participate. This unique requirement, which is exceessive in the grand jury context, may sometimes thwart an important investigation. Recently, for example, a murder investigation in New York was hindered when investigators sought to pursue their sole lead as to the whereabouts of the suspected killer by issuing a federal grand jury subpoena to the cable television service to which the suspect had just subscribed. The service was unable to comply with the subpoena because of the provisions of 47 U.S.C. 551. The proposed amendment would establish a limited grand jury exception, modeled on 12 U.S.C. 3413(i), to remedy this problem.

Sec. 8105. Addition of conforming predicates to money laundering statute.

This proposed amendment would add certain predicate offenses relating to financial institutions to the money laundering statute, 18 U.S.C. 1956. Recently, in the Financial Institutions Reform, Recovery and Endorcement Act of 1989 (FIRREA), Congress amended, increased the penalties for, and provided for forfeiture relating to 18 U.S.C. 1005, 1006, 1007, and 1014. given the seriousness of these offenses and their association with others already included in the money laundering statute, it makes sense to add these same offenses to the definition of "specified unlawful activity" in section 1956(c)(7)(D). The amendment would also delete the specific reference to 18 U.S.C. 1344, the general bank fraud statute, since that reference was made redundant through the addition of section 1344 by FIRREA to the RICO law, 18 U.S.C. 1961, whose predicates are incorporated into section 1956.

Sec. 8106. Arrest of fugitive about to enter United States.

Section 7087 of the Anti-Drug Abuse Act of 1988 amended 18 U.S.C. 3184 to permit an arrest warrant to be issued by the federal district court in Washington, D.C., for a foreign fugitive whose whereabouts within the United States are not known. Issuance of an arrest warrant aids in apprehending such fugitives since it enables the information to be entered into various communications systems which may be readily accessed by law enforcement authorities across the country.

The proposed amendment, requested by Interpol, would logically expand the 1988 amendment to include a situation in which a foreign fugitive was believed to be about to enter the United States, a fairly common circumstance. Under the amendment, authorities would be permitted to obtain an arrest warant for such a fugitive, thereby enhancing the likelihood that the fugitive could be arrested at the point of entry into this country.

Sec. 8107. Elimination of superfluous language.

18 U.S.C. 510(b) punishes the receipt, exchang, delivery, or concealment of a Treasury check or bond or security of the United States, knowing the same to be stolen or to bear a falsely made or forged endorsement; the offense also contains a unique further element that the check, bond, or security "in fact" be stolen or falsely made or carry a forged endorsement. This latter element, no explanation of which appears in the legislative history of the provision, adds nothing to the offense in terms of culpability and is problematic.

Other, more frequently utilized federal offenses that proscribe similar conduct of receiving or trafficking in property know to have been stolen, e.g., 18 U.S.C. 641, 659, 2313, 2314, 2315, contain no requirement that the property "in fact" be stolen. While in most prosecutions under these statutes the property will indeed be of the prohibited character, the effect of the "in fact" clause in section 510(b) is to prevent the use of appropriate "sting"-type investigative techniques that would be authorized by identical provisions in S. 1971 and 1972 and H.R. 3760 in which the defendant "knows" the securities are stolen because an undercover agent has represented to the defendant that the securities are of this character when in fact they were provided by law enforcement authorities. Since there is no reason to bar "sting" investigations with respect to 18 U.S.C. 510 or to treat persons who traffick in stolen or falsely made United States securities any differently from traffickers in other types of stolen or counterfeit goods, the "in fact" language in section 510(b) should be deleted.

Sec. 8108. Correction to reference to nonexistent agencies.

This proposes amendments that are purely technical. The Department of Health, Education, and Welfare was divided into the Department of Education and the Department of Health and Human Servies in 1979. See P.L. 96-88. The Federal Savings and Loan Insurance Corporation was abolished by section 401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, see P.L. 101-73, and its functions assumed by the Fededral Deposit Insurance Corporation; the latter is already mentioned in 18 U.S.C. 1114.

Sec. 8109. Disclosure of grand jury information for use in civil forfeiture.

Section 964 of the Financial Institutions Recovery, Reform and Enforcement Act of 1989 (FIRREA) enacted a provision (18 U.S.C. 3322) that allows a federal prosecutor to disclose grand jury information to another attorney in the Department of Justice for use in connection with civil forfeiture proceedings involving criminal violations directed at federally insured financial institutions. Under the amendment proposed here, this concept would be expanded to permit such sharing of information among Department of Justice attorneys for the purpose of enforcing civil forfeitures under any law of the United States.

Civil forfeiture statutes exist, and are an important enforcement tool, in such areas as controlled substance and RICO violations, and pornography and gambling offenses, among others. Access to grand jury information that is in the possession of another Department of Justice attorney may often be critical to the success of civil forfeiture efforts. Moreover, there is no reason to limit the scope of the provision enacted in FIRREA to civil forfeitures involving bank law violations. Accordingly, the amendment would extend the principle of section 3322 to any other civil forfeiture provision. It should be noted that disclosure is only permitted to another Department of Justice attorney, thus minimizing the risk of improper use.

Sec. 8110. Use of a search warrant to obtain contents of a stored wire communication.

This section is designed to clarify the procedure by which, under the Electronic Communications Privacy Act (ECPA), the government may require a provider of electronic communication service to disclose the contents of a stored wire communication. Under 18 U.S.C. 2703(a), the government is authorized to use a search warrant to obtain the contents of a stored electronic communication that is in storage for one hundred and eighty days or less (and a warrant, subpoena, or court order for such contents that have been stored for more than one hundred and eights days). It is not apparent, however, by what means the government may obtain access to the contents of a stored *wire* communication, for example a message left with a telephone answering service. A case can be made that a Title III warrant (under 18 U.S.C. 2510 et. seq.), such as must be used to intercept the communication in the course of transmittal, is required, particularly since the definition of "wire communication" in 18 U.S.C. 2510(1) "includes any electronic storage of such communication". On the other hand, access to a stored wire communication may not fit the definition or concept of an "interception" (see 18 U.S.C. 2510(4)), and if this view is taken it would seem appropriate to treat access to the contents of a stored wire communication in the same manner as ECPA treats access to the contents of a stored electronic communication under section 2703(a).

This section adopts the latter approach for stored wire communications and accordingly amends section 2703(a) to bring the contents of stored wire communications expressly within the ambit of that section. Thus, rather than the "super" type of search warrant application required by Title III for "intercepted" communication contents (requiring, in addition to a showing of probable cause, a showing that other methods to get the information have been unsuccessful, high level approval for the warrant application, etc.), an ordinary search warrant based on probable cause, location, and particularly would suffice to get the contents of a wire communication that has come to rest in electronic storage. The reasons for the additional protection mandated by Title III for *intercepting* a wire communication are simply not present, and thus excessive, when applied to stored wire communications. The latter situation is analogous to that in which a letter is sent and delivered to the addressee and the government seeks access to its contents, a classic case for the use of a search warrant based upon probable cause under Rule 41, F.R.Crim.P.

Sec. 8111. Authority for State government personnel to assist in conducting court-authorized interceptions.

This section would amend 18 U.S.C. 2518(5), as added by ECPA, to make clear that State and local government personnel, if acting under federal supervision, may conduct an interception. Under the 1986 ECPA amendment, federal government personnel may be used to conduct an interception if acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception. The amendment was added at the request of the Justice Department in order to facilitate the use of support personnel in monitoring wiretaps. Prior to 1986, Title III required the use of full fledged investigators, such as F.B.I. agents, to perform this time-consuming task, a requirement unrelated to privacy interests and one that needlessly wasted scarce investigative resources. Thus, the 1986 ECPA amendment permitted such monitoring to be handled by "Government personnel" provided such personnel were acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

Clearly, this provision covers government personnel who are federal employees. It is doubtful, however, whether it covers personnel of a State or local government as well. Often such personnel, especially law enforcement members, are enlisted to assist in complex, joint investigations involving wire, oral, or electronic surveillance. Currently, federal agencies such as the F.B.I. use such State and local agents to assist in monitoring Title III wiretaps through the cumbersome device of cross-designating such agents as federal agents, or by deputizing them as federal marshals. See, e.g., *United States* v. *Bynum*, 763 F. 2d 477 (1st Cir. 1985). The paperwork involved in such methods is, however, burdensome and costly, with no corresponding benefit to privacy or other interests protected by the statutes. Cross-designation involves no qualitative screening; neither the F.B.I. nor the Marshals Service conducts any meaningful background investigation related to the act of deputation, other than routine checks under NCIC and NADDIS for criminal involvement. It would be far more efficient, and consistent with the purpose of the 1986 amendment adding "Government personnel", if the statute expressly permitted State government personnel, acting under the supervision of a federal law enforcement officer, to participate in the conduct of a Title III interception. Section 434 would effect this result.

Sec. 8112. Clarification of inapplicability of 18 U.S.C. 2515 to certain disclosures.

This section would make a minor amendment to 18 U.S.C. 2515, the statutory exclusionary rule for violations of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, so as clearly to exempt situations in which private persons, not acting for any government authority, illegally intercept and record a communication

which later lawfully comes into the possession of the government, which then wishes to use the recording in a criminal investigation or trail. At present, appellate decisions are in apparent conflict over whether section 2515 precludes such use.

Under one possible interception of section 2515, if a private individual consensually records a conversation in aid of an illegal activity, the contents of that recording are not admissible in a criminal trial or hearing even if the government had no role in having the evidence recorded and only acquired it, through lawful means, at a later date. This is because, under 18 U.S.C. 2511(2)(d), a recording by a consenting party, not acting under color of law, is permissible only if the recording is for a non-criminal or non-tortious purpose. Thus, if a briber secretly records a transaction in which a bribe is paid to an official, and the government later obtains the recording and seeks to use it against the official to prove the bribe, section 2515 arguably precludes such use. One appellate court has so held. *United States* v. *Vest*, 813 F.2d (1st Cir. 1987).

By contrast, another appellate court has held that section 2515 did not bar the government from using evidence where individuals operating an illegal gambling business recorded bets placed by telephone so as to facilitate their business by avoiding disagreements with bettors over the amount of their bets. *United States* v. *Underhill*, 813 F.2d 105 (6th Cir. 1987). While the court in *Vest* acknowledged that no deterrent purpose would be served by suppression, since the government played no role in the illegal recording, it relied on the fact that further disclosure in court of the contents would magnify the original privacy violation. The court in *Underhill*, on the other hand, relied on clear legislative history indicating that Congress, despite the facial breadth of section 2515, did not intend to permit lawbreakers to immunize themselves from prosecution by their own acts, the criminal purposes of which made the recordings illegal.

This section adopts the view that *Vest*, whether or not correctly decided under the existing statutory provision, represents bad policy and that an exemption should be created under section 2515 for that narrow class of cases in which private consensual recordings—unlawful under section 251(2)(d) because made for a criminal or tortious purpose—are later acquired by the government and sought to be used as evidence in a criminal trial or hearing. The truth-seeking function of a criminal proceeding is of paramount importance and, in the absence of any deterrent purpose to be served by exclusion, should prevail over the remaining concern that disclosure in the criminal proceeding would somehow exacerbate the original illegal recording.

Sec. 8113. Technical amendment of 31 U.S.C. 5325.

This provision requires financial institutions to identify non-transaction accountholders purchasing bank checks, cashier's checks, traveler's checks, or money orders in amounts of $3,000 or more in currency. The purpose of the provision was to deter structuring of transactions to avoid the $10,000 reporting requirement of 31 U.S.C. 5313 or at least to force persons conducting such transactions to open bank accounts. There is an advantage to law enforcement in having transaction conducted through accounts. If deposit accounts were opened, including a savings, money market or NOW account, the bank would be required to maintain a record of the person's name and social security number, 31 CFR 103.34. That record would later be available to law enforcement through legal process if there were an investigation or prosection.

However, as currently written, the special identification procedures would apply to all persons not holding "transaction accounts" as defined in section 19(b)(1)(c) of the Federal Reserve Act. This, for instance, would require identification of savings account holders making $3,000 cash purchases of monetary instruments. This is too restrictive. In keeping with the statutory purpose, the identification requirement should be coextensive with the recordkeeping provisions of the Bank Secrecy Act, i.e., only apply to persons where the bank would not be required to maintain records of identity. Therefore, this proposed section deletes the reference to "transaction account" and authorizes the Secretary to defined by regulation the definition of accountholder for purposes of this provision.

Sec. 8114. ONDCP transfer authority.

The Office of National Drug Control Policy does not have the authority to transfer funds to agencies responsible for carrying out the National Drug Program. This section extends the powers of the Director of the Office by providing such authority. This authority will enable the Director to transfer funds from the Special Forfeiture Fund as well as other funds appropriated by Congress to the Office of National Drug Control Policy for assistance to high intensity drug trafficking areas to federal agencies and departments for the purpose of executing the National Drug Control Strategy. It also enables the Director to transfer funds appropriated to the Office of National Drug Control Policy for a specified purpose to appropriate Federal agencies and departments for the same purpose.

OFFICE OF NATIONAL
DRUG CONTROL POLICY,
Washington, DC, May 16, 1990.

Hon. J. DANFORTH QUAYLE,
President of the U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: I am submitting for the consideration of the Congress a legislative proposal entitled the "National Drug Control Strategy Implementation Act of 1990." Also enclosed is a section-by-section analysis summarizing the contents of this legislation.

The enclosed proposed legislation contains provisions to implement the 1990 National Drug Control Strategy. It also includes several important initiatives that remain outstanding from the 1989 Strategy and the last session of Congress. The major elements of the proposed legislation will, if enacted, authorize the death penalty for major drug kingpins, provide the tools needed to implement the Andean initiative in South America, increase accountability in the drug treatment community, and make several important improvements to the Federal criminal justice system.

In the area of accountability, we are again asking that the States be required to implement a program of drug testing in their criminal justice systems as a condition of receiving Federal Bureau of Justice Assistance grant funds. The Administration originally proposed this initiative last fall, but Congress did not act on it. We also propose establishing a nationwide program of drug testing for Federal offenders on post-conviction release. And we are again proposing that States be required to develop Statewide Treatment Plans as a condition of receiving Federal Alcohol, Drug Abuse, and Mental Health grants. This measure passed both houses of Congress last fall, but has not been reported on by the Conference Committee.

As called for by President Bush, we are also proposing legislation that would authorize the death penalty for drug kingpins. Specifically, our proposal would permit the imposition of the death penalty for: 1) the highest statutory category of major drug traffickers, 2) other drug kingpins who attempt murder to obstruct the investigation or prosecution of their drug offenses, and 3) the perpetrators of drug felonies who cause death intentionally or with aggravated recklessness. We believe that the availability of the death penalty in these instances will communicate the Nation's strong and unequivocal resolve to deal forcefully and effectively with drug trafficking and drug-related violence.

In the international area, we are seeking a number of permanent and temporary waivers needed to facilitate the provision of assistance critical to the implementation of the Andean Initiative. While a number of these waivers were implemented for Fiscal Year 1990, it is vital that they be extended to demonstrate our commitment to the Andean governments. In addition, our proposals would broaden the authority of the Secretary of State to order the extradition of a U.S. citizen to a foreign country.

In an effort to increase the efficiency and effectiveness of our criminal justice system, our proposal contains improvements such as general arrest authority for INS officers and streamlined exclusion and deportation proceedings for criminal aliens. We also seek tougher penalties for violence against witnesses, court officers, and jurors. In addition, our legislation authorizes forfeiture proceedings and civil penalties for violations of the drug paraphernalia statute, and increases penalties for drug-related public corruption. We also propose criminal sanctions for failure to heed the order of an authorized Federal law enforcement officer to land an aircraft or bring to a vessel. And, we are seeking new authority for the Coast Guard to engage in air interdiction over the high seas or waters over which the U.S. has jurisdiction.

In addition to the proposals contained in this package, the Administration has previously proposed a number of other important measures to control crime, including drug-related crimes. These proposals have not been acted on by the Congress. The President's proposed Comprehensive Violent Crime Control Act (S. 1225 and H.R. 2709), which encompasses measures to control the criminal use of firearms, restores an enforceable death penalty for the most heinous Federal offenses, creates a "reasonable good faith" exception to the exclusionary rule, and curbs the abuse of habeas corpus, should be enacted without further delay. Other measures supported by the Administration relating to public corruption, debt collection, drug elimination grants in public housing units, and the Administration's legislative package of essential technical amendments to criminal law are also critically important to the national drug control effort. We urge enactment of the proposals in this drug strategy implementation package in conjunction with these other important elements of the Administration's legislative program.

In addition to these proposals, the Administration fully supports the recommendation

of the Judicial Conference regarding the need for additional judgeships and recommends swift passage of authorizing legislation. As stated in the National Drug Control Strategy, these new judgeships are desperately needed to maintain an effective criminal justice system.

I ask that the Congress act favorably and expeditiously on the enclosed proposal and on the other critical legislative reforms mentioned above. An identical letter has been sent to the Speaker of the House of Representatives.

The Office of Management and Budget advises that there is no objection to the submission of this proposal to Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

WILLIAM J. BENNETT,
Director.

By Mr. BURNS (for himself, Mr. GRASSLEY, Mr. SYMMS, Mr. BURDICK, Mr. BOREN, Mr. PRESSLER,Mr. NICKLES, and Mr. DOLE):

S. 2653. A bill to permit States to waive application of the commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer; to the Committee on Commerce, Science, and Transportation.

COMMERCIAL DRIVERS LICENSE WAIVER

Mr. BURNS. Mr. President, I am introducing legislation today which will provide much needed regulatory relief to the farm community in my State and other agriculturally based States. I am pleased to have Senators GRASSLEY, SYMMS, BURDICK, BOREN, PRESSLER, NICKLES, and DOLE joining me as original cosponsors.

This legislation will give States the authority to waive commercial drivers' license [CDL] requirements included in the Commercial Motor Vehicle Safety Act of 1986 for vehicles used to transport farm supplies from retail dealers to or from a farm whether or not such vehicles are operated by a farmer. This bill also extends the same waiver authority to States for vehicles used for custom harvesting.

Mr. President, where I come from family members and young workers have always worked on the family farm or in the family business. If it is not a family member, then it is the young neighbor home from college. In rural America, it is a cost effective and productive way of doing business. It holds true for farmers, farm retailers, and custom harvesters alike—it is American tradition! Now, we are seeing a Federal regulation which interfers with that practice making it impractical at best and illegal at worst.

All I am asking is that the States most affected by these requirements—our Nation's farm States—are given the opportunity to exempt not only farmers, but farm retailers and custom harvesters. I think this is a reasonable piece of legislation and I urge my colleagues to support it.

Let me back up for a moment and give Senators some history on this issue. In 1986, the Commercial Motor Vehicle Safety Act was passed into law and established the commercial driver's license [CDL] program which applies to both interstate and intrastate drivers involved in trade, traffic and transportation. The Department of Transportation issued regulations in the fall of 1988 to implement that law. The DOT regulations gave States the authority to waive CDL requirements for farm vehicles which are controlled and operated by a farmer. In granting this waiver, DOT recognized the excellent safety record of seasonal farm vehicle movements.

I believe that this excellent safety record holds true for agri-businesses and their employees as well as for custom harvesters and their employees, and that they should be extended the same opportunity for exemption from CDL requirements. The safety concerns addressed in 1986 law are certainly legitimate, and I am in no way attempting to undercut them. I want to be very clear on that point. This is not a Federal exemption of those requirements. All this legislation does is give the States—which are more familiar with the way our rural farming economies work—the opportunity to waive CDL requirements if they determine that the safety concerns can be met without them.

The main concern for the farm retailers and the custom harvesters is workers. There are labor shortages in these businesses where the jobs are both seasonal and low paying. If Federal regulations cut out people under 21 years of age, for example, as the CDL requirements do in the case of agri-businesses, we are further draining an already half-empty pool of workers. Many of these businesses rely on family members and college students to perform the kind of jobs I am talking about. I do not think we should let Federal regulations take these jobs away from these young people. I also do not think we should burden these small businesses—and ultimately the farmers—with the additional cost of finding workers who comply with the current law.

There being no objection, the bill was printed in the RECORD as follows:

S. 2653

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in addition to the authority which the Department of Transportation granted to States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to farm vehicles contained in volume 53, pages 37313-37316, of the Federal Register (September 26, 1988), such States may extend such waivers to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer.

Mr. DOLE. Mr. President, I am proud to join the distinguished Senator from Montana, Senator BURNS, as an original cosponsor of legislation that would permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled or operated by the farmer.

Nearly 2 years ago, the U.S. Department of Transportation gave States the authority to waive commercial drivers license requirements for farm vehicles under the Commercial Motor Vehicle Safety Act. Unfortunately, DOT did not recognize when granting this waiver that the majority of these particular seasonal agricultural shipments were carried out by agricultural retail outlets, not necessarily by farmers.

DOT also failed to recognize the importance of the custom harvesting industry, which many farmers rely on to harvest a seasonal, perishable crop. This industry is markedly different than the commercial trucking industry. At least two-thirds of the driving is done offpavement. They differ from other for-hire carriers because they only provide the initial transportation of grain from the field to storage or market. These trucks average around 15,000 miles per year, and are simply not in the same category as other commercial truck operations that may average over 100,000 miles per year.

Mr. President, this bill would go a long way to remove this inequity. Farm operation costs and related transport costs are squeezing the farmer out of business. This is not an exemption from these commercial drivers license requirements. It simply is a commonsense approach to give States, who have an excellent safety record in this area, the ability to set reasonable requirements.

Mr. President, the conditions for the operation of these vehicles differ vastly from those of other commercial, over-the-road carriers. I encourage my colleagues to consider supporting this important legislation that, if not adopted, may have serious consequences for farmers, harvesters, and farm suppliers next year.

Mr. BOREN. Mr. President, I am very proud to be a cosponsor of this legislation with our distinguished colleague, Senator BURNS. We have a serious problem in our part of the world in terms of allowing the custom harvesting process to go forward. The regulations that would be imposed by the Department of Transportation are

burdensome and unnecessary. Our farming operations have burdens enough without being further burdened by the Federal bureaucracy. Custom harvesting is often a family operation. We have all members of the family, some of them teenagers, participating in this process.

As the Senator has just indicated, they have an excellent safety record. We do not have a problem here. It is not a problem that needs to be fixed. We are simply talking about preventing the Federal Government from imposing unnecessary burdens on a sector of the economy that is already struggling to continue to exist. They do not need additional burdens. They need help and understanding and I am very proud to join with the distinguished Senator in cosponsoring this legislation. I hope it will be rapidly enacted.

By Mr. HARKIN (for himself, Mr. HATFIELD, Mr. SASSER, Mr. METZENBAUM, and Mr. PELL):

S. 2654. A bill to provide for an intensified national effort to improve the health and enhance the independence of older Americans through research, training, treatment, and other means, and for other purposes; to the Committee on Labor and Human Resources.

INDEPENDENCE FOR OLDER AMERICANS ACT

● Mr. HARKIN. Mr. President, good health and increased independence for older Americans must be a top priority for our Nation. That is why I am pleased to announce that today I am introducing the Independence for Older Americans Act on behalf of myself my distinguished colleague and ranking Republican member of the Appropriations Committee, Senator MARK HATFIELD, the distinguished chairman of the Budget Committee, Senator JIM SASSER, and senior Labor Committee members and leaders in the field of health, Senators HOWARD METZENBAUM and CLAIBORNE PELL. I am honored to join the distinguished chairman of the House Select Committee on Aging, the Honorable EDWARD ROYBAL, as the House sponsor of this bill.

I am also very pleased that a broad coalition of more than 50 leading national organizations representing the older Americans, research, business, and provider communities for their support of this effort.

Mr. President, the Independence for Older Americans Act makes the independence of older Americans a top national priority. It calls for a no-holds-barred war against the illnesses and debilitating conditions which rob the elderly of their independence. Specifically, our plan:

Increases the total Federal investment in aging research to not less than $1 billion—the fiscal year 1990 level is $425 million. This would put Federal support of increasing the independence of our growing elderly population on par with that for other major national priority areas such as cancer, AIDS, and heart research. New moneys would be targeted at the most promising areas of research.

Creates a national task force to better coordinate and target federally supported research aimed at increasing the independence of older Americans. The task force would be made up of representatives from all of the major Federal agencies involved in aging research as well as a bipartisan group of congressional leaders.

Establishes at least 15 top-flight geriatric research and training centers across the Nation to be known as the Claude D. Pepper Comprehensive Independence Centers, in tribute to our late great colleague Senator Pepper. These centers will help to address the inadequate supply of physicians and other health providers trained in geriatrics. They will also concentrate research resources for the specific purpose of increasing the health and functional independence of older Americans.

Supports increased research on comprehensive geriatric assessments, the prevention of frailty, and recovery and rehabilitation from chronic illnesses. This research will move our health care system in a positive direction away from a reliance on nursing homes and other forms of long-term care for our growing elderly population.

Establishes a national computerized clearinghouse to assure that the latest developments in research and treatments to improve the health and independence of older Americans are quickly taken advantage of by health care providers, the elderly, and the Government.

Mr. President. The need for this legislation is clear. Debilitating illnesses and conditions are robbing our elderly of their health, independence, and income. The costs of health and long-term care will skyrocket as our population ages in the coming decades. Consider the following:

The elderly are now spending a record amount out of their own pockets for health care. In 1988, the average senior citizen spent $2,400 for health care, eight times more than in 1966.

By the year 2020, the number of Americans who are 65 and older will more than double from 30 million to over 65 million. The fastest growing segment of our population, Americans age 85 and older, will quadruple in size to over 12 million by the year 2040.

By the year 2020, Medicare costs for people 65 and older will nearly double from their 1987 level of approximately $75 million to about $150 million. Medicare costs will soar to as much as $212 billion by 2040, when the average baby boomer will be 85.

By 2040, as many as 10 million Americans could be suffering from moderate to severe dementia, most from Alzheimer's disease. The cost of their care could reach $149 billion—about the size of our current Federal deficit.

By 2040, 840,000 older Americans will suffer hip fractures, nearly four times the current number. Hip-fracture-related costs are expected to triple to as much as $6 billion a year.

Our leading national aging experts agree that the best way to contain the huge projected increases in health care costs is neither to reduce reimbursements nor to ration health care for older Americans. The best medicine is prevention and the Independence for Older Americans Act offers a large dose of it. Dr. Edward Schneider, director of aging studies at the University of Southern California, recently stated that by investing $1 billion a year in research over the next decade, we could cut the number of older Americans afflicted with disabling conditions in half or delay the onset for 5 years and save more than one-half trillion dollars per decade in health and long-term care costs.

Mr. President. Some may say we can't afford to make such an investment. I say all we need to do is shift our priorities. The increased investment this bill calls for amounts to less than 3 percent of the money we've spent on star wars research. We're wasting $3.8 billion of taxpayers money on this pipedream this year alone. I think the American people would rather have us find a cure for Alzheimer's than design a system that won't work and isn't needed.

I want to specifically thank the Alliance for Aging Research and their national spokesperson, Hon. Joe Califano, for their great work in developing this legislation. I also want to thank the many groups who have joined us in endorsing the Independence for Older Americans Act. I look forward to working with all of you in moving this legislation forward.

Mr. President. I'd like to include for the RECORD the current list of organizations which support the Independence for Older Americans Act as well as a summary of the proposal.

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

SUMMARY OF THE INDEPENDENCE FOR OLDER AMERICANS ACT

Section 1. Congressional findings.

Congressional findings outline the growth in the size of the elderly population, the prevalence of chronic diseases and disabling conditions that threaten older Americans and their families, elderly health and long-term care costs and out-of-pocket expenditures, the promise that research holds for breakthroughs in diseases and conditions

which rob older Americans of their independence, and the declaration that independence for older Americans is an achievable goal for our nation's research and health care systems.

TITLE I. TASK FORCE ON INDEPENDENCE FOR OLDER AMERICANS

A Task Force on Independence for Older Americans is established within the Department of Health and Human Services (HHS) which will coordinate all Federally sponsored research on conditions and diseases leading to dependence among the elderly and identify the most promising areas of research in this area. This Task Force will be composed of:

Two Members of the House of Representatives appointed by the Speaker in consultation with Minority leader and 2 Senators appointed by the Majority Leader in consultation with the Minority Leader, no more than 2 of whom can be members of the same political party;

The Assistant Secretary of Health;

The Surgeon General of the United States;

The Assistant Secretary for Planning and Evaluation;

The Director of the National Institute on Aging (NIA) and (as may be appointed by the Secretary) the Directors of other NIH Institutes which are carrying out activities related to conditions or diseases which limit the independence of the elderly;

The Director of the National Institute on Mental Health;

The Commissioner of the Administration on Aging;

The Commissioner of the Food and Drug Administration; and,

The Chief Medical Officer of the Veteran's Department.

$100,000 is authorized annually to carry out this Title.

TITLE II. GERIATRIC RESEARCH AND TRAINING CENTERS

15 comprehensive geriatric research and training centers, to be known as the Claude D. Pepper Comprehensive Independence Centers, are to be established by the NIA. These centers shall include research, training, demonstration and dissemination activities related to enhancing the independence of older Americans.

$32.5 million is authorized annually to carry out this Title.

TITLE III. AVAILABILITY OF INFORMATION

The Secretary is to establish a computerized information clearinghouse and toll-free telephone lines to make the latest developments to improve the health and independence of older Americans available to researchers, health professionals, the general public and government agencies.

The Secretary is to make grants to nonprofit and public entities for the development and implementation of public information campaigns concerning the importance of health and nutrition and preventing illnesses and conditions which inhibit independence among the elderly.

$20 million is authorized to carry out this Title.

TITLE IV. PREVENTION AND RECOVERY FROM CHRONIC ILLNESS

The NIA, in cooperation with HCFA, shall support research to determine the most effective techniques for performing, targeting and providing geriatric assessment. Appropriate national guidelines are to be established based on this research.

Up to 5 demonstration programs are to be established within the Pepper Comprehensive Independence Centers to prevent the loss of mobility and help frail older individuals regain independence.

The NIA shall develop model techniques to aid in the recovery and rehabilitation of older persons from chronic and debilitating illness and model curricula for training health professionals in the use of such techniques.

$5 million is authorized to carry out this Title.

TITLE V. RESEARCH IN HEALTH, RETIREMENT AND INDEPENDENCE

A 10 year health and retirement survey is to be initiated concerning health functioning and expenditures, longevity, labor force and retirement, women in the labor force and living arrangements and financial status of older Americans.

The National Health and Nutrition Examination Survey, the National Health Interview Survey and the National Ambulatory Medical Care Survey are to be modified in order to develop better information regarding health promotion and disease prevention among older individuals.

The NIA is to request and fund research proposals on behavioral, social, and environmental mechanisms for promoting the health and independence of older Americans.

$5 million is authorized to carry out this Title.

TITLE VI. INCREASE IN OVERALL AGING RESEARCH AUTHORIZATION

Not less than $1 billion is authorized for all aging research within the National Institutes of Health.

ORGANIZATIONS THAT SUPPORT THE INDEPENDENCE FOR OLDER AMERICANS ACT

Alliance for Aging Research.
Alzheimer's Association.
American Association of Immunologists.
American Association of Retired Persons.
American College of Nuclear Physicians.
American Dental Association.
American Dental Hygienists Association.
American Diabetes Association.
American Federation for Aging Research.
American Foundation for the Blind.
American Foundation for Urologic Diseases.
American Health Care Association.
American Heart Association.
American Nurses Association.
American Podiatric Medical Association.
American Psychological Association.
American Society for Bone and Mineral Research.
American Society for Geriatric Dentistry.
American Society on Aging.
Association Nacional Pro Personas Mayores.
Association for Health Services Research.
B'nai B'rith International.
Brown Bridgman & Company.
Consortium of Social Science Associations.
Families USA Foundation.
Federation of Behavioral, Psychological and Cognitive Sciences.
Foundation for Urologic Diseases.
French Foundation for Alzheimer Research.
Gerontological Society of America.
Help for Incontinent People.
Institute for Advanced Studies in Immunology and Aging.
Mature Market Institute.
Merck & Company, Inc.
National Alliance for the Mentally III.
National Association of Health Underwriters.
National Association of Life Underwriters.
National Association of Medical Equipment Suppliers.
National Association of Private Geriatric Care Managers.
National Caucus and Center on Black Aged.
National Committee to Preserve Social Security and Medicare.
National Council of Senior Citizens.
National Council on the Aging.
National Hispanic Council on Aging.
National Mental Health Association.
National Organization on Disability.
National Osteoporosis Foundation.
National Pacific/Asian Resource Center on Aging.
National Stroke Association.
Paget's Disease Foundation.
Research! America.
Society of Nuclear Medicine.

● Mr. HATFIELD. Mr. President, it was only last week that Senators METZENBAUM, GRASSLEY, PRESSLER, and I stood on this floor and introduced the second version of the Comprehensive Alzheimer's Assistance, Research and Education act. The bill, which calls for over $500 million in Federal support for biomedical research, is a substantial step forward toward unlocking the mysteries of Alzheimer's disease and related disorders.

Today, it is a pleasure to join my colleagues on the Senate Appropriations Committee and the Subcommittee on Labor, Health and Human Services, Senator HARKIN and Seantor SPECTER, in moving toward an even broader vision of medical research into the ailments of the aging population. I am delighted to be an original cosponsor of the Independence for Older Americans Act.

This legislation calls for a $1 billion increase in Federal spending on biomedical research into the injuries and diseases which afflict our aging population. It is designed to stimulate an intensified national effort to improve the health and enhance the independence of older Americans by stepping up efforts in research, training, and treatment. It is clear, Mr. President, that this proposal could lead the way to a reordering of our national priorities.

The introduction of this legislation again gives me the opportunity to comment briefly on our budget process. The simple truth is this: Our budgetary priorities attach a higher importance to chemical weapons research than to medical research; a higher priority to disease-causing research than to disease-curing research.

In only the last 24 months, defense-related research and development spending is roughly equivalent to total research and development spending at the National Institutes of Health in the last 100 years. For the price of one underground nuclear test, we could more than triple the amount now spent on research into sudden infant death syndrome. For the price of one

Stealth bomber, we could almost double the amount being spent at the National Institute of Diabetes, Digestive and Kidney Disease.

However, when we consider the drastic cuts suffered by other nondefense, domestic discretionary programs, health research spending has fared relatively well in recent years. Thirteen percent of all Federal research and development money is spent on medical research today—a figure which has remained constant since the beginning of this decade.

But it has done well only at the expense of other worthy programs. And even within the medical research budget itself, worthy programs are forced to compete against each other: AIDS versus cancer, strokes versus heart disease.

The bottom line, Mr. President, is that we must reorder our Federal budget priorities. Public opinion is already on our side. A survey recently conducted by the American Federation for Clinical Research suggests that 53 percent of our constituents would make increased funding for medical research a top budget priority. Only 3 percent would make increased funding for weapons the top priority.

The facts are also on our side. One dollar spent on medical research today produces $13 in savings tomorrow. A $235,000, 17-year study that led to the identification of a vaccine against hepatitis B, for example, is saving between $50 and $100 million each year. A $680,000, 4-year study that led to a preventative treatment of kidney stones will result in a savings of between $300 million and $600 million a year.

As we debate the Federal budget every year, we are given the choice between supporting life enhancing endeavors and life destroying ones. When we hammer out budget agreements and focus our attention on complicated calculations and endless reams of paper, perhaps we feel isolated and insulated from the very real choices we are making. But those who are suffering from cancer and AIDS and hundreds of other diseases understand the implications of our choices all too well.

Mr. President, I wholeheartedly support the increases in this legislation and pledge to redouble my efforts—within the Senate Appropriations Committee and within this body as a whole—to reorient our Federal budget priorities.

There is one other dimension to this problem. As the ranking Republican member of the Senate Appropriations Committee, I am painfully aware of the skyrocketing health care costs and the Federal Government's inadequate efforts to address them. A study by the Department of Health and Human Services, which was released earlier this month, noted that health care spending has increased 117 percent between 1980 and 1988. Health care spending in 1988 alone totaled $540 billion—11.2 percent of our GNP. This is up from 9.1 percent in 1980, 7.3 percent in 1970, and only 5.3 percent in 1960.

Indeed, Mr. President, some experts predict that health care spending will triple by the beginning of the 21st century—a decade away. A study published in the Journal of the American Medical Association later this month predicts that Medicare costs alone will need to triple within the next 50 years to care for our aging baby boom population. But more importantly in our discussion today, Medicare costs for those 85 and older, the fastest growing segment of our population today, could increase sixfold.

We can only combat this escalation by investing far more energy, talent, and money into health research, preventative medicine, and social programs: Sooner rather than later. Suggesting a solution to rising health care costs which involves spending more money—at least in the short term—may seem decidedly unhelpful. Moreover, the concept of investment is hard to sell in a political culture which seeks instant gratification. But I am increasingly convinced that research and prevention offer our best, our most humane, and ultimately our most cost-effective alternative.

Mr. President, imagine the savings if we could develop a way to prevent or cure Alzheimer's disease, which now costs at least $34,000 a year for each of its estimated 4 million victims. Our goal must be not just to make health care better: But to prevent illness and disease in the first place. Translated into dollars, this goal adds up to enormous savings. Translated into life and the quality of life, the savings cannot be measured.

As we in the Congress continue to wrestle with skyrocketing health care costs and with the unmet human needs in our midst, I will be on the forefront of efforts like this one to rechannel our Federal budget into investments in medical research, in preventative medicine, and in social service programs. We must invest in our future—it makes financial sense and it makes human sense. I hope my colleagues will join me.●

By Mr. STEVENS

S. 2655. A bill to authorize a certificate of documentation for the vessel *Arctic Fisher;* to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "ARCTIC FISHER"

● Mr. STEVENS. Mr. President, this legislation would allow the Coast Guard to issue a valid certificate of documentation for the 191-ton vessel, *Arctic Fisher,* official number 602365, which is currently owned by Sea Fisher Products, Inc., an Alaskan corporation.

The *Arctic Fisher* was built in Pennsylvania in 1945 for the U.S. Navy. In 1975, the U.S. Navy sold the vessel to an Iranian owner. In 1979, Sea Fisher Products, Inc. purchased the vessel, rebuilt it as a fish processing vessel, and has operated as an independent fish buyer for the past 10 years.

The *Arctic Fisher* is restricted from enagaging in coastwise trade because of its Iranian ownership. Mr. Jack Aldrich, president of Sea Fisher Products, Inc., would like his coastwise privileges restored in order that he may provide berthing for oilspill cleanup crews and serve as tender in herring and salmon fisheries for which the *Arctic Fisher* has been documented.

This legislation is needed in order to allow Sea Fisher Products, Inc. to obtain a valid certificate of documentation so that the *Arctic Fisher* can be employed in oilspill cleanup and as a fish tender vessel.●

S. 2656. A bill to authorize a certificate of documentation for the vessel *Pumpkin;* to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "PUMPKIN"

● Mr. STEVENS. Mr. President, this legislation would allow the Coast Guard to issue a valid certificate of documentation for the 54-foot vessel *Pumpkin,* official number 627259, which is currently owned by Pacific Investments, Inc., an Alaskan corporation.

The *Pumpkin* was built in Marinette, WI in 1968. The vessel was used on the west coast in its capacity as a motorized fuel barge until 1981, when it was purchased by Pacific Investments, Inc. The *Pumpkin* was documented with a coastwise license and registry endorsement in 1982.

Pacific Investments has used and intends to continue to use the vessel solely for transporting fuel between sites in support of mining operations in the Shumagin Islands, in the Aleutians. Alaska Apollo Gold Mines Ltd. [Apollo Gold], a Nevada corporation, is conducting the Shumagin Island mining operations, and the president of Apollo Gold owns a controlling interest in Pacific Investments, Inc.

For insurance purposes, the ownership of the *Pumpkin* was transferred from Pacific Investments to Apollo Gold. Apollo Gold'subsequent application for redocumentation of the vessel was denied by the Coast Guard on the grounds that Apollo Gold did not meet the citizenship criteria of 46 C.F.R. §§ 7.03-9 because three of Apollo Gold's five directors are Canadian.

By mutual consent of both corporations, the transfer of the vessel from Pacific Investments to Apollo Gold was voided. However the Coast Guard

still refuses to license it for coastwise trade because the vessel fails to meet the continuous U.S. ownership requirement of the law.

This legislation is needed in order to allow Pacific Investments, Inc. to continue to use the *Pumpkin* to transport fuel from ports in Alaska to its gold mining sites in the Aleutians.●

By Mr. BRADLEY:

S. 2657. A bill to direct the Secretary of the Interior, acting pursuant to the Reclamation Act of 1902 (act of June 17, 1902, 32 Stat, 388) and acts amendatory thereof and supplementary thereto, to undertake certain studies to investigate opportunities for wastewater reclamation and reuse, to conduct studies of ground water, and for other purposes; to the Committee on Energy and Natural Resources.

S. 2658. A bill to establish conditions for the sale and delivery of water from the Central Valley Project, California, a Bureau of Reclamation facility, and for other purposes; to the Committee on Energy and Natural Resources.

S. 2659. A bill to amend and supplement Federal reclamation law to eliminate abuses of the Reclamation Program, and for other purposes; to the Committee on Energy and Natural Resources.

BUREAU OF RECLAMATION LEGISLATION

● Mr. BRADLEY. Mr. President, I rise today in my capacity as chairman of the Subcommittee on Water and Power to introduce three bills concerning the Bureau of Reclamation. These bills represent a portion of the overall agenda for the Subcommittee and the Federal Reclamation Program that I will pursue in this and subsequent sessions of Congress.

The Bureau of Reclamation has played a vital role in the settlement and economic growth of the American West and the Nation as a whole. Dams, irrigation, and water supply projects constructed by the Bureau serve millions of Americans, providing water, power, recreation, food, and other benefits.

In 1988, the Bureau's projects delivered 9.5 trillion gallons to 27 million people, irrigated 9 million acres on 131,000 farms, produced 58 million tons of agricultural products valued at almost $9 billion, and generated 42 billion kilowatt hours of clean hydroelectric power which netted revenues of $584 million. The Bureau's 298 recreation areas saw 54.5 million visitor days.

The Bureau of Reclamation is a creature of Congress, with an especially close tie to this Chamber. The Reclamation Program was conceived by Senator Francis Newlands of Nevada and has followed a course charted, for the most part, by the Senate. I would ask my colleagues to join me in saluting the thousands of Reclamation employees who have served Congress and the Nation loyally and professionally.

As my colleagues know, environmental problems that have begun to plague the Reclamation Program in recent years have forced some rethinking of the Bureau's traditional approach to water resource development. These problems in no way diminish or devalue the program's many successes. But they do require prompt corrective action.

Mr. President, each of the bills I offer today reflects my belief that the Bureau of Reclamation has a crucial role to play in the future of the Nation, in channeling a vital resource—clean water—to the communities that need it. My object as chairman of the subcommittee has been to find ways to reconcile the Bureau's traditional mission with the newer mandate we all share to maintain a safe and sound environment. With this in mind, I offer the "Reclamation Wastewater and Groundwater Study Act."

This bill would direct the Secretary of the Interior to study opportunities to reclaim and reuse agricultural, municipal, industrial, and other wastewater stemming from water supplied by Reclamation facilities. Though less glamorous than construction of high dams and broad canals, wastewater reclamation and reuse is a sensible means to make the best use of our already developed water supplies. In many cases, I expect that wastewater reuse programs, while meeting growing human needs, will also aid efforts to restore the environment and protect instream flows.

This bill also directs the Secretary to study the Reclamation Program's impact on ground water resources. It is vital that we understand the linkage between surface water development and ground water supplies in order to make the most efficient and environmentally sound use of water resources.

Mr. President, I am committed to see that the past environmental damage that is the unfortunate legacy of the Reclamation Program is addressed and repaired. I am particularly determined to restore and protect fish and wildlife and their habitats, and to do so in a manner that comprehends and respects ecological systems. I believe that we can tackle these problems using resources developed by the Bureau of Reclamation. With this in mind, I offer the Central Valley Project Improvement Act.

The Central Valley Project Improvement Act would direct the Secretary of the Interior to repair environmental damage done by the Central Valley Project in California. The CVP could be considered our most successful reclamation project. It serves 3 million acres, produces hundreds of different crops, employs thousands of people, and generates billions of dollars of economic activity. But the CVP can be improved and made to serve a broader range of interests without sacrificing its place as a leading and extraordinarily productive agricultural enterprise.

Environmental damage caused by this largest of all Federal water supply projects has polarized the State, leading to a deadlock over future water development. For example:

Construction of the Central Valley Project was this century's principal contributor to the loss of 5,700 of the original 6,000 miles of salmon spawning habitat on Central Valley rivers;

The Friant Unit of the CVP dewatered the Upper San Joaquin River and contributed substantially to elimination of chinook salmon from the mainstream San Joaquin;

The Red Bluff Diversion Dam, located on the Upper Sacramento River, has had devastating impacts on migration of juvenile and adult salmon, leading to last year's listing of the river's winter run chinook as a potentially endangered species;

The CVP is responsible for the loss of 100,000 acres of Central Valley wetlands, areas of vital importance to the Pacific flyway's migratory waterfowl.

There can be no doubt that the Central Valley Project has heavily damaged California's fish and wildlife, including migratory species in which the Federal interest is high. Just as troubling, the Bureau of Reclamation violated in California what has been the cardinal principle of Federal water development—deference to State authority. In California, the Bureau stood policy on its head and actually worked to frustrate the State's administration of its own water law.

The Bureau of Reclamation is most comfortable working with its traditional agricultural constituency. Western States' water law is generally oriented toward traditional agricultural uses, so there is usually no tension between the Bureau's sense of its mission and the direction of State law.

But California water law is different and changing. Increasingly, it mandates protection for public values, such as water quality, fish, wildlife, and recreation. The Bureau has shown discomfort with this aspect of California's water law. For example, the Bureau has aggressively opposed efforts by the California State Water Resources Control Board to set new quality standards for the San Francisco Bay/Sacramento-San Joaquin River Estuary. It has attempted to market the remaining firm yield of the CVP without seriously considering public or environmental needs for that water. Where the Bureau has had discretion to renew irrigation water sales contracts for 10 to 40 years, it has chosen to renew them for the longest period possible, making it more difficult for the State to adjust its priorities. Worse, these contracts obligate the Federal Government to defend the

private water user's right to divert and use water "before all courts and agencies."

I would be interested to know what my colleagues from Wyoming or Utah or Idaho would think if the Bureau of Reclamation obligated the Department of Justice to fight their State's water rights administrators. It is unacceptable Federal policy for the Bureau of Reclamation to pick and choose among the States whose water laws they will agree to defer to. This bill includes several provisions that would not be necessary if the Bureau had maintained its appropriate deference.

The Central Valley Project's environmental debt must be paid before any further water development occurs—no matter how environmentally benign the new projects might be. This bill will authorize the Secretary of the Interior to operate the CVP in a way that takes account of the needs of fish and wildlife as well as other water users. The Nation—in many respects following California's lead—has begun to recognize that environmental protection and economic development must be equal partners. This bill will prevent Federal agencies from obstructing that partnership.

My legislation also directs the Secretary of the Interior to deliver enough clean water to the wildlife refuges in the Central Valley to sustain the millions of waterfowl that live in those refuges. It further requires the Secretary to restore Central Valley salmon and steelhead populations, and directs the Department of Commerce to assess the CVP's economic impact on California's commercial, tribal, and sport-fishing communities. I expect the Secretary to work as closely as possible with all local interests in developing these plans, farmers and fishermen as well as environmentalists and developers.

Because 90 percent of the CVP's water already goes to irrigation, this bill prohibits the Bureau of Reclamation from entering into new contracts to provide irrigation water from the CVP until the fish and wildlife restoration goals of the bill are met.

Finally, Mr. President, the third bill I offer today, the Reclamation Reform Act amendments, is a narrowly tailored effort to close loopholes that permit abuse of the ownership and pricing limitations in Reclamation law.

The Federal taxpayer has been very generous to the beneficiaries of the Reclamation Program. By one recent estimate, the Nation has spent between $22 and $23 billion on Bureau irrigation projects. Of that total, only about $3 billion will ever be repaid. The $19 billion subsidy, about 85 percent of the total cost, has been justified by those who cite the central social purpose of the program, that is, to support modest-sized family farms.

Indeed, many farmers have been helped and the overwhelming majority of Reclamation project farms and farmers need and deserve the help they get. I strongly support rural economic development and measures to bring stability to local farm economies.

However, there are those who have created and exploited loopholes in Reclamation law and subverted the worthwhile purposes of the program for personal or corporate gain. Congress has had to act twice in the past 10 years to eliminate such abuses. Recently, it has become clear that Congress must act once again to protect the public interest and the integrity of the program. These amendments will close the loopholes and stop the profiteering.

As I noted at the beginning of my remarks, I believe that the Reclamation Program has served the Nation well since its inception in 1902. We now have an opportunity to recast and renew this exemplary public endowment in a way that recognizes contemporary needs. With these bills, the Reclamation Program will deliver a second generation of benefits to new generations of Americans.

I look forward to the support of my colleagues as we move to capitalize on the Reclamation Program's successes and remedy its problems.●

By Mr. BREAUX:

S. 2660. A bill to authorize a certificate of documentation for the vessel *Bounty*; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF VESSEL "BOUNTY"

● Mr. BREAUX. Mr. President, I am introducing a bill today to direct that the vessel *Bounty*, Official Number 950956, be accorded coastwise trading privileges and be issued a coastwise endorsement under 46 U.S.C. 12106. The *Bounty* was constructed in 1960 in Nova Scotia for use by MGM in the filming of the movie "Mutiny on the Bounty" starring Marlon Brando. The ship is a three-masted, fully rigged replica of a famous British ship captained by William Bligh and taken over by mutineers led by Fletcher Christian in the 18th century.

The *Bounty* was purchased by Turner Broadcasting System, Inc. [TBS] in 1986 when it acquired MGM Entertainment Co. The vessel has been used by TBS for public display and in the Turner Television Network remake of "Treasure Island," starring Charlton Heston. The *Bounty* will be used for various visits at ports throughout the world, including Seattle, WA, for this year's Goodwill Games. It will be operated by a nonprofit corporation, available for various public and private events.

Until recently, the vessel was documented as a yacht under the Canadian flag. Prior to its public display visits in the United States, the *Bounty* was inspected by the U.S. Coast Guard and given a certificate of inspection as an attraction vessel. However, because of the particular use contemplated by TBS, the Coast Guard has indicated that the vessel is not operating for pleasure only and, for certain uses, may have to be licensed and inspected as a commercial passenger vessel. However, in order to be used as a commercial passenger vessel, if approved by the Coast Guard—or for various other activities that may fall within the Jones Act—within U.S. waters, the *Bounty* must be documented under U.S. law and possess a coastwise license.

TBS has now received U.S. documentation for the *Bounty* and is having the vessel inspected by the Coast Guard as a passenger vessel. Because the vessel was constructed in Canada, it will take new legislation to qualify it for coastwise trade privileges. The circumstances requiring legislation are the same as those of the *African Queen*, which was given coastwise privileges in Public Law 101-92 in 1989. The House of Representatives has already approved similar legislation for the *Bounty* in H.R. 4009, section 4(2).

The *Bounty* is a very special ship and will be used in a very unique manner by TBS. The company's desire is to comply fully with U.S. documentation and safety requirements so that the *Bounty* can be enjoyed by as many as possible. The purpose of the legislation I am introducing today is to allow the *Bounty* the ability to operate in coastwise trade under the U.S. flag.●

By Mr. LAUTENBERG:

S.J. Res. 320. Joint resolution designating July 2, 1990, as "National Literacy Day"; to the Committee on the Judiciary.

NATIONAL LITERACY DAY

● Mr. LAUTENBERG. Mr. President, I am pleased to introduce a joint resolution to designate July 2, 1990, as "National Literacy Day." This is the fifth year in a row that I am introducing this resolution. It is vital to call attention to the problem of illiteracy, to help others understand the severity of this problem and its detrimental effects on our society, and to reach those who are unaware of the service and help available for illiterate people.

In the book "Illiterate America" by Jonathan Kozol, the author describes an invisible minority, the growing crisis of illiteracy in America. In this country it is often said that we live in the information age. Yet for many Americans, information is inaccessible. Over 27 million American adults cannot read. An additional 35 million read below the level needed to function successfully. The cost of these wasted human resources is estimated

at $225 billion, although, in truth, no value can be put on the devastation of illiteracy.

The cost includes the lifetime earnings that will not be realized by men and women who cannot get and hold jobs requiring any reading skills. The cost includes child welfare expenditures for the children of adults who lack the skills to get jobs. The cost includes prison maintenance for the inmates whose imprisonment can be linked to their illiteracy. The cost includes on-the-job accidents and damage to equipment caused by the inability of workers to read and understand instructions for the operation of machines.

And the human cost is even higher. The daily activities that we take for granted—reading the newspaper, reading a menu, reading a street or subway map, reading a note from a child's teacher—become a nightmare for illiterate people. They devise remarkable strategies of evasion and coping. The creativity that goes into hiding the inability to read is a terrible waste and a tragic commentary on the losses illiterate people suffer.

It is vital to call attention to the problem of illiteracy. Our society must begin to understand the severity of this problem and its detrimental effects. Perhaps even more essential is the need to reach the people who need help in overcoming their illiteracy and to make them aware of the services that are available.

Mr. President, for these reasons, I am introducing a joint resolution to designate July 2, 1990, as "National Literacy Day." I urge my colleagues to support this resolution.

I ask unanimous consent that text of the joint resolution be printed in the RECORD.

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

S.J. RES. 320

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Whereas literacy is a necessary tool for survival in our society;

Whereas thirty-five million Americans today read at a level which is less than necessary for full survival needs;

Whereas there are twenty-seven million adults in the United States who cannot read, whose resources are left untapped, and who are unable to offer their full contribution to society;

Whereas illiteracy is growing rapidly, as two million three-hundred thousand persons, including one million two-hundred thousand legal and illegal immigrants, one million high school dropouts, and one hundred thousand refugees, are added to the pool of illiterates annually;

Whereas the annual cost of illiteracy to the United States in terms of welfare expenditures, crime, prison expenses, lost revenues, and industrial and military accidents has been estimated at $225,000,000,000;

Whereas the competitiveness of the United States is eroded by the presence in the workplace of millions of Americans who are functionally or technologically illiterate;

Whereas there is a direct correlation between the number of illiterate adults unable to perform at the standard necessary for available employment and the money allocated to child welfare and unemployment compensation;

Whereas the percentage of illiterates in proportion to population size is higher for blacks and Hispanics, resulting in increased economic and social discrimination against these minorities;

Whereas the prison population represents the single highest concentration of adult illiteracy;

Whereas one million children in the United States between the ages of twelve and seventeen cannot read above a third grade level, 13 per centum of all seventeen-year-olds are functionally illiterate, and 15 per centum of graduates of urban high schools read at less than a sixth grade level;

Whereas 85 per centum of the juveniles who appear in criminal court are functionally illiterate;

Whereas the 47 per centum illiteracy rate among black youths is expected to increase;

Whereas one-half of all heads of households cannot read past the eighth grade level and one-third of all mothers on welfare are functionally illiterate;

Whereas the cycle of illiteracy continues because the children of illiterate parents are often illiterate themselves because of the lack of support they receive from their home environment;

Whereas Federal, State, municipal, and private literacy programs have only been able to reach 5 per centum of the total illiterate population;

Whereas it is vital to call attention to the problem of illiteracy, to understand the severity of the problem and its detrimental effects on our society, and to reach those who are illiterate and unaware of the free services and help available to them; and

Whereas it is also necessary to recognize and thank the thousands of volunteers who are working to promote literacy and provide support to the millions of illiterates in need of assistance, now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That July 2, 1990, is designated as "National Literacy Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.●

ADDITIONAL COSPONSORS

S. 324

At the request of Mr. WIRTH, the names of the Senator from Louisiana [Mr. JOHNSTON], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 324, a bill to establish a national energy policy to reduce global warming, and for other purposes.

S. 670

At the request of Mr. ARMSTRONG, the name of the Senator from North Dakota [Mr. CONRAD] was added as cosponsor of S. 670, a bill to recognize the organization known as the Retired Enlisted Association, Incorporated.

S. 1664

At the request of Mr. HEINZ, the names of the Senator from Illinois [Mr. DIXON] and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 1664, a bill to establish a congressional commemorative medal for members of the Armed Forces who were present during the attack on Pearl Harbor on December 7, 1941.

S. 2071

At the request of Mr. PACKWOOD, the name of the Senator from Mississippi [Mr. COCHRAN] was added as cosponsor of S. 2071, a bill to amend the Internal Revenue Code of 1986 to provide incentives for savings and investments in order to stimulate economic growth.

S. 2078

At the request of Mr. WARNER, the names of the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of S. 2078, a bill to recognize the organization known as the National Center for Theraputic Riding.

S. 2150

At the request of Mr. SYMMS, the name of the Senator from Alaska [Mr. STEVENS] was added as cosponsor of S. 2150, a bill to set aside a fair proportion of the highway trust fund moneys for use in constructing and maintaining off-highway recreational trails.

S. 2256

At the request of Mr. HARKIN, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 2256, a bill to amend title XIX of the Public Health Service Act to clarify the provisions of the allotment formula relating to urban and rural areas, and for other purposes.

S. 2293

At the request of Mr. WILSON, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as cosponsor of S. 2293, a bill to warn certain consumers in connection with the purchase of a medicare supplemental policy.

S. 2356

At the request of Mr. SYMMS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as cosponsor of S. 2356, a bill to amend the Internal Revenue Code of 1986 to allow tax-exempt organizations to establish cash and deferred pension arrangements for their employees.

S. 2525

At the request of Mr. GRAHAM, the name of the Senator from South Dakota [Mr. DASCHLE] was added as cosponsor of S. 2525, a bill to recognize the importance of the domestic fruit and vegetable industry in United States farm policy, and to require the Secretary of Agriculture to conduct a

study of the domestic fruit and vegetable industry, and for other purposes.

S. 2600

At the request of Mr. KENNEDY, the names of the Senator from Arizona [Mr. DECONCINI], and the Senator from Maryland [Mr. SARBANES], were added as cosponsors of S. 2600, a bill to combat homelessness through the establishment of housing-based family support centers, through the provisions of housing-based services to elderly individuals with chronic and debilitating illnesses and conditions, through the provision of residence-based outpatient mental health services, and through the use of grants for the improvement of community development corporations, and for other purposes.

S. 2611

At the request of Mr. HARKIN, the name of the Senator from Arkansas [Mr. PRYOR] was added as cosponsor of S. 2611, a bill to authorize assistance to the Washington Center for Internships and Academic Seminars.

S. 2649

At the request of Mr. KENNEDY, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 2649, a bill to provide for improved drug abuse treatment and prevention.

SENATE JOINT RESOLUTION 240

At the request of Mr. SYMMS, the name of the Senator from North Dakota [Mr. CONRAD] was added as cosponsor of Senate Joint Resolution 240, a joint resolution designating the week of June 10, 1990, through June 16, 1990, as "Multiple-Use Sustained-Yield Week."

SENATE RESOLUTION 288—RELATIVE TO THE REOPENING OF UNIVERSITIES IN THE WEST BANK AND GAZA

Mrs. KASSEBAUM (for herself, Mr. CHAFEE, Mr. INOUYE, and Mr. DOLE) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 288

Whereas on July 22, 1989, the Government of Israel announced that it would begin reopening primary and secondary schools in the West Bank;

Whereas the primary and secondary schools in the West Bank have been reopened;

Whereas the United States Congress applauds recent steps by the Government of Israel to begin reopening community colleges in the West Bank and Gaza;

Whereas the reopening of these community colleges did not lead to increased violence in the West Bank and Gaza;

Whereas all universities in the West Bank and Gaza have been closed for over two years;

Whereas this closure affected over 15,000 university students;

Whereas on May 14, 1990, Israeli authorities announced that they are considering reopening the Arab universities in the occupied territories; and

Whereas reopening of the universities would make an important contribution to improving relations between Palestinians and the Government of Israel and to the peace process in the Middle East: Now, therefore, be it

Resolved, That it is the sense of the Senate

(1) that the Government of Israel should undertake to reopen universities in the West Bank and Gaza without delay;

(2) that these institutions should remain open, and should not be closed or caused to be closed for political purposes; and

(3) that these institutions should be respected and regarded as centers of education.

Mrs. KASSEBAUM. Mr. President, I am introducing today, along with Senator CHAFEE and Senator INOUYE, a sense-of-the-Senate resolution calling for the immediate reopening of universities in the West Bank and Gaza.

More than 2 years ago, at the start of the Palestinian uprising, the Israeli authorities moved to close schools in the West Bank and Gaza, which included five universities with over 15,000 students. The unfortunate result of this move has been that students of all ages were collectively punished and denied their right to continuing education.

As the ranking member of our Senate Subcommittee on Education, it is a subject near and dear to my heart, and I believe every one of us here in the U.S. Senate value the importance of education. Last year the Congress supported Senator CHAFEE's effort, and that of myself and others, to urge the reopening of primary and secondary schools in the West Bank and Gaza. Since that time, the Israeli Government has reopened these schools and has begun to reopen community colleges. The Israeli authorities have also announced recently they are considering reopening the Arab universities in the occupied territories.

All these moves by the Israeli Government should be commended. Our resolution is very straightforward. It urges the immediate reopening of the universities without delay. We hope our colleagues will join us in supporting such a move.

I strongly believe, Mr. President, these institutions should be respected and regarded as centers of education. Education must not be used as a pawn or a lever in civil conflict. It is a basic right which must be preserved.

Mr. CHAFEE. Mr. President, thank the Senator from Kansas for her efforts in addressing this very important issue.

I am glad to join in introducing this resolution in the wake of the encouraging news from Israel. Just this past Monday, Mr. Goren, the coordinator of government activities in the occupied territories, met with the heads of all the Palestinian universities. They discussed the possibility of reopening theses universities which, for over 2½ years, have been closed. Those universities have been closed for nearly 3 years.

I believe the measure we are introducing today can have a positive influence on the education of the Palestinian students in the West Bank, and can contribute to the peace process in that region.

What exactly does this resolution do? First, it commends Israel for reopening the Palestinian schools. Second, it encourages Israel to continue on this path by reopening the universities. There is a difference, obviously, Mr. President, between their treatment of the schools and the universities.

The first section outlines the history of Israel's progress in reopening the Palestinian schools on the West Bank and in the Gaza strip. On July 22, 1989, just about a year ago, Israel announced it would begin to open primary and secondary schools in the occupied territories. While these schools were opened and then temporarily closed, all of them were opened again earlier this year.

Israel then began to reopen the community colleges, in an effort to ease tensions between the government and the Palestinian people. This process has proven successful, in that students have been able to resume their studies, and we have not seen an increase in violence as a result.

It is, indeed, this evidence that has led Israel to consider reopening the universities.

Note the difference. Schools, primary and secondary on one hand, they have been opened; the community colleges, they have been opened; but not the universities.

Mr. Goren has stated the reopening of the high schools and colleges did not influence the violence in the territories and this was the reason why Israel was trying to reopen the universities. There was no rise in violence as a result of the reopening of the schools and colleges.

I am hopeful Israel will continue its progress in restoring the educational opportunities for the Palestinian people and in normalizing daily life in the West Bank and Gaza Strip. Thus far over 14,000 university students have been affected, in addition to the thousands of high school graduates who have been able to continue their study.

The second part of this resolution is very straightforward. It expresses three things: First, that Israel should undertake to reopen the universities without delay; second, that these institutions should remain open and should not be closed for political purposes; third, that these institutions should be respected and regarded as what they are, centers of education.

I urge my colleagues to join in cosponsoring this resolution. In July of last year, the Senate unanimously approved a resolution that expressed that these three very same principles: namely, the reopening, they should remain open, and they should remain centers of education and be respected as the same. These same principles with respect to the primary and secondary schools were approved unanimously by this Senate last year, in July.

This resolution simply extends our encouragement to do the same with the universities. The reopening of these institutions would clearly ease tensions between the Palestinian people and the Government of Israel, and thus help foster a favorable climate that is conducive to the peace process we all so earnestly seek.

I commend the junior Senator from Kansas for her resolution and say I join in it enthusiastically and hope we can make as much progress with it as we did with the resolution pertaining to schools last year.

Mrs. KASSEBAUM. Mr. President, I acknowledge Senator CHAFEE'S support. He has been a steadfast advocate of the importance of education and the opening the schools in Israel. I also am pleased to ask unanimous censent that Senator DOLE'S name be added as a cosponsor as well.

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

AMENDMENTS SUBMITTED

CONSTITUTIONAL PROCEDURES FOR IMPOSITION OF SENTENCE OF DEATH

SPECTER AMENDMENT NO. 1663

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the bill (S.1970) to establish constitutional procedures for the imposition of the sentence of death, and for other purposes, as follows:

At the appropriate place, insert the following:

SEC. . SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES.

(a) IN GENERAL.—Part IV of title 28, United States Code, is amended by inserting immediately following chapter 153 the following new chapter:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.

"§ 2261. Defendants subject to capital punishment and prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) This chapter shall apply—

"(1) to—

"(A) cases in which the defendant is tried for a capital offense; or

"(B) cases arising under section 2254 of this title brought by prisoners in State custody who are subject to a capital sentence; and

"(2) only if subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable fees and litigation expenses of competent counsel consistent with section 2266 of this title.

"(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State defendants tried for a capital offense and all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

"(1) appointing one or more counsel to represent the defendant or prisoner upon a finding that the defendant or prisoner—

"(A) is indigent and has accepted the offer; or

"(B) is unable competently to decide whether to accept or reject the offer;

"(2) finding, after a hearing, if necessary, that the defendant or prisoner has rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the defendant or prisoner is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent—

"(1) a State defendant being tried for a capital offense; or

"(2) prisoner under capital sentence during direct appeals in the State courts, shall have previously represented the defendant or prisoner at trial or on direct appeal in the case for which the appointment is made unless the defendant or prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel during State or Federal collateral post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under this chapter or section 2254 of this title. This subsection shall not preclude the appointment of different counsel at any phase of Federal post-conviction proceedings.

"§ 2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) Upon the entry in the appropriate State court of record of an order pursuant to section 2261(c) of this title for a prisoner under capital sentence, a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed pursuant to section 2254 of this title. The application must recite that the State has invoked the procedures of this chapter and that the schedule execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under 2254 of this title within the time required in section 2263 of this title; or

"(2) upon completion of district court and court of appeals review under section 2254 of this title, the petition for relief is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely fashion for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254 of this title, in the presence of counsel and after having been advised of the consequences of making the waiver.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

"(1) the basis for the stay and request for relief is a claim not previously presented in the State or Federal courts;

"(2) the failure to raise the claim—

"(A) was the result of State action in violation of the Constitution or laws of the United States;

"(B) was the result of a recognition by the Supreme Court of a new Federal right that is retroactively applicable; or

"(C) is due to the fact the claim is based on facts that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal post-conviction review; and

"(3) the filing of any successive petition for a writ of habeas corpus is authorized by the appropriate court of appeals in accordance with section 2264(c).

"§ 2263. Filing of habeas corpus petition; time requirements; tolling rules

"(a) Any petition in capital cases for habeas corpus relief under section 2254 of this title must be filed in the appropriate district court not later than 90 days after the filing in the appropriate State court of record of an order issued in compliance with section 2261(c) of this title. The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner seeks review of a capital sentence that has been affirmed on direct appeal by the court of last resort of the State or has otherwise become final for State law purposes; and

"(2) during an additional period not to exceed 60 days, if counsel for the State prisoner—

"(A) moves for an extension of time in Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus petition under section 2254 of this title; and

"(B) makes a showing of good cause for counsel's inability to file the habeas corpus petition within the 90-day period established by this section. A court that finds that good cause has been shown shall explain in writing the basis for such a finding.

"(b) A notice of appeal from a judgment of the district court in a claim under this chapter shall be filed within 20 days of the entry of judgment.

"(c) A petition for a writ of certiorari to the Supreme Court of the United States in a claim under this chapter shall be filed within 10 days of the issuance of the mandate by the court of appeals.

"§ 2264. Evidentiary hearings; scope of Federal review; district court adjudication

"(a) Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall—

"(1) determine the sufficiency of the evidentiary record for habeas corpus review; and

"(2) conducted any requested evidentiary hearing necessary to complete the record for habeas corpus review.

"(b) Upon the development of a complete evidentiary record, the district court shall rule on the merits of the claims properly before it within the time limits established in section 2268 of this title.

"(c)(1) Except as provided in paragraph (2), a district court may not consider a successive claim under this chapter.

"(c)(2) A district court may only consider a successive claim under this chapter if the applicant seeks leave to file a successive petition in the appropriate court of appeals. A decision by the court of appeals to grant or deny leave to file a successive petition under this chpater shall not be reviewable in any court.

"(c)(3) In a case in which the appropriate court of appeals grants leave to file a successive petition, the time limits established by this chapter shall be applicable to all further proceedings under the successive petition.

"§ 2265. Certificate of probable cause inapplicable

"The requirements of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to this chapter except when a second or successive petition is filed.

"§ 2266. Counsel in capital cases; trial and post-conviction standards

"(a) A mechanism for the provision of counsel services to indigents sufficient to invoke the provisions of this chapter under section 2261(b) of this title shall provide for counsel to indigents charged with offenses for which capital punishment is sought and to indigents who have been sentenced to death and who seek appellate or collateral review in State court.

"(b)(1) In the case of an appointment made before trial, at least one attorney appointed under this chapter must have been admitted to practice in the court in which the prosecution is to be tried for not less than 5 years, and must have had not less than 3 years' experience in the trial of felony prosecutions in that court.

"(2) In the case of an appointment made after trial, at least one attorney appointed under this chapter must have been admitted to practice in the court of last resort of the State for not less than 5 years, and must have had not less than 3 years' experience in the handling of appeals in that State courts in felony cases.

"(3) Notwithstanding this subsection, a court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable the attorney to properly represent the defendant, with due consideration of the seriousness of the possible penalty and the unique and complex nature of the litigation.

"(c) Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or issues relating to sentence, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefor, under subsection (d). Upon finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment of such services nunc pro tunc.

"(d) Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to an attorney appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under subsection (c), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of this subsection. A State court's determination of reasonable compensation, fees, and expenses shall not be reviewable in proceedings under this chapter or under section 2254 of this title, and any alleged insufficiency in compensation, fees, or expenses shall not be grounds for granting a writ of habeas corpus under this chapter or under section 2254 of this title, unless the court finds that the compensation, fees, and expenses awarded were so insufficient as to result in a denial of due process.

"§ 2267. Law controlling in Federal habeas corpus proceedings; retroactively

"In cases subject to this chapter, all claims shall be governed by the law as it was when the petitioner's sentence became final, supplemented by an interim change in the law, if the court determines, in light of the purpose to be served by the change, the extent of reliance on previous law by law enforcement authorities, and the effect on the administration of justice, that it would be just to give the prisoner the benefit of the interim change in the law.

"§ 2268. Habeas corpus time requirements

"(a) A Federal district court shall determine any petition for a writ of habeas corpus brought under this chapter within 110 days of filing.

"(b) The court of appeals shall hear and determine any appeal of the granting, denial, or partial denial of a petition for a writ of habeas corpus brought under this chapter within 90 days after the notice of appeal is filed.

"(c) The Supreme Court shall act on any petition for a writ of certiorari in a case brought under this chapter within 90 days after the petition is filed.

"(d) The Administrative Office of United States Courts shall report annually to Congress on the compliance by the courts with the time limits established in this section.".

(b) AMENDMENT TO TABLE OF CHAPTERS.—The table chapters for part IV of title 28, United States Code, is amended by inserting after the item for chapter 153 the following:

"154. Special habeas corpus procedures in capital cases, 2261".

(c) AMENDMENT TO SECTION 2254 OF TITLE 28.—Section 2254(c) of title 28, United States Code, is amended by—

(1) striking "An applicant" and inserting "(1) Except as provided in paragraph (2), an applicant";

(2) adding at the end thereof the following:

"(2) An applicant in a capital case shall be deemed to have exhausted the remedies available in the courts of the State when he has exhausted any right to direct appeal in the State.".

INTERNATIONAL DATA IMPROVEMENT ACT

MURKOWSKI AMENDMENT NO. 1664

(Ordered referred to the Committee on Commerce, Science, and Transportation.)

Mr. MURKOWSKI submitted an amendment intended to be proposed by him to the bill (S. 2516) to augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act by allowing that agency to share statistical establishment list information compiled by the Bureau of the Census, and for other purposes, as follows:

On page 2, line 3, immediately before "Section" insert "(a)".

On page 2, between lines 15 and 16, insert the following:

(b) Section 5 of the International Investment and Trade in Services Survey Act of 1976 (22 U.S.C. 3104) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) COMMITTEE REVIEWS AND REPORTS.—

"(1) Notwithstanding any other provision of this section restricting disclosure of or access to information submitted under subsection (b)(2), the President, or the President's designee responsible for monitoring the impact of foreign investment in the United States and coordinating implementation of United States policy on such investment, is authorized to review any such information in order to evaluate, analyze, compare, or verify the nature and extent of foreign investment in the United States.

"(2) Authorized officials and employees designated by the President to perform functions under this subsection shall have access to and may obtain copies of, any information submitted pursuant to subsection (b)(2), including all records, documents, reports, books, papers, and other materials related thereto. Such access shall be granted promptly but not later than 5 days after a duly authorized official or employee has made a request therefor.

"(3) Except as provided in this subsection, an official or employee designated to perform functions under this subsection shall not disclose to any other person or organization any information, including any records, documents, reports, books, papers, and other materials related thereto, acquired during a review conducted pursuant to paragraph (1), that specifically identifies any person who finished information pursuant to subsection (b)(2). The President shall establish such procedures and safeguards that are necessary to prevent the unauthorized disclosure of this information. An official or employee designated to perform functions under this subsection may discuss any matter relating to such information with officials or employees designated to perform functions under the data collection program.

"(4) The President or the President's designee may submit a report to the Congress on any review conducted pursuant to paragraph (a), except that any such report shall not specifically identify any person who furnished information pursuant to subsection (b)(2). Nothing in this subsection shall prevent an official or employee designated to perform functions under this subsection from discussing the findings, conclusions, or recommendations of a draft or final report with a committee or subcommittee of the Congress.".

Mr. MURKOWSKI. Mr. President, I rise today to offer an amendment to S. 2516, the International Data Improvement Act. This bill was introduced by one of my own distinguished colleagues from Nebraska, Senator EXON, on April 25 of this year. It has since been referred to the Committee on Commerce, Science, and Transportation. It is one of several timely pieces of legislation to improve the sharing of data on foreign investment amongst our Government agencies.

Mr. President, last year I also introduced legislation to improve our system on foreign investment data sharing. The legislation I introduced, S. 856, allows for the sharing of data between the Census Bureau and the Bureau of Economic Analysis, or the BEA.

Senator EXON's legislation also does this, but my bill allows the Committee on Foreign Investment in the United States, CFIUS, access to data collected by the Bureau of Economic Analysis. That is the difference between our two bills.

Mr. President, I feel strongly that the legislation introduced by my colleague from Nebraska is not sufficient if CFIUS is not included in the sharing of BEA's disaggregated data. CFIUS is the interagency body designated by the President to monitor foreign investments in the United States, and to coordinate U.S. policy on such investments. So, I am offering an amendment to S. 2516 to include the Committee on Foreign Investment to include CFIUS in sharing of BEA data.

My colleague stated when introducing his bill that it represents what the Bush administration is willing to do on the matter. The argument raised by the administration, or those who support the administration position on the issue is that the confidential information which Census and BEA have cannot be protected if it is shared by CFIUS. The argument is advanced that if confidentiality cannot be guaranteed, then there will be a dampening effect on further foreign investment, an effect, we do not wish to generate.

In response, Mr. President, I think it would be useful to explain to my colleagues exactly who is on the Committee on Foreign Investment in the United States. At a hearing before the Subcommittee of Commerce, Consumer Protection, and Competitiveness of the Committee on Energy and Commerce in the House of Representatives held in March, Assistant Secretary of the Treasury for International Affairs Charles Dallara, described the membership of CFIUS:

CFIUS membership is the Secretary of the Treasury (Chair), the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and the United States Trade Representative.

I find it hard to believe that the confidentiality of information cannot be guaranteed by the Cabinet members who serve on CFIUS. I find it hard to believe that Secretary Brady's learning that a Japanese electronics conglomerate also happens to be an owner of an auto parts plant in the United States will discourage that Japanese company from investing in the United States.

I also find it hard to believe that the very body which oversees foreign investment should not be privy to information, the specific kind of information the Senator from Alaska feels the Government should have and evaluate. This is not all foreign investment but foreign government-controlled investment, and there is a difference.

Quite clearly, we have seen the action of Great Britain when the Government of Kuwait took a significant interest in the largest petroleum producer in Great Britain, British Petroleum. The British Monopolies Board investigated the case and found it was contrary to the national security interests of Great Britain that a foreign government, as opposed to a foreign private investor controlled a significant share of Great Britain's largest petroleum producing company.

My purpose in this legislation is to ensure that the appropriate agencies have knowledge when there is foreign government participation, foreign government loan guarantees, foreign government financing below market rates as opposed to the quite legitimate foreign investment which we all basically welcome in this country. But when there is a foreign government involved in a transaction for the specific purpose of obtaining a market share, I think relevant agencies ought to have access to the information and be able to respond if necessary with action. That is the purpose of this specific legislation which I think is in the administration's best interests.

I also find it hard to believe that the very body which oversees foreign investment should not be privy to this information. I am referring to the Exon-Florio provision of the Omnibus Trade Act of 1988 which gave the President or his designee the power to investigate and even prohibit foreign investment which may be contrary to the national security interests. The President's designee in this case is CFIUS.

The Senator from Alaska maintains that to have that knowledge, you have to be able to differentiate between foreign government investment and foreign private investment. I find it courious that my colleague who wrote the Exon-Florio provision would not make the responsible committee more efficient by having this information.

I would solicit my colleagues to review this information and consider supporting it.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON MEDICARE AND LONG TERM CARE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Medicare and Long Term Care of the Committee on Finance be authorized to meet during the session of the Senate on May 18, 1990, at 9:30 a.m. to hold a hearing on recommendations for the Medicare volume performance standards [MVPS] for fiscal year 1991.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Friday, May 18, at 10 a.m., for a hearing on "Improving Math and Science Education for America's Youth."

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Friday, May 18, 1990, at 10 a.m. to conduct a hearing on S. 2327 and H.R. 3848, Depository Institution Money Laundering Amendments of 1990.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. MITCHELL. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on compensation and pension (title I of S. 2100); insurance (title III of S. 2100); expansion of radiation presumptions (S. 2556); administrative reorganizations (S. 2102); and national cemeteries (S. 2482 and S. 2485); VA debt collection (S. 2615); and miscellaneous legislation (S. 1887, S. 2454, S. 2499) on Friday, May 18, 1990, at 9:30 a.m. in SR-418.

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

SUBCOMMITTEE SUPERFUND, OCEAN AND WATER PROTECTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Superfund, Ocean and Water Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Friday, May 18, beginning at 9:30 a.m., to conduct a markup of S. 203, the Ground Water Research and Education Act and, immediately following the markup, to conduct a hearing on pending legislation to require local educational agencies to conduct testing for radon contamination in schools, S. 1697—the Radon Testing for a Safe Schools Act.

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

ADDITIONAL STATEMENTS

CUBA RECOGNIZES 88TH YEAR OF INDEPENDENCE FROM SPAIN

● Mr. MACK. Mr. President, this Sunday, May 20, the Cuban people wil recognize their 88th year of independence from Spain. This is usually a time for celebration and thanksgiving but Cuba's celebration will be empty and false because they have not yet achieved true independence and freedom.

Independence is when a government is controlled by the people not when the people are controlled by their government. Freedom is the most precious of man's God-given rights. Freedom is when one can be unrestricted in opinion, choice or action.

These are the American values which have made our nation the inspiration for people around the world struggling to achieve their own freedom and independence.

Just 90 miles from the southern tip of my home State of Florida lies an island ruled by a ruthless Communist dictator. Cuba, the Alcatraz of the Atlantic, remains in the hands of a Stalinist regime that ignores basic human rights and tortures individuals who cry out for the kind of God-given freedoms that we so easily take for granted.

I am confident the winds of freedom which have swept Europe and Latin America will reach a Cuba yearning for freedom from Castro's oppression.

Despite Castro's attempt to block TV and Radio Marti from bringing the message of freedom to Cuba, the Cuban people will always continue to foster hope.

The Cuban people have waited long enough for their nightmare to end. We in the United States, the land of freedom and independence, have the moral responsibility to support their yearning for freedom. Their day of freedom is near but unfortunately, it is not near enough.

Defending democracy and asserting the American values of liberty and constitutional government around the world are policies I support. I will never compromise my values and love of freedom and I will work to make sure the nation of Cuba will soon be free.

The Cuban people have a right to be heard and determine their form of government. We must stand firm behind the principle that democracy is the cornerstone of a free and open society.

Once again, I call on Castro to put his leadership to the test and find out whether Cubans really favor Communism. Since he took power 31 years ago, some 2 million Cubans have fled their homeland, voting against Castro with their feet. He knows if he allows Cubans to speak their mind, he will be out of power.

The message of freedom is the message of hope. I'm confident the people of Cuba will continue to have the hope that one day they will find freedom.

Who would have thought that this time last year we would have seen the tearing down of the Berlin Wall, the liberation of Eastern Europe and free elections in Nicaragua. Maybe next year we will see freedom in Cuba.

Even though the Cuban people will recognize their independence from Spain this Sunday, tragically, they must wait until they can celebrate their freedom from Castro and Communism. When that day comes the Cuban people will finally have true independence. I look forward to that day when we can welcome Cuba into the community of free nations.●

PUBLIC IS—CORRECTLY—WARY ABOUT DECIMATING THE DEFENSE BUDGET

● Mr. BOSCHWITZ. Mr. President, the American public does not want the Congress to rush ahead with uncoordinated, irresponsible cuts in the defense budget.

The $30 billion in budget authority cuts proposed by the Budget Committee for next year will decimate our defense effort. I use the word "decimate" advisedly, in its original sense of "selecting at random and killing one of ten in a given group." The budget the majority forced through the Budget Committee cuts defense budget authority by 10 percent in a single year—with more cuts to come in future years. The budget cuts were simply presented and voted on without any significant discussion or consideration of their ramifications.

Not only are the cuts proposed by the Committee on the Budget irresponsible: They are also out of sync with the wishes of the American people.

The Gallup poll's recent national survey reveals that "most Americans are cautious about cutting too much from the defense budget too soon * * * close to eight in ten (78 percent) feel it is prudent to wait and see how things develop before making deep reductions in the Pentagon's budget."

I am sure that they would agree that if we maintain a properly funded defense budget now, the cuts in the future will be deeper than those contemplated by the committee, because the concessions we will be able to exact will be all the more significant. The American people realize, for example, that the deep defense cuts of the seventies only postponed the accomplishments of the past few years. If we had maintained our defense effort at that level, we simply would never have achieved the recent concessions at the negotiating table, and we would not have been on the verge of new, safer defense cuts in the future.

Mr. President, the Gallup poll's findings deserve the close attention of my colleagues and I ask that they be inserted in the RECORD at this point.

The material follows:

PUBLIC WARY ABOUT DEEP CUTS IN MILITARY SPENDING

(By Larry Hugick)

A recent Gallup Poll finds that most Americans are cautious about cutting too much from the defense budget too soon in response to events in Eastern Europe. Although roughly two-thirds (68 percent) believe the situation will eventually lead to large cuts in defense spending, close to eight in ten (78 percent) feel it is prudent to wait and see how things develop before making deep reductions in the Pentagon's budget.

Even among Democrats, only 10 percent favor immediate action to scale back the defense budget significantly.

SENTIMENT FOR CUTTING DEFENSE HIGHEST SINCE VIETNAM ERA

Sentiment for cutting military spending is as great as it has been at any time since the latter stages of U.S. involvement in Vietnam. Today, 50 percent of Americans feel that defense spending is too high, while only 10 percent feel it is too low.

Since the mid-1980s, a plurality of Americans have felt that we are overspending on defense. One must look back to 1971, however, to find the last time that that plurality reached 50 percent in the Gallup Poll. The

belief then that the defense budget should be cut was associated with a growing perception that the United States should get out of Vietnam.

In the past decade, when Americans thought about the biggest threat to the country's future, fear of war with the Soviet Union gave way to concern about economic competition from Japan and other countries.

In the context of events in Eastern Europe, U.S. military power seems less critical than it did in the past. Since 1984, the percentage who believe that building the strongest military force in the world is very important to our nation's future has declined from 45 percent to 36 percent. Over the same period, the percentage who say it is very important to develop the best educational system in the world—often cited as a key to solving our competitiveness problems—has increased from 82 percent to 91 percent.

Opinion about the necessity of military superiority to our country's future strength varies along generational lines. While close to half (45 percent) of adults over fifty years of age believe it is very important to be the strongest military power, fewer than a third (30 percent) of those under fifty—the post-World War II generation—share this opinion.

MANY CONCERNED ABOUT EFFECTS OF CUTS ON NATIONAL SECURITY, ECONOMY

Americans look to the post-Cold War era and what some have called the "peace economy" with mixed feelings. Despite the shift in attitudes toward the Soviet Union in recent years, reduced fear of a military conflict has not yet resulted in the perception that our country is stronger militarily than it needs to be. About two-thirds (64 percent) of Americans say that our defense capabilities are adequate, but not excessive, to meet our needs. And people are as likely to say our defenses are not strong enough (17 percent) as they are to say our defenses are overly strong (15 percent).

Almost three-fourths (73 percent) of adults say they would be be very or somewhat concerned that our national security would become threatened if defense spending were greatly reduced.

As many as one-third (33 percent) of adults and 40 percent of those age fifty or older say they would be very concerned about or national security under such circumstances.

The fear that sharp cuts in defense would threaten our security is highest in the South.

In addition to uneasiness that a scaled-down defense might leave us vulnerable, there is a lack of consensus about how our economy might be affected by military spending cuts. A larger percentage of Americans think that sharp reductions would hurt (35 percent) rather than help (28 percent) the national economy. Another 30 percent don't feel the economy would be affected much one way or the other.

Roughly a fourth (27 percent) expect large defense-spending reductions to have a negative impact on their local economy; only half as many (13 percent) say lower levels of military spending would be good for the local economy. In the western states, where the defense industry has played a major role in the postwar era, as many as a third (33 percent) express concern about possible negative economic fallout locally. By contrast, only about a fifth (20 percent) of Midwesterners see their local economy being hurt by defense cutbacks.

One-fourth (25 percent) of Americans feel that their own family's financial situation might be affected by a shrinking defense budget. People are about as likely to say they would be helped (12 percent), however, as they are to say they would be hurt (13 percent). Despite the regional patterns observed for expectations about effects on the local economy, there are no significant differences by region in expectations about effects on family finances.

PUBLIC FAVORS REDUCING U.S. TROOPS IN EUROPE

While cautious about the situation in Eastern Europe and the effect it should have on our defense budget, a clear majority of the public (57 percent) supports reducing the number of U.S. troops in Europe. Roughly a third (34 percent) disapprove of making any reductions at this time.

The idea of troop cuts wins the support of a majority in all age groups, political party affiliations and regions of the country. Withdrawal is particularly attractive to college graduates, 72 percent of whom favor bringing some U.S. troops home from Europe. Among the groups less supportive of the idea are non-whites (47 percent).

PUBLIC WANTS PEACE DIVIDEND TO GO TOWARD SOCIAL SPENDING

While President Bush seems to be enjoying much of the political benefits of being in office during this period of change, his Democratic opposition could make some political gains as well. The public's appetite for new social spending, a traditional Democratic theme, may increase as the perception builds that a reduced defense burden will result in more money for other government programs.

When asked how the U.S. should spend the "peace dividend"—financial resources that can be diverted from defense to other areas—opinion breaks 62 percent to 27 percent in favor or using the money for social spending such as aid to the homeless, the war against drugs, and public education, rather than for reducing the federal budget deficit.

Democrats in the poll split 68 percent to 18 percent in support of spending more on social problems. Independents are only slightly less solid in the view (62 percent to 26 percent). A majority of Republicans (55 percent) agree with the social spending option, but those identifying with the GOP are significantly more likely than others to prefer the deficit reduction option (35 percent).

There is much discussion as to the amount of money the government in Washington should spend for national defense and military purposes. How do you feel about this? Do you think we are spending too little, about the right amount, or too much?

[In percent]

	Too little	Right amount	Too much	No opinion
1990	9	36	50	5
1987	14	36	44	6
1986	13	36	47	4
1985	11	36	46	7
1983	21	36	37	6
1982	16	31	41	12
1981	51	22	15	12
1976	22	32	36	10
1973	13	30	46	11
1971	11	31	50	8
1969	8	31	52	9

How likely do you think it is that government spending on defense will be greatly reduced as a result of improving relations with the Soviet Union and the changes in Eastern Europe? Do you think it is—

	Percent
Very likely	24
Somewhat likely	44
Not very likely	19
Not at all likely	8
No opinion	5
Total	100

In determining America's strength in the future, say 25 years from now, how important do you feel each of the following factors will be—very important, fairly important, not too important, or not at all important?

[In percent]

	Very important	Fairly important	Not too important	Not at all important	No opinion
Developing the most efficient industrial production system in the world:					
January 1990	61	32	3	1	3
May 1984	70	23	3	1	3
Building the strongest military force in the world:					
January 1990	36	38	18	5	3
May 1984	45	36	13	3	3
Developing the best educational system in the world:					
January 1990	91	7	1	(1)	1
May 1984	82	14	2	(1)	2

[1] Less than 1 percent.

As one of the ways to reduce the amount the government spends on defense, would you approve or disapprove of reducing the number of U.S. troops based in Europe?

	Percent
Approve	57
Disapprove	34
No opinion	9
Total	100

If government spending on defense is greatly reduced, do you think this will hurt the U.S. economy, help the U.S. economy, or won't it make any difference to the U.S. economy?

	Percent
Hurt	35
Help	28
No difference	30
No opinion	7
Total	100

If the government spending on defense is greatly reduced, do you think this will hurt the economy in your local area, help the economy in your local area, or won't it make any difference to the economy in your local area?

	Percent
Hurt	27
Help	13
No difference	57
No opinion	3
Total	100

If government spending on defense is greatly reduced, do you think this will hurt your household's financial situation, help your household's financial situation, or won't it make any difference to your household's financial situation?

	Percent
Hurt	13
Help	12
No difference	72
No opinion	3
Total	100

Question: Do you, yourself, feel that our national defense is stronger now than it needs to be, not strong enough, or about right at the present time?

CURRENT LEVEL OF DEFENSE?

	Percent				
	Stronger than necessary	Not strong enough	About right	No opinion	No. of interviews
National	16	17	64	3	1,226
Sex:					
Male	17	14	67	2	609
Female	15	19	62	4	617
Age:					
18 to 29 yrs	23	14	62	1	282
30 to 49 yrs	14	18	66	2	519
50 and older	12	17	65	6	407
Region:					
East	17	17	65	1	293
Midwest	16	17	63	4	307
South	13	17	65	5	366
West	17	14	66	3	260
Race:					
White	16	15	66	3	1,097
Nonwhite	12	27	57	4	122
Education:					
College grads	28	9	62	1	330
College inc.	17	16	65	2	284
High school grads	11	21	65	3	483
Not H.S. grads	9	16	65	10	122
Politics:					
Republicans	11	16	70	3	437
Democrats	17	16	63	4	378
Independents	19	17	60	4	411
Income:					
$50,000 and over	23	10	66	1	242
$30,000 to 49,999	17	13	68	2	329
$20,000 to 29,999	14	16	64	6	247
Under $20,000	14	22	62	2	332

Question: There is much discussion as to the amount of money the government in Washington should spend for national defense and military purposes. How do you feel about this? Do you think we are spending too little, about the right amount or too much?

AMOUNT SPENT?

	Percent				
	Too little	Right amount	Too much	No opinion	No. of interviews
National	9	36	50	5	1,226
Sex:					
Male	8	36	52	4	609
Female	11	37	47	5	617
Age:					
18 to 29 yr	9	32	56	3	282
30 to 49 yr	11	39	48	2	519

AMOUNT SPENT?—Continued

	Percent				
	Too little	Right amount	Too much	No opinion	No. of interviews
50 and older	9	37	46	8	407
Region:					
East	8	33	54	5	293
Midwest	10	38	50	2	307
South	11	39	43	7	366
West	8	36	52	4	260
Race:					
White	9	38	49	4	1,097
Nonwhite	15	26	51	8	122
Education:					
College grads	5	32	61	2	330
College inc	10	35	52	3	284
High schol grads	14	38	44	4	483
Not H.S. grads	4	40	44	12	122
Politics:					
Republicans	11	46	39	4	437
Democrats	9	33	52	6	378
Independents	9	30	58	3	411
Income:					
$50,000 and over	8	36	55	1	242
$30,000 to $49,999	9	36	52	3	329
$20,000 to $29,999	12	35	48	5	247
Under $20,000	10	40	44	6	332

Question: How do you think U.S. defense spending should be affected by the changes taking place in Eastern Europe? Do you think the U.S. should make sharp cuts in defense spending right away, or do you think the U.S. should wait and see how things develop before making any sharp cuts, or do you oppose making any sharp cuts in defense spending in the foreseeable future?

WHEN MAKE CUTS?

	Percent				
	Right away	After things develop	No cuts soon	No opinion	No. of interviews
National	8	78	12	2	1,226
Sex:					
Male	8	78	12	2	609
Female	7	79	12	2	617
Age:					
18 to 29	8	83	8	1	282
30 to 49	8	78	13	1	519
50 and older	6	76	14	4	407
Region:					
East	6	81	11	2	293
Midwest	8	76	13	3	307
South	6	80	12	2	366
West	10	75	12	3	260
Race:					
White	7	78	13	2	1,097
Nonwhite	7	81	7	5	122
Education:					
College grads	13	73	13	1	330
College inc.	7	83	10	(1)	284
High school grads	6	80	13	1	483
Not H.S. grads	6	76	10	8	122
Politics:					
Republicans	3	80	16	1	437
Democrats	10	76	11	3	378
Independents	9	79	9	3	411
Income:					
$50,000 and over	8	79	12	1	242
$30,000 to $49,999	7	77	14	2	329
$20,000 to $29,999	10	78	11	1	247
Under $20,000	6	79	12	3	332

[1] Less than 1 percent.

Question: If government spending on defense is greatly reduced, how concerned are you that our national security might become threatened? Are you very concerned, somewhat concerned, not very concerned, or not at all concerned?

CONCERNED FOR SECURITY?

	Percent					
	Very	Somewhat	Not very	Not at all	No opinion	No. of interviews
National	33	39	18	8	2	1,226
Sex						
Male	30	38	21	9	2	609
Female	36	41	15	6	2	617
Age:						
18 to 29	27	45	21	7	(*)	282
30 to 49	32	39	21	7	1	519
50 and older	40	36	13	8	3	407
Region:						
East	30	39	22	9	(*)	293
Midwest	31	40	19	7	3	307
South	39	40	13	7	1	366
West	32	40	21	7	(*)	260
Race:						
White	33	39	19	8	1	1,097
Nonwhite	38	42	8	7	5	122
Education:						
College grads	22	37	31	10	(*)	330
College inc	28	46	19	6	1	284
High school grads	38	41	15	5	1	483
Not H.S. grads	43	31	10	10	6	122
Politics:						
Republicans	38	38	18	5	1	437
Democrats	32	39	18	8	3	378
Independents	30	42	18	10	(*)	411
Income:						
$50,000 and over	25	41	24	10	(*)	242
$30,000 to $49,999	25	41	25	8	1	329
$20,000 to $29,999	36	41	17	6	(*)	247
Under $20,000	42	37	11	6	4	332

* Less than 1 percent.●

MEETING OF PRUNSKIENE AND GORBACHEV

● Mr. RIEGLE. Mr. President, for the last 2 months, as Lithuania and its fellow Baltic republics of Latvia and Estonia have declared the restoration of independence, I have called on the administration to raise the issue of Baltic independence with the Soviet Government on several occasions. But, as the Soviets tightened their grip of economic coercion on Lithuania and condemned the independence movements in Latvia and Estonia, President Bush has looked the other way.

Finally, after months of acquiescence, Secretary Baker, in Moscow this week for pre-summit negotiations with Soviet President Gorbachev and Foreign Minister Schevardnaze, elevated Baltic independence to its rightful place among American foreign policy priorities. Only one day after Baker's warning to the Soviets that further delays in negotiations would have a cooling effect on the warming trend in United States-Soviet relations, President Gorbachev met with Lithuanian Prime Minister Prunskiene in the first talks between leaders of the two governments.

Underlying Gorbachev's decision to meet with Prunskiene was undoubtedly Lithuania's unselfish and peaceminded offer to suspend laws implementing its independence declaration. Still, the coincidence of Baker's raising the Baltic issue as a potential stumbling block to better American-Soviet relations and Moscow's decision to meet with Prunskiene is too strong

to be ignored. The connection between continued pressure by the American Government and progress toward Baltic self-determination is plain and unmistakable.

Mr. President, I urge the administration to persevere in its efforts to convince the Soviet Government to expand the good-faith talks between Gorbachev and Prunskiene into full, bilateral negotiations on Lithuanian independence between Vilnius and Moscow. Rather than rewarding the Soviets for their aggressive behavior in the Baltic states, the United States must continually make clear that continued delays in talks on Baltic independence will have a negative impact upon United States-Soviet relations.●

STUART EIZENSTAT: ISRAEL MUST REFORM ITS ECONOMY

● Mr. BOSCHWITZ. Mr. President, Israel is on the verge of a great transformation. The waves of Soviet immigrants now arriving there, fully motivated to improve their place in life, have the potential to reinvigorate a stalled economy. With the Russians vastly enriching the current mix of native Israelis and other immigrants, Israel now has one of the most highly skilled and innovative work forces to be found anywhere in the world.

But it the Soviet immigrants' potential to help Israel prosper is to be realized, the way has to be cleared to allow their spirit of enterprise to flourish—not to speak of that same spirit of the Israelis themselves. This means that Israel's barriers to economic activity have to be lifted.

Israel's leaders need to make some hard choices about the way its economy is governed. They have to deregulate, lower taxes, bust cartels and monopolies, encourage competition, loosen controls on the flow of capital as well as on land use, and sell off state enterprises.

These are not mere theoretical concerns: if the Israeli economy is ever to begin the job of absorbing the new immigrants, much must be done in the very near term to make the housing and industrial sectors more efficient. Once a beginning is made, however, I have little doubt that the Russian immigrants will become self-sustaining, fully contributing members of Israeli society. Having seen the failure of perhaps the most centralized, bureaucratized regime known to man, I am sure that the immigrants from the Soviet Union will provide impetus to move the Israeli society away from that model and toward a freer economy.

Finally, Mr. President, I should add that in addition to changes in the economy, there will have to be changes in the Israeli political system to make it more responsible to the overall national interest and less responsive to the views of tiny fractions of the electorate.

My friend Stuart Eizenstat has some experience in making the kind of hard economic choices I alluded to earlier. Stu advised President Carter on the difficult process of deregulating the Nation's economy—a prelude to the more extensive deregulation that helped cause our economy to boom during the Reagan and Bush years. A keen observer of the Israeli scene, he has written an admirable prescription for the Israeli economy that recently appeared in the Wall Street Journal—Europe. Mr. President, I ask that the article be inserted at this point in the RECORD.

The article follows:

[From the Wall Street Journal Europe, Apr. 3, 1990]

HOW TO REFORM THE ISRAELI ECONOMY

(By Stuart E. Eizenstat)

When Israel's economy was near the precipice in 1985, with 400% inflation and dangerously low foreign reserves, Secretary of State Shultz personally intervened to urge additional economic help and to provide advice.

Tariffs were reduced and a U.S.-Israel Free Trade Agreement was implemented. The Israeli government's sole control over credit markets was ended, food and transportation subsidies were phased out and the government stopped bailing out failing institutions and undertaking projects beyond Israel's financial capacities, such as the Lavi fighter plane.

It worked. Budget deficits were reduced from 15% of GNP to 1% to 2%. Inflation dropped to around 16%.

Today, Israel faces the enormous challenge of a sudden inrush of Soviet Jews. It needs to take an even harder step: changing its highly bureaucratized, monopolistic, cartelized economy into a more Western-oriented free market system while maintaining the best of its social welfare state. The Bush administration should take the same interest now that the Reagan administration took five years ago to help Israel effectively use the badly needed special U.S. assistance I hope will be forthcoming.

The first 25 years of Israel's rebirth as a modern state, its nation-building phase, were little short of remarkable. Its population tripled and growth rates averaged over 9% in real terms from 1960 to 1973 with single-digit rates of inflation. A modern infrastructure of roads, sewage systems, and communications was developed and swamps were converted into magnificent, lush valleys. A sophisticated military was established.

But after the Yom Kippur war and OPEC oil embargo of 1973, the economy lurched sideways. In the last five years, growth has barely equaled that of mature nations, such as the United States.

AN UNUSUAL ECONOMY

For sure, the huge growth in defense expenditures after 1973—although financed in large part by massive loans from the U.S. Government—contributed to Israel's woes. Its foreign debt and defense expenditures account for over 60% of its budget.

But, it became clear from a recent conference in Israel sponsored by the Israel Center for Social and Economic Progress that something more fundamental is the biggest barrier to the successful integration of Soviet Jews. Israel has failed to move from its early nation-building phase—when heavy state involvement and limited competition may have been essential—to a modern, liberalized economy. It has developed a unique, partly-managed, partly-free market, partly-socialist set of institutions which make up one of the most unusual two-tiered economies in the world.

At one level Israel has developed world-class products and technologies. It has produced bio-medical breakthroughs and a space satellite. But there is a third-world quality to some parts of the economy. The Histadrut is both a labor union to which an overwhelming percentage of Israel's salaried workers belong and one of the country's largest employers. It is the owner of debt-ridden enterprises.

One of every three Israeli workers is employed by the government, compared to one in five 20 years ago. A stultifying bureaucracy inflicts regulations a Talmudic scholar would have difficulty understanding, blocking the natural entrepreneurial spirit of the people. An explosion in transfer payments has created a modern welfare state, but with an income base which can barely afford it. Taxes are high and have a patchwork quality.

A dramatic increase in housing and jobs is critically necessary to absorb the Soviet Jews arriving each week, but housing exemplifies the rigidity of the economy. Last year only about 20,000 dwellings were built compared to two-and-a-half times that amount in 1974. Roughly 50,000 units will be necessary to accommodate new immigrants this year. It takes an unbelievable 22 to 27 months on the average to construct an apartment building. A permit for even minor changes in plans can take months or years to obtain. An Israeli paper recently published a full-page spread of licensing and permitting agencies. It looks like an organizational chart of the Pentagon.

The price of an acre of land in the Tel Aviv area rivals that of downtown Washington, D.C. That's because the Israel Land Authority and other public bodies own over 90% of the country's land. The Land Authority never sells its property—which in Zionist ideology is God's gift for the people—but leases it for 49 years with a 49-year option. It is extraordinarily parsimonious. It rarely "tenders" land for lease, creating a pent-up demand and artifically inflating real-estate and home values. The Mayor of Maalot, Shlomot Buchbut, called it "Mission Impossible" to get land from the Land Authority. David Lewis who has virtually remade the hotel industry in Eilat, had to wait two years to get land to construct housing for the new workers brought in to service his new hotels—and then got enough for only two-thirds of the units needed.

As if excessive licensing and extraordinarily high land costs were not enough, the costs of construction for housing, and everything else, skyrocket because the basic materials are suppplied by state sanctioned monopolies or cartels. Developers cannot shop around because cartel members protect each other's high prices. Import permits are stricly limited. In the mid-1970s, Nesher, the chief producer of cement, crushed an Israeli importer's effort to import Romanian cement by dramatically raising the price of cement domestically and then dropping it precipitously. There have been virtually no imports of cement since.

Between 20% and 30% of the business sector is controlled by monopolies and cartels. Medieval-style professional guilds in

law, architecture, engineering and accounting set fees. It is difficult to leave your accountant without his permission. Agricultural marketing boards limit price competition in fruit and vegetables. There are scores of state-owned enterprises.

Meryl Jaffe, a young American female entrepreneur with an American Ivy League degree, recently came to Israel and wants to import books from the U.S. to start a book business. She faced taxes on investment capital raised abroad and government-set exchange rates which bear little relationship to true currency values. Government-supported importers make it virtually impossible for people like Meryl Jaffe to compete.

MOVING ISRAEL FORWARD

Hopes for a successful Soviet Jewish absorption rest significantly on a rapid movement to a more deregulated competitive economy:

Red tape and bureaucratic delay must be eliminated. As the mayor of the development town of Migdal Haemek, Shaul Amor, put it, there is a need for "perestroika in the bureaucracy." There should be a freeze on government employment so that the percentage of government workers in the economy is reduced.

State-owned enterprises should be privatized except in areas essential to national security, like the aircraft industry.

Monopolies, cartels, and limits on import licenses should end so that the fresh air of competition can invigorate the Israeli economy.

The Israel Land Authority should tender all the land under its control over a three-year period.

Indexing of wages, prices, and interest rates, which perpetuates inflation, should be phased-out.

As the United States did in 1986, the tax base should be broadened, exemptions reduced, and tax rates lowered.

The government should continue its progress in removing its control over capital markets by gradually moving to a more flexible, market-oriented exchange rate for the Israeli shekel.

A private secondary mortgage market institution, like the Federal National Mortgage Association in the U.S., should be created to encourage investment in housing.

In a small country like Israel with huge defense, social, and absorption challenges, there is still an important role for government in providing social services, job training, incentives for affordable housing, and infrastructure in areas like the Negev and the Galilee. But the Israeli government's biggest challenge is to remove itself from economic management.

Israel is a land of miracles in which seemingly insurmountable odds are regularly overcome. Yet another miracle—an economic one—will be needed if the historic movement of Soviet Jews to the Jewish homeland is to be successful.

(Mr. Eizenstat, A Washington lawyer, was President Carter's Chief domestic policy adviser. He recently returned from a visit to Israel sponsored by the Israel Center for Social and Economic Progress.)●

EXECUTIVE SESSION

NOMINATION OF RICHARD G. AUSTIN TO BE ADMINISTRATOR OF GENERAL SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the executive session to the consider the following nomination: Calendar Order No. 771, Richard G. Austin to be Administrator of General Services; further, that the nominee be confirmed; that any statements appear in the RECORD as if read; that the motion to reconsider be laid upon the table; and that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nomination was considered and confirmed as follows:

GENERAL SERVICES ADMINISTRATION

Richard G. Austin, of Illinois, to be Administrator of General Services.

STATEMENTS ON THE NOMINATION OF RICHARD AUSTIN

Mr. GLENN. Mr. President, I would like to say a few words regarding the nomination of Richard Grant Austin to be Administrator of the General Services Administration [GSA].

GSA may not be a very high-profile agency. But I consider it to be a vital one in the operation, management, and administration of the Federal Government. For GSA manages several billion dollars each year in Government contracts for goods and services, along with all Federal real estate holdings. It sets Federal policy with all Federal real estate holdings. It sets Federal policy in the areas of communications, data processing, building leasing and construction, information resources management, and Government travel.

The next GSA Administrator will head a staff of over 18,000 people with a yearly internal budget of almost $9 billion. But despite the efforts of many fine employees, GSA's image, according to a recent GAO report on GSA management, has often been unfavorable.

The GAO report cited many structural and operational deficiencies which can be addressed with the proper attention and resources. However, the most glaring problems at GSA relate to leadership. Frequent political turnovers, poor interaction between political appointees and career executives, and a lack of involvement by career personnel in the planning process are among the primary factors cited by GAO which have inhibited effective leadership, increased staff turnover, and lowered employee morale.

Today, GSA stands at the crossroads. A multitude of problems, some of which have been festering for years, have come to the forefront. They threaten not only to undermine GSA's present mission, but also compromise its ability to prepare for and meet the challenges of the coming century.

That is precisely the reason why the Committee on Governmental Affairs, which I chair, took a very hard and long look at Mr. Austin. What GSA needs most is strong, effective, and professional leadership. And that must start at the top.

Now, there were some people who contacted the committee to ask "What was taking so long?", or "Why don't you just confirm the guy?", or "Don't you know there are some major contract decisions needing to be made?" Well, given GSA's history, I didn't want to confirm someone just for the sake of having an administrator. I wanted someone whom I felt sure was qualified for the job, and deserved the consent and approval of this body. That is why the committee's confirmation and investigative process was so lengthy and extensive.

Indeed, issues surrounding Mr. Austin's past GSA performance which were examined in both of the committee's hearings, caused me some concern, particularly his handling of the Paul Cation matter. In addition, I had some misgivings not only over the growth of political appointees at GSA while Mr. Austin has served as Acting Administrator, but their quality as well.

I have raised these and other specific issues in private meetings with White House officials and with the nominee directly.

Based on these discussions, the hearing record, and assurances received from Mr. Austin, give Mr. Austin the benefit of some doubt and vote for his confirmation. I do not because of two primary reasons.

First, while Mr. Austin displayed poor judgment in his hiring and retention of Paul Cation, I have his assurances and his word that this was a one-time mistake, which shall not be repeated on his GSA watch. The bottom line here, in my opinion, is that this one incident, by itself, does not represent a flaw so serious as to preclude confirmation.

Second, I also give weight to the fact Mr. Austin has been acting GSA Administrator for over 18 months, has experience, and possesses a working knowledge of the agency's operations. His responses to my substantive questions indicated to me his awareness of the issues and his commitment to both address longstanding problems and meet the challenges facing GSA.

Further, I have received certain assurances and commitments from the nominee, described as follows, which have satisfied my particular concerns.

The nominee has pledged that, during his tenure, he will not exceed

60 total political employees—Schedule C and noncareer SES personnel—within GSA at any one time, and that positions will be established only where needed for the efficient operation of GSA.

In response to questions arising from the Cation Case, the nominee has also instituted procedures within GSA to terminate any employee convicted of a felony. Further, GSA employees under investigation for these types of offenses will now be placed on administrative leave until the matter is resolved.

I feel that Mr. Austin's assurances represent a good-faith commitment to work with the committee and the Senate, and will help to ensure that GSA operates in a competent, efficient, and professional manner.

On that basis, and with these specific commitments, I am ready to proceed to confirm Mr. Austin and look forward to working with him in the years ahead.

Mr. WARNER. Mr. President, I am delighted to have today the opportunity to vote to confirm Richard G. Austin to be Administrator of General Services at the U.S. General Services Administration [GSA].

I know that my colleagues will agree that President Bush made a fine choice when he selected Dick for this position. Dick's performance during his tenure as Acting Administrator has proven the wisdom of the President's choice.

As my colleagues know, Dick Austin has held the post of Acting Administrator since September 1988, while continuing to hold the post of Deputy Administrator at GSA.

President Bush formally transmitted Dick Austin's nomination to the Senate in October 1989, yet, due to the early adjournment of the first session of the 101st Congress, there was not sufficient opportunity for the Senate to proceed with confirmation at that time.

Once the Congress reconvened in 1990, the Senate Governmental Affairs Committee set about its confirmation process. That process, I am happy to say, culminated last Tuesday, May 8, 1990, with the unanimous 11-to-0 vote to favorably report Dick's nomination to the full Senate for confirmation.

Mr. President, in the 20 months since Dick has been at the helm of GSA, I have worked with him on a number of matters of considerable importance to the Nation and to the Commonwealth of Virginia. I have been very impressed with the GSA under Dick's leadership, as we have worked and continue to work together in my capacity as the ranking Republican on the Senate Armed Services Committee on the renovation of the Pentagon, implementation of the base closures and realignments mandated by the Congress, and securing new, modern space for the Department of the Navy.

This last item is one very near and dear to me, Mr. President, given the role I played in bringing the Navy into northern Virginia some 20 years ago. Moving the Navy to new quarters could not be in better hands than those now in charge of GSA and the U.S. Navy [USN]. I have every confidence that working together, we—Dick Austin, the Navy, northern Virginia's local elected officials and its congressional delegation—can achieve a resolution of the outstanding issues involved in the acquisition of a new home for the Navy.

Mr. President, the responsibility borne by the Administrator of General Services is of utmost importance to those of us who represent large numbers of Federal employees, particularly in the National Capital region. The productivity of each of this area's hundreds of thousands of Federal employees rests in large part upon the GSA's ability to provide a healthy, safe, and comfortable environment in which to work. Dick Austin is the kind of administrator to see to it that that challenge is met. I have no doubt that, once confirmed by the Senate, Dick Austin will be an even greater advocate for effective and efficient government.

Mr. President, I am proud to support the confirmation of Richard G. Austin to be Administrator of General Services. I urge my colleagues to confirm Mr. Austin to this important post without delay.

Mr. FORD. Mr. President, I would like to take a moment and speak on behalf of Richard G. Austin to be Administrator of the General Services Administration [GSA].

For the past 20 months that Dick Austin has been Acting Administrator of GSA, he has proven himself to be a capable administrator. I know this firsthand. My office and the GSA under Dick Austin have worked together on a project to convert the city post office here in Washington, DC, into office space for both executive branch and Senate tenants. This project had run into a number of impediments. As a result of Dick's direct involvement, these obstacles were overcome. His effectiveness in working with Senator STEVENS and me on this project made our success possible.

In addition, in my capacity as chairman of the Committee on Rules and Administration, I am aware of the support services that the GSA provides to Senators' home State offices. Working through the office of the Senate Sergeant at Arms, the GSA under Mr. Austin has been very responsive to the needs of Congress. I have no doubt that, once confirmed by the Senate, Mr. Austin will continue to be responsive.

Mr. President, I am pleased to support the confirmation of Mr. Austin to be Administrator of GSA, and I urge my colleagues to support his confirmation.

Mr. MOYNIHAN. Mr. President, I am pleased to support the nomination of Mr. Richard G. Austin for the post of Administrator of the U.S. General Services Administration [GSA]. The Committee on Governmental Affairs unanimously supported Mr. Austin's nomination.

Dick Austin has held the post of Acting Administrator since September 1988. As chairman of the Environmental and Public Works Subcommittee on Water Resources, Transportation, and Infrastructure, I have had the opportunity to work with Mr. Austin during the 20 months he has held the top job at GSA. He has testified before my subcommittee on one of the little noticed, but very important issues facing Government—the acquisition of Government buildings. The administration has recently proposed one of the largest Government building programs ever—21 buildings at a cost of nearly $3 billion. This ambitious plan will provide the Federal Government with much-needed space for its agencies and avoid the waste of leasing the Government's long-term space requirements. Mr. Austin and I share the view that increased Government ownership of space is the most cost-efficient method to house the Government.

In working with Mr. Austin on this program, I have found him to be a dedicated and hard-working individual intent on producing a more efficient and effective Government building program. I have no doubt that if confirmed by this body, Dick Austin will continue such efforts.

Ms. MIKULSKI. Mr. President, I rise today in support of the nomination of Richard G. Austin to be the Administrator of the U.S. General Services Administration [GSA].

GSA has been in the forefront of one of the most compelling issues facing the American work force today, that of ensuring access to quality child care. I believe it is highly appropriate for the Federal Government to lead the way in setting an example for employer involvement in child care. I commend Mr. Austin for his efforts in this area.

During his 20 months as Acting Administrator of GSA, Mr. Austin has actively promoted GSA's involvement in providing child care for Federal employees. GSA's child care initiatives have resulted in the establishment of 65 centers that are operating in GSA-controlled space. These centers serve over 3,205 children, with approximately 2,300 being children of Federal employees. An additional 48 centers are

at various stages in the planning process.

Under Richard Austin's direction, GSA is expanding the scope of its involvement beyond the design and construction of child care centers. This past February, Mr. Austin established the office of child care and development programs within GSA to assist new and existing centers to operate more efficiently and to meet the wide-ranging needs of today's families.

In addition, Mr. Austin is currently organizing an initial training conference for July 1990 that will bring directors, staff, board members of GSA-housed centers, GSA regional child care coordinators, and Federal agency contacts together to learn what each can do to improve the availability, affordability and quality of child care in Federal facilities.

I support Mr. Austin's efforts, and I look forward to working with him to continue expanding the availability of child care services for Federal employees. I urge my colleagues to confirm him as Administrator of General Services so that he may continue his good work in this area.

Mr. BOSCHWITZ. Mr. President, I am pleased to rise today to express support for Mr. Richard G. Austin to be the Administrator of the U.S. General Services Administration [GSA].

I believe that President Bush made a fine selection. Dick's performance as Acting Administrator has demonstrated that he is most equipped to handle this important position. Dick Austin has held the post of Acting Administrator since September 1988, and prior to that was GSA's Regional Administrator in Chicago. He brings with him an operational perspective that is vital to managing an organization as diverse as GSA.

Mr. President, I have worked with Dick Austin both in his capacity as Regional Administrator and as Acting Administrator, most recently on the development of a new courthouse for Minneapolis, MN. I know Dick to be resourceful and capable, and I am confident that upon confirmation by the Senate, he will be even more effective and efficient as the leader of GSA.

Mr. President, I am proud to support the confirmation of Richard G. Austin to be Administrator of General Services. I urge my colleagues to confirm him as Administrator of General Services.

Mr. SYMMS. Mr. President, I am pleased to rise today to support Mr. Richard G. Austin to be the Administrator of the U.S. General Services Administration [GSA].

In my position as the ranking Republican on the Senate Environment and Public Works Subcommittee on Water Resources, Transportation and Infrastructure, I have had the opportunity to work with Dick Austin and with our chairman, the Senator from New York [Mr. MOYNIHAN], on a wide range of issues.

Mr. Austin has proven himself to be an able administrator over the past 20 months that he has served as the Acting Administrator of GSA. He has also proven that President Bush made a fine decision in selecting him for this post, as I am sure my colleagues will agree.

Dick Austin has held the post of Acting Administrator since September 1988. President Bush formally transmitted Dick's nomination to the Senate in October 1989. Unfortunately, there was not sufficient time for the Senate to proceed with confirmation at that time.

However, the Senate Governmental Affairs Committee continued Dick's confirmation process, and on Tuesday last, May 8, voted unanimously to report Dick's nomination to the full Senate for confirmation.

It is important that the Federal agency which is tasked with so many of the Government's administrative duties is in the hands of a person of the caliber and the expertise of Dick Austin.

Mr. President, I am pleased to support the President's nomination of Richard G. Austin to be Administrator of General Services. I urge my colleagues to confirm Mr. Austin to this important post without delay.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

CORRECTING THE ENGROSSMENT OF SENATE CONCURRENT RESOLUTION 133

Mr. MITCHELL. Mr. President, I ask unanimous consent that in the engrossment of Senate Concurrent Resolution 133, the year "1989" be stricken and the year "1990" be substituted therefor.

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

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I understand that Senators DECONCINI and CRANSTON wish to be recognized to address the Senate.

I ask unanimous consent that Senator DECONCINI and Senator CRANSTON be recognized to address the Senate and that at the conclusion of their remarks the Senate stand in recess under the order until 1 p.m. on Monday.

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

The Senator from Arizona [Mr. DECONCINI].

DRAFT SOVIET EMIGRATION REFORM LEGISLATION

Mr. DECONCINI. Mr. President, I have just learned that the Soviet Parliament has finally issued a revised version of new draft emigration legislation which takes into account many Western and Soviet citizens' concerns about the right of the Soviet peoples to freedom of movement. As chairman of the Helsinki Commission, I have followed the issue of Soviet emigration closely and have been encouraged by the changes which have taken place over the past few years.

I am particularly encouraged by the general thrust of this proposed emigration reform legislation. I do, however, have one serious reservation about which Cochairman STENY HOYER and I have just cabled Ivan Laptev, Chairman of the Council of the Union of the U.S.S.R. Supreme Soviet asking for a clarification. I refer to paragraph 1 under article 7 of the draft which states and I quote:

> Grounds on which foreign travel can be refused* * *
>
> (1) For reasons concerning the state security of the USSR until these reasons shall cease to exist;

Congressman HOYER and I are concerned, Mr. President, because this statement does not define what these reasons might be. In addition, it places no time limit on the denial period. In the next section, article 8, it is clearly stated that citizens possessing State secrets cannot be denied travel abroad for more than 5 years. The language of article 7, however, provides Soviet authorities with an open-ended avenue for denying Soviet citizens permission to emigrate. Article 7, as currently drafted, appears to take us back to square one regarding the central issue of visa denials.

I hope, therefore, that Chairman Laptev will provide us with a prompt and complete explanation for this apparently serious loophole in the proposed emigration law prior to formal codification currently scheduled for the end of May. Quite frankly, I am sick and tired of the behind-the-scene shenanigans of those who are trying to derail this nomination. Venal and vindictive attempts to destroy Jon's reputation are unworthy of this body. I hope and trust they will stop and that this nomination will move forward expeditiously.

JON STEINBERG

Mr. DECONCINI. Mr. President, on another subject, I want to speak for just a few minutes. There have been some negative articles, I am sorry to say, on the nomination of Jon Steinberg for a judgeship on the new Court of Veterans Appeals. Having worked intimately with Jon over the past 13 years, this Senator thinks the time has

come to tell this body of the exceptional abilities that he possesses.

I can think of no person who is more conversant with both the issues and the laws affecting our Nation's veterans. I can think of no person who is more dedicated to ensuring that veterans receive the benefits to which they are entitled. I can think of no person with whom I have worked on the hill here who has been more helpful to this Senator in ensuring that Arizona veterans are fairly treated under the existing veterans benefits system.

Over the course of the past 13 years, I have come to respect Jon's enormous intellectual abilities and his love for the law. The combination of Jon's abilities and long professional experience in the area of veterans affairs makes him an ideal person to fill the position for which he has been nominated. I compliment Secretary Derwinski for making this recommendation to the White House, and I compliment the President for choosing someone of this character and ability.

I am very saddened and I am tired of what I consider to be the behind-the-scenes shenanigans of those who may be trying to derail this nomination. Venal and vindictive attempts to destroy Jon's reputation are unworthy. I do not know where they come from, but they continue to appear in the press. I think it is most unfortunate.

Jon has worked, I am advised, on veterans' issues for almost 20 years. He is a veteran, indeed, of this body. He has been tireless. He has bent over backwards on many occasions to assist with this Senator's needs. I know he has done the same for many other Senators.

The distinguished chairman of that committee has just come in and we will hear from him just how important Jon has been to the entire committee.

This Senator personally knows of occasions on which Jon has taken the time to call the Director, to talk to veterans groups in my State.

So, it is with a great deal of pride and pleasure on my part to see his name before the Senate Veterans' Affairs Committee for confirmation. But I am very saddened to see derogatory remarks about him and what appear to be some efforts to send this nomination back.

This would be a tragedy, not only to the system but to Veterans' Administration and the court he would serve on because he is so suited for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from California [Mr. CRANSTON].

JON STEINBERG

Mr. CRANSTON. I first want to thank Mr. DECONCINI, the ranking majority member on the Veterans' Affairs Committee, for remarks he just made about Jon Steinberg and the situation swirling around him. Jon Steinberg was one of the first people I employed when I came to the Senate over 21 years ago. I think it is one of the wisest personnel choices I ever made.

He has been responsible for veterans affairs ever since. He has been the principal staffer in the Senate on veterans matters. He is presently the chief counsel of the Veterans' Affairs Committee.

I believe that he knows more about veterans' law and more about veterans' needs, more about veterans' problems, as they relate to the law under Government programs, than any other person, not only in Washington, but in the entire country. He is brilliant. He is a very, very fine attorney. He would make a marvelous judge.

He served as a clerk to then-Judge Warren Burger of the U.S. Court of Appeals for the D.C. Circuit, who later served as Chief Justice of the United States. He served as the Deputy General Counsel of the Peace Corps with Sergeant Shriver in the Kennedy days. He has a quite remarkable background. He would be a truly great judge with total understanding of the law and compassion for those who become embroiled in its processes.

I have looked at all the documents that are available at the time a nomination is submitted to the Senate, as Jon Steinberg's was a few days ago. There is absolutely nothing in any of those documents that would cause anyone to have any doubts about the wisdom of the nomination. It was delayed almost endlessly for rather mysterious and unknown reasons. Eventually, it was submitted just a few days ago.

Then a rumor yesterday that it was about to be withdrawn, and there was some evidence that that was under consideration at the White House. I think there is no doubt about the fact that it was.

The law provides that the new Court of Veterans Appeals, on which Jon Steinberg has been nominated to serve, will be almost evenly divided as to its membership between nominees emanating from the Democratic Party and the Republican Party, and no one party is supposed to have more than a one-member advantage over the other party.

Thus, Jon Steinberg is a Democratic nominee. I would certainly consider it a very unfriendly act, and an intolerable act, if the nomination were withdrawn at this time, for no apparent reason that relates to Jon Steinberg.

My impression is that he is caught up in some other affair that has no relationship to him, no relationship to me, no relationship to veterans' affairs. I do not understand the situation, and I have been unable to ascertain exactly why there is difficulty, but I have been told that it does not relate to the qualifications of Jon Steinberg. His qualifications are great.

It is unfortunate that this situation leads to speculation in the press and some statements in the press that cast some aspersions on Jon Steinberg. He is an outstanding public servant. He will be an outstanding member of the bench. I think he is highly qualified to serve in even higher posts than the one for which he has been nominated, such as on the Federal bench in just about, I would say, any capacity.

I trust the nomination will not be withdrawn by the White House. I know that there is overwhelming support for Jon Steinberg on the Veterans' Affairs Committee on both sides of the aisle, from those who know and respect his brilliance, his dedication, his energy, his hard work. He has a broad vision, but he also is able to dot every i and cross every t.

Often, he stayed up all night before markups in the Veterans' Affairs Committee to make sure everything was in perfect order, and that every base that should be covered had been covered. It would be a tragic loss for the veterans of America were he denied this opportunity to serve on the Court of Veterans Appeals. It would be a tragedy in the life of a remarkable American who has served his country with distinction and who is fully entitled to the post for which he has been nominated by the President.

I trust that the White House will not yield to whatever pressures are being put upon them to withdraw this nomination, and that it will remain now in the custody of the Senate for our deliberations and for our decision as to what do do about the nomination.

I am very confident the Veterans' Affairs Committee, under those circumstances, would report him with an overwhelming vote and that he would be approved overwhelmingly by the Senate with votes from both sides of the aisle.

I would really be outraged if the White House took a step that would be so damaging to Jon Steinberg and so damaging to veterans, depriving them of the service of this remarkable man for reasons that have no relationship to the Court of Veterans Appeals, apparently, and no relationship to the qualifications of Jon Steinberg.

I will be watching with great interest as the next steps unfold in this matter.

ORDERS FOR MONDAY, MAY 21, 1990

RECESS UNTIL 1 P.M.; MORNING BUSINESS; PROCEED TO THE CONSIDERATION OF S. 1970, THE OMNIBUS CRIME PACKAGE

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it

stand in recess until 1 p.m. on Monday, May 21; and that following the time for the two leaders, there be a period for morning business not to extend beyond 1:30 p.m., with Senators permitted to speak therein for up to 5 minutes each; I further ask unanimous consent that at 1:30 p.m. the Senate proceed to the consideration of Calendar Order No. 422, S. 1970, the omnibus crime package; and that on Monday, when S. 1970 is considered, there be debate only, and that no amendments or motions be in order.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

RECESS UNTIL MONDAY, MAY 21, 1990, AT 1 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess.

Thereupon, at 1:46 p.m., the Senate recessed until Monday, May 21, 1990, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate May 18, 1990:

THE JUDICIARY

MICHAEL BOUDIN, OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA VICE JOHN H. PRATT, RETIRED.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASSES INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

EMILIO IODICE, OF VIRGINIA
JAMES A. MOORHOUSE, OF VIRGINIA

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

KEVIN BRENNAN, OF CALIFORNIA
ROBERT KOHN, OF MARYLAND
KENNETH MOOREFIELD, OF THE DISTRICT OF COLUMBIA

THE FOLLOWING-NAMED PERSON OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT FOR APPOINTMENT AS CAREER MEMBER OF THE SENIOR FOREIGN SERVICE OF THE CLASS STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR REAPPOINTMENT IN THE FOREIGN SERVICE AS A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, AND A CONSULAR OFFICER AND A SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

W. WAYNE MCKEEL, OF VIRGINIA

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS TWO, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF AGRICULTURE

ALLAN P. MUSTARD, OF WASHINGTON
GRANT A. PETTRIE, OF OHIO
MARK S. SLOAN, OF VIRGINIA
ROGER A. WENTZEL, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

VIRGINIA M. HOLTE, OF CALIFORNIA
BETTY HARRIET MCCUTCHAN, OF TEXAS

DEPARTMENT OF AGRICULTURE

CHARLES A. BERTSCH, OF VIRGINIA
DARYL A. BREHM, OF VIRGINIA
ANDREW C. BURST, OF MISSOURI
CAROL M. CHESLEY, OF MARYLAND
STAN A. COHEN, OF VIRGINIA
ROBERT H. CURTIS, OF VIRGINIA
LAWRENCE D. FUELL, OF WASHINGTON
RALPH B. GIFFORD, OF MARYLAND
JONATHAN P. GRESSEL, OF FLORIDA
PATRICIA M. HASLACH, OF OREGON
DAVID B. HEGWOOD, OF TEXAS
HOLLY S. HIGGINS, OF IOWA
MAURICE W. HOUSE, OF OKLAHOMA
STEPHEN M. HUETE, OF MARYLAND
DAVID C. MILLER, OF VIRGINIA
PHILIP A. SHULL, OF OHIO
MARGARET K. TING, OF FLORIDA
ELLEN L. WOLANER, OF FLORIDA

DEPARTMENT OF COMMERCE

RENATO L. DAVIA, OF TEXAS
DANIEL D. DEVITO, OF WASHINGTON
CAMIILLE E. SAILER, OF PENNSYLVANIA
NORA SUN, OF CALIFORNIA

U.S. INFORMATION AGENCY

MAGDA SELIM SIEKERT, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICERS AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

DAVID WAYNE ABELL, OF ARKANSAS
BERYL LEONE BENTLEY-ANDERSON, OF MARYLAND
PAUL DOUGLAS BIRDSALL, OF FLORIDA
HENRY LOUIS BISHARAT, OF CALIFORNIA
KATHRYN ANN CABRAL, OF FLORIDA
SANDRA J. CECCHINI, OF FLORIDA
SANDRA ELAINE CLARK, OF NEW YORK
ANNE ELIZABETH CLAUSING, OF TENNESSEE
IRENE POSNER COHN, OF CALIFORNIA
CHERYL EILEEN COVIELLO, OF FLORIDA
PAUL W. DAVIS-JONES, OF NEW YORK
LIANE RENEE DORSEY, OF NEW YORK
SARAH F. DREW, OF CALIFORNIA
DAVID RICHARD FETTER, OF MARYLAND
NANCY IZZO JACKSON, OF NEW JERSEY
RICHARD MICHAEL JARVIS, OF WASHINGTON
ELISE H. KLEINWAKS, OF NEW YORK
DOUGLAS ROBERT KRAMER, OF MINNESOTA
KATHLEEN H. B. MANALO, OF VIRGINIA
LARRY L. MEMMOTT, OF UTAH
RICHARD H. RILEY, IV, OF GEORGIA
PAULA SUE THIEDE, OF TEXAS
MICHAEL M. UYEHARA, OF TEXAS
MARGARET MARY WILLINGHAM, OF VIRGINIA
CHRISTOPHER S. WILSON, OF KANSAS
JULIE BASTIAN WINN, OF FLORIDA
TIMOTHY PATRICK DE SAN RAFAEL ZUNIGA-BROWN, OF NEVADA

DEPARTMENT OF COMMERCE

WILLIAM N. CENTER, JR., OF MARYLAND
JOAN H. EDWARDS, OF PENNSYLVANIA
THOMAS M. KELSEY, OF CONNECTICUT
CHARLES M. REESE, OF CALIFORNIA
ALAN R. TURLEY, OF CONNECTICUT

U.S. INFORMATION AGENCY

DAVID R. FARRAR, OF CONNECTICUT
JOHN WILLIAM FINN, OF MASSACHUSETTS
GARY P. KEITH, OF OHIO
NEIL R. KLOPFENSTEIN, OF IOWA
DAVID MEES, OF MASSACHUSETTS
RICHARD MEI, JR., OF FLORIDA
WILLIAM J. MILLMAN, III, OF CALIFORNIA
RACHEL NORNIELLA, OF FLORIDA
ROBERT WILLIAM OGBURN, OF MARYLAND
JOY E. WHITE, OF OHIO
BARBARA ANNE ZIGLI, OF VIRGINIA

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENTS OF STATE AND COMMERCE AND THE UNITED STATES INFORMATION AGENCY TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

RICHARD HUGH ADAMS, OF CALIFORNIA
ASPEN LOREE AMAN ARVANDI, OF MARYLAND
BRIAN D. BACHMAN, OF VIRGINIA
TAMARA K. BAIRD, OF COLORADO
CLARE ALISON BARKLEY, OF MARYLAND
GERALD J. BEAULIEU, OF THE DISTRICT OF COLUMBIA
WILLIAM BELLIS, OF TEXAS
MICHAEL DAVID BOMBERGER, OF VIRGINIA
DONALD SCOTT BOY, OF MASSACHUSETTS
JUDITH L. BRYAN, OF TEXAS
MARTHA BUCKLEY, OF PENNSYLVANIA
BRENT D. BYERS, OF VIRGINIA
MARK CANNING, OF WASHINGTON
KELLY SCOTT CECIL, OF OKLAHOMA
NATHANIEL DABNEY CHAPMAN, II, OF VIRGINIA
JENNIFER APPLETON CLARK, OF CALIFORNIA
MELISSA E. CLEGG, OF CALIFORNIA
KATHARINE MCCALLIE COCHRANE, OF VIRGINIA
GEORGE C. DAHAN, OF VIRGINIA
JASON DAVIS, OF ALASKA
KEES C. DAVISON, OF NEW YORK
GERALD A. DENION, OF NEW JERSEY
GORDON KENNEDY DUGUID, OF ILLINOIS
TERRENCE JAMES DUNN, OF VIRGINIA
JORDANA DYM, OF MASSACHUSETTS
SUSAN MARSH ELLIOTT, OF CONNECTICUT
ANDREW S. E. ERICKSON, OF CALIFORNIA
TIMOTHY L. FORSYTH, OF OREGON
JOSE ANGEL FOURQUET, OF PUERTO RICO
CHARLES W. FROST, OF VIRGINIA
JANICE BRADLEY GARDNER, OF MARYLAND
AMADO GAYOL, OF FLORIDA
ELAINE CYGNAROWICZ GLASENAPP, OF VIRGINIA
MARY C. GORDON-SMITH, OF MARYLAND
PATRICIA ANN GREGORY, OF WASHINGTON
MARY THERESE BUTLER GUDJONSSON, OF MINNESOTA
DAINA INGEBORG HELD, OF VIRGINIA
GUILLAUME L. HENSEL, OF THE DISTRICT OF COLUMBIA
DAVID HORNBERGER, OF TEXAS
CHARLES F. HUNTER, OF CALIFORNIA
JEAN F. HUPTICH, OF VIRGINIA
MARILYN P. JAQUAY, OF VIRGINIA
NATALIE ANN JOHNSON, OF ARIZONA
ELIZABETH JANE JORDAN, OF MARYLAND
KEITH C. JORDAN, OF OHIO
MARK W. JULIAN, OF VIRGINIA
LAWRENCE J. KAY, OF IOWA
KEREN A. KAYES, OF VIRGINIA
ANTHONY KLIMKIEWICZ, OF CALIFORNIA
NANCY LANGLEY, OF VIRGINIA
JOHN CHARLES LAW, OF WEST VIRGINIA
BONNIE PENFOLD LEACH, OF VIRGINIA
CARYN ELISABETH LINDSAY, OF MINNESOTA
STEPHEN M. LISTON, OF CALIFORNIA
MICHAEL LUK, OF VIRGINIA
NANCY J. LUNDE, OF VIRGINIA
MATTHEW LUSSENHOP, OF MINNESOTA
EARLINE J. MARTIN, OF VIRGINIA
RUTH T. MCBRIDE, OF VIRGINIA
WILLIAM LEWIS MCCULLA, OF MARYLAND
DEBORAH HUNSLEY MCGEEHON, OF NORTH CAROLINA
CHRISTOPHER MCSHANE, OF WASHINGTON
KAREN ELIZABETH MEINHART, OF TENNESSEE
GLENN JOSEPH MELCHER, OF THE DISTRICT OF COLUMBIA
JOHN WALTON MERIWETHER, OF ORGEON
DOUGLAS JOHN MEURS, OF NEW YORK
WILLIAM S. MEYER, OF VIRGINIA
STEPHANIE ANNE MILEY, OF MARYLAND
JAMES RICHARD MINICOZZI, OF VIRGINIA
ELIZABETH E. MOORE, OF VIRGINIA
BRIAN R. MORAN, OF CONNECTICUT
SARAH CRADDOCK MORRISON, OF LOUISIANA
ARTURO G. MUNOZ, OF VIRGINIA
MARY ANN NORTON, OF VIRGINIA
LOIDA DE LOS ANGELES O'CONNELL, OF VIRGINIA
PAUL LEONARD OGLESBY, JR., OF ILLINOIS
MONA ELAINE OPDYKE, OF CALIFORNIA
SUSAN PAGE, OF WASHINGTON
TAMARA T. PARSONS, OF WASHINGTON
BRIAN HAWTHORNE PHIPPS, OF CONNECTICUT
WILLIAM BASCOM PLUMMER, OF VIRGINIA
ELIZABETH MABEL WHALEN PRATT, OF THE DISTRICT OF COLUMBIA
ZORINE RADOYCICH-EATON, OF VIRGINIA
DAVID HUGH RANK, OF VIRGINIA
CELINA B. REALUYO, OF NEW YORK
JOHN NEIL RIES, OF OHIO
ANNE SLOAN RILEY, OF FLORIDA
VICTOR M. RIVERA, OF NEW YORK
CAROLINE A. ROGERS, OF VIRGINIA
PAUL W. ROPP, OF VIRGINIA
DANIEL EDMUND ROSS, OF VIRGINIA
SARAH KATHERINE SCHULTZ, OF NORTH CAROLINA
BRIAN K. SELF, OF CALIFORNIA
ELIZABETH STERN, OF VIRGINIA
CONSTANCE E. TAUBE, OF THE DISTRICT OF COLUMBIA
TRACY KIM THIELE, OF CALIFORNIA
SCOTT BRIAN TICKNOR, OF VIRGINIA
JAY VANDEVOORT, OF VIRGINIA
JAMES ALAN WARREN, OF CALIFORNIA
JESSICA WEBSTER, OF THE DISTRICT OF COLUMBIA
TERRENCE E. WEST, OF CALIFORNIA
TERRY JOHN WHITE, OF CALIFORNIA
DENISE ANN URS, OF TEXAS
MICHAEL K. YEN, OF CALIFORNIA

CONSULAR OFFICER OF THE UNITED STATES OF AMERICA:

JOHN BREIDENSTINE, OF PENNSYLVANIA

THE FOLLOWING-NAMED CAREER MEMBER OF THE FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED, EFFECTIVE OCTOBER 12, 1986:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR:

LANGE SCHERMERHORN, OF NEW JERSEY

IN THE AIR FORCE

THE FOLLOWING STUDENT OF THE UNIFORMED SERVICES UNIVERSITY OF HEALTH SCIENCES CLASS OF 1990, FOR APPOINTMENT IN THE REGULAR AIR FORCE, EFFECTIVE UPON HIS GRADUATION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 2114, WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE:

ROBERT A. SCHMITZ, xxx-xx-xxxx

THE FOLLOWING CADETS, UNITED STATES AIR FORCE ACADEMY, FOR APPOINTMENT AS SECOND LIEUTENANTS IN THE REGULAR AIR FORCE, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 9353(B) AND 531, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE:

BARRY D. BROWN, xxx-xx-xxxx
MICHAEL E. CALTA, xxx-xx-xxxx

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 4333(B):

DANIEL J. KAUFMAN, xxx-xx-xxxx

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS OF THE MARINE CORPS FOR PERMANENT APPOINTMENT TO THE GRADE OF MAJOR UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

WILLIAM S. AITKEN, xx...
GREGORY S. AKERS, xx...
BRUCE N. AKIYAMA, xx...
LARRY D. ALEXANDER, xx...
JOHN M. ALLISON, xx...
DOUGLAS R. ALLPRESS, xx...
PHILIP ANDERSON, xx...
SCOTT M. ANDERSON, xx...
WILLIAM J. ANDERSON, xx...
DENNIS M. ARINELLO, xx...
ROGER D. ATKINS, xx...
RICKEY L. AUMAN, xx...
JUAN G. AYALA, xx...
LYNNWOOD M. BAADE, xx...
ROBERT J. BADER, xx...
THOMAS B. BAILEY, III, xx...
WILLIAM R. BALL, JR. xx...
GREGORY A. BALLARD, xx...
JOHN R. BALLARD, xx...
MARK H. BAMBERGER, xx...
ROBERT C. BARBER, xx...
RICHARD A. BARFIELD, xx...
THOMAS G. BARTON, xx...
WILLIAM G. BASSETT, xx...
MIGUEL I. BECERRIL, xx...
EDWARD J. BECK, xx...
PHILLIP W. BECK, xx...
PATRICK L. BEEKMAN, xx...
DONALD D. BEGLEY, xx...
LORINE E. BERGERON, III, xx...
BRENT D. BIELENBERG, xx...
HENRY A. BLACK, xx...
PAUL E. BLAIS, xx...
MICHAEL J. BLANC, xx...
RICARDO J. BLANCO, xx...
PAUL R. BLESS, xx...
RICHARD K. BOCH, xx...
LAMONT D. BOILEAU, JR. xx...
ROBERT I. BOLAND, III, xx...
MARK G. BOLIN, xx...
JOSEPH BONSIGNORE, JR. xx...
THOMAS G. BOODRY, xx...
GLENN A. BOUSQUET, xx...
WILLIAM J. BOYD, xx...
MICHAEL F. BRADLEY, xx...
TERRANCE C. BRADY, xx...
THOMAS BRANDL, xx...
WILLIAM G. BRANSCUM, xx...
JOHN M. BRANUM, xx...
ROBERT E. BRECKENRIDGE, xx...
DAVID J. BREEN, xx...
ROBERT J. BRENNAN, xx...
CHRISTOPHE R. BRESLIN, xx...
TROY G. BREWER, xx...
RAYMOND T. BRIGHT, xx...
JAMES W. BROWN, xx...
JEFFREY L. BROWN, xx...
JOSEPH R. BROWN, II, xx...
JOSEPH A. BRUDER, I, xx...
GARY E. BRYSON, xx...
BERNARD T. BURCHELL, JR. xx...
GREGORY A. BURGHARDT, xx...
KEVIN P. BURNS, xx...
DONALD W. BUSSELL, xx...
DANIEL T. BUTTON, xx...
JOHN M. BYZEWSKI, xx...
WILLIAM H. CALLAHAN, JR. xx...
CARLOS J. CAMARENA, xx...
MARK E. CAMPORINI, xx...
JOHN J. CANHAM, JR. xx...
BRADLEY E. CANTRELL, xx...
THOMAS L. CARIKER, xx...
ROBERT E. CARNEY, xx...
DANIEL K. CARPENTER, xx...
GARY L. CARTER, xx...
JEFFREY L. CASPERS, xx...
EDWIN B. CASSADY, xx...
JOSEPH D. CASSEL, JR. xx...
ANDREW M. CELLA, III, xx...
DONNA B. CHALKLEY, xx...
DAVID R. CHASE, xx...
RONALD E. CHEZEM, JR. xx...
JOSEPH F. CIANO, JR. xx...
WILLIAM M. CIASTON, xx...
WILLIAM L. CLEMENTE, xx...
GUY M. CLOSE, xx...
FRANCIS C. COBLE, xx...
JAMES M. CODDING, xx...
WILLIAM C. COLLEY, xx...
KATHRYN E. COLLINS, xx...
THOMAS F. COLLINS, JR. xx...
MICHAEL J. CONKLIN, xx...
THOMAS M. CONNERS, xx...
JAMES M. CONNOLLY, JR. xx...
PATRICK T. CONWAY, xx...
MITCHELL A. COOK, xx...
LESLIE S. COOPER, xx...
DEANE A. CORBETT, xx...
LAWRENCE P. CORBETT, xx...
GARY A. CORREIA, xx...
MARK T. CRAMER, xx...
ROBERT E. CRANK, xx...
ROBERT J. CRAZYTHUNDER, xx...
CARL M. CRIBBS, xx...
JOHN CSASZI, xx...
FRANCIS A. CSUTOROS, xx...
PATRICK T. CUSHING, xx...
RICHARD C. DANIELS, xx...
MATTHEW A. DAPSON, xx...
KELVIN M. DAVIS, xx...
DEBRA L. DECKER, xx...
KIRK M. DEISSLER, xx...
DANIEL D. DEITZ, xx...
KEVIN J. DELMOUR, xx...
JAMES R. DERDA, xx...
RONALD H. DERRICK, xx...
ROBERT W. DESTAFNEY, xx...
RICHARD L. DETRIQUET, xx...
JERRY DEVALLE, xx...
GORDON J. DEY, JR, xx...
CHARLES R. DICKINSON, xx...
DALE A. DICKS, xx...
DOUGLAS J. DIEHL, xx...
CALVIN R. DIXON, xx...
JAMES G. DIXON, JR. xx...
MARK C. DOBBS, xx...
DOUGLAS R. DOERR, xx...
WILLIAM B. DONOHUE, xx...
JAMES J. DORMER, III, xx...
STEPHEN M. DOUMA, xx...
JOE D. DOWDY, xx...
ERIK N. DOYLE, xx...
JAMES H. DRESCHER, xx...
WARREN I. DRIGGERS, xx...
ROBERT J. DRUMMOND, xx...
GREGORY R. DUNLAP, xx...
DAVID C. DURHAM, xx...
PAUL K. DURKIN, xx...
WALTER R. DYAR, xx...
MICHAEL A. DYER, xx...
STEVEN G. EADS, xx...
LAURIN P. ECK, xx...
JOHN J. EGAN, xx...
GREGORY M. EHRMANN, xx...
E. D. ELEK, xx...
RICHARD C. ELLIS, xx...
GEORGE P. ELSASSER, xx...
DAVID A. ERCHULL, xx...
CARL E. ERLANDSON, xx...
PAUL A. EVANS, xx...
JEFFREY D. EVEREST, xx...
WILLIAM L. EZELL, xx...
HARRY W. FARMER, JR, xx...
ANTHONY P. FAZIO, xx...
WILLIAM G. FELL, JR, xx...
ATTILA H. FELSEN, xx...
JAMES D. FELTON, xx...
THOMAS J. FELTS, xx...
ROBERT W. FERGUSON, JR. xx...
KEITH B. FERRELL, xx...
DAVID D. FERRUCCI, xx...
JUAN A. FIGUEROA, xx...
RICHARD J. FINDLAY, xx...
JAMES J. FINK, xx...
MATTHEW A. FINLON, xx...
EDWARD J. FINN, xx...
THOMAS A. FINN, III, xx...
MICHAEL E. FINNIE, xx...
WILLIAM L. FISER, xx...
NORMAN W. FLAKE, xx...
CHRISTOPHE M. FLECK, xx...
GEORGE E. FLEMING, III, xx...
EDMUND F. FLORES, xx...
WARREN J. FOERSCH, xx...
GARY P. FONTAINE, xx...
MARK E. FORT, xx...
MARK FRACASSA, xx...
WILLIAM A. FRANCHI, xx...
JOHN B. FRANKLIN, JR. xx...
ADRIENNE K. FRASERDARLING, xx...
KEVIN M. FRENCH, xx...
LAWRENCE W. FRYER, JR. xx...
PHILLIP A. GABRIEL, xx...
HAROLD D. GAGNON, III, xx...
STEVEN A. GAIONI, xx...
RAYMOND P. GANAS, xx...
DONNA A. GANZER, xx...
RICHARD B. GARTRELL, xx...
DAVID C. GARZA, xx...
MICHAEL C. GASAPO, xx...
RAYMOND P. GASILIUNAS, xx...
ROBERT A. GEARHART, JR, xx...
PAUL R. GEHRING, xx...
THOMAS D. GEHRKI, xx...
MICHAEL A. GEORGE, xx...
RONALD C. GERD, xx...
DONALD L. GEVING, II, xx...
HAROLD R. GIELOW, xx...
EDWARD T. GILHOOLEY, xx...
PAUL F. GILLIS, xx...
DOUGLAS W. GILLS, xx...
THOMAS J. GILROY, xx...
CHARLES W. GITTINS, xx...
THOMAS E. GLAZER, xx...
EUGENE H. GODIN, xx...
PATRICK F. GOULD, xx...
TERRANCE A. GOULD, xx...
ROBERT S. GRAHAM, xx...
JAMES D. GRAU, xx...
CATKIN M. GRAYSON, xx...
WILLIAM W. GRIFFEN, JR, xx...
JAMES M. GRIFFIN, JR, xx...
CHRISTOPHE P. GUTMANN, xx...
EARL W. HACKER, xx...
RICHARD D. HAFENBRACK, xx...
JACK J. HAGER, xx...
RAYMOND W. HAMMER, xx...
JUDY L. HANCE, xx...
JOHN F. HAND, xx...
GREGORY L. HARBAC, xx...
MARY M. HARBAC, xx...
JAMES E. HARBISON, xx...
ANDRE J. HARDEMAN, xx...
WILLIAM J. HARTIG, xx...
MARK L. HASKETT, xx...
EDWARD M. HATCHER, JR, xx...
BRUCE E. HATLEM, xx...
MICHAEL L. HAWKINS, xx...
BRIAN S. HEALEY, xx...
DAVID E. HEILAND, xx...
DAVID R. HEINZ, xx...
GEOFFREY L. HENRY, xx...
RICHARD B. HENSEL, xx...
KEVIN G. HERRMANN, xx...
TERENCE L. HESS, xx...
TIMOTHY P. HEWITT, xx...
STEWART M. HICKEY, xx...
JOSEPH F. HIGGINS, xx...
STEPHEN L. HILL, xx...
JAMES S. HINKLE, xx...
JON T. HOFFMAN, xx...
LLOYD C. HOLBERT, xx...
JOHN P. HOLDEN, xx...
JIMMY L. HOLDER, xx...
DARRELL A. HONEA, xx...
GLENN HONEYCUTT, xx...
GLENN M. HOPPE, xx...
HERBERT A. HOPPER, III, xx...
MELVIN D. HORTON, xx...
JAMES R. HOWCROFT, xx...
JOSEPH P. HREHA, xx...
TAWISH HUAUTE, xx...
WILLIAM D. HUGHES, III, xx...
TIMOTHY L. HUNTER, xx...
PETER J. HURAL, xx...
RICHARD F. INGLETT, xx...
DANIEL T. JACKSON, xx...
HENRY C. JACKSON, II, xx...
RODNEY J. JARVIS, xx...
LEONARD A. JASCZAK, xx...
ROBERT K. JENNINGS, xx...
DOUGLAS J. JEROTHE, xx...
RONALD J. JOHNSON, xx...
JOHN W. JOHNSTON, xx...
DAVID S. JONAS, xx...
KEVIN L. JONES, xx...
MICHAEL A. JONES, xx...
STEVEN M. JONES, xx...
WILLIE C. JONES, xx...
WILLIAM C. JORDEN, III, xx...
RAYMOND B. JOSEPH, xx...
ROBERT E. JOSLIN, xx...
TIMOTHY E. JUNETTE, xx...
KEVIN M. KACHMAR, xx...
STEPHEN R. KACZMAR, xx...
MICHAEL J. KANTARIS, xx...
DAVID P. KARCHER, JR, xx...
LARRY M. KEIM, xx...
STEVEN M. KEIM, xx...
RUSSELL A. KELLER, xx...
JOSEPH L. KELLEY, xx...
KEVIN L. KELLEY, xx...
KEITH R. KELLY, xx...
KENNETH W. KEVERLINE, xx...
LAWRENCE M. KING, JR, xx...
SAMUEL R. KING, xx...
JOHN W. KIRKLAND, III, xx...
CHAD E. KIRKLEY, xx...
CRISTON E. KLOTZ, xx...
RICHARD V. KMIEC, xx...
LAWRENCE D. KNOSP, xx...
ROBERT L. KNOY, xx...
BRUCE A. KOERNER, xx...
DANIEL W. KOLOS, xx...
JOHN G. KORAN, III, xx...
THOMAS R. KOVACH, JR, xx...
LELAND P. KRINER, III, xx...
ROBERT A. KUHNERT, xx...
MICHAEL D. KUSZEWSKI, xx...
MATTHEW J. KUZNIEWSKI, xx...
ROBERT L. LAMANNA, xx...
JOSEPH M. LANCE, III, xx...
KENNETH R. LARDIE, xx...
JAMES B. LASTER, xx...
KEITH A. LAWLESS, xx...
ROBERT E. LAYTON, xx...
KEVIN M. LEAHY, xx...
TIMOTHY G. LEARN, xx...
GEORGES E. LEBLANC, III, xx...
BEVELY G. LEE, xx...
JAMES M. LEE, JR, xx...
ALAN R. LEWIS, xx...
JOHN G. LIDDLE, xx...

MARC C. LIEBER, xx...
CHAD LIENAU, xx...
ERIC T. LITAKER, xx...
DANIEL M. LIZZUL, xx...
TERRY M. LOCKARD, xx...
PETER F. LONG, JR., xx...
ROBERT G. LONGINO, xx...
ROBERT M. LOTTIE, xx...
MICHAEL E. LOVE, xx...
JEFFREY G. LUCAS, xx...
JAMES L. LUNCEFORD, xx...
STEPHEN P. LYNCH, xx...
JOHN F. LYNN, xx...
WILLIAM P. MACECEVIC, JR, xx...
DAVID S. MALCOLM, xx...
THOMAS F. MANLEY, II, xx...
MARTIN J. MARBACH, xx...
THOMAS R. MARCHEGIANO, JR, xx...
CRAIG A. MARSHALL, xx...
JEFFERY L. MARSHALL, xx...
EDDIE D. MARTIN, xx...
LYNETTE M. MARTIN, xx...
RAYMOND M. MARTIN, xx...
WILLIAM L. MARTIN, JR, xx...
CARL D. MATTER, xx...
STEVEN H. MATTOS, xx...
BOBBY J. MAY, xx...
FRANK D. MAZUR, xx...
LORNE N. MAZZAWI, xx...
ROBERT E. MCCANN, xx...
MICHAEL K. MCCLANAHAN, xx...
SCOTT E. MCCLAY, xx...
EDWARD M. MCCUE, III, xx...
RICHARD L. MCCUTCHEON, xx...
TIMOTHY E. MCDONOUGH, xx...
WILLIAM R. MCDOWELL, xx...
RICK T. MCFADDEN, xx...
THOMAS J. MCGILL, JR, xx...
JEROME P. MCGOVERN, xx...
BERNARD W. MCGOWAN, JR, xx...
THOMAS J. MCGRATH, xx...
KENNETH F. MCKENZIE, JR, xx...
RICHARD H. MCKENZIE, JR, xx...
MARK F. MCKEON, xx...
DANIEL L. MCMANUS, xx...
CHARLES L. MCNABB, xx...
DENNIS M. MCNULTY, xx...
CRAIG M. MCVAY, xx...
PATRICK J. MEAD, xx...
JERRY G. MENGELKOCH, xx...
LEO A. MERCADO, JR, xx...
EUGENE R. MEREDITH, xx...
JONATHAN G. MICLOT, xx...
CHARLES D. MILES, xx...
ERIC W. MILLER, xx...
RANDALL N. MILLER, xx...
RANDY J. MILLER, xx...
GREGORY E. MINKS, xx...
JAMES E. MINNEMA, xx...
JAMES F. MITCHELL, xx...
ARTHUR M. MOBLEY, xx...
MICHAEL J. MOLIDOR, xx...
DAVID J. MOLLAHAN, xx...
JOHN E. MONTEMAYOR, xx...
MEDIO MONTI, xx...
DONALD R. MOORE, JR, xx...
GARRETT W. MOORE, xx...
JOHN A. MORROW, xx...
WILLIAM M. MOSER, xx...
SEAN T. MULCAHY, xx...
GARY W. MUNROE, JR, xx...
GEORGE W. MURRAY, JR, xx...
THOMAS M. MURRAY, xx...
DOUGLAS A. MUSIL, xx...
MARK E. MYELLE, xx...
CHARLES R. MYERS, xx...
GORDON F. MYERS, xx...
CHAD F. NELSON, xx...
PETER M. NELSON, xx...
SCOTT D. NELSON, xx...
JERRY J. NEWTON, xx...
MARK L. NOBLE, xx...
PAUL J. NUNEZ, xx...
ROBERT E. NUNLEY, xx...
CHRISTOPHE E. OCONNOR, xx...
MICHAEL S. OGDEN, xx...
DENNIS J. OKEEFFE, xx...
KEITH A. OLIVER, xx...
MAHATHA M. OLIVER, JR, xx...
JAMES C. OLSEN, xx...
THOMAS D. OLSEN, xx...
ROGER J. OLTMAN, xx...
MICHAEL E. ONEIL, xx...
TIMOTHY P. OREILLY, xx...
MICHAEL R. OSBORN, xx...
DENNIS M. OSBORNE, xx...
MICHAEL E. OSTAPIEJ, xx...
CHARLES E. OWENS, xx...
JOHN E. PAGE, xx...
ANTHONY B. PAIS, xx...
JON E. PARIS, xx...
WILLIAM H. PARKER, xx...
WILLIAM J. PARKER, xx...
WILLIAM E. PARRISH, xx...
DARRYL B. PATTON, xx...
MICHAEL J. PAULOVICH, xx...
MICHAEL D. PEDERSEN, xx...
ANDREW S. PELO, xx...
ROBERT L. PELON, xx...
LAURA E. PERDUE, xx...
DAVID J. PERNAI, xx...
CURTIS A. PERRY, xx...
PHILLIP D. PETERSON, JR, xx...
WILLIAM C. PFAENDER, xx...
ALLAN C. POLLEY, xx...
BRIAN L. POOLER, xx...
RICHARD M. POWELL, JR, xx...
GLENN H. PRESTON, xx...
DAVID W. PRICE, xx...
LYNN A. PRICE, xx...
MARTIN C. PRICE, III, xx...
BRADFORD A. PRINDLE, xx...
KAREN S. PROKOP, xx...
JOHN C. PROSS, xx...
HARRY J. PURCELL, xx...
MICHAEL J. PURVIS, xx...
THOMAS F. QUALLS, JR, xx...
JOHN L. QUICK, xx...
MICHAEL E. RATLIFF, xx...
EDGAR A. REA, xx...
LESLIE H. REED, JR, xx...
WILLIAM A. REED, JR, xx...
PATRICK C. REGAN, xx...
THOMAS L. REHRIG, xx...
RICHARD C. REINECKE, xx...
DAVID G. REIST, xx...
ROBIN R. RENKEN, xx...
GINA M. RICHER, xx...
JACKIE L. RICKMAN, xx...
SCOTT W. RIDGEWAY, JR, xx...
VICKI A. RILEY, xx...
WILLIAM H. RITCHIE, III, xx...
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WILLIAM E. RIZZIO, JR, xx...
JAMES S. ROBERTSON, xx...
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ROY E. ROE, xx...
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THOMAS L. ROLLANDINI, xx...
GLENN W. ROSENBERGER, xx...
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CHARLES T. ROUSE, xx...
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JOHN D. RUDZIS, xx...
ROBERT L. RUSCH, xx...
DANIEL P. RYAN, xx...
LEONARD M. RYAN, xx...
ROBERT J. SAVAGE, xx...
MICHAEL L. SAWYERS, xx...
HUBERT J. SCALLON, xx...
STEVEN J. SCHAD, xx...
GARY W. SCHENKEL, xx...
ROY R. SCHLEIDEN, xx...
ROBERT W. SCHMIDT, xx...
JOHN F. SCHMITT, xx...
MICHAEL H. SCHMITT, xx...
RICHARD A. SCHOLLMANN, xx...
CHRISTOPHER P. SCHUCHARDT, xx...
DOUGLAS E. SCHUMICK, xx...
JOEL G. SCHWANKL, xx...
MICHAEL SEAY, II, xx...
FRED R. SEITER, xx...
KEITH A. SEIWELL, xx...
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MICHAEL G. SESSIONS, xx...
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JAMES K. SHANNON, xx...
DAVID G. SHARP, xx...
THOMAS R. SHAW, xx...
BRADLEY SHOEMAKER, xx...
JAMES E. SHULSON, xx...
SAMUEL C. SICHKO, xx...
ROLF A. SIEGEL, xx...
GEORGE W. SIMMONS, xx...
ROBERT W. SIMMONS, xx...
PATRICK A. SIVIGNY, xx...
BRANTLEY O. SMITH, III, xx...
DOUGLAS SMITH, xx...
ROBERT L. SMITH, xx...
WILLIAM L. SMITH, III, xx...
JERRY W. SNEED, xx...
CHRISTOPHER P. SNOW, xx...
CHRISTOPHER H. SONNTAG, xx...
JOHN J. SPEGELE, xx...
EDMUND J. SPINELLA, xx...
COSMAS R. SPOFFORD, xx...
JOSEPH D. STANSBURY, xx...
ESTA L. STAPLES, xx...
LAWRENCE P. STAWICKI, xx...
EDWIN P. STEARNS, xx...
BYRON F. STEBBINS, xx...
STEVEN P. STEDFELT, xx...
JOHN P. STEVENS, xx...
GERARD M. STOLAR, xx...
WILLIAM T. STOOKSBURY, xx...
JAMES D. STOREY, xx...
DANIEL B. STREICH, xx...
THOMAS K. SUDBECK, xx...
CATHERINE L. SULLIVAN, xx...
MARTIN J. SULLIVAN, xx...
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SUSAN G. SWEATT, xx...
PETER J. TALLERI, xx...
MICHAEL G. TANNER, xx...
WILLIAM E. TAYLOR, xx...
JEFFERY G. TEGZES, xx...
JOHN A. TERRELL, xx...
JEFFREY A. TERRY, xx...
DAVID G. THOMPSON, xx...
ROBERT L. THOMPSON, xx...
DONALD J. THORNLEY, xx...
TIMOTHY L. THORSON, xx...
DAVID H. TIERNEY, xx...
CHRISTOPHER M. TILTON, xx...
SHANE W. TIPPETT, xx...
BRADLEY J. TOYNBEE, xx...
DWIGHT E. TRAFTON, xx...
RAYMOND R. TROMBADORE, JR, xx...
ROBERT S. TROUT, xx...
MICHAEL V. TRUJILLO, xx...
JANE E. TRUSKEY, xx...
ROBERT J. TURNER, JR, xx...
PETER T. UNDERWOOD, xx...
DIRK J. VANGEISON, xx...
HENRY G. VANWINKLE, II, xx...
GREGORY J. VAUGHAN, xx...
STEVEN E. VEYNA, xx...
BRIAN J. VINCENT, xx...
DAVID A. VINSON, xx...
MICHAEL J. VOHASKA, xx...
RODERICK K. VONLIPSEY, xx...
BLAINE D. VORGANG, xx...
GLENN L. WAGNER, xx...
ROBERT P. WAGNER, III, xx...
LEE A. WAKEFIELD, xx...
ALAN W. WALLACE, xx...
EDWARD M. WALSH, xx...
ROBERT S. WALSH, xx...
DAVID L. WALTER, xx...
GLENN M. WALTERS, xx...
ROLAND B. WALTERS, xx...
DONALD D. WARMKE, xx...
GARY A. WARNER, xx...
PATRICIA F. WARREN, xx...
KENNETH L. WARTICK, xx...
JAMES S. WASEK, xx...
JAMES T. WASLEY, JR, xx...
DAVID J. WASSINK, xx...
DREW M. WATSON, xx...
STEPHEN L. WATTERS, xx...
MICHAEL K. WEBB, xx...
MICHAEL M. WEBER, xx...
STUART D. WEINSTEIN, xx...
AARON E. WELCH, xx...
JAMES L. WELSH, xx...
ANTHONY J. WENDEL, III, xx...
GARY R. WENTZ, xx...
RICHARD B. WERNER, xx...
RICHARD L. WEST, xx...
WILLIAM G. WEST, xx...
MARTIN M. WESTPHAL, xx...
DERMOT C. WHELEHAN, xx...
CHARLES M. WHITE, xx...
GLEN WHITE, xx...
BRUCE A. WHITEHOUSE, II, xx...
ROBERT A. WIEDOWER, xx...
ROBERT A. WILKINS, xx...
GREGORY K. WILKINSON, xx...
DAVID R. WILLIAMS, xx...
HARVEY B. WILLIAMS, III, xx...
THOMAS E. WILLIAMS, JR, xx...
SEDGWICK A. WILLINGHAM, xx...
JEFFREY R. WILLIS, xx...
GARY L. WILLISON, xx...
DAVID L. WILSON, xx...
PATRICK T. WILSON, xx...
RONALD W. WILSON, xx...
TIMOTHY B. WILSON, xx...
FRANK B. WOLCOTT, I, xx...
ALAN M. WOMBLE, xx...
YAN C. WONG, xx...
MICHAEL D. WOODMAN, xx...
RANDALL B. WORMMEESTER, xx...
DAVID M. WUNDER, xx...
MICHAEL P. WYNN, xx...
DAVID M. YADDOW, xx...
ALEC F. YASINSAC, xx...
LON M. YEARY, xx...
DENNIS J. YECKE, xx...
DERWIN G. YEE, xx...
PETER E. YOUNT, xx...
RONNY L. YOWELL, xx...
CHRIS YUNKER, xx...
DOUGLAS P. YUROVICH, xx...

CONFIRMATION

Executive nomination confirmed by the Senate May 18, 1990:

GENERAL SERVICES ADMINISTRATION

RICHARD G. AUSTIN, OF ILLINOIS, TO BE ADMINISTRATOR OF GENERAL SERVICES.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.