SENATE—*Thursday, September 25, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Let us pray.

God of all comfort, in this large Senate family, there are probably many who are hurting about whom we are uninformed. But You know, Lord, who they are and their circumstances.

We regret the death of Officer Delbert Lanier after surgery last night and pray for Your consolation for his family.

We pray for every person who has a need, whether it be personal, family, physical, financial, or vocational.

Confident You are a God who knows when the spirit falls to the ground, we lift up to You those who are hurting and pray for a special healing touch in their lives.

We are grateful for the good news concerning Mrs. Metzenbaum and pray for her early and total recovery.

We are grateful for the recovery of Senator GARN and his daughter, Susan, and commend them to Your gracious care.

Words come with difficulty when we remember Stan and Eunice Kimmit as they hope against hope for their son, Tom. Be gracious, Lord, to a strong, loving father who waits helplessly and a faithful mother and her lonely vigil beside her son's bed day after day now for 18 months. In mercy, Lord, give them special grace and comfort in their unrelieved pain and anxiety.

Thank You, Heavenly Father, for Your comfort and encouragement in difficult days. In His name who is the great physician. Amen.

RECOGNITION OF MAJORITY LEADER

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

SCHEDULE

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

Under the standing order, the leaders will have 10 minutes each followed by special orders for Senators HAWKINS, PROXMIRE, MURKOWSKI, BRADLEY, and MCCONNELL for not to exceed 5 minutes each.

Routine morning business will not extend beyond the hour of 10:30 a.m., with Senators permitted to speak for no more than 5 minutes each.

Between 9:30 and 10:30, hopefully, we can make some decision on cloture on product liability.

It is still my hope that we can complete action on the Commodity Futures Trading Commission authorization legislation. I know they were working last evening, the staff representing Members on both sides of the aisle, to see if they could combine some of the amendments because there are Members on each side who want to offer pretty much the same amendment on grain quality, for example.

Senator MELCHER has an amendment which can be accepted and Senator MCCONNELL has an amendment which can be accepted.

We would still like to dispose of that piece of legislation and then perhaps move to FIFRA, which is another important piece of legislation which should be disposed of.

On that there could be an amendment by Senator BOREN, if he decides not to offer it on the CFTC legislation.

In any event, I would say before midafternoon it would be my hope that we could turn to drug legislation. We hope to have an opportunity to meet sometime this morning with the principals who have been involved with their staffs for the last couple of weeks. That would include myself, the distinguished minority leader, and others who might be designated. There is a lot of work going on by members of our staffs on each side of the aisle.

We hope we can agree on 90 percent of the package. There is no disagreement from the standpoint of Republicans or Democrats. We do not believe ours will be a perfect solution, but we do believe that it is time for us to act. We would like to start that process today.

In my view, the drug problem can only be solved by a full-scale bipartisan attack. That is why we looked carefully at all proposals and then divided negotiators into five bipartisan working groups. They have been working within these groups.

One group is education, prevention, and treatment. The second group is judiciary and justice related issues. The third group is interdiction of supply. The fourth group is international issues. The final group is leadership issues and floor amendments.

The initial meeting was held last Friday afternoon and they have reached, we believe, a fair consensus. We believe that most, if not all, Senators can agree to cosponsor and wholeheartedly support the package at the outset. However, as with any comprehensive package, some major issues must be decided on the Senate floor. At least at this time, we have not reached a compromise on such issues as the death penalty, the so-called drug czar, the exclusionary rule, drug testing and a few others. So in the course of this deliberation—today, tomorrow, and possibly Saturday—I hope we can resolve these outstanding issues.

Again, Mr. President, I suggest to my colleagues that we do not have a great deal of time left. I hope we are in the final 7 or 8 days of legislative business this year. I do believe there is some hope that we can conclude our business by October 3.

The one matter we would like to take up early today is the so-called Daniloff resolution sponsored by Senators HUMPHREY and MOYNIHAN. It is my understanding now that they have agreed to certain modifications in the resolution which will make it acceptable to nearly everyone on both sides and at least let us bring it up as a freestanding resolution. Otherwise, I am advised by Senator HUMPHREY that he will offer it as an amendment to whatever might be pending on the Senate floor.

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

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. ANDREWS). Under the previous order, the Democratic leader is recognized.

Mr. BYRD. I thank the Chair.

SUPPORT FOR THE PHILIPPINES

Mr. BYRD. Mr. President, President Corazon Aquino has now returned to the Philippines, after an inspiring visit to the United States. Her remarkable presentation to Congress was an eloquent testimony to the powerful wellsprings of democracy which exist in her island nation, and which survived and finally prevailed under extremely trying and difficult circumstances.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mrs. Aquino renewed the lessons of the true value of the democratic system which she cherishes and which we cherish and nurture. Through the heroism of the Philippine people, the story which she so poignantly recounted to this body and the other body, she has retaught is our own lessons.

As she so accurately remarked, for the United States her revolution was cheap. The revolution that evolved and resulted in a democracy cost us nothing. But the dollars that we previously had given to the Marcos government were stolen by him, robbing his people of their intended help. Repayment of debts accumulated by Marcos, diverted from their intended use, are burdensome on the Philippine people today—consuming one-half of that Nation's export earnings to pay just the debt service.

Mrs. Aquino came to this country in a true celebration of democracy. And, she came for help. Mr. President, it is true that we have, so far, turned away from her request. She has gone home empty handed—not a cent, not a red cent, from this Chamber.

The Senate played a remarkable and responsible role as events unfolded in the Philippine peaceful revolution last spring. In declaring the manipulation of the election results by Marcos to amount to fraud, and in supporting the real victory of Mrs. Aquino, this body inspired the empowering of forces of democracy behind her. Are we now to give those same forces the brushoff? Are we now to step back from those forces in their time of need? No, I do not think we should do that. I do not think we will do that. And I do not think we will do that.

We have a serious budget crisis in this country. Our debt, foreign and domestic, is enormous. We dare not add to it. But there are ways to fulfill America's obligation to the Philippines and yet not add to that debt. The Contra Aid Program proposed by the administration includes a $300 million slush fund for Nicaragua's neighbors, which comes on top of very substantial aid we are providing those nations both last year and this coming year. I intend to offer an amendment to the continuing resolution, which contains the Contra program, which would give the Senate an opportunity to turn slush into genuine assistance, to turn bribery into investment, to turn waste into constructive assistance.

My amendment would redirect $200 million of the Central America slush fund toward economic support for the Philippines. It will not add 1 cent to our deficit, but I believe it is a far wiser use of $200 million in aid.

The administration has given no rationale for its $300 million slush fund. Presumably, it is designed to give Nicaragua's neighbors an incentive to support the U.S. Contra Aid Program. But those countries already have plenty of incentive. El Salvador is to get half a billion dollars next year, Honduras over $250 million, Costa Rica nearly $200 million, and Guatemala $150 million. The additional $300 million is just throwing money around, throwing it away in an extravagant way. So I believe redirecting $200 million for the Philippines is justifiable and will not damage America's goals in Central America.

The base facilities that currently exist in the Philippines are essential to America's security interests in the Pacific region and the continued support of the Philippine Government for those bases is critical to American national security interest. It would be nearly impossible and enormously expensive, even if it were possible, to substitute those bases with comparable facilities in the near future.

Mr. President, do I have any time remaining under the order?

The PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mr. BYRD. I thank the Chair.

I ask unanimous consent that I may reserve the remainder of my time throughout the remainder of the day.

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

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized for not to exceed 5 minutes.

VITIATION OF SPECIAL ORDER FOR SENATOR McCONNELL

Mrs. HAWKINS. Mr. President, I ask unanimous consent that the special order for the Senator from Kentucky [Mr. McCONNELL] be vitiated.

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

DRUG TESTING: MUCH ADO ABOUT NOTHING

Mrs. HAWKINS. Mr. President, there are 61 lawyers in the Senate. Some people think that is enough. Some people think that is too many. I am not one of the lawyers. But in my 15 years of public service, I have learned something about the law and the Constitution. Frankly, I am puzzled at the questions being raised about drug testing, contending that it is a constitutional issue and an invasion of privacy. The hullabaloo strikes me as much ado about nothing.

Laws require us to have a driver's license to operate an automobile and States place various restrictions on who may drive. Health regulations mandate vaccinations against several diseases before children may attend school. There are Federal and State laws regulating the sale and transportation of firearms. There are laws governing the sale and consumption of alcoholic beverages.

Such laws were enacted in the best-interests, safety and well-being of society. They do result in some limitations of personal freedom. They do not compromise basic constitutional rights. Nor do I believe that mandatory drug testing is any violation of our basic freedoms. Rather, drug use in the workplace and in our schools violates the rights of those who do not succumb to substance abuse. We all pay a heavy price for drug use.

Drug testing is already in place and working splendidly in our Armed Forces. And I might add—it has worked! It has not violated anyone's right of privacy. Testing has enabled the military to bring under control a significant drug problem in its ranks.

Many private companies, municipal governments and professional sports teams have already implemented drug testing programs. President Reagan and Vice President BUSH have been tested. My Senate office staff has undergone testing. I have passed the test. In none of these instances have constitutional rights been violated.

There are many areas of employment where public safety can not be compromised—airline pilots, air traffic controllers, railroad engineers, bus drivers, ships officers, policemen, firemen, doctors, nurses, ambulance teams, paramedics, and nulcear plant crews, to name a few. The public has a right to expect drug-free personnel in our transportation facilities, hospital rooms and utility management. And I do not think it violates any constitutional rights to require people employed in critical industries to take drug tests.

In Kansas City, five air traffic controllers have been fired for drug use. In my home State of Florida, an air traffic controller was arrested after discovery of a package containing 10 ounces of cocaine being shipped to Illinois. Air controllers must make split second decisions involving the safety of thousands of airline passengers. Their minds cannot function properly and their reflexes are slowed under the influence of drugs.

I do not think it is unreasonable to expect Federal employees in sensitive positions to be drug-free. I would take that a step further: I think all Federal employees should be subject to drug tests. I know that some individuals and groups feel that mandatory drug testing violates personal rights. But I think they are wrong. This Nation is the greatest on Earth, but it has a major flaw. It consumes 60 percent of the world's output of illicit drugs. This is the compelling issue we must address.

□ 0950

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. Thank you, Mr. President.

STAR WARS SPINOFFS DO NOT JUSTIFY ITS WASTE

Mr. PROXMIRE. Mr. President, the Sunday, August 25 New York Times magazine carried a story entitled "The Star Wars Spinoff." The story was written by Malcolm Browne. Mr. Browne is a New York Times science writer. Browne concludes that the more than $6 billion already spent on star wars will change the face of science whether a single strategic defense initiative unit is ever deployed or not. The scientific spinoffs in the future will become ever more dazzling as the billions in research become tens of billions as the administration intends. What areas of human endeavor will specially benefit from this extraordinary explosion of scientific research? Browne cites many. Conventional military weapons could receive the largest benefit. SDI research has greatly advanced the railgun. Browne contends that both the United States and Soviet military planners agree that continental style armored combat will be transformed by tough-skinned Soviet tanks opposed, thanks to oncoming SDI research, by amazing new rail guns powered by such enormous increases in velocity that they can send steel projectiles through super-toughened armor.

Browne charges that star wars research has also made stunning contributions to cancer research through the development of the free electron laser. This laser shows promise—probably several years away—of increasing its velocity to a point where it could confront and defeat ballistic missiles in flight. The same penetrating capability can be applied to find and destroy cancerous tissue. The electron beam has little effect in the tissue through which it passes. But when it reaches its penetration depth, it releases most of its energy at that spot. Result: an exactly calibrated electron beam could smack a malignant tumor on the precise spot without damaging the healthy tissue.

So what's the answer? Does the star wars spinoff make this multibillion-dollar research extravaganza worthwhile? Malcolm Browne gives a double-edged answer: he says critics of star wars point out that the technological aid benefits of this SDI research could be achieved far more cheaply and quickly if researchers went after them directly, to which this Senator would say "amen." So why don't we? Well, says Browne, the star wars supporters say there is no way this country would pursue this research with such all out vigorous funding—with the juiciest contracts that buy the best research brains and give them the finest equipment money can buy to work with if it were not driven by the top military priority of the President of the United States. And do not knock it, says Browne. This is the way so much scientific progress has always been made. Out of World War II came a quantum jump in aeronautics. World War II military research also brought us the great new nuclear energy industry, not to mention plastics, synthetic fibers, antibiotics and many other scientific marvels.

Mr. President, this argument is madness. It is the old story of the man who discovered the joys of roast pig when his house burned down with a pig in it. The roast pig tasted so great the man and his friends bought up houses, placed a pig in each and burned each house down so they could dine on that ever-loving roast pork.

In the terrible exigencies of war, this Senator can understand how we can welcome beneficial side effects. But in peacetime? Can any sane person justify the billions we are throwing away and the trillion dollars or more we will eventually squander on this ridiculous and obscene waste of our resources because the President of the United States, one highly popular but very limited man has made such an appalling military decision? Here is one Senator who can find no justification in this madness. Surely, the Congress of the United States can and should directly fund research that can improve our conventional weapons. Certainly we can and should and do fund the most promising cancer research. If laser beams have such promise in fighting cancer, let's go ahead—to fight—not to dream of an impenetrable, missileproof rainbow for the whole United States.

MYTH: PR PACKAGE CAN REPLACE SANCTIONS

Mr. PROXMIRE. Mr. President, the myth of the day is that a package of South African actions the administration is cooking up can adequately replace the South African sanctions Congress has passed.

Here is the strategy coming out of the White House. The President plans to veto the bill Congress passed by a wide bipartisan margin, which imposes economic sanctions against South Africa.

Mr. Reagan knows he will catch a lot of heat for this veto. His policy of constructive engagement with South Africa has no support in Congress or across the country. It is a disgraceful policy that runs counter to the democratic values this Nation stands for.

Mr. Reagan, therefore, knows that Congress would likely override that veto.

So in order to head off a veto override, the White House is floating a trial balloon. If you don't override the veto, the White House is proposing, we'll offer a package of South African initiatives in place of the sanction.

That package, according to press reports, consists of:

First, appointing a black Ambassador to Pretoria; second, giving $500 million in aid to countries bordering South Africa; third, and accepting just some of the sanctions in the congressional bill.

Mr. President, it is a myth to believe for one moment that this package is an adequate substitute for the congressional sanctions bill.

For starters, we don't have a half billion dollars to give in foreign aid to these border states.

Second, appointing a black Ambassador to South Africa is nothing but a cosmetic gesture. The problem is not with our Ambassador, but with our President's South African policy.

Third, the Congress and the American people are tired of getting only a half a loaf from this administration when it comes to sanctions. It is time for this administration to come through with the whole loaf.

Mr. President, it is time for the administration to stop being an apologist for the repressive regime in South Africa.

It is time to recognize that the situation in South Africa is becoming more violent and more unstable.

It is time for the United States to stand firmly behind the forces of freedom in South Africa.

In other words, it is time for the sanctions Congress has passed—not the PR package the administration is floating—to become the law of the land.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with statements therein limited to 5 minutes each.

The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Chair.

AN UNWRITTEN DRUG BILL

Mr. LEVIN. Mr. President, this country is now facing some critical decisions and many of them are coming together in the final days of this Congress. One of the things on which we

are focusing is drugs, and it is highly appropriate that we do so. I happen to come from a community which for a long time has faced the scourge of drugs. I was president of a city council in a city which has been devastated at least in times and parts by the drug menace. I have seen the product of drug use in that community and in many other communities across the country. So the problem is obviously an important one to address. It is important to address properly. We understand that there is now in process a drug measure being written. The ink not only is not dry on that measure, apparently some of the ink has not yet been used; it is still in the bottle. And so what we are being told is that the Senate might be asked today to proceed to consider a significant measure, significant to the people of this country, significant to our children, a measure which has not even been written.

I think that would be a mistake. There is no more important issue to address wisely and well. Any measure which is as important as this is entitled to appropriate consideration, serious consideration, wise consideration, and deliberate consideration. We ought to see it. We and the people of the United States ought to have a chance for a couple days to read it before we decide that we want to proceed to it.

I think it would be a mistake to proceed to a bill today which is still not written. I think it would not be consistent with the needs of this country to proceed to a bill today which is still not written. I think it is out of keeping with the seriousness of this question, the importance of this question, to proceed to a bill today which is still not written.

I hope we proceed to this issue before we leave. If we have to stay longer than October 3 in order to address this issue, I hope we do so. But I also hope that we, a body that we like to think of as a deliberative body, not contemplate consideration on the same day that that bill is being written, never having had any hearings, no committee report. It is too serious to treat this way. It is not a political issue. Hopefully it will not be treated as a partisan issue. Hopefully it will be treated as an issue which requires and commands some serious respect and serious debate, serious contemplation, not just by this body but by the people of the United States before this body proceeds to consider it.

I thank the Chair. I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF SENATOR BRADLEY

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized for not to exceed 5 minutes.

ASSISTANCE TO THE PHILIPPINES

Mr. BRADLEY. Mr. President, I have asked for these few minutes this morning to talk about Philippine democracy and American honor.

Just yesterday, it seems, Americans gave their hearts and hands to the Filipino people in their struggle to overthrow a corrupt dictator. We championed their cause. Their victory was a victory for all democratic nations.

But getting rid of Marcos was just the beginning of a new struggle. A struggle against Communist insurgents, a struggle against reactionary forces who continue to resist the people's will, a struggle against a huge debt burden that crushes hope and strangles growth; a struggle against poverty, illiteracy, joblessness, and despair.

These forces are democracies' most potent foes. They stand in the way of the political stability and the modest prosperity without which democracy cannot thrive.

Mrs. Aquino knows that. And few have put it so eloquently as she. But it was not her eloquence that prompted the House to vote $200 million in supplemental economic assistance.

The House voted for that money because they understood that our moral and security interests also hang in the balance. That is why it is imperative that the Senate follow the House in aiding the Philippines at this critical time.

If we do not, both our commitment to democracy and the value of America's word will be found wanting, not just in the Philippines, but around the world. We will undercut our leadership and debase our worth if we fail to follow up our words with aid.

We must seize this opportunity to demonstrate our solidarity with the Filipino people in a concrete way. Rather than wishing Mrs. Aquino and the Filipino people luck, we must help them help themselves. To be effective, our help must come when it is most needed—when the new government is struggling to translate its mandate into action.

There may be some in this body who think that United States interests would be better served if a different group were to take power in the Philippines. This is a dangerously flawed notion. We cannot promote our interests by seeking to impose our will on the Filipino people. That is the lesson of Marcos' downfall. The best hope for furthering our objectives lies in a democratic government with genuine popular support. Cory Aquino unquestionably enjoys that support—and deservedly so.

I know that the deficit and the Gramm-Rudman regime force us to make tough choices. But helping our Filipino friends consolidate their new democracy is a wise use of our funds even when things are tight at home. Shortchanging democracy is penny-wise and pound-foolish. On the other hand, a modest investment in democracy will preserve our access to key bases and earn us ample political and strategic dividends in the years ahead. Make no mistake. Preserving democracy in the Philippines is critical. Our bases there project American power into Asia and the Pacific. If we shortchange the Filipinos now, we risk losing those bases to the Communists.

But there is even more at stake here than bases. Filipinos inherited their yearning for democracy from America. We were their mentors. If we turn a deaf ear to their needs now, how can we be democracy's champion? Instead, the world will view us as a fair weather friend, long on rhetoric and short on staying power. Who will trust us if we betray the trust of Cory Aquino and the millions who elected her? In this context, I am mystified that some Members of this body can find money to subsidize grain sales to the Soviet Union and yet they close their purses to a staunch ally in a time of need.

So, Mr. President, I hope that we will soon act on this economic assistance. And I hope that it will pass by the overwhelming majority that the Philippine people deserve.

AVERELL HARRIMAN

Mr. HART. Mr. President, last week, many of us gathered to pay tribute to the life, work, and contribution of Averell Harriman. To the hundreds who came to the National Cathedral, he was known by many names: Governor, Mr. Ambassador, and Mr. Secretary—to mention just a few. But the thousands more across this country, who didn't experience firsthand his advice or his friendship, he was known simply as a patriot who gave selflessly to the country he loved.

Indeed, what distinguished Averell Harriman's service was not just its breadth but also its quality. He integrated his mastery of business, politics, and world history to become a genius of administration, a hero of diplomacy. His achievements were impressive, tangible, lasting. Our understanding of the Soviet Union, the neutrality of Laos, the cessation of nucle-

ar tests in the atmosphere—these are just some of the results of his efforts.

Most impressive of all was the quality of his professional advice—always acute, honest, and fearless. He was unafraid to tell Wall Street it needed the New Deal. He was unafraid to reprehend Soviet leaders for their despotism. And he was unafraid to tell America that we must negotiate with the Soviets, no matter how repugnant we find their behavior.

In all this, he exercised his influence with a selflessness that all in public service would do well to emulate. He worked tirelessly—but never on his own behalf. He weilded great power—but never for its own sake. He was often the first to make diplomatic breakthroughs—but usually the last to claim credit.

Much has been said about the life of this great statesman. But I believe that four men who knew him well, said it best. The words of Cyrus Vance, Clark Clifford, and Arthur Schlesinger, Jr., and our colleague from Massachusetts, Mr. KENNEDY, moved those of us who attended the memorial service for Averell Harriman. And I am confident they would move all Americans as well. For this reason, I ask unanimous consent that their eulogies be printed in the RECORD.

There being no objection, the eulogies were order to be printed in the RECORD, as follows:

REMARKS DELIVERED AT W. AVERELL HARRIMAN MEMORIAL CEREMONY TUESDAY, SEPTEMBER 16, 1986—WASHINGTON DC

(By Cyrus Vance)

Averell was my friend. He was also, at various times in my life, a mentor, a guide, a staunch ally, and a close and revered colleague. And always he was an inspiration. Over the years, we served together in good times and bad, and formed a bond of love and respect which will always be with me, and will all of our family.

For almost three decades, on perhaps the two most important challenges to face our nation since World War II, I worked closely with Averell. The first, in which his clarity of vision was a steady beacon, was US-Soviet relations. The second was Vietnam.

No one tried harder than Averell to resolve that conflict. Having already negotiated the Laos cease-fire in 1961, he approached the Vietnam crisis in a manner characteristic of his entire career—as a patriot, loyal to the presidents who had appointed him, yet determined to do everything in his power, to achieve a reasonable negotiated end to the war.

Day after day in Paris, in that difficult year of 1968, I watched Averell, then in his late 70s, push himself and the rest of us against the unrelenting clock of history. If our efforts were not crowned with an end to the conflict, it was not because of a lack of trying on his part.

But Vietnam was for him only an unhappy diversion from the main task that he had set for himself over the last 40 years. I refer, of course, to the search for ways to deal with the Soviet Union.

At various times in his life, Averell was attacked by the left for being too hard on Russia and by the right for being too soft. History will record that both criticism were equally misinformed. Through the high winds and turbulence of American domestic politics, his course was remarkably steady. As he often said, the Soviet system and value are vastly different from ours in a profound and disquieting way, but we must live on the same planet and find ways of reducing the chance of war. "I decry," he wrote a decade ago, "those who contend that any relaxation of tensions must inevitably benefit the Russians, to our disadvantage." In a memorable phrase that has as much relevance today as it did when he coined it, he called for a policy of "competitive coexistence." Characteristically, he said that he did not fear this competition, for in the end he believed that American determination, Americans ideals, and American strength would succeed. His was a down-to-earth, unideological, and wholly American approach to dealing with the Soviet Union.

Averell approached all problems with the same simple, direct style. We were all aware—many of us from painful first-hand experience—why he was called the "crocodile." He penetrated straight to the heart of any issue, seized it, and never let go. Not for Averell a meandering debate: if there was a problem he wanted to solve it—not tomorrow but immediately. Enough talk, he seemed to say, let's get on with it. Like his great friend, Winston Churchill, he felt that the problems would worry for themselves; what he wanted was solutions.

This impatience with temporizing, this fierce determination to create, to build, to make a contribution, stemmed, I believe, from his conviction like Jefferson, Madison and other Founding Fathers, that he had a profound obligation to serve the country that had given him so much. And he did not shrink from the political side of policy debate. This sometime made him suspect in the eyes of others. But I believe that this willingness to mix politics and policy testified in the most eloquent way that he cared not just about service but about solutions.

Averell cared about something else too: encouraging the careers—and particularly independent thinking—of young foreign service officers. Throughout his career, he sought out promising junior foreign service officers whom he promoted rapidly, often to the dismay of their superiors. Up to 50 years older than some of the people he worked closely with, he was more open to new ideas than many of them. To encourage that rarest of bureaucratic qualities, which he possessed in such abundance, he established an award—given each year to a junior foreign service officer who had shown exceptional talent and "creative dissent" in his work. Later, Pam added a second award in honor of Avis Bohlen, the widow of Averell's distinguished foreign service colleague, Ambassador Charles Bohlen. This award is given annually to a member of a foreign service family. These two awards are part of the shining legacy of W. Averell Harriman.

Averell also gave us one of the most important institutions of Soviet studies in the country, which he established a few years ago at Columbia University. I am confident that from the new generation of young men and women being trained there, there will come distinguished public servants of the future, like Chip Bohlen, George Kennan and Tommy Thompson.

Averell Harriman lived the consummate life of our century. He was vital and questing, a participant in history, for more than five decades. He never said so directly, but I think I know how he would have summed up his aggressive, probing activism—a ceaseless energy which continued until the last few weeks. We can do better, he would have said; we can do better, and we must try.

The poet, Stephen Spender, once wrote these lines which I feel capture the essence of our friend Averell:

I think continually of those who were truly great—
The names of those who in their lives fought for life,
Who wore at their hearts the fire's center.
Born of the sun they traveled a short while towards the sun,
And left the vivid air signed with their honor.

REMARKS OF THE HONORABLE CLARK M. CLIFFORD

I wish to express my appreciation to the three speakers who preceded me for their eloquence and what each did to enrich the life of Averell Harriman.

We have heard of his public career, of his expertise as a foreign policy advisor, and we know much about it and the fifty years of service he rendered to the country.

I shall confine my remarks to an extraordinary one visit that I had with him some time ago. On May 7, 1983, I had the opportunity of visiting with him for four hours. Now, two men do not just sit down together and talk for four hours. We were taking a trip in the Governor's plane to Independence, Missouri, to attend a meeting of the Truman Library Board. So we had two hours going out and two hours coming back.

He was in a wonderfully nostalgic period. He spoke of his boyhood, he talked of his father, he talked of his young manhood, and he stated the impact that Franklin Roosevelt had had upon him and how the direction of his life had changed as a result of that friendship.

At one time he spoke of Walter Lippmann. He had the highest regard for him. He said he felt the country owed him a debt of gratitude because Lippmann had the facility to take the most complex foreign and domestic issues and reduce them to clarity so that the American people could understand it.

We both remembered that Walter Lippmann had a photograph hanging on the wall of his office. It was taken from a tombstone from a churchyard in Carolina of a man who had died in the Civil War. I tried to remember the words, and he did, but we did not do it well. I said I would get a copy of it and send it to him if I could because I thought that it contained words that perhaps very aptly could describe Averell Harriman. There are not many, but they are meaningful.

"Unawed by opinion, unseduced by flattery, undismayed by disaster, he confronted life with unique courage and death with Christian hope."

On the way back we had exhausted most of the usual subjects, and we turned to literature and then to poetry, and we attempted to lines of poems we loved. He would come up with one; I might remember one; sometimes we were successful in constructing an entire stanza. I found that we both had the deepest respect and the highest regard for Alfred Lord Tennyson, and we attempted, if we could, to put together a poem that we both loved. We didn't do it very successfully, but I shall read it now because of the significance that it has today:

Sunset and evening star,
And one clear call for me
And may there be no moaning of the bar
When I put out to sea.

But such a tide as moving seems asleep
Too full for sound and foam
When that which drew from out the boundless deep
Turns again home.

Twilight and evening bell
And after that the dark
And may there be no sadness of farewell
When I embark

For though from out are born of time and place
The flood may bear me far
I hope to see my pilot face to face
When I have crossed the bar.

At one point, he told of a very troubled year he had. It was the year 1970 and he said it was a year of withdrawal. He found himself withdrawing from people, even from his friends. He said he found himself losing interest in subjects that he had long followed. But then he said that all changed in 1971 when he married Pamela. And he spoke so beautifully of that relationship. He spoke of the sense of fulfillment that it had brought to him, and it was a wonderful experience to sense the feeling with which he spoke. And after a bit, I suggested, "Well, certainly, one of the best decisions you ever made was when you married Pamela." He smiled, and said, "No. It was not 'one of the best decisions I ever made.' It was *the* best decision I ever made."

I feel his presence strongly here today, here with his family, here with so many of his close friends in this magnificent House of God. If he were here and if he could, I think he might conclude by reading a lovely poem by Ila Richardson. I will read it for him:

If I should ever leave you, whom I love
To go along the silent way
Grieve not, nor speak of me with tears
But laugh and talk of me as if I were beside you
For, who knows, but that I shall be oftentimes.

I'd come, I'd come, but could I find a way
But would not tears and grief be barriers
And when you hear a song I used to sing
Or see a bird I love
Let not the thought of me be sad
For I am loving you just as I always had.

You were so good to me
So many things I still wanted to do
So many, many things to say to you
Remember that I did not fear
It was just leaving you I could not bear to face.

We cannot see beyond, but this I know
I loved you so, 'twas heaven there with you.

REMARKS OF ARTHUR SCHLESINGER, JR.

During these weeks since Averell Harriman's death, in sorting out impressions and recollections across the long years, I found myself trying to understand the qualities of character that made him so impressive a figure in all our lives and in the history of our times.

I first met Averell forty years ago, directly after the war. I was in my twenties, a young fellow who had occupied obscure posts in the OWI and the OSS and later rose to the rank of corporal in the ETO. Averell was already world-famous, the trusted intermediary between Roosevelt, Churchill and Stalin, ambassador to the Soviet Union, then to Britain and at this point Secretary of Commerce in President Truman's cabinet.

We were brought together by Robert E. Sherwood, who was working on his wonderful book Roosevelt and Hopkins. What struck me at once was that, despite the formidable gap in age, experience, status, knowledge and savoir-faire, Averell wasted no time on ceremony, treated me as a contemporary, instructed me to call him by his first name and placed our relations on a basis of ease and candor that endured till the end of his days.

In 1948 he took me to Paris as his special assistant when he ran the European side of the Marshall Plan. Working for Averell, let me say, was not always easy. He was a nonfrills chief, single-minded in his concentration on the job, who rarely slept and expected his associates to be on call at any hour of day or night. Alfred Friendly, his director of public affairs, and I had special responsibility for his public appearances. Averell later became a rather effective speaker, but he was an inveterate mumbler in those days; and, after he had mumbled away a speech before an increasily bemused audience at a luncheon of the American Chamber of Commerce in Paris, Al and I, unable to face him, sought fortification at a convenient cafe and did not reappear in the office till later afternoon. Averell glared at us and said, "All right, what did I do wrong?" We told him. He grunted, dismissed us brusquely and returned to work. Still later he came by and, without further word about the speech, invited us to dinner at Maxim's.

For all the occasional exasperation involved, I do not know anyone who worked for him, then or later, who failed to emerge not alone with overwhelming respect for his boldness of mind and intensity of concern and purpose but with overwhelming affection for his straightness, decency and astonishing charm.

What happened on a small scale with associates was, I suppose, what happened more consequentially with Roosevelt, Churchill, Stalin and later generations of world statesmen who dealt with him on global matters. Above all, they liked Averell and trusted him. He was frank and often blunt in stating differences but with an impersonality that preserved friendship across political lines. When he became personal, he felt a little guilty about it thereafter. Once at dinner at Francis Biddle's in the early 1950s, he got mad for some reason at Archie MacLeish. Twenty years later MacLeish's name came up, and Averell surprisingly said, "You know, I still feel very badly over the way I treated Archie—do you remember, back at that Biddle dinner?"

His secret lay partly in his manners, which were distinguished. To the end of his life he accompanied parting guests to the front door and struggled to his feet when a woman entered the room. But, as Emerson said, "Manners impress as they indicate real power." Averell's manners were an expression of character.

He was one of the last of 19th century Americans. His father instilled high standards in him; his sister Mary led him to extend those standards to less fortunate members of society. Then there was Groton. He never much liked the Reverend Endicott Peabody. George Biddle in his autobiography recalls Averell's remark to his father about the Rector: "You know he would be an awful bully if he weren't such a terrible Christian." I once asked Averell why so many New Dealers came out of Groton. He said grimly, "Because they were unhappy there." Yet Groton too gave an abiding sense of service and obligation.

The word has gone out of fashion, but Averell was in truth a great gentleman. Even the Soviet leaders recognized this, which is why they welcomed him in Moscow though he made no bones about his dislike of their ideology and policy. Like really great gentlemen, he was a true democrat, scornful of judgments made on extraneous considerations like class, sex, race, color or opinion. One still remembers his magnificent contempt for John Foster Dulles's habit of appeasing Joe McCarthy at the expense of the foreign service.

Of course he joined to his 19th century code traits that made him so vital a force in 20th century government and life. He had an instinct for power and a readiness to use it, high intelligence, imperturbable self-confidence and sure political intuitions that steered him through the intricacies of European and Asian affairs and lapsed only when he confronted the incomprehensible politics of the state of New York.

But character counts most in the end. In this age of hustle and opportunism and the mucker pose, we don't seem to breed men like Averell Harriman very often. Yet it was men of this noble stamp who invented the republic and men of this stamp who saw it through its fiercest trials. We loved him for himself, for his concern and passion and patriotism, and we loved him for the hope his life held out that our nation may yet rise to its highest ideals. The republic was blessed by his years of service to the state. His friends were doubly blessed to have known him.

REMARKS OF THE HONORABLE EDWARD M. KENNEDY

Today I speak not simply for myself, but on behalf of both my brothers who cared deeply for Averell Harriman. For them—for Jackie and Ethel and our families—this great man was also the greatest of friends. He was advisor and counselor; he gave his help and his heart in our happiest days and our hardest hours. For us, he was like another, older—and yes, wiser brother.

It was a bond strongly-forged in a few glorious years, a generation ago, at the beginning of a new decade and a new Administration.

After the 1960 election, President Kennedy was not quite sure what assignment he should ask Governor Harriman to undertake. They knew each other, but not well—and after all, the Governor was well past the normal retirement age. But it was not long before President Kennedy came to regard Averell as the only ambitious seventy-year old he knew—and perhaps the single ablest diplomat in American history. By the end of those thousand days, there was no trust that President Kennedy would not have given to him. The young President and the elder statesmen became remarkable companions in a powerful quest to make the world safe for human survival.

They took a special delight in each other's presence. For example, President Kennedy was well aware of Averell's very selective hearing aid and its magical tendency to tune out the boring, the foolish and the long winded. But once during a meeting at the White House, the hearing aid actually failed. As the President started to talk, so did Assistant Secretary of State Harriman—who just kept on talking. Afterwards, someone asked the President if he was annoyed. Of course not, he said: "I enjoy watching Averell in a meeting more than anyone else. He sits there with his head down and you might think he's asleep. But then someone says something foolish and he bites off his

head like a crocodile." So that became his nickname among the new frontiersmen—and the crocodile loved it.

As Averell worked his way up, tireless in his 70s, to the summit of the President's confidence, he gave the most remarkable achievements to his country and the world. He had been among the first to warn of the Soviet danger after World War II; he now became the masterful negotiator of the first lasting break in the Cold War— the Nuclear Test Ban Treaty of 1963. He was not a man of illusions, of stereotypes, of the right or the left. At the bargaining table, he was tough, but without false bravado. Among the wise men of the many eras he lived and led, he was preeminent in reason and common sense.

He was practical, but principled—and on the most important issues, he was often prophetic. He negotiated neutralization in Laos—and warned against militarization in Vietnam. He dismissed as "outdated" the experts, many of them younger than he was, who said we had to expect and accept military dictatorships in Latin America.

Averell Harriman proved the truth of Robert Kennedy's belief that "Youth is not a time of life, but a state of mind." To the end, he was young—always ready for another assignment, a new mission to Moscow, the challenge of a new election.

At the age of 80, he was one of the happiest newly-weds I have ever seen. Pamela became the light of his life; there was always a lilt in his voice when she entered the room. "Pam," he would say and his tone said it all as he smiled and reached for her hand. With her at his side, he had a fourth—or was it a fifth?—political career.

In a time when many foolish things were being said, the crocodile still had his bite.

Averell Harriman never became the President he possibly might have been—or the Secretary of State he surely should have been. But he was the first citizen of this century—a greater man than all the titles he ever held.

His friends John and Robert Kennedy loved and often quoted some words, which seems to me now to sum him up. In what he did and how he lived, Averell Harriman urged us on: "Come, my friends, tis not too late to seek a newer world—Push off, and sitting well in order—(yes, sitting well in order was always important to him)—smite the sounding furrows; for my purpose holds to sail beyond the sunset and the baths of all the western stars, until I die.

For Averell Harriman, the sunset has come at last. But we will continue to live in the glow of his life and each time we push off again, toward that never world of peace he sought, we have a guiding star to follow—the example and the direction he set for us, and for all the Americans yet to come.

VETERANS FASTING IN PROTEST OF OUR POLICY IN CENTRAL AMERICA

Mr. KERRY. Mr. President, I know that all of us who are Members of this institution—both institutionally and otherwise—are very hesitant to sometimes want to revisit the issues that are not pleasant to consider. But there is at this moment on the steps of the U.S. Capitol an event taking place that I believe forces us to yet again at least stop to pause and think about our policy in Central America.

At this moment, a group of Vietnam veterans are fasting in protest of our policy in Central America. Their commitment to their fast is total—they say they are prepared to lose their lives in this fast, and, having talked with them, I do not doubt their sincerity or the sincerity of their commitment in coming here to try to bring a message to the U.S. Congress.

Now, I am sure that no one here, certainly myself, quickly supports any individual making a decision to fast to death in opposition to any policy of the U.S. Government. No one wants to encourage the risk and the potential loss of such an action, and I believe that their lives are far too precious to be wasted.

The purpose of my speaking here today is not to say that I think that this is what these veterans should do, but to take note and to ask my colleagues to take note of the depth of their commitment and the concern which they express regarding our policy.

Mr. President, as a veteran of Vietnam, as well as one who, along with my colleagues, went through the public process of those terrible years of division in this country over that war, I am deeply distressed that yet again American citizens have come to such a feeling of separation from the course of our Government that they feel compelled by conscience to take this kind of action.

Yet, we persist to pursue a course that brings bloodshed and confrontation closer, not peace closer.

A few days ago, people across this country marveled at the words of President Corazon Aquino. Senator after Senator and Congressman after Congressman left that joint session of Congress saying it was the best speech that they had heard in years. I heard the Speaker of the House of Representatives say that it was the best that he had heard from any foreign leader in all the time that he had been in the House of Representatives since 1952. I heard Senator MATHIAS say to the Foreign Relations Committee, it was the best he has heard in all the years he has served on that committee and in the Congress.

In that speech, President Aquino said:

> I must explore the path of peace to the utmost, for at the end of whatever disappointment I meet there, is the moral basis for laying down the olive branch of peace, and taking up the sword of war.

At the core of her speech, Mr. President, which we all applauded, was her commitment to make every effort to pursue negotiations with those who oppose her policies before pursuing armed conflict.

And yet we do exactly the opposite, Mr. President. We continue in Central America to pick up the sword of war, and to give others the ability to pick up the sword of war, before pursuing the olive branch of peace.

The veterans who are fasting on the steps of the Capitol are asking us:

> Why is it that we can't pursue a more peaceful policy in Central America? Why is it that we cannot seem to learn the lessons of Vietnam? Why is it that we must repeat those same mistakes again in an escalating conflict in Central America?

Because we have reached the same position of picking up the sword of war before in fact making every effort to pick up the olive branch of peace.

Let me just say a few words today—and I will talk about this on other days—about one of the veterans who is fasting on the Capitol steps, Charlie Liteky.

Charlie was ordained as a Catholic priest in 1960. He volunteered to enter the Army as a chaplain in 1966. He served for 2½ years in Vietnam, where he was assigned to the 199th Light Infantry Brigade and to a field hospital.

In 1968, Charlie was awarded the Congressional Medal of Honor by President Johnson at a White House ceremony. This award for heroism is our Nation's highest civilian award. As President Johnson handed Charlie the medal, he whispered to him—and Charlie will tell you this—"son, I'd rather have one of these than be President."

The Medal of Honor was awarded to Charlie Liteky for actions taken in December 1967, while his company was conducting a search and destroy operation in Bien Hoa Province in Vietnam, and was ambushed by enemy forces.

According to the citation, Chaplain Liteky—who now fasts to death on the steps of our Capitol—"despite painful wounds in the neck and foot," rescued over 20 men while under fire. The citation continues:

> Through his indomitable inspiration and heroic actions, Chaplain Liteky saved the lives of a number of his comrades, and enabled the company to repulse the enemy. Chaplain Liteky's actions reflect great credit upon himself and were in keeping with the highest traditions of the U.S. Army.

Mr. President, on July 29, 1986, Charlie Liteky renounced his Medal of Honor in protest of U.S. policy in Central America. He later placed it at the foot of the Vietnam Veterans Memorial in Washington.

In doing so, Charlie Liteky said:

> My renunciation of the Medal of Honor in no way represents disrespect for the Medal itself, or for the recipients of medals of valor throughout our history. My action is directed toward the inhumne foreign policies of my Government, policies that cast shadows of shame over the heritage of this country * * * I find it ironic that conscience calls me to renounce the Congressional Medal of Honor for the same basic reason I received it—trying to save lives.

Mr. President, we learned in Vietnam over 11 bitter years and more

about the terrible divisions that occurred because of government's unwillingness to listen when a majority of its people oppose its policies. The veterans who are fasting today on the Capitol steps are here to remind us of that simple truth.

I hope that we listen to their plea of conscience. I hope that we learn from them. And I hope that this Nation will live up to its own highest traditions, and once again pick up the olive branch of peace, before choosing the sword of war.

Mr. President, we have not heard one word in the United States in recent months about the Contadora process. The American people have been called on to spend not $100 million in aid in Central America, but $800 million—$300 million in covert assistance, $400 million in slush fund money—to the Governments of Honduras, Costa Rica, Guatemala, and El Salvador.

Meanwhile, veterans of our last military conflict have decided that, to get us to listen, they have to stop eating, they have to make the choice of potentially giving up their lives.

I hope, before they are in wheelchairs, Mr. President, and before this Congress has the uncomfortable plight of dealing with those who have chosen to die in order that others may live, that we will somehow reconsider or see whether or not that olive branch of peace is not worthy of picking up.

(Applause in the galleries.)

The PRESIDING OFFICER. The galleries will be quiet or the Sergeant at Arms will be ordered to remove the spectators from the galleries.

REMARKS OF DEPUTY SECRETARY OF DEFENSE WILLIAM H. TAFT IV, AT THE DEDICATION CEREMONY OF THE SOLDIER-SIGNERS OF THE CONSTITUTION CORRIDOR

Mr. THURMOND. Mr. President, on September 17, I had the pleasure of attending the dedication ceremony of the Soldier-Signers of the Constitution Corridor at the Pentagon. This was a significant event to me, not just because of my great love for the Constitution, but also because three of the soldier-signers—Pierce Butler, Charles Pinckney, and Charles Cotesworth Pinckney—were from my home State of South Carolina.

As a member of the Commission on the Bicentennial of the Constitution, I would like to take this opportunity to urge my distinguished colleagues to participate in the upcoming festivities and events marking the 200th anniversary of the signing of the Constitution. This is indeed a time for reflecting on the importance this great document holds for all of us, and for celebrating the unique form of freedom and self-government which we enjoy as Americans.

The splendid event at the Pentagon, which was also attended by the Secretary of the Army, John O. Marsh, was made even more meaningful by the inspirational remarks of William H. Taft IV, the Deputy Secretary of Defense. I ask unanimous consent that these remarks and a copy of the program be inserted in the RECORD at the conclusion of my statement.

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

REMARKS OF WILLIAM H. TAFT IV, DEPUTY SECRETARY OF DEFENSE

Thank you Secretary Marsh. It is an honor for me to participate in this very special and significant ceremony.

Upon the men we honor today was placed the great and arduous trust of forming a union that would grant freedom without license and best secure the permanent prosperity and liberty of their country.

Yet I believe these citizen-soldiers would be somewhat uncomfortable with the praise they richly deserve. For they knew the Constitution they wrote was not perfect. They knew it was—in the now-popular phrase—a "bundle of compromises," and as such was subject to all the hedging that political agreement demands.

But they also knew that temporizing was possible because there was fundamental agreement that the times called for everyone to rise above regional differences and narrow self-interest; that the times called for a union and the creation of a strong republic.

It is probably not too much to say that the brilliance and subtle wisdom of our Constitution is due in no small measure to the fact that over half of its signers also served in the Revolutionary War. We therefore owe these men a special measure of our devotion.

What was it about that war that led these men to gather during the steamy Philadelphia summer of 1787 to write a new constitution? Complex and surely valid reasons may be given, but a brief look at the biographies of these men points to one rather simple answer. Six years of war impressed upon these citizen-soldiers that the Government under the articles of confederation was simply inadequate to the necessities of leadership.

One of the men we honor today, Gouveneur Morris of Pennsylvania, upon viewing Washington's troops during their bitter winter at Valley Forge, called them "an army skeletons . . . naked, starved, sick, discouraged." Colonial rivalries and petty jealousies joined with the impotence of the central Government to deny Washington's troops the most basic necessities. The soul-wrenching cold of that winter, could not but convince Washington and others of the need for a government adequate to the exigencies of war.

And in the years following the war, the feebleness of the articles of confederation was obvious. A government not adequate for either peace or war had to be changed.

Because they knew both peace and war, the soldier-signers of our Constitution possessed a unique wisdom, a wisdom that molded their vision of appropriate governmental powers, and shaped their actions as they strove to create a vigorous union.

The impetuous genius of Hamilton; the clever and yet prudent mind of Gouveneur Morris; the quiet, but extraordinary dedication of William Jackson; the towering example and incomparable wisdom of Washington—these were the qualities of the men who wrote our constitution and whose character we commemorate today.

Nations are often defined by the men and women who lead them. And our democracy has frequently been defined by the statesmenship of its citizen-soldiers.

The concept of citizen-soldier is not easy to capture in words, but listen to George Washington's reflection: "When we assumed the soldier," he said, "we did not lay aside the citizen, and we shall . . . rejoice . . . when the establishment of American liberty . . . shall enable us to return to our private stations in the bosom of a free, peaceful and happy country."

The sometimes uneasy combination of citizen-soldier was reconciled and given its greatest achievement in the men we honor today. As each of us joins in the celebration of the bicentennial of our Constitution, it is these men and their sacrifice that we must keep before us.

THE SOLDIER-SIGNERS OF THE CONSTITUTION CORRIDOR DEDICATION CEREMONY

(September 17, 1986, the Pentagon, Washington, DC.)

In September 1987 the United States commemorates the bicentennial of the signing of the Constitution. Twenty-three of the forty signers of the Constitution including the Secretary to the Convention were veterans of the Revolutionary War. Their experiences in that conflict made them deeply conscious of the need for a strong central government that would prevail against its enemies, yet one that would safeguard the individual liberties and the republican form of government for which they had fought. Their solution is enshrined in the Constitution. The President of the United States is the Commander in Chief of the nation's military forces. But it is the Congress that has the power to raise and support those forces, and to declare war. The Founding Fathers established for all time the precedent that the military, subordinated to the Congress, would remain the servant of the Republic. That concept is the underpinning of the American military officer. These twenty-three men were patriots and leaders in every sense of the word: they fought the war, they signed the Constitution, and they forged the new government. They all went on to careers of distinguished public service in the new Republic. Their accomplishments should not be forgotten by those who enjoy the fruits of their labors.

The Soldier-Signers of the Constitution Corridor was created to provide information on these veterans, celebrate the bicentennial of the signing of the Constitution, and honor these great Americans.

SIGNERS OF THE CONSTITUTION

1. George Washington,[1] 2. Benjamin Franklin, 3. James Madison, Jr., 4. Alexander Hamilton,[1] 5. Gouverneur Morris,[1] 6. Robert Morris, 7. James Wilson, 8. Charles C. Pinckney,[1] 9. Charles Pinckney, 10. John Rutledge, 11. Pierce Butler,[1] 12. Roger Sherman, 13. William S. Johnson, 14. James McHenry,[1] 15. George Read, 16. Richard Basset,[1] 17. Richard D. Spaight,[1] 18. William Blount,[1] 19. Hugh Williamson,[1] 20.

[1] Soldier-signer.

Dan of St. Thomas Jenifer, 21. Rufus King,[1] 22. Nathaniel Gorham, 23. Jonathan Dayton,[1] 24. Daniel Carroll, 25. William Few,[1] 26. Abraham Baldwin,[1] 27. John Langdon,[1] 28. Nicholas Gilman,[1] 29. William Livingston,[1] 30. William Paterson, 31. Thomas Miffin,[1] 32. George Clymer, 33. Thomas FitzSimmons,[1] 34. Jared Ingersoll, 35. Gunning Bedford. Jr., 36. Jacob Broom, 37. John Dickinson,[1] 38. John Blair, 39. David Brearley,[1] 40. William Jackson,[1]

SOLDIER-SIGNERS OF THE CONSTITUTION

George Washington, 1732-1799, Virginia, Commander in Chief, Continental Army.

Abraham Baldwin, 1754-1807, Georgia, Chaplain, Continental Army.

Richard Bassett, 1745-1815, Delaware,, Captain, Delaware, Militia,

William Blount, 1749-1800, North Carolina, Staff Officer (Paymaster,) Continental Army.

David Brearley, 1745-1790, New Jersey, Lieutenant Colonel, Continental Army.

Pierce Butler, 1744-1822, South Carolina, Adjutant General, South Carolina Militia.

Jonathan Dayton, 1760-1824, New Jersey, Captain, Continental Army.

John Dickinson, 1732-1808, Delaware, Brigadier General , Militia.

William Few, 1748-1828, Georgia, Colonel, Georgia Militia.

Thomas Fitzsimons, 1741-1811, Pennsylvania, Captain, Pennsylvania.

Nicholas Gilman, 1755-1814, New Hampshire, Captain, Continental Army.

Alexander Hamilton, 1757-1804, New York, Lieutenant Colonel, Continental Army.

Rufus King, 1755-1827, Massachusetts, Major, Massachusetts Militia.

John Langdon, 1741-1819, New Hampshire, Colonel, New Hampshire Militia.

William Livingston, 1723-1790, New Jersey, Brigadier General, New Jersey Militia

James McHenry, 1753-1816, Maryland, Major, Continental Army.

Thomas Mifflin, 1744-1800, Pennsylvania, Major General, Continental Army.

Gouverneur Morris, 1752-1816, New York, Volunteer, New York Militia.

Charles Pinckney, 1757-1824, South Carolina, Lieutenant, South Carolina Militia.

Charles Cotesworth Pinckney, 1746-1825, South Carolina, Colonel, Continental Army.

Richard Dobbs Spaight, 1758-1802, North Carolina, Staff Officer, North Carolina Militia.

Hugh Williamson, 1735-1819, North Carolina, Surgeon General, North Carolina State Troop.

William Jackson, 1759-1828, Secretary to Constitutional Convention, Major, Continental Army.

PARTICIPANTS

HOST

The Honorable John O. Marsh, Jr., Secretary of the Army.

DISTINGUISHED GUEST

The Honorable William H. Taft, IV Deputy Secretary of Defense.

SEQUENCE OF EVENTS

Pre-Ceremony Concert, The United States Army Band (Pershing's Own): March-On, Honors, Sound Off, Retreat, Inspection, National Anthem.

Remarks, Secretary Marsh.

Remarks, Secretary Taft.

March in Review.

Conclusion of Outdoor Ceremony.

Ceremonial Ribbon Cutting (Commemorative Corridor Site).

Tour of Corridor.

SALE OF LIBYAN STOCK OWNERSHIP IN FIAT S.P.A.

Mr. DIXON. Mr. President, several months ago the Congress expressed its serious concern about the Libyan Government's partial ownership of a major Italian defense contractor, Fiat S.P.S. The Qadhafi regime held 15.19 percent of a firm that had done substantial business with the U.S. Department of Defense, and no one in the Congress wanted Libya to profit from American defense contracts.

On September 23, Fiat and a group of Western investors bought the Libyan ownership. After months of pressure from Congress and the Department of Defense, the Fiat company has finally rid itself of the Libyan connection.

Mr. President, after the issue of Libyan ownership in Fiat was revealed, I introduced legislation in the Armed Services Committee which provides the Department of Defense with the ability to look into the question of hostile foreign ownership in any potential defense contractor.

At this moment, Mr. President, a House-Senate conference committee is considering my legislation, which requires strict disclosure of any hostile foreign ownership before a corporation is allowed to bid on a U.S. defense contract. The United States must not do business with firms linked financially to nations which support international terrorism.

This legislation is designed to prevent U.S. tax dollars from enriching the treasury of terrorist nations such as Libya, Iran, or Syria. I believe it also effectively strengthens the administration's policy of economically isolating the Qadhafi regime.

I applaud the action taken by the Fiat company in finally ridding itself of Libyan ownership. This was an action long overdue. As a member of the Senate Armed Services Committee, I strongly support allied participation in supplying U.S. and NATO defense needs. Significant Libyan ownership of Fiat, however, was unacceptable.

The sale of Libya's interest in Fiat does not, however, remove the need for specific legislation. Indeed, the Pentagon testified before a Senate Armed Services Subcommittee that our country did not have the statutory authority to deny a contract to a corporation with Libyan ownership. It is my hope that by providing the Department of Defense with this authority, the fiscal 1987 defense authorization bill will contribute further to developing a comprehensive U.S. policy on state-sponsored terrorism against innocent Americans.

FIRST ETHNIC AMERICAN DAY A SUCCESS

Mr. PRESSLER. Mr. President, last Sunday the first Ethnic American Day celebration was held at Constitution Hall here in Washington. I am proud to have had a part in this celebration and hope that Ethnic American Day will become an increasingly larger event each year, not only in the Nation's Capital, but also throughout America. Over 1,600 people attended this first celebration.

Twenty-one American ethnic organizations selected Americans of their ethnic backgrounds to honor on this special day. These honored Americans and their sponsoring organizations included:

HONORED AMERICANS CHOSEN BY ETHNIC AMERICAN ORGANIZATIONS FOR THEIR OUTSTANDING CONTRIBUTION TO THE AMERICAN WAY AND PRIDE IN THEIR ETHNIC HERITAGE

Congressman Mario Biaggi—Sponsor: Order Sons of Italy in America.

Hyman Bookbinder—Sponsor: The American Jewish Committee Institute for American Pluralism.

Dr. Zbigniew Brzezinski—Sponsor: Polish National Alliance.

Norman E. D'Amours—Sponsor: Association Cando-Americaine.

Dr. Tirso del Junco—Sponsor: National Association of Cuban Women, Inc.

Professor Manoranjan Dutta—Sponsor: The Association of Indians in America, Inc.

Mr. Ahmet Ertegun—Sponsor: Federation of Turkish American Societies, Inc.

His Eminence Archbishop Iakovos—Sponsor: United Hellenic American Congress.

Senator Daniel K. Inouye—Sponsor: Japanese American Citizens League.

Ann Jillian—Sponsor: Lithuanian World Youth Association.

Casey Kasem—Sponsor: National Association of Arab Americans.

James V. Krakora—Sponsor: CSA Fraternal Life.

Dr. Sammy Lee—Sponsor: League of Korean Americans.

Maya Lin—Sponsor: Asian American Assembly.

Dr. Haridas T. Muzumdar—Sponsor: National Federation of Asian Indian Organizations in America.

Irene Natividad—Sponsor: Filipino American Women's Network.

Paul O'Dwyer—Sponsor: Ancient Order of Hibernians in America.

Dr. Olgerts Raimonds Pavlovskis—Sponsor: American Latvian Association.

Colonel Harry A. Sachaklina—Sponsor: Armenian National Committee of America.

Dr. Dalip Saund (Deceased)—Sponsor: Indian American Forum for Political Education.

Mrs. Elsbeth M. Seewald—Sponsor: German American National Congress.

Representing all of these honored Americans, our distinguished colleague, Senator INOUYE, gave a stirring speech praising the American tradition of respect for the immigrants and refugees who have contributed so much to the building of our Nation.

Finally, President Reagan sent a fine statement which was read at the Ethnic American Day celebration. Mr. President, I ask unanimous consent

that President Reagan's letter be printed as if read at this point in the RECORD.

THE WHITE HOUSE,
Washington, September 19, 1986.

I am delighted to extend warm greetings to those gathered together from twenty-four ethnic organizations to commemorate the first Ethnic American Day. In particular, I wish to offer my congratulations to the distinguished recipients of the Honored American award, to Selven Feinschreiber of Americans By Choice, and to the members of Congress whose vision made this day possible.

This special observance presents a welcome opportunity to recognize and honor the accomplishments and contributions of ethnic Americans. By keeping alive and advancing your ethnic heritage you contribute to the diversity that enriches American life and is the foundation of our nation's strength.

God bless you.

RONALD REAGAN.

Following the presentation of bronze plaques to each of the 21 honored Americans, 15 of the organizations entertained the audience with music and dance performances and a costume show.

Mr. President, next year and thereafter I hope even more Americans will participate in an even greater variety of ways in the celebration of Ethnic American Day. Schoolchildren could be encouraged to compete in essay contests, writing about the contributions of ethnic Americans. Local organizations throughout the land could select their own honored citizens and sponsor local celebrations. Constitution Hall will be the site of the principal Ethnic American Day celebration again next year, but more Americans can experience the sheer enjoyment of honoring America's multiple ethnic heritages if people throughout the Nation cooperate in organizing more celebrations.

PRODUCT LIABILITY

Mr. HATCH. Mr. President, we have before us a cloture vote on the motion to proceed on consideration of S. 2760, the Product Liability Reform Act. I will vote for cloture, because this is an issue that should be debated and acted upon by the Senate. In my view, the liability crisis is one of the most critical issues facing our Nation's business. I have been concerned with this issue for quite some time. The problems are, I am sure, well known to all of you. Today, both the business community and consumers are threatened by the unpredictability of court awards and judge-made laws that allow a finding of liability even though a defendant is without fault. Insurance companies have responded to this unpredictability by doubling and even tripling their premiums each year. The heavy burden of insurance premiums has driven some companies out of business and has made life difficult for those who remain.

This is by no means a local problem. In fact, courts in Utah and her surrounding States have been relatively restrained when dealing with the issue. Those local courts have not joined the few States that have discarded traditional concepts of tort law that require negligence or recklessness in order to recover in favor of an expanded doctrine of strict liability. Furthermore, the Utah Legislature recently passed the Tort Reform Act of 1986 which abolished the legal theory of joint and several liability. But because insurance companies set their premiums based upon the worst-case scenario, professionals in Utah are feeling the effects of laws made in States thousands of miles away.

This is a national problem and several proposals have been presented in Congress in an attempt to reduce the pressure felt by the insurance unavailability/unaffordability crisis. These proposals range from "shotgun ideas" that would federalize the entire tort system to specific "rifle shots" that address only those areas most needing assistance.

Certainly, there is considerable controversy on Capitol Hill about these proposals. Part of the problem is due to opposition lobbyists like the American Trial Lawyers Association. But what, to me, is a more serious concern, are the ramifications of dealing on a Federal level with legal principles that have traditionally remained on the State level. However, the scope of the liability crisis is, as I mentioned, one of national concern. There are thousands of businesses across the Nation, both small and large, that are seeing their costs increase, their profits disappear and their risk of being used growing larger daily. In Florida, 20 percent of obstetricians have stopped delivering babies. Manufacturers of vaccines for our children are faced with skyrocketing insurance premiums that increase costs and limit innovation. One Utah town with 60 registered voters was recently held liable for $2.7 million in a dispute over construction permits. Nationwide, people have been prevented from engaging in business because of their inability to obtain insurance.

Therefore, I believe that the Federal Government can and should take limited steps to correct our runaway liability system. Earlier this month I chaired hearings in the Senate Judiciary Committee in which we heard testimony demonstrating the need for a national remedy for products liability. I have therefore endorsed S. 2760, the Product Liability Reform Act, which I believe will have a great impact on the problem, but with minimal disruption of the ability of the people to govern themselves on the State level.

I am convinced that this bill would reduce the pressure that is currently felt by businesses who are exposed to product liablity. Because businesses such as those in my own State of Utah are feeling the effects of court decisions rendered in States that have not adopted such laws, passage of this proposal by Congress would establish some level of uniformity, allowing insurance companies to better anticipate potential jury vedicts. A limited Federal product liability solution is needed and we must act on S. 2760.

However, as this legislation deals only with product liability, it does not alleviate the insurance crisis as it relates to our local governments and medical professionals, two other groups in great need. A separate proposal that I introduced is directed at reducing the risk of municipal liability. Courts have recently interpreted section 1983, a civil right statute, so that a city or local government may be sued in Federal court for a violation of Federal law unrelated to civil rights. If the plantiff prevails, the defendant city or county must pay not only the amount awarded, but attorneys fees as well. This has forced insurance companies to raise liability insurance premiums of cities and local governments.

I have introduced S. 436, to limit the broad reading that courts have given to the Federal law in question, and return the interpretation to violations of civil rights, which was the original intent of the law. This bill would also establish an immunity for decisions of local governments that were made in good faith; impose a uniform statute of limitations; and require the exhaustion of State administrative remedies prior to suit in Federal court. Passage of S. 436 would significantly reduce the pressure felt by municipalities and local governments. S. 436 was unanimously approved by the Constitution Subcommittee and is now pending before the Senate Judiciary Committee.

To respond to the health care professional liability crisis, I have introduced a bill providing incentives to States who modify their laws to provide for periodic payment of damage awards over $100,000; elimination of the collateral source rule; limiting noneconomic damages to $250,000; limiting contingency fee awards; and several other provisions to ensure recordkeeping and discipline.

These three approaches respond to the liability problems facing practicing professionals, local governments, and American business generally. I believe that State governments bear the majority of the responsibility of modifying the laws as tort liability is traditionally an area of State law. However, through judicious use of the Federal power to provide stability in an area marked by continued turmoil, the Fed-

eral Government can join the States in making great strides in eliminating the liability crisis.

S. 2878—ANTI DRUG ABUSE ACT OF 1986

(Note: Later in today's proceedings the Senate proceeded to the consideration of S. 2878, the Anti Drug Abuse Act of 1986. By unanimous consent the text of the bill was ordered to be printed in the RECORD. To assure inclusion of the text of the bill in part I of today's RECORD, the text of the bill is printed at this point, as follows:)

S. 2878

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 "Anti Drug Abuse Act of 1986".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Compliance with Budget Act.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Drug Penalties Enhancement Act of 1986

Sec. 1001. Short title.
Sec. 1002. Controlled Substances Act penalties.
Sec. 1003. Other amendments to the Controlled Substances Act.
Sec. 1004. Amendment to title 18 of the United States Code.
Sec. 1005. Amendment to title 28 of the United States Code.
Sec. 1006. Amendment to the Federal Rules of Criminal Procedure.
Sec. 1007. Elimination of special parole terms.
Sec. 1008. Amendment to the Comprehensive Crime Control Act of 1984.
Sec. 1009. Miscellaneous technical amendments.

Subtitle B—Drug Possession Penalty Act of 1986

Sec. 1051. Short title.
Sec. 1052. Penalty for simple possession.

Subtitle C—Juvenile Drug Trafficking Act of 1986

Sec. 1101. Short title.
Sec. 1102. Offense.
Sec. 1103. Technical amendments.
Sec. 1104. Manufacturing a controlled substance within 1000 feet of a college.

Subtitle D—Assets Forfeiture Amendments Act of 1986

Sec. 1151. Short title.
Sec. 1152. Asset forfeiture funds.
Sec. 1153. Substitute assets.

Subtitle E—Controlled Substance Analogs' Enforcement Act of 1986

Sec. 1201. Short title.
Sec. 1202. Offense.
Sec. 1203. Definition.
Sec. 1204. Technical and conforming amendments.

Subtitle F—Continuing Drug Enterprise Act of 1986

Sec. 1251. Short title.
Sec. 1252. Increased penalties.
Sec. 1253. Continuing criminal enterprise enhanced penalties.

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Sec. 1301. Short title.
Sec. 1302. Enhanced penalties.

Subtitle H—Money Laundering Crimes Act of 1986

Sec. 1353. Amendment to the Right to Financial Privacy Act.
Sec. 1354. Compliance, exemptions, and summons authority.
Sec. 1355. Predicate offenses.
Sec. 1356. Forfeiture.
Sec. 1357. Severability clause.

Subtitle I—Armed Career Criminals

Sec. 1401. Serious drug offenses.

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Sec. 1451. Authorization of appropriations.

Subtitle L—State and Local Narcotics Control Assistance

Sec. 1551. Short title.
Sec. 1552. Office of justice assistance drug grant program.

Subtitle M—Study on the Use of Existing Federal Buildings as Prisons

Sec. 1601. Study required.

Subtitle N—Drug Law Enforcement Cooperation Study

Sec. 1651. Drug law enforcement cooperation study.

Subtitle P—Narcotics Traffickers Deportation Act

Sec. 1751. Amendment to the Immigration and Nationality Act.

Subtitle Q—Federal Drug Law Enforcement Agent Protection Act of 1986

Sec. 1771. Short title.
Sec. 1772. Amendment to the Controlled Substances Act.

Subtitle R—Common Carrier Operation Under the Influence of Alcohol or Drugs

Sec. 1791. Offense.

Subtitle S—Freedom of Information Act

Sec. 1801. Law enforcement.
Sec. 1802. Organized crime.

Subtitle T—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Sec. 1821. Short title.
Sec. 1822. Offense.
Sec. 1823. Effective date.

Subtitle U—Manufacturing Operations

Sec. 1841. Manufacturing operation.

Subtitle W—Precursor and Essential Chemical Review

Subtitle V—Controlled Substances Technical Amendments

Subtitle X—Improved Drug Crime Reporting

Sec. 1921. Improved Drug Crime Reporting.

TITLE II—INTERNATIONAL NARCOTICS CONTROL

Subtitle A—Strengthening United States Narcotics Control Overseas

Sec. 2001. Additional funding for international narcotics control assistance and regional cooperation.
Sec. 2002. Restrictions on the provision of United States assistance.
Sec. 2003. Retention of title to aircraft provided to foreign countries for narcotics control purposes.
Sec. 2004. Records of aircraft use.
Sec. 2005. Development of herbicides for aerial coca eradication.
Sec. 2006. Review of effectiveness of international narcotics control assistance program.
Sec. 2007. Extradition to the United States for narcotics-related offenses.
Sec. 2008. Foreign police arrest actions.
Sec. 2009. Information-sharing so that visas are denied to drug traffickers.
Sec. 2010. Assessment of narcotics trafficking from Africa.
Sec. 2012. Conditions on assistance for Bolivia.
Sec. 2013. Combating narcoterrorism.
Sec. 2014. Interdiction procedures for vessels of foreign registry.
Sec. 2015. Department of Defense assistance for law enforcement activities outside the United States.
Sec. 2016. Intelligence support to combatting the drug problem.
Sec. 2017. Report on certain countries.
Sec. 2018. Policy toward multilateral development banks.

Subtitle B—Strengthening International Narcotics Control and International Drug Education

Sec. 2021. Declaration; policy.
Sec. 2022. Findings.
Sec. 2023. International conference on drug abuse and illicit trafficking.
Sec. 2024. Effectiveness of international drug prevention and control system.
Sec. 2025. Narcotics control conventions.
Sec. 2026. Mexico-United States intergovernmental commission.
Sec. 2027. Opium production in Pakistan.
Sec. 2028. Opium production in Iran, Afghanistan, and Laos.
Sec. 2029. Increased funding for USIA drug education programs.
Sec. 2030. Increased funding for aid drug education programs.
Sec. 2031. Reports to Congress on drug education programs abroad.

TITLE III—INTERDICTION

TITLE IV— EDUCATION, TREATMENT, AND REHABILITATION

SEC. 3. COMPLIANCE WITH BUDGET ACT.

Notwithstanding any other provision of this Act, any spending authority and any credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 and the term "credit authority" has the meaning provided in section 3(10) of the Congressional Budget Act of 1974.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Drug Penalties Enhancement Act of 1986

SEC. 1001. SHORT TITLE.

This part may be cited as the "Drug Penalties Enhancement Act of 1986".

SEC. 1002. CONTROLLED SUBSTANCES ACT PENALTIES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking out subparagraphs (A) and (B) and inserting the following in lieu thereof:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl or 100 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment imposed therein.

"(B) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation of suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment.

"(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 1003. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1) In subsection (b), paragraph (1)(D), as redesignated, is amended by—

(A) striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual";

(B) striking out "a fine of not more than $100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual"; and

(C) inserting "except in the case of 100 or more marihuana plants regardless of

weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24):

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

SEC. 1004. AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE.

(a) Section 3553 of title 18, United States Code, is amended by adding the following at the end thereof:

"(a) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.".

(b) The amendment made by this section shall take effect on the date of the taking effect of section 3553 of title 18, United States Code.

SEC. 1005. AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.

Section 994 of title 28 of the United States Code is amended by—

(1) inserting the following after subsection (n):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (z), respectively.

SEC. 1006. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence.".

(b) The amendment made by this section shall take effect on the date of the taking effect of rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 1007. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" wherever it appears and inserting "term supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 1008. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"Sec. 225. Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 1009. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (c) of section 3583 of title 18, United States Code, is amended—

(A) so that the catchline reads as follows: "Modification of conditions or revocation.";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title," and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of rule 32.1 of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Subsection (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release."

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1978 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

Subtitle B—Drug Possession Penalty Act of 1986

SEC. 1051. SHORT TITLE.

This Subtitle may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 1052. PENALTY FOR SIMPLE POSSESSION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"PENALTY FOR SIMPLE POSSESSION

"SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise au-

thorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this subsection, or a prior conviction for any drug or narcotic offense chargeable under this title or title III or under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum or $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this subsection, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days not more than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

"(b) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.".

Subtitle C—Juvenile Drug Trafficking Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1102. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER TWENTY-ONE YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) Except as authorized by this title, it shall be unlawful for any person at least eighteen year of age to knowingly and intentionally—

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under twenty-one years of age to violate any provision of this title; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under twenty-one years of age to assist in avoiding detection or apprehension for any offense of this title by any Federal, State, or local law enforcement official.

"(b) Any person at least eighteen years of age who violates section 405B(a) (1) or (2) of this title is punishable by a term of imprisonment, or a fine, or both; up to twice that authorized by section 401(b) of this title, and at least twice any special parole term authorized by section 401(b) of this title, for a first offense.

"(c) Any person at least eighteen years of age who violates section 405B(a) (1) or (2) of this title after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b) of this title for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this title for a first offense under that section.

"(d) Any person who violates section 405B(a) (1) or (2)

"(1) by knowlingly providing or distributing to any person under twenty-one years of age; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is set out in section 401(b) of this title shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.".

SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by striking out the phrase "or 405A" and inserting in lieu thereof ", 405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

(c) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 405A the following:

"405B. Employment of minors in controlled substance trafficking.".

SEC. 1104. MANUFACTURING A CONTROLLED SUBSTANCE WITHIN 1000 FEET OF A COLLEGE.

Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amened, in subsection (a), by inserting "or manufacturing" after "distributing" and by striking out "a public or private elementary or secondary school" and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

Subtitle D—Assets Forfeiture Amendments Act of 1986

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the "Asset Forfeiture Amendments Act of 1986".

SEC. 1152. ASSET FORFEITURE FUNDS

(a) DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Subsection (c) of section 524 of title 28, United States Code, is amended—

(1) in paragraph (1) before subparagraph (A) by striking out "in such amounts as may be specified in appropriations Acts";

(2) by inserting at the end of paragraph (A) the following:

"such payments may also include those, made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than ninety percent of which use will be program-related), training, printing, contracting for service directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;";

(3) by inserting after subparagraph (A) of paragraph (1) the following new subparagraph and renumbering the subsequent subparagraphs appropriately:

"(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States.

(4) by amending newly designated subparagraph (F) of paragraph (1) to read as follows:

"(F) for equipping for drug law enforcement functions any government owned or leased vessels, vehicles, and aircraft available for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service; and";

(5) by striking out paragraph (8); and

(6) by adding at the end of the subsection and following new paragraph:

"(9)(A) If any funds deposited into the Department of Justice Assets Forfeiture Fund or the Customs Forfeiture Fund (19 U.S.C. 1613a, 1613b) are not expended or obligated prior to thirty days after the end of the fiscal year, ninety percent of such funds shall be transferred into a Special Forfeiture Fund.

"(B) The funds in the Special Forfeiture Fund shall be disbursed, during the fiscal year in which they are transferred into the Special Fund, by the Attorney General, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Education, to enhance the following efforts:

"(i) Federal drug law enforcement agencies and programs;

"(ii) Federal drug abuse agencies and programs relating to drug abuse education, prevention, treatment, rehabilitation, and research;

"(iii) State, local, and nonprofit agencies with drug abuse responsibilities; and

"(iv) State and local law enforcement agencies for drug law enforcement efforts.

"(C) Funds disbursed from the special forfeiture fund shall not be used to supplement existing funds, but shall be used to supplement the amount of funds, that would be otherwise available."

"(D) The Attorney General shall report annually to the Congress on all disbursement under the authority of clause (B).".

(b) CUSTOMS FORFEITURE FUND.—

(1) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) as added by Public Law 98-473, is amended—

(A) in subsection (a) before paragraph (1) by striking out "in such amounts as may be specified in appropriations Acts";

(B) by amending paragraph (3) of subsection (a) to read as follows:

"(3) for equiping for law enforcement functions any government owned or leased vessels, vehicles, and aircraft available for official use by the United States Customs Service; and"; and

(C) by striking out subsection (h).

(2) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) as added by Public Law 98-573, is repealed.

"(c) FUNDS NOT COUNTED FOR PURPOSES OF ALLOCATION LIMITS IN SECTION 302 OF THE CONGRESSIONAL BUDGET ACT OF 1974.—Notwithstanding any other provision of law or

any rule of the House of Representatives or the Senate, amounts available in the Customs Forfeiture Fund or the Department of Justice Assets Forfeiture Fund shall not be counted in determining the allocation of totals under subsections (a) and (b) of section 302 of the Budget Act of 1974.

SEC. 1153. SUBSTITUTE ASSETS.

"(a) Section 1963 of title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

Subtitle E—Controlled Substance Analogs' Enforcement Act of 1986

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Controlled Substance Analogs' Enforcement Act of 1986".

SEC. 1202. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 403 the following new section 403A (21 U.S.C. 843):

"§ 403A. Prohibited acts D

"Any person who knowingly or intentionally manufactures with intent to distribute, possesses with intent to distribute, or distributes a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $500,000, or imprisoned not more than twenty years, or both, and $2,000,000 for a person other than an individual. Any person who knowingly or intentionally possesses a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $25,000, or imprisoned not more than one year, or both. This section does not apply to a person who manufactures, possesses, or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). For purposes of this section, section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.".

SEC. 1203. DEFINITION.

Section 102 of the Controlled Substance Act (21 U.S.C. 802) is amended by adding at the end thereof the following new paragraphs:

"(31) The term 'controlled substance analog' as used in section 403A means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in schedule I or II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in schedule I or II. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the following: phenethylamines, N-substituted piperidines, morphinans, ecogonnies, quinazolinones, substituted indoles, and arylcycloalkylamines.

"(32) The term 'human consumption' includes application, injection, inhalation, or ingestion.".

SEC. 1204. TECHNICAL AND CONFORMING AMENDMENTS.

(1) The analysis of part D of the Controlled Substances Act is amended by inserting after the item relating to section 403 the following:

"403A Prohibited acts D.".

(2) Title 18 of the United States Code is amended as follows:

(a) Section 1791 is amended—

(1) in subsection (a)(1) by—

(A) redesignating subparagraphs (E) and (F) as (F) and (G), respectively; and

(B) inserting the following new subparagraph after subparagraph (D):

(E) a controlled substance analog as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);" and

(2) in subsection (b)(3) by—

(A) striking out "or" the second place it appears and inserting in lieu thereof a comma; and

(B) inserting ", or (1)(F)" after "(1)(E)".

(b) Section 1952(b)(1) is amended by—

(1) striking out "or" the first place it appears and inserting a comma in lieu thereof;

(2) inserting ", or controlled substance analogs" after "substances"; and

(3) striking out "(6)".

(c) Section 2118 is amended—

(1) in subsection (a) by inserting ", or controlled substance analog all or part of which controlled substance analog is intended for human consumption," after "substances";

(2) in subsection (b) by—

(A) inserting "or controlled substances analog all or part of which controlled substance analog is intended for human consumption" after "substance" the first place it appears; and

(B) inserting "or controlled substance analog" after "substance" the second place it appears; and

(3) in subsection (e)(1) to read as follows:

"(1) the 'controlled substance', 'controlled substance analog', and 'human consumption' have the meaning prescribed for those terms by section 102 of the Controlled Substances Act (21 U.S.C. 802);".

(d) Section 3142(c)(2)(I) is amended by inserting "or controlled substance analog" after "substance".

(e)(1) Section 3563(b)(8), as enacted by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by inserting "or controlled substance analog" after "substance".

(2) The amendment made by this subsection shall take effect on the date of the taking effect of such section 3563(b)(8).

(f)(1) section 3607 is amended—

(A) in subsection (a) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. 843) or" after "of" the first place it appears;

(B) in subsection (a)(1) by inserting "or controlled substance analog" after "substances"; and

(C) in subsection (c) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. § 843A) or" after "of" the first place it appears.

(2) The amendments made by this subsection shall take effect on the date of the taking effect of section 3607.

(3) The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended as follows:

(a) Section 102(11) (21 U.S.C. 802(11)) is amended by inserting "or a controlled substance analog" after "substance" each place it appears.

(b) Section 307(f) (21 U.S.C. 827(f)) is amended by inserting "and controlled substance analogs" after "substances".

(c) Subsections (a) and (b) of section 405 (21 U.S.C. 845) are amended by—

(1) inserting "or section 403A" after "401(a)(1)";

(2) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(3) inserting "in the case of a controlled substance or section 403A in the case of a controlled substance analog" after "section 401(b)" the first place it appears.

(d) Section 405A (21 U.S.C. 845A) is amended—

(1) in subsection (a) by—

(A) inserting "or section 403A" after "401(a)(1)";

(B) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(C) striking out "841(b) of this title" and inserting in lieu thereof "401(b) in the case of a controlled substance or section 403A in the case of a controlled substance analog"; and

(2) in subsection (b) by—

(A) inserting "or section 403A" after "401(a)(1)"; and

(B) inserting "or a controlled substance analog" after "substance" the first place it appears.

(e) Section 501(c) (21 U.S.C. 871(c)) is amended by inserting "or controlled substance analogs" after "substances".

(f) Section 503 (21 U.S.C. 873) is amended—

(1) in subsection (a) by—

(A) inserting "and controlled subtance analogs" after "substances" each place it appears; and

(B) inserting "and controlled substance analog" after "substance" each place it appears; and

(2) in subsection (d)(1)(A) by inserting "and controlled substance analogs" after "substances".

(g) Section 504 (21 U.S.C. 874) is amended by inserting "and controlled substance analogs" after "substances".

(h) Section 506(a) (21 U.S.C. 876(a)) is amended by inserting "or controlled substance analogs" after "substances".

(i) Section 509 (21 U.S.C. 879) is amended by inserting "or controlled substance analogs" after "substances".

(j) Section 511 (21 U.S.C. 881) is amended—

(1) in subsection (a) by—

(A) inserting "or controlled substance analogs" after "substances" each place it appears; and

(B) inserting "or controlled substance analog" after "substance" each place it appears;

(2) in subsection (f) by inserting "and all controlled substance analogs" after "schedule I" each place it appears; and

(3) in subsection (g)(1) by inserting "or controlled substance analogs" after "II".

(k) Section 515 (21 U.S.C. 885) is amended—

(1) in subsection (c) by inserting "or controlled substance analogs" after "schedule I"; and

(2) in subsection (d) by inserting "or controlled substance analogs" after "substances".

(l) Section 516(b) (21 U.S.C. 886(b)) is amended by inserting "or controlled substance analogs" after "substances".

(4) Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) is amended as follows:

(a) Subsections (a), (b), and (c) are amended by inserting "or a controlled substance analog all or part of which controlled substance analog is intended for human consumption" after "substance".

(b) Subsection (e) is amended by inserting "or controlled substance analog" after "substance" each place it appears.

(c) Subsection (g) is amended—

(1) in paragraph (1) by inserting "involving a controlled substance" after "section";

(2) in paragraph (2) by inserting "involving a controlled substance" after "Act"; and

(3) by adding the following new paragraph after paragraph (2):

"(3) Any person who commits an offense defined in subsection (a), (b), or (c) of this section involving a controlled substance analog shall be fined not more than $250,000, or imprisoned not more than fifteen years, or both."

(5) Section 280E of the Internal Revenue Code of 1954 (26 U.S.C. 280E) is amended by inserting "or controlled substance analogs (within the meaning of section 102 of the Controlled Substances Act (21 U.S.C. 802)" after "Act)".

(6) Section 994 of title 28 of the United States Code is amended as follows:

(a) Paragraphs (1)(B) and (2)(B) of subsection (h) are amended by—

(1) striking out "section" the first place it appears and inserting in lieu thereof "sections";

(2) inserting "and 403A" after "401"; and

(3) inserting "and 843A" after "841".

(b) Paragraph (5) of subsection (i) is amended by—

(1) inserting ", 403A," after "401;

(2) inserting ", 843A," after "841; and

(3) inserting "or controlled substance analog" after "substance".

(7) Section 902q of the Federal Aviation Act of 1958 (49 U.S.C. 1472q) is amended by—

(a) inserting "or controlled substance analog" after "substance" each place it appears; and

(b) striking out the second sentence and inserting in lieu thereof:

"For purposes of this subsection, the terms 'controlled substance' and 'controlled substance analog' have the meaning given such terms by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

Subtitle F—Continuing Drug Enterprise Act of 1986

SEC. 125. SHORT TITLE.

This subtitle may be cited as the Continuing Drug Enterprises Act of 1986".

SEC. 1252. INCREASED PENALTIES.

Subsection 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended as follows:

(1) by striking out the phrase "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(2) by striking out the phrase "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual".

SEC. 1253. CONTINUING CRIMINAL ENTERPRISE ENHANCED PENALTIES.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

(2) by inserting the following new subsections after subsection (a):

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal adminstrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(B) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(B) of this Act."

Subtitle C—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

SEC. 1301. SHORT TITLE.

This subtitle may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986.".

SEC. 1542. ENHANCED PENALTIES.

(a) Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting the following in lieu thereof:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl or 100 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment.

"(2) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violations shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during their term of imprisonment.

"(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this paragraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out the phrase "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24);

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

Subtitle H—Money Laundering Crimes Act of 1986

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Crimes Act of 1986".

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact

involves the proceeds of specified unlawful activity—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $250,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $250,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

"(3) Whoever conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate or facilitate a violation of section 7201 or 7206 of the Internal Revenue Code of 1954 shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), (a)(3), or a transportation described in subsection (a)(2) is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the phrase 'knowing that the property involved in a financial transaction represents the proceeds of some form on unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes but is not limited to initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes but is not limited to a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes but is not limited to a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

"(7) the term 'specified unlawful activity' means—

"(A) any act or activity occurring in whole or in part in, or directed at, the United States, and constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securites of States and private entities), section 545 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.), the International Emergency Economic Power Act (50 U.S.C. 1702 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new item:

"1956. Laundering of monetary instruments".

SEC. 1353. (a) Subsection 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: "Such information may include only the name or names of and other indentifying information concerning the individuals and accounts involved in and the nature of the suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employees, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 1354. (a) Section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority

"(a) The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

"(1) delegate duties and powers under this subchapter to an appropriate supervising agency, except as provided in subsection (e);

"(2) require a class of domestic finnancial institutions to maintan appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter;

"(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institutions or an officer or employee of a financial institution, or a former officer or employee, or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time

and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (c); and

"(5) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

"(b) The purposes for which the Secretary of the Treasury may take any action described in paragraph (3) of subsection (a) include the purpose of civil and criminal enforcement of the provisions of this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act (12 U.S.C. 1730d), or chapter 2 of Public Law 91-508.

"(c) The purpose for which the Secretary of the Treasury may take any action described in paragraph (4) of subsection (a) is limited to investigating violations of this subchapter, violations of section 21 of the Federal Insurance Act (12 U.S.C. 1829b), violations of section 411 of the National Housing Act (12 U.S.C. 1730d), or violations of chapter 2 of Public Law 91-508 for the purpose solely of civil enforcement of these provisions or any regulation issued thereunder. A summons may be issued under paragraph (4) of subsection (a) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury .

"(d) A summons pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than five hundred miles distant from any place where the financial institution operates or conducts business in the United States. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expenses incurred in connection with the production of books, papers, records, or other data pursuant to the provisions of this section.

"(e) Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may provide by regulation.

"(f) In the case of contumacy by or refusal to obey a summons issued to any person under this section, the Secretary shall refer the matter to the Attorney General. The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation which gave rise to the summons is being or has been carried on or of which the person summoned is an inhabitant, or in which he carries on business or may be found, to compel compliance with the summons. The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.".

(b)(1) Paragraph (1) of subsection (a) of section 5321 of title 31, United States Code, is amended to read as follows:

"(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315) is liable to the United States Government for a civil penalty of not more than the amount of the transaction (but not more than $1,000,000) or $25,000, whichever is greater. For a willful violation of section 5318(a)(2) of this title, or a regulaiton prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at such office, branch, or place of business at which a violation occurs or continues.".

(2) Subsection (a) of section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) A person willfully violating the provisions of section 5314 of this title or of a regulation prescribed under section 5314 is liable to the United States Government for a civil penalty of not more than—

"(A) where the violation involves a transaction, the amount of the transaction or $25,000, whichever is greater, or

"(B) where the violation involves the failure to report the existence of an account or any required identifying data pertaining to the account, the amount of the account (but not more than $250,000) or $25,000, whichever is greater.

"(5) Any financial institution negligently violating any provision of this subchapter or a regulation prescribed under this subchapter is liable to the United States for a civil penalty of not more than $500.

"(6) A civil penalty assessed pursuant to this section is in addition to any criminal penalty under section 5322 of this title based on the same transaction."

"(7) The Secretary may impose a civil penalty on a person or persons (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by this paragraph may not be more than the amount of the United States coins and currency (or other monetary instruments the Secretary may prescribe) involved in the violation of section 5324 of this subchapter. A civil penalty under this paragraph is reduced by any amount forfeited under subsection 981(a)(1)(C) of title 18.".

(c) Subsection (b) of section 5321 of title 31, United States Code, is amended to read as follows:

"(b) The Secretary may assess a civil penalty under this section within six years from the date of the transaction in which the penalty is based. The Secretary may bring a civil action to recover a civil penalty under this section within two years from the date of a penalty assessment or the conclusion of a criminal action under section 5322 of this title based on the same transaction, whichever is later.".

(d) Subsection (c) of section 5321 of title 31 is amended to read as follows:

"(c) The Secretary of the Treasury may remit any part of a forfeiture under subsection 5317(c) of this title or under subsection 981(a)(1)(C) of title 18 or may mitigate any civil penalty under subsection (a) of this section.".

(e) Subsection (b) of section 5322 of title 31, United States Code, is amended by striking out "pattern of illegal activity involving transactions of more than $100,000" and inserting in lieu thereof "pattern of any illegal activity involving more than $100,000", and by striking out "5" and inserting in lieu thereof "10".

(f) Section 5312(a)(5) of title 31, United States Code, is

"(5) 'United States' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, or a military or diplomatic establishment.".

(g) Subchapter II of Chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new section:

"Section 5324. Structuring transactions to evade reporting requirements.

"No person shall, for the purpose of evading the reporting requirements of subsection 5313(a)—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required by subsection 5313(a),

"(2) cause or attempt to cause a domestic financial institution to file a report required by subsection 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or attempt to structure or assist in structuring a transaction.".

(h) The table of sections for chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirements."

(i) Subsection 5317(c) of title 31, United States Code, is amended to read as follows:

"(c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.".

(j) The table of sections at the beginning of chapter 53, subchapter II, of title 31, is amended by striking "5318. Compliance and exemption." and inserting in lieu thereof "5318. Compliance, exemptions and summons authority."

(k) Subsection (c) of Section 5322 of title 31, United States Code is amended by striking out "5318(2)" each time it appears and inserting in lieu thereof "5318(a)(2)"."

"(1) Subsection (b) of Section 5317 of title 31, United States Code is amended by striking Subsection (b) and inserting in lieu thereof "(b) To ensure compliance with section 5316 of this title, a customs officer may stop and research, at the border, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States."

SEC. 1335. (a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title

31, United States Code, or under section 1956 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments)," after "section 1955 (relating to enterprises of gambling),".

SEC. 1356. (a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer or employee thereof."

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or emission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General * * * the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated * * *

"(e) Notwithstanding any other provision of the law, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure for forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a * * * ceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall apply:

"(1) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable, presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(j) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)—(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following.

"46. Forfeiture ..... 961".

SEC. 1357. If any provision of this Subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and

Subtitle I—Armed Career Criminals

SEC. 1401. SERIOUS DRUG OFFENSES.

(a) The second sentence of subsection (a) of section 1202 of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1202(a)) is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a crime of violence or a serious drug offense, or both,".

(b) Subsection (c) of section 1202 of title VII of such Act is amended by striking out paragraphs (8) and (9) and inserting in lieu thereof:

"(8) 'serious drug offense' means—

(i) an offense for which a maximum term of imprisonment of ten years or more is prescribed in 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 section 1 of the Act of September 15, 1980 (21 U.S.C. 955a et. seq.); and

"(ii) an offense under State law, involving manufacturing, distributing, possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law: and

"(9) 'crime of violence' means any offense punishable by imprisonment for a term exceeding one year that—

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

Subtitle J—Authorization of Appropriation for Drug Law Enforcement

SEC. 1451. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration, $438,000,000 of which $15,000,000 shall be for an All Source Intelligence Center; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expense of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $805,807,000 of which $179,000,000 shall be for the construction of Federal penal and correctional institutions.

(c) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $88,000,000.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $54,500,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the United States Marshals Service, $157,000,000.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for Support of United States prisoners in non-Federal Institutions, $59,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $351,093,000.

Subtitle K—Controlled Substances Production Control

* * * * *

Subtitle L—State and Local Narcotics Control Assistance

SEC. 1551. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1986".

SEC. 1552. OFFICE OF JUSTICE ASSISTANCE DRUG GRANT PROGRAM.

(a) Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended—

(1) by redesignating part M as part N,

(2) by redesignating section 1301 as section 1401, and

(3) by inserting after part L the following new part:

"PART H—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"FUNCTION OF THE ATTORNEY GENERAL

"SEC. 1301. The Attorney General shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF DRUG LAW ENFORCEMENT GRANT PROGRAM

"SEC. 1302. The Attorney General is authorized to make grants under this part to States for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.), and to—

"(1) provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons, who violate State laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons,

"(2) provide additional personnel, equipment, facilities (including upgraded and additional law enforcement crime labs), personnel training, and supplies for more widespread prosecution of persons accused of violating such State laws and to pay operating expenses in connection with such prosecution,

"(3) provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State laws, to pay operating expenses in connection with such adjudication, and to provide quickly temporary facilities in which to conduct adjudications of such cases,

"(4) provide additional correctional facilities (including the expansion of existing prisons) for the detention of persons convicted of violating State laws relating to the production, possession, or transfer of controlled substances, and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State laws,

"(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted, and

"(6) to conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move

these offenders expeditiously through the judicial system.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1303. (a) To request a grant under section 1302, the chief executive officer of a State shall submit to the Attorney General an application at such time and in such form as the Attorney General may require. Such application shall include a statewide strategy for the enforcement of State laws relating to the production, possession, and transfer of controlled substances. Such strategy shall be prepared after consultation with State and local officials whose duty it is to enforce such laws. Such strategy shall include an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Bureau or the State, as the case may be, a performance report concerning the activities carried out pursuant to section 1302 of this title.

"REPORTS

"SEC. 1304. (a) Each State which receives a grant under under section 1302 shall submit to the Attorney General, for each year in which any part of such grant is expended by a State or local government entity, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 1303, and

"(2) such other information as the Attorney General may require by rule.

Such report shall be submitted in such form and by such time as the Attorney General may require by rule.

"(b) Not later than ninety days after the end of each fiscal year for which grants are made under section 1302, the Attorney General shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of such grants made to such State for such fiscal year,

"(2) the amount of such grants expended for each of the five general purposes specified in section 1302, and

"(3) a summary of the information provided in compliance with subsection (a)(1).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1305. (a) A grant under section 1302 may not be expended for more than 75 per centum of the cost of the identified uses, in the aggregate, for which such grant is received to carry out any one of the five general purposes specified in section 1302. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 per centum of a grant under section 1302 may be used for costs incurred to administer such grant.

"(c)(1) Each State which receives a grant under section 302 shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Attorney General may require by rule to facilitate an effective audit.

"(2) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of State and local government entities which receive any part of a grant, made under section 1302 if, in the opinion of the Attorney General or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1306. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1302 of this title; and

"(2) administering funds received under such section from the Bureau, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended—

(A) by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M", and

(B) by striking out "part D" each place it appears and inserting in lieu thereof "parts D and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1306, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Attorney General.

"Sec. 1302. Description of drug law enforcement grant program.

"Sec. 1303. Applications to receive grants.

"Sec. 1304. Reports.

"Sec. 1305. Expenditure of grants; records.

"Sec. 1306. State office.

"PART N—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and I" and inserting in lieu thereof "L, and M",

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $115,000,000 for fiscal year 1987, $115,000,000 for fiscal year 1988, and $115,000,000 for fiscal year 1989, to carry out the programs under part H of this title.", and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and H".

Subtitle M—Study on the Use of Existing Federal Buildings as Prisons

SEC. 1601. STUDY REQUIRED.

(a) Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide to the Attorney General—

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; and, the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle N—Drug Law Enforcement Cooperation Study

SEC. 1651. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle O—Arrest Authority for INS Officers

Subtitle P—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation or a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by this section shall apply to convictions occurring before, on, or after the date of the enactment of this part, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this part.

Subtitle Q—Federal Drug Law Enforcement Agent Protection Act of 1986

SEC. 1771. SHORT TITLE.

This subtitle may be cited as the "Federal Drug Law Enforcement Agent Protection Act of 1986".

SEC. 1772. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by—

(1) inserting after "(e)" the following: "(1)";

(2) redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively; and

(3) striking out the matter following subparagraph (D), as redesignated, and inserting in lieu thereof the following:

"(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

"(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

"(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

"(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A).".

Subtitle R—Common Carrier Operation Under the Influence of Alcohol or Drugs

SEC. 1791. OFFENSE.

(a) Part I of title 18, United States Code, is amended by inserting after chapter 17 the following:

"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.
"341. Definitions.
"342. Operation of a common carrier under the influence of alcohol or drugs.
"343. Presumptions.

"§ 341. Definitions

"As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than $10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.".

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs

Subtitle S—Freedom of Information Act

SEC. 1801. LAW ENFORCEMENT.

(a) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any natural person;".

(b) Section 552(a) of title 5, United States Code, is amended by adding after paragraph (6) thereof the following new paragraph:

"(7) Nothing in this section shall be deemed applicable in any way to the informant record maintained by a law enforcement agency under an informant's name or personal identifier, whenever access to such records is sought by a third party according to the informant's name or personal identifier.".

SEC. 1802. ORGANIZED CRIME.

Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Nothing in this section shall be deemed applicable to documents compiled in any lawful investigation of organized crime, designated by the Attorney General for the purposes of this subsection and conducted by a criminal law enforcement authority for law enforcement purposes, if the requested document was first generated or acquired by such law enforcement authority within five years of the date of the request, except where the agency determines pursuant to regulations promulgated by the Attorney General that there is an overriding public interest in earlier disclosure or in longer exclusion not to exceed three years. Notwithstanding any other provision of law, no document described in the preceding sentence may be destroyed or otherwise disposed of until the document is available for disclosure in accordance with subsections (a) and (b) of this section for a period of not less than ten years.".

(b) Subsection (f) of title 5, United States Code (as redesignated), is amended by—

striking out the comma after "section" and inserting a dash;

(2) by designating the matter that follows as clause (1);

(3) by striking the period at the end thereof and inserting "; and"; and

(4) by inserting at the end thereof:

"(2) 'organized crime' means those structured and disciplined associations of individuals or of groups of individuals who are associated for the purpose of obtaining monetary or commercial gains or profits, wholly or in part by illegal means, while generally seeking to protect and promote their activities through a pattern of graft or corruption, and whose associations generally exhibits the following characteristics:

"(A) their illegal activities are conspiratorial,

"(B) in at least part of their activities, they commit acts of violence or other acts which are likely to intimidate,

"(C) they conduct their activities in a methodical or systematic and in a secret fashion,

"(D) they insulate their leadership from direct involvement in illegal activities by their organizational structure,

"(E) they attempt to gain influence in government, politics, and commerce through corruption, graft, and illegitimate means, and

"(F) they engage in patently illegal enterprises such as dealing in drugs, gambling, loan-sharking, labor racketeering, or in the investment of illegally obtained funds in legitimate businesses.".

Subtitle T—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia;

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or

may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Sustances Act (title II of Public Law 91-513). It includes, but is not limited to, items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetimines into the human body, such as:

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is deplayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate users of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any person or entity that, in the normal lawful course of business, imports, exports, transports, or sells thorugh the mail or by any other means any pipe, paper, or accessory primarily intended for use with tobacco products.

SEC. 1823. EFFECTIVE DATE.

This subtitle shall become effective ninety days after the date of enactment of this subtitle.

Subtitle U—Manufacturing Operations

SEC. 1841. MANUFACTURING OPERATION.

(a) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ESTABLISHMENT OF MANUFACTURING OPERATIONS

"SEC. 416. (a) Except as authorized by this title, it shall be unlawful to—

"(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

"(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

"(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than $500,000, or both, or a fine of $2,000,000 for a person other than an individual.".

(b) Section 405A of the Controlled Substances Act is amended—

(1) in subsection (a) by inserting after "section 401(a)(1)" the following: "or section 416"; and

(2) in subsection (b) by inserting after "section 401(a)(1)" the following: "or section 416".

Subtitle Y—Controlled Substances Technical Amendments

SEC. 1861. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3672 (formerly section 3656) of title 18 of the United States Code by adding at the end thereof:

"He shall have the authority to contract, subject to appropriations, with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing, medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under section 3552 (b) or (c) except for studies conducted by the Bureau of Prisons.".

SEC. 1862. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the sentence beginning * * * the filing", by striking out "$2,500" and inserting in lieu thereof "$5,000".

SEC. 1863. (a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) is enacted by Public Law 98-473 is repealed.

SEC. 1864. Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853) is amended—

(1) in subsection (c) by striking out "(o)" and inserting in lieu thereof "(n)";

(2) in subsection (f) by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)"; and

(3) in subsection (k) by striking out "(o)" and inserting in lieu thereof "(n)".

SEC. 1865. (a) Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4) by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 1866. (a) Subparagraph (E) of section 524(c)(1) of title 28 of the United States Code is amended by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after the words "for official use by", and by inserting a comma before the word "or".

(b) Paragraph (4) of section 524(c) of title 28 of the United States Code is amended by striking out "remaining after the payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof ", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

DRUG ENFORCEMENT AMENDMENTS (CHAPTER V)

SEC. 1867. Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

SEC. 1868. Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their sales, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.".

SEC. 1869. Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

SEC. 1870. Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.".

SEC. 1871. Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees; except that such officers shall be subject to section 3374(c) of title 5, United States Code.

SEC. 1872. Paragraph (1) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended—

(1) in subparagraph (A) by striking out clauses (i), (ii), and (iii) and inserting in lieu thereof the following:

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);";

(2) in subparagraph (B) by inserting "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in subparagraph (C) by inserting "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in subparagraph (D) by inserting "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than four years in addition to such term of imprisonment.".

(b) Paragraph (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

SEC. 1873. Paragraph (2) of section 5316(a) of title 31 of the United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1874. Subsection (c) of section 924 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to any" the words "felony described in 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 section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) or any";

(2) adding after the words "in addition to the punishment provided for such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the" the words "felony or".

SEC. 1875. Subsection (a) of section 929 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to the commission of a" the words "felony described in 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 section 1 of the Act of September 15, 1980 (21 U.S.C. 855a), or a";

(2) adding after the words "in addition to the punishment provided for the commission of such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the felony" the words "or crime of violence".

Subtitle W—Precursor and Essential Chemical Review

SEC. 1901. PRECURSOR AND ESSENTIAL CHEMICAL REVIEW.

(a) STUDY AND REPORT.—The Attorney General shall—

(1) conduct a study of the need for legislation, regulation, or alternative methods to control the diversion of legitimate precursor and essential chemicals to the illegal production of drugs of abuse; and

(2) report all findings of such study to Congress not later than the end of the 90th day after the date of enactment of this part.

(b) CONSIDERATIONS.—In conducting such study the Attorney General shall take into consideration that—

(1) clandestine manufacture continues to be a major source of narcotic and dangerous drugs on the illegal drug market;

(2) these drugs are produced using a variety of chemicals which are found in commercial channels and which are diverted to illegal uses;

(3) steps have been taken to deny drug traffickers access to key precursor chemicals, including that—

(A) P2P, a precursor chemical used in the production of amphetamines and methamphetamines was administratively controlled in schedule II of the Controlled Substances by the Drug Enforcement Administration;

(B) a variety of controls were placed on piperidine, the precursor for phencyclidine, by the Psychotropic Substance Act of 1978; and

(C) the Drug Enforcement Administration has maintained a voluntary system in cooperation with chemical industry to report suspicious purchases of precursors and essential chemicals; and

(4) despite the formal and voluntary systems that currently exist, clandestine production of synthetic narcotics and dangerous drugs continue to contribute to drug tarfficking and abuse problems in the United States.

Subtitle X—Improved Drug Crime Reporting

SEC. 1921. IMPROVED DRUG CRIME REPORTING.

(a) The Congress—

(1) finds that—

(A) The Bureau of Justice Statistics currently conducts one of the largest public opinion survey programs in the world, the National Crime Survey;

(B) this survey, conducted by the Census Bureau, involves detailed field surveys of 60,000 households and more than 100,000 individuals who are interviewed twice a year to measure the amount of crime actually occurring (crime victimization), as opposed to that reported to police through the uniform crime reporting system;

(C) currently the National Crime Report does not gather data involving drug abuse or victimization;

(D) further, the Bureau of Justice Statistics does not act as a clearinghouse for the gathering of data generated by Federal, State, local enforcement and together criminal justice agencies on their drug enforcement activities; and

(E) to obtain a comprehensive understanding of the dimensions of our crime problems and enforcement activities, one must sift through the annual reports of numerous agencies; and

(2) based on findings in paragraph (1) the purpose of this Act is to create a comprehensive and timely data base of the dynamics of the drug crisis.

(b)(1) The Bureau of Justice Statistics, in cooperation with the Federal Bureau of Investigation and other Federal enforcement agencies as well as other Federal, State, and local statistics gathering groups, shall compile and publish comprehensive data on drug trafficking and abuse.

(2) For purposes of carrying out the provisions of paragraph (1), the authorization for the Bureau of Justice Statistics for fiscal year 1987 is increased by $3,000,000.

TITLE II—INTERNATIONAL NARCOTICS CONTROL

Subtitle A—Strengthening United States Narcotics Control Overseas

SEC. **01. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

Section 482(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$75,445,000 for the fiscal year 1987"; and

(2) by adding at the end the following: "In addition to the amounts authorized by the preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress a detailed plan for the expenditure of those funds, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less than $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under chapter 8 of part I of this Act (22 U.S.C. 2291 et seq.; relating to international narcotics control). These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts and shall be available primarily for use in Latin America.".

SEC. **02. RESTRICTIONS ON THE PROVISION OF UNITED STATES ASSISTANCE.

(a) Section 481(h) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(h)(1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country—

"(A) 50 percent of the amount of United States assistance justified to the Congress for allocation to such country for each fiscal year shall be withheld from obligation and expenditure;

"(B) on or after March 1, 1987, and on March 1 of each succeeding year, the Secre-

tary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of their respective institution to or for such country; and

"(C) on or after March 1, 1987, and March 1 of each succeeding year, the President shall deny to all products of such country tariff treatment under title V of the Trade Act of 1974 (the Generalized System of Preferences), the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment.

"(2)(A) The assistance withheld by paragraph (1)(A) may be obligated and expended and the provisions of clauses (A) and (B) of paragraph (1) shall not apply if the President determines, and so certifies to the Congress, at the time of the submission of the report required by subsection (e), that—

"(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

"(ii) the vital national interests of the United States require the provision of such assistance, financing, or preferential treatment to such country.

"(B) If the President makes a certification pursuant to clause (A)(ii), he shall include in such certification—

"(i) a full and complete description of the vital national interests placed at risk should assistance, financing, or preferential tariff treatment not be provided such country; and

"(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combatting narcotics or to take adequate steps to combat narcotics on its own.

"(3) In making the certification required by paragraph (2) of this subsection, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidenced by—

"(i) the enactment and enforcement of laws prohibiting such conduct, and

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(4)(A) The provisions of paragraph (1) shall apply without regard to paragraph (2) if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (2), a joint resolution disapproving the determination of the President contained in such certification.

"(B)(i) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(ii) For the purpose of expediting the consideration and enactment of joint resolution under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5) Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive the assistance, financing, or preferential treatment described in subsection (a) unless—

"(A) the President makes a certification under paragraph (2) and the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (2) with respect to such country and the Congress enacts, in accordance with the procedures of paragraph (4), a joint resolution approving such certification.".

(b) Section 481(e) of such Act is amended by striking out "February" and inserting in lieu thereof "March".

(c) Section 481(i) of such Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.".

(d) The amendments made by this section shall take effect October 1, 1986.

SEC. **03. RETENTION OF TITLE TO AIRCRAFT PROVIDED TO FOREIGN COUNTRIES FOR NARCOTICS CONTROL PURPOSES.

(a) Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program) is amended by adding at the end the following new section:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft made available to a foreign country under this chapter at any time after the date of enactment of this section (including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986) shall be provided, to the maximum extent practicable, on a lease or loan basis.".

(b) The Congress finds that the aircraft provided Mexico under assistance made available by section 481 of the Foreign Assistance Act of 1961 have not been used efficiently and that the fleet of aircraft provided Mexico is plagued by rapidly rising maintenance costs.

SEC. **04. RECORDS OF AIRCRAFT USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program), as amended by the preceding section of this subtitle, is further amended by adding at the end the following new section:

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to Mexico under this chapter, including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986 and aircraft made available under this chapter before the enactment of this section.

"(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.".

SEC. **05. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. **06. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) REQUIREMENT FOR INVESTIGATION.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) REPORTS TO CONGRESS.—

(1) PERIODIC REPORTS.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) FINAL REPORT.—Not later than 12 months after the date of enactment of this Act, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

SEC. **07. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relat-

ing to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.".

SEC. **08. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (1), by striking out in the first sentence "engage or participate in any direct police arrest action in any foreign country" and inserting in lieu thereof "directly make an arrest in any foreign country as part of any foreign police action";

(2) by amending paragraph (2) to read as follows:

"(2) Nothing in paragraph (1) prevents such employee or officer—

"(A) from being present at the scene of an arrest or otherwise assisting foreign officers in making an arrest; or

"(B) from taking direct action to protect life or safety if exigent circumstances arise in the course of an arrest which are unanticipated and which pose an immediate threat to United States or foreign officers or to members of the public."; and

(3) by adding at the end thereof the following new paragraph:

"(3) The provisions of this subsection shall apply to all countries, unless the President certifies to the Congress a specific country or countries for which it would be against the national interests of the United States to do so.".

S0200

SEC. **09. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) NEED FOR COMPREHENSIVE INFORMATION SYSTEM.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) ESTABLISHMENT OF SYSTEM.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. **10. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. **11. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a)(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz Estenssoro government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) Section 611(2) of the International Security and Development Cooperation Act of 1985 is amended to read as follows:

"(2) For fiscal year 1987—

"(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has either met in calendar year 1986 the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has adopted a plan to eliminate illicit narcotics cultivation, production, and trafficking countrywide, and has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond, and is making substantial progress towards the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

(c) In the certification required by subsection (b) of this section, the President shall explain why the 1983 agreement's terms proved unattainable and the reasons why a new agreement was necessary.

(d) Nothing in this section or the amendment made by this section shall be construed as waiving any provision of section 481 of the Foreign Assistance Act of 1961.

SEC. **12. COMBATING NARCOTERRORISM.

(a) FINDING.—The Congress finds that the increased cooperation and collaboration between narcotics traffickers and terrorist groups constitutes a serious threat to United States national security interests and to the political stability of numerous other countries, particularly in Latin America.

(b) IMPROVED CAPABILITY FOR RESPONDING TO NARCOTERRORISM.—The President shall take concrete steps to improve the capability of the executive branch—

(1) to collect information concerning the links between narcotics traffickers and acts of terrorism abroad, and

(2) to develop an effective and coordinated means for responding to the threat which those links pose.

Not later than 90 days after the date of enactment of this subtitle, the President shall report to the Congress on the steps taken pursuant to this subsection.

SEC. **13. INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY.

(a) FINDINGS.—The Congress finds that—

(1) the interdiction by the United States Coast Guard of vessels suspected of carrying illicit narcotics can be a difficult procedure when the vessel is of foreign registry and is located beyond the customs waters of the United States;

(2) before boarding and inspecting such a vessel, the Coast Guard must obtain consent from either the master of the vessel or the country of registry; and

(3) this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days.

(b) NEGOTIATIONS CONCERNING INTERDICTION PROCEDURES.—

(1) The Congress urges the Secretary of State, in consultation with the Secretary of the department in which the Coast Guard is operating, to increase efforts to negotiate with relevant countries procedures which will facilitate interdiction of vessels suspected of carrying illicit narcotics.

(2) If a country refuses to negotiate with respect to interdiction procedures, the President shall take appropriate actions directed against that country, which may include the denial of access to United States ports to vessels registered in that country.

(3) The Secretary of State shall submit reports to the Congress semiannually identifying those countries which have failed to negotiate with respect to interdiction procedures.

SEC. **14. DEPARTMENT OF DEFENSE ASSISTANCE FOR LAW ENFORCEMENT ACTIVITIES OUTSIDE THE UNITED STATES.

Section 374(c)(1) of title 10, United States Code, is amended—

(1) by inserting "or foreign" after "Federal"; and

(2) in subparagraph (B) by striking out "and the Attorney General" and insert in lieu thereof ", the Attorney General, and the Secretary of State".

SEC. **15. INTELLIGENCE SUPPORT TO COMBATING THE DRUG PROBLEM.

(a) It is the sense of the Congress that the Intelligence Community can play a key role in United States efforts to prevent the importation of illegal drugs into the United States. It is also the sense of the Congress that the drug problem is sufficiently important that monitoring the production of illegal drugs and providing support to efforts to halt the trafficking in illegal drugs should be a high priority for the United States intelligence program.

(b) In order to improve the strategic international narcotics control program of the United States and to assist the reporting requirements of section 481(e) of the Foreign Assistance Act of 1961, the Congress directs the Director of Central Intelligence to improve the collection and analysis of foreign drug production sufficiently to produce highly reliable data on drug cultivation, harvest, and yields for each major illicit drug producing country (as defined by section 481(i) of the Foreign Assistance Act of 1961).

(c) The Congress also directs the Director of Central Intelligence (hereafter in this paragraph referred to as the "DCI") to make support to anti-drug efforts a Level One Priority in his National Foreign Intelligence Strategy and to reflect this priority in the National Foreign Intelligence Program. The Congress understands that—

(1) a copy of the DCI's National Foreign Intelligence Strategy will be provided to the Permanent Select Committee on Intelligence of the House of Representatives and

the Select Committee on Intelligence of the Senate, with the DCI's budget request for fiscal year 1988; and

(2) the DCI will address Intelligence Community support to anti-drug efforts and the coordination of these efforts within the Intelligence Community in his presentation of the National Foreign Intelligence Strategy to the Committees.

SEC. **16. REPORT ON CERTAIN COUNTRIES; RESTRICTIONS ON ASSISTANCE.

(a) Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and identities of officials whose activities caused such country to be so listed.

(b) No United States assistance may be furnished to any country listed under subsection (a)(1), and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of any country listed under subsection (a)(1), unless the President certifies to the Congress that—

(1) overriding vital national interests require the provision of such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country has made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) For purposes of this section, the term "United States assistance" has the same meaning as is given to such term by section 481(i)(4) of the Foreign Assistance Act of 1961.

SEC. **17. POLICY TOWARD MULTILATERAL DEVELOPMENT BANKS.

Section 481(a) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) In order to promote international cooperation in combating international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implementation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.".

Subtitle B—Strengthening International Narcotics Control and International Drug Education

SEC. **21. DECLARATION; POLICY.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization (NATO) in cooperative drug programs.

SEC. **22. FINDINGS.

The Congress finds that—

(1) in response to the growing narcotics threat to the international community—

(A) the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending that Convention, and the Convention on Psychotropic Substances were adopted under United Nations auspices, and

(B) the United Nations has created various entities to deal with drug abuse control and prevention; and

(2) a greater international effort is required to address this threat, such as additional or increased contributions by other countries to the United Nations Fund for Drug Abuse and Control and greater coordination of enforcement and eradication efforts.

SEC. **23. INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING.

(a) CONGRESSIONAL SUPPORT.—The Congress hereby declares its support for United Nations General Assembly Resolution 40/122 adopted on December 13, 1985, in which the General Assembly decided to convene in 1987 an International Conference on Drug Abuse and Illicit Trafficking in order to generate universal action to combat the drug problem in all its forms at the national, regional, and international levels, and to adopt a comprehensive outline of future activities.

(b) UNITED STATES PARTICIPATION.—With respect to United States participation in the International Conference on Drug Abuse and Illicit Trafficking, the Congress calls on the President—

(1) to appoint the head of the United States delegation well in advance of the conference; and

(2) to ensure that necessary resources are available for United States preparation and participation.

(c) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress on the status of United States preparations for the International Conference on Drug Abuse and Illicit Trafficking, including the status of naming the delegation, the issues expected to arise, and United States policy initiatives to be taken at the conference.

SEC. **24. EFFECTIVENESS OF INTERNATIONAL DRUG PREVENTION AND CONTROL SYSTEM.

(a) STUDY.—The United States should seek to improve the program and budget effectiveness of United Nations entities related to narcotics prevention and control by studying the capability of existing United Nations drug-related declarations, conventions, and entities to heighten international awareness and promote the necessary strategies for international action, to strengthen international cooperation, and to make effective use of available United Nations funds.

(b) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress any recommendations that may result from this study.

SEC. **25. NARCOTICS CONTROL CONVENTIONS.

The Congress—

(1) urges that the United Nations Commission on Narcotic Drugs complete work as quickly as possible, consistent with the objective of obtaining an effective agreement, on a new draft convention against illicit traffic in narcotic drugs and psychotropic substances, in accordance with the mandate given the Commission by United Nations General Assembly Resolution 39/141; and

(2) calls for more effective implementation of existing conventions relating to narcotics.

SEC. **26. MEXICO-UNITED STATES INTERGOVERNMENTAL COMMISSION.

(a) NEGOTIATIONS TO ESTABLISH.—In accordance with the resolution adopted by the 26th Mexico-United Interparliamentary Conference which recommended that the Government of Mexico and Government of the United States establish a Mexico-United States Intergovernmental Commission on Narcotics and Psychotropic Drug Abuse and Control, the President should direct the Secretary of State, in conjunction with the National Drug Enforcement Policy Board, to enter into negotiations with the Government of Mexico to create such a joint intergovernmental commission.

(b) MEMBERSHIP.—The commission, which should meet semiannually, should include members of the Mexican Senate and Chamber of Deputies and the United States House of Representatives and Senate, together with members of the executive departments of each government responsible for drug abuse, education, prevention, treatment, and law enforcement.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this subtitle, the Secretary of State shall report to the Congress on the progress being made in establishing a commission in accordance with subsection (a).

SEC. **27. OPIUM PRODUCTION IN PAKISTAN.

(a) FINDINGS.—The Congress finds that—

(1) the production of opium in Pakistan is expected to more than double in the 1985-1986 growing season, posing an increased threat to the health and welfare of the people of Pakistan and the people of the United States; and

(2) despite past achievements, the current eradication program in Pakistan, which employs manual eradication of opium poppies, has proven inadequate to meet this new challenge.

(b) NEED FOR MORE EFFECTIVE DRUG CONTROL PROGRAM.—The Congress urges that the Government of Pakistan adopt and implement a comprehensive narcotics control program which would provide for more effective prosecution of drug traffickers, increased interdiction, and eradication of opium poppies.

(c) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress not later than 60 days after the date of enactment of this subtitle with respect to the adoption and implementation by the Government of Pakistan of a comprehensive narcotics control program in accordance with subsection (b).

SEC. **28. OPIUM PRODUCTION IN IRAN, AFGHANISTAN, AND LAOS.

The Congress calls on the President to instruct the United States Ambassador to the United Nations to request that the United

Nations Secretary General raise with delegations to the International Conference on Drug Abuse and Illicit Trafficking the problem of illicit drug production in Iran, Afghanistan, and Laos, the largest opium poppy producing countries which do not have narcotics control programs.

SEC. **29. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons, programs and international visitor programs involving students, educators, and scientists.

SEC. **30. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be used pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. **31. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies.

TITLE III—INTERDICTION

Subtitle A—National Drug Interdiction Improvement

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "National Drug Interdiction Improvement Act of 1986".

SEC. 3002. FINDINGS.

The Congress hereby finds that—

(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

(A) increased investigations of large networks of drug smuggler organizations;

(B) source country drug eradication;

(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

(D) increased emphasis on drug education programs in the schools and workplace;

(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, national drug interdiction program;

(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) systems, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) in 1981, the Department of Defense has assisted in the effort to interdict drugs, but they can do more.

SEC. 3003. PURPOSES.

It is the purpose of this subtitle—

(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act, for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States; and

(3) to improve other drug interdiction programs of the Federal Government.

SEC. 3004. DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS FOR ENHANCED DRUG INTERDICTION ACTIVITIES.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for enhancement of drug interdiction assistance activities of the Department as follows:

(1) For procurement of aircraft for the Navy, $138,000,000 to be available for refurbishment and upgrading of four existing E2C Hawkeye surveillance aircraft for drug interdiction purposes, and the procurement of four replacement E2C Hawkeye aircraft and related spares for the Navy.

(2) For procurement for the Air Force, $49,500,000, to be available for procurement of 3 aerostat radar systems, 3 aerostat radar spares for such system, and 1 aerostat radar spare for an aerostat radar system authorized and funded for location in the Bahamas by section 5(b) of the Urgent Supplemental Appropriations Act, 1986 (Public Law 99-349; 100 Stat. 723).

(3) For operation and maintenance for the Air Force, $12,615,000 to be available for the transfer of 6 Air Force helicopters to Davis-Monthan Air Force Base for use in carrying out drug interdiction missions.

(4) For the Secretary of Defense, $12,000,000 for enhanced intelligence collection activities concerning illegal importation into the United States of drugs originating in South America.

(5) For procurement of twin engine pursuit helicopters and procurement of four aerostat radar systems, $90,000,000. The location of the aerostat radar systems shall be established at the highest drug threat sites, as agreed to by the Commissioner of Customs and the Commandant of the Coast Guard.

(b) LOANS TO THE UNITED STATES CUSTOMS SERVICE.—The Secretary of Defense shall make available the refurbished, upgraded, and modified aircraft; and the twin engine pursuit helicopters, using funds appropriated pursuant to authorizations in subsections (a)(1) and (a)(5) to the United States Customs Service in accordance with chapter 18 of title 10, United States Code, except that the four replacement E2C Hawkeye aircraft procured using funds appropriated pursuant to authorizations in subsection (a)(1) shall be delivered to the Navy.

(c) RESPONSIBILITIES OF THE UNITED STATES CUSTOMS SERVICE.—

(1) The United States Customs Service shall have the responsibility for operation and maintenance costs attributable to the aircraft refurbished, upgraded, or modified and the twin engine pursuit helicopters using funds appropriated pursuant to authorizations in subsections (a)(1) and (a)(5) and the aerostat radar systems using funds appropriated pursuant to authorizations in subsections (a)(2) and (a)(5) except that responsibility for the operation and maintenance costs by the United States Customs Service shall commence upon receipt of the modified, refurbished, and upgraded aircraft, and helicopters authorized in subsections (a)(1) and (a)(5) and upon completion of the installation of the aerostat radar systems authorized in subsections (a)(2) and (a)(5).

(2) Upon enactment of this Act, the Commissioner of Customs shall immediately commence consultations with the Commandant of the United States Coast Guard regarding coordination of the deployment of the aircraft authorized in subsection (a)(1) and on loan to the United States Customs Service under subsection (b) in order to maximize the detection, surveillance, and intelligence gathering capabilities of the drug surveillance aircraft on loan to the United States Customs Service. The Commissioner of Customs shall make quarterly reports to the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives regarding drug interdiction plans developed under this paragraph.

(d) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized by subsection (a) are in addition to any other amounts authorized to be appropriated to the Department of Defense for fiscal year 1987.

(e) FUNDING OF COAST GUARD DRUG-INTERDICTION ACTIVITIES.—

(1) USE OF DEPARTMENT OF DEFENSE FUNDS FOR THE COAST GUARD.—(A) In addition to any other amounts authorized to be appropriated to the Department of Defense in fiscal year 1987, $45,000,000 shall be authorized to be appropriated for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft.

(B) There are hereby authorized to be appropriated to the Department of Defense in fiscal year 1987, $15,000,000 to be available for transfer to the Secretary of Transportation and shall be used only for the program described in section 379 of title 10, United States Code.

71-059 O-87-33 (Pt. 18)

(2) ENHANCED DRUG-INTERDICTION ASSISTANCE.—(A) Chapter 18 of title 10, United States Code, is amended by adding after section 378 the following new section:

"§ 379. Assignment of Coast Guard personnel to naval vessels for drug enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation may, by agreement, provide for the assignment to duty on board surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and are empowered to arrest, search, and seize property and persons suspected of violations of law.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty as provided in subsection (a) or for other high priority drug interdiction activities.

"(d) In this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 378 the following new item:

"379. Assignment of Coast Guard personnel to naval vessels for drug enforcement purposes.".

SEC. 3005. COAST GUARD DRUG INTERDICTION ENHANCEMENT.

(a) ADDITIONAL AUTHORIZATIONS FOR THE COAST GUARD.—

(1) There is authorized to be appropriated for Acquisition, Construction, and Improvements of the Coast Guard, $114,000,000.

(2) There is hereby authorized to be appropriated for Operating Expenses of the Coast Guard, $39,000,000; *Provided*, That this amount shall be used to increase the full-time equivalent strength level for the Coast Guard for active Duty personnel for fiscal year 1987 to 39,220.

(3) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized to be appropriated for the Coast Guard by this section are in addition to any amounts otherwise authorized by law.

SEC. 3006. UNITED STATES CUSTOMS SERVICE DRUG INTERDICTION ENHANCEMENT.

(a) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES CUSTOMS SERVICE.—In addition to any other funds authorized to be appropriated to the United States Customs Service for fiscal year 1987, there are authorized to be appropriated the following sums:

(1) For an additional amount for Salaries and Expenses, $65,900,000.

(2) For an additional amount for Operation and Maintenance, Air Interdiction Program, $50,000,000.

SEC. 3007. ESTABLISHMENT OF COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I).

There are authorized to be appropriated $25,000,000 for the establishment of command, control, communications, and intelligence (C-3I) centers, including sector operations centers and a national command, control, communications, and intelligence (C-3I) center, in locations within the United States. The coordination of the establishment and location of such C-3I centers shall be conducted among the Commissioner of Customs; the Commandant of the Coast Guard; the Attorney General of the United States; and the National Narcotics Border Interdiction System (NNBIS).

SEC. 3008. ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.—(A) There is authorized to be established a United States-Bahamas Drug Interdiction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act, immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3006, and (ii) any training and personnel enhancements authorized in this section and section 3006.

(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

(2) AMOUNTS AUTHORIZED.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this subtitle, $10,000,000 for the following:

(A) $9,000,000 for 3 twin engine drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

(3) COAST GUARD-BAHAMAS DRUG INTERDICTION DOCKING FACILITY.—There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Bahamas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

(B) The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this subsection as may be necessary to establish a repair, maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

SEC. 3009. ADDITIONAL FUNDS FOR THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for fiscal year 1987, in addition to any other amounts authorized to be appropriated to the Department for such fiscal year, $7,000,000 for twin engine helicopters with forward looking infrared radiation detection devices for drug interdiction operations in Hawaii.

Subtitle B—Customs Enforcement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART I—TARIFF ACT AMENDMENTS

SEC. 3111. CONTROLLED SUBSTANCES DEFINED.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by striking out the period in subsection (c) and inserting in lieu thereof "and monetary instruments as defined in section 5312 of title 31, United States Code.",

(2) by striking out the following: "For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.",

(3) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term",

(4) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel,

"(B) has received merchandise while in the customs waters beyond the territorial sea, or

"(C) has received merchandise on the high seas,

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.", and

(5) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given to such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, any controlled substance is merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

"(1) an appropriate license or permit; or

"(2) the Controlled Substances Import and Export Act.".

SEC. 3112. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—

"(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not beyond 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—

"(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall, present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

"(1) depart from the port, airport, or place of arrival, or

"(2) discharge any passenger or merchandise, including baggage,

only in accordance with regulations prescribed by the Secretary.".

SEC. 3113. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with the provisions of section 433;

"(2) to present any forged, altered, or false document or paper to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509);

"(4) to violate section 433(e); or

"(5) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of the preceding paragraphs.

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who violates any provision of subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) CRIMINAL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who willfully commits any violation enumerated in subsection (a) shall be liable for an additional fine of not more than $2,000 or imprisonment for not more than 1 year, or both, and if the conveyance has, or is discovered to have had, on board—

"(1) any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, or

"(2) any controlled substances, spirits, wines, or other alcoholic liquors,

such person shall be liable for an additional fine of not more than $10,000 and imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any merchandise is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for an additional penalty equal to the value of the merchandise and the merchandise shall be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of the controlled substances listed in section 584 of this Act, the master, person in charge of a vehicle, or pilot shall be liable for the penalties prescribed in that section.".

(b) Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting in lieu thereof "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 3114. PENALTY FOR UNLOADING OF PASSENGERS.

Section 454 of the Tariff Act of 1930 (19 U.S.C. 1454) is amended by striking out "$500 for each" and inserting in lieu thereof "$1,000 for the first passenger and $500 for each additional".

SEC. 3115. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false documents or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally commits any violation described in subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) Section 460 of the Tariff Act of 1930 (19 U.S.C. 1460) is repealed.

SEC. 3116. PENALTY FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—

"(1) Any article which—

"(A) is not included in the declaration and entry as made, and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required,

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article, and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—

"(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary, in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 3117. FALSE MANIFESTS; LACK OF MANIFESTS.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000",

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000",

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500", and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 3118. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" each place it appears and inserting in lieu thereof "$10,000",

(2) by striking out "two years" in subsection (e) and inserting in lieu thereof "15 years", and

(3) by striking out "within one league of the coast" in subsection (e) and inserting in lieu thereof "within customs waters".

SEC. 3119. AVIATION SMUGGLING.

The Tariff Act of 1930 is amended by inserting after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It shall be unlawful for the pilot of any aircraft to transport, or for any person on board any aircraft to possess, merchandise knowing or intending that the merchandise will be introduced into the United States unlawfully.

"(b) SEA TRANSFERS.—It shall be unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)) and the merchandise consists of controlled substances, spirits, wines, or other alcoholic liquors or merchandise, the importation of which into the United States is prohibited or is restricted, or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

"(c) PENALTIES.—

"(1) Any person who violates any provision of this section shall be civilly liable for a fine equal to twice the value of the merchandise involved but less than $10,000 and, in addition to such civil penalty shall be liable for a fine of not more than $10,000 and imprisonment for a period of not more than 5 years or both if the merchandise involved was not a controlled substance and a fine of $250,000 or imprisonment for a period of 20 years or both if its a controlled substance—

"(2) For purposes of this subsection, the value of any controlled substance shall be determined in accordance with section 497(b).

"(d) SEIZURE AND FORFEITURE.—Any vessel or aircraft used in connection with, or in aiding or facilitating, any of the unlawful acts described in this section (whether or not any person is charged in connection with such acts) shall be seized and civilly forfeited in accordance with the customs laws.

"(e) INTENT OF TRANSFER OF CONTROLLED SUBSTANCES.—For purposes of imposing civil penalties under this section of this Act, any one of the following acts, when performed within 250 miles of the territorial sea of the United States shall be prima facie evidence that the transportation of possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (d) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) the operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law;

"(2) the presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law;

"(3) the failure to correctly identify—

"(A) the vessel by name and the country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority;

"(4) the external display of false registration numbers, false country of registration, or, in the case of a vessel, false name;

"(5) the presence on board of unmanifested merchandise, the importation of which is prohibited or restricted;

"(6) the presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under the Single Convention on Narcotic Drugs or any other international treaty;

"(7) the presence of any compartment or equipment which is built or fitted out for smuggling; or

"(8) the failure of a vessel to stop when hailed by a customs officer or other government authority.".

For purposes of section 590, merchandise shall consist of controlled substances, spirits, wine, or other alcoholic liquors or other merchandise, the importation of which into the United States is prohibited or restricted.

SEC. 3120. SEIZURE OF CONVEYANCES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft, or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft,

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure or forfeiture under the customs laws for violations relating to merchandise contained—

"(1) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(2) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) CONTROLLED SUBSTANCES ON CONVEYANCE.—If any controlled substances are found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it appears to the satisfaction of the Secretary that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such controlled substances were on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party;

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) and other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.".

SEC. 3121. SEARCHES AND SEIZURES.

Subsection (a) of section 595 of the Tariff Act of 1930 (19 U.S.C. 1595) is amended to read as follows:

"(a)(1) If any officer or person authorized to make searches and seizures shall have probable cause to believe the presence of—

"(A) any merchandise upon which the duties have not been paid or which has been otherwise brought into the United States contrary to law,

"(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service, or

"(C) any documents, containers, wrappings, or other articles which are evidence of violations of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

in any dwelling house, store, or other building or place, such officer or person may apply, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate for a warrant and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other building or place at night or by day, and to search for and seize such merchandise or other article named in such warrant.

"(2) If any house, store, or other building or place is located upon or within ten feet of

the boundary line between the United States and a foreign country and any merchandise or other article subject to forfeiture is found in such house, store, or other building or place, the portion of such house, store, or other building or place that is within the United States may be taken down or removed.".

SEC. 3122. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "in the proviso to section 594" and inserting in lieu thereof "in subsection (b) or (c) of section 594",

(2) by adding at the end thereof the following new subsection:

"(c) Any merchandise that is or has been introduced, or attempted to be introduced, into the United States contrary to law (other than in violation of section 592) shall be seized and forfeited.".

SEC. 3123. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under a law enforced or administered by the United States Customs Service, or otherwise acquired under section 605 of this Act, and relief from the forfeiture is granted by the Secretary upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the United States Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the United States Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 3124. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"SEC. 619. AWARD OF COMPENSATION TO INFORMERS.

"(a) IN GENERAL.—

"(1) If any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person, and

"(2) such detection and seizure or such information leads to a recovery of—

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) FORFEITED PROPERTY NOT SOLD.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section shall not exceed $250,000 for any case.

"(d) SOURCE OF PAYMENT.—Any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.".

SEC. 3125. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", or to comply with international obligations.".

SEC. 3126. EXCHANGE OF INFORMATION.

The Tariff Act of 1930 is amended by inserting after section 627 the following new section:

"SEC. 628. EXCHANGE OF INFORMATION.

"The Secretary of the Treasury may prescribe regulations authorizing customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law related to controlled substances that is enforced or administered by the United States Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; or

"(4) assist a foreign customs or law enforcement agency in taking any action comparable to any of those described in paragraph (1), (2), or (3), or in relation to any proceeding in a foreign country.".

SEC. 3127. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) IN GENERAL.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) FUNCTIONS AND DUTIES.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) COMPLIANCE.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station were a port of entry within the customs territory of the United States.

"(d) SEIZURES.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory of the United States to be proceeded against under the customs laws.

"(e) STATIONING OF FOREIGN CUSTOMS OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) APPLICATION OF CERTAIN LAWS.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) the provisions of sections 111 and 1114 of title 18, United States Code, shall apply as if the foreign officials were designated in those sections;

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be liable for a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.".

SEC. 3128. COMMERCIAL COVER.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 630. AUTHORITY TO CONDUCT COMMERCIAL COVER.

"(a) IN GENERAL.—The Commissioner of Customs may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support investigative activities of the United States Customs Service. Such commercial entities may be established only upon written certification by the Commissioner of Customs or a delegate of the Commissioner of Customs that commercial cover is necessary to conduct authorized investigative activities.

"(b) ESTABLISHMENT AND OPERATION.—The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. Laws applicable to Federal appropriations, Federal property management, Feder-

al acquisitions, Federal employment and Government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Commissioner of Customs, or any delegate of the Commissioner of Customs, that the application of such laws would compromise a commercial cover.

"(c) WITHDRAWAL AND DEPOSIT OF FUNDS.—The Commissioner of Customs, or any delegate of the Commissioner of Customs, is authorized to deposit and withdraw in banks and other financial institutions—

"(1) funds appropriated for the United States Customs Service that are used to conduct commercial cover, and

"(2) funds generated by the business entities authorized by this section.

"(d) USE OF FUNDS GENERATED BY COMMERCIAL COVER.—

"(1) Funds generated by any business entities authorized by this section may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(2) Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under this section and after the payment of all obligations incurred with respect to such commercial cover, any remaining funds described in paragraph (1) or (2) of subsection (c) shall be deposited in the Treasury of the United States as miscellaneous receipts.".

PART II—MISCELLANEOUS PROVISIONS

SEC. 3131. RECREATIONAL VESSELS.

Subsection (b) of section 12109 of title 46, United States Code, is amended by adding at the end thereof the following new sentence: "Such vessel must, however, comply with all customs requirements for reporting arrival pursuant to section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such vessel shall be subject to all applicable customs regulations.".

SEC. 3132. PROVISION OF ASSISTANCE TO CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes (19 U.S.C. 507) is amended to read as follows:

"(a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government, and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If such person shall, without reasonable excuse, neglect or refuse to assist the customs officer upon proper demand, such person shall be guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 3133. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1454. SMUGGLING INVESTIGATIONS.

Section 3 of the Act of August 11, 1955 (69 Stat. 684; 21 U.S.C. 969), is amended by (A) deleting the words "of Controlled Substances" from the heading of Sec. 1.; (B) by redesignating sections (1), (2), and (3) and subsections (a), (b), and (c); (C) by striking "Section 545 of title 15 (relating to . . . 21 U.S.C. and substituting in any law relating to the reporting of monetary instrument transactions and transportation (pursuant to Chap. 53, title 31 U.S. Code) or to the Bank Secrecy Act (P.L. 91-508)" inserting "and pay the costs of the proceeding" after "investigation" in the second sentence.

PART III—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 3141. UNLAWFUL IMPORTATION.

(a) Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "Possession," in the heading,

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall",

(3) by striking out "This section" and inserting in lieu thereof "(c) This section",

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a), and

(5) by inserting after subsection (a) the following new subsection:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States to—

"(1) manufacture or distribute a controlled substance, or

"(2) possess a controlled substance with intent to distribute.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

PART IV—AMENDMENTS TO THE CRIMINAL CODE

SEC. 3151. OPERATION OF AIRCRAFT; WITH ILLEGAL FUEL TANK INSTALLATIONS.

(a) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Illegal fuel installations aboard aircraft

"(a) It shall be unlawful for any person to knowingly make a fuel tank or fuel system installation aboard an aircraft, or to operate any aircraft with a fuel tank or fuel system installation aboard, unless such tank or installation is in accordance with all applicable rules, regulations or requirements of the Administrator of the Federal Aviation Administration, including inspection and approval. Any person violating this section shall be subject to a fine of not more than $5,000 or imprisonment not exceeding two years, or both. Unless exempted by the Administrator of the Federal Aviation Administration, by regulation, authorization from the Federal Aviation Administration to have an auxiliary fuel tank or system installation or modification shall be aboard the aircraft whenever it is operated and such authorization must be shown to any Federal, State, or local law enforcement officer upon request. Failure to have such authorization aboard shall create a presumption that the installation is unlawful.

"(b) Any unlawful fuel tank or fuel system installation and the aircraft in which it is installed shall be subject to seizure and civil forfeiture. 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 and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof: *Provided,* That such duties as are imposed upon customs officers or any other person with respect to the seizure and forfeiture of property under the customs law may also be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.".

(b) The table of sections for chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following:

"36. Illegal fuel installation aboard aircraft.".

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 3201. SHORT TITLE.

This part may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 3202. IMPROVEMENT OF PUBLIC LAW 96-350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350; 94 Stat. 1159) is amended by striking everything immediately after the enacting clause and inserting in lieu thereof the following:

"That this Act may be cited as the 'Maritime Drug Law Enforcement Act'.

"SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) For purposes of this section, a 'vessel of the United States' means—

"(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c)(1) For purposes of this section, a 'vessel subject to the jurisdiction of the United States' includes—

"(A) a vessel without nationality;

"(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

"(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

"(D) a vessel located within the customs waters of the United States; and

"(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

Consent or waiver of objection by a flag nation to the enforcement of United States law by the United States under paragraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(2) For purposes of this section, a 'vessel without nationality' includes—

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

"(3) For purposes of this section, a claim of nationality or registry only includes:

"(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(B) flying its flag nation's ensign or flag; or

"(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"Sec. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).".

Subtitle D—Reports on Department of Defense Drug Control Actitivies

SEC. 3251. REPORTS ON DEPARTMENT OF DEFENSE DRUG CONTROL ACTIVITIES.

(a) Not later than March 1, 1987, the National Drug Enforcement Policy Board shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the manner and the extent to which the Department of Defense should be involved in United States law enforcement activities relating to the control and reduction of drug abuse. The Board shall include in such report—

(1) its recommendation for a 5-year funding plan for the participation of the Department of Defense in United States drug law enforcement activities; and

(2) a description of the functions which members of the Armed Forces, including the National Guard, the Reserves, and the Civil Air Patrol, under the jurisdiction of the Secretary of Defense may appropriately perform in the national effort to control and reduce drug abuse, including the interdiction of illegal drugs.

(b) Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of (1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse, (2) the types of drug education programs that are currently being provided in such schools, (3) whether additional drug education programs are needed in such schools, and (4) the extent to which drug education programs for youth in grades K through 12 include or should include preventative peer counseling classes.

Subtitle E—Driving While Impaired by Drug Intoxication to be Punishable Under the Uniform Code of Military Justice

SEC. 3301. DRIVING WHILE IMPAIRED.

Section 911 of title 10, United States Code, is amended by striking out "drunk," and inserting in lieu thereof "drunk or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),".

Subtitle F—Drug Interdiction Assistance to Civilian Law Enforcement Officials

SEC. 3351. ASSISTANCE TO CIVILIAN LAW ENFORCEMENT.

Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws.".

Subtitle G—Air Safety

SEC. 3401. AIR SAFETY.

(a)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(b)) is amended by adding at the end thereof the following:

"(3)(A) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who in connection with an act described in subparagraph (B) and with knowledge of such act—

"(i) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate;

"(ii) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate;

"(iii) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft; or

"(iv) obtains an aircraft registration certificate from the Administrator by knowingly and willfully falsifying, concealing, or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.

"(B) The Act referred to in subparagraph (A) is the transportation by aircraft of any controlled substance, or the aiding or facilitation of a controlled substance offense, where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law re-

lating to simple possession of a controlled substance).".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401) is amended by adding at the end thereof the following:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate or registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 501. Registration of aircraft nationality." is amended by adding at the end thereof the following:

"(g) Inspection by law enforcement officers.".

(b)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such a capacity;

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity; and

"(E) to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation or anticollision lights.

"(2) The act referred to in paragraph (1) is the transportation by aircraft of any controlled substance or aiding or facilitating a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death of imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) For purposes of this subsection, the term 'controlled substance' has the meaning given to such term by section 102(5) of the Controlled Substances Act (21 U.S.C. 802(6)).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 902. Criminal penalties." is amended after the item relating to subsection (q) to read as follows:

"(q) Violations in connection with transportation of controlled substances.".

(c) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

(1) by striking "$500" wherever it appears and by inserting in lieu thereof "$5,000";

(2) by inserting immediately after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109(b) and (c) of this Act, the owner or person in charge of such aircraft shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidence, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In the case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(d)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer or conveyance of such ownership interest, file within 15 days such notice as the Secretary of the Treasury may by regulation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements of section 501 or 503 of this Act.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 1109. Application of existing laws relating to foreign commerce." is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership.".

Subtitle H—Communications

SEC. 3451. COMMUNICATIONS.

The Federal Communications Commission shall revoke any license issued to any person under the Communications Act of 1934 (47 U.S.C. 151 et seq.) who is found to have used said license for the purpose of using or distributing any controlled substance in violation of any provision of Federal law. In addition, the Federal Communications Commission shall, upon the request of an appropriate Federal law enforcement agency, assist in the enforcement of Federal law prohibiting the use or distribution of any controlled substance where communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 is being used for purposes of using or distributing any such substance.

Subtitle I—Drug Law Enforcement Cooperation Study

SEC. 3551. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle J—Drug Interdiction

SEC. 3601. EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL.

Subsection (c) of section 374 of title 10, United States Code, is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations, including to transport such officials into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft when such pursuit began outside such land area,

if the Secretary of Defense and the Attorney General jointly, in consultation with the Secretary of State, determine that an emergency circumstance exists.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory or possession of the United States) for the purpose of—

"(i) identifying such vessels and aircraft; and

"(ii) monitoring and communicating the location and movement of such vessels and aircraft until Federal, State, and local law enforcement officials can assume such responsibilities,

if the Secretary of Defense and the Attorney General jointly, in consultation with the Secretary of State, determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a)

would be seriously impaired if such use of equipment were not permitted.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

TITLE IV—DEMAND REDUCTION

Subtitle A—Treatment and Rehabilitation

SEC. 4001. SHORT TITLE; REFERENCE.

(a) This subtitle may be cited as the "Alcohol and Drug Abuse Amendments of 1986".

(b) Except as otherwise specifically provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Public Health Service Act.

SEC. 4002. EXTENSION OF ALCOHOL, DRUG, ABUSE, AND MENTAL HEALTH BLOCK GRANT.

(a) Section 1911 is amended—

(1) by striking out "$576,000,000" and inserting in lieu thereof "$675,000,000"; and

(2) by adding at the end thereof the following new sentence: "Of the amounts appropriated under the preceding sentence for fiscal year 1987, $136,000,000 shall be available for allotments to States under section 1921 and for the purpose of section 1923.".

(b)(1) Title XIX is amended by inserting after section 1920A the following new sections:

"SPECIAL ALLOTMENTS TO STATES FOR ALCOHOL ABUSE AND DRUG ABUSE TREATMENT AND REHABILITATION PROGRAMS

"SEC. 1921. (a)(1) The allotment of a State under this section for a fiscal year shall be the sum of the amounts allotted to such State under paragraphs (2) and (3).

"(2) Twenty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted in accordance with this subsection. The allotment of a State under this subsection for a fiscal year shall be an amount which bears the same ratio to the total amount required pursuant to the preceding sentence to be allotted under this subsection for such fiscal year as the population of such State bears to the population of all States.

"(3) Seventy-five percent of the amount available for allotment under this section for a fiscal year shall be allotted by the Secretary to States on the basis of the need of each State for amounts for programs and activities for the treatment and rehabilitation of the alcohol abuse and drug abuse. In determining such need for each State under this subsection, the Secretary shall consider—

"(A) the nature and extent, in the State and in particular areas of the State, of the demand for effective programs and activities for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(B) the number of individuals in the State who abuse alcohol or drugs and the capacity of the State to provide treatment and rehabilitation for such individuals (as determined by the Secretary on the basis of the number of individuals who requested treatment for alcohol abuse and drug abuse in the State during the most recent calendar year ending prior to the date on which a statement is submitted by the State under subsection (c);

"(C) the commitment of the State to the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse (as determined by the Secretary after an evaluation of the expenditures of the State for such services during the calendar year described in subparagraph (B) and of the ability of the State to meet the need for such services);

"(D) the availability in the State of Federal, State, and local resources to satisfy the needs in such State for services described in subparagraph (C); and

"(E) the number of low-income individuals in the State who need treatment and rehabilitation for alcohol abuse and drug abuse and who do not have insurance to pay the costs of such treatment and rehabilitation or who are not eligible to receive services for such treatment and rehabilitation under the State plan approved under title XIX of the Social Security Act.

"(b)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under subsection (a) from amounts appropriated for that fiscal year.

"(2) Any amount paid to a State under paragraph (1) for a fiscal year and remaining unobligated at the end of such fiscal year shall remain available to such State for the purposes for which it was made for the next fiscal year.

"(c) In order to receive an allotment for a fiscal year under subsection (a), each State shall include with the application submitted to the Secretary under section 1916 a separate statement requesting an allotment under this section. Each such statement shall contain—

"(1) such information as the Secretary may prescribe, including information necessary for the Secretary to consider the matters specified in subparagraphs (A) through (F) of subsection (a)(3);

"(2) a description of the manner in which programs and activities conducted with payments under subsection (b) will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs;

"(3) assurances that, in the preparation of any application under this section, the State will consult with local governments and public and private entities, including community based organizations, involved in the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(4) a description of the manner in which the State will evaluate programs and activities conducted with payments made to the State under subsection (b) and assurances that the State will report periodically to the Secretary on the results of such evaluations; and

"(5) assurances that payments made to the State under subsection (b) will supplement and not supplant any State or local expenditures for the treatment and rehabilitation of alcohol abuse and drug abuse that would have been made in the absence of such payments.

"(d) Except as provided in subsections (e), (f), and (i), amounts paid to a State under subsection (b) may be used by the State for alcohol abuse and drug abuse treatment and rehabilitation programs and activities, including—

"(1) activities to increase the availability and outreach of programs provided by major treatment centers and regional branches of such centers which provide services in a State in order to reach the greatest number of people;

"(2) activities to expand the capacity of alcohol abuse and drug abuse treatment and rehabilitation programs and facilities to provide treatment and rehabilitation services for alcohol abusers and drug abusers who have been refused treatment due to lack of facilities or personnel; and

"(3) activities to provide access to vocational training, job counseling, and education equivalency programs to alcohol abusers and drug abusers in need of such services in order to enable such abusers to become productive members of society.

"(e) A state shall use 5 percent of the total amount paid to a State under subsection (b) for a fiscal year to carry out the programs described in section 1922.

"(f) Of the total amount paid to any State under subsection (b) for a fiscal year, not more than 2 percent may be used for administering the funds made available under such subsection. The State will pay from non-Federal sources the remaining costs of such administering such funds.

"(g) The Secretary may provide training and technical assistance to States in planning and operating activities to be carried out under this section.

"(h) The Secretary may conduct data collection activities to enable the Secretary to carry out this section.

"(i) The provisions of subsections (a) and (d) and paragraphs (1) through (5) of subsection (b) of section 1917 and the provisions of sections 1914(b), 1915(b), 1918, 1919, and 1920 shall apply to this section in the same manner as such provisions apply to payments made under section 1914 from allotments made under section 1913.

"STATE PROGRAMS FOR HIGH RISK YOUTH

"SEC. 1922. A State shall use the amounts required by sections 1916(c)(8) and 1921(e) to be used under this section for model, innovative, community based programs to provide multiple coordinated services for alcohol abuse and drug abuse prevention, treatment, and rehabilitation directed toward high risk youth. For purposes of this paragraph, the term 'high risk youth' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is identified as a child of a substance abuser;

(2) is a victim of physical, sexual, or psychological abuse;

(3) has dropped out of school;

(4) has become pregnant;

(5) is economically disadvantaged;

(6) has committed a violent or delinquent act;

(7) has experienced mental health problems;

(8) has attempted suicide; or

(9) is disabled by injuries.".

TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

SEC. 1922. Of the amount available under the last sentence of section 1921, the Secretary shall transfer to the Administrator of Veterans' Affairs $11,000,000 to be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities."

SEC. 4003. REVISION OF ALLOTMENT PROCEDURES APPLICABLE TO INDIAN TRIBES.

(a) Section 1902(d)(1) is amended to read as follows:

"(d)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

(b) Section 1913(b)(1) is amended to read as follows:

"(d)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

SEC. 4004. REVISION OF CERTAIN BLOCK GRANT EARMARKS.

(a) Section 1916(c) is amended—

(1) by striking out "35" each place it appears in subparagraphs (A) and (B) of paragraph (7) and inserting in lieu thereof "25";

(2) by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 80 percent of such amount for treatment and rehabilitation programs for individuals who abuse alcohol or drugs."; and

(3) by adding at the end thereof the following new paragraph:

"(16) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 5 percent of such amount for programs described in section 1922.".

SEC. 4005. SENSE OF THE SENATE WITH RESPECT TO POSSESSION OR DISTRIBUTION OF DRUGS UNDER STATE LAW.

It is the sense of the Senate that, if the possession or distribution of a drug is an offense under the Controlled Substances Act, the laws of the States should not be amended or revised to provide that the possession or distribution, respectively, of such drug is not a criminal offense.

SEC. 4006. ADVISORY COUNCILS.

(a) Part A of title V is amended by redesignating sections 505 and 506 as sections 506 and 507, respectively, and by inserting after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the national research institute for which it was appointed on—

"(A) matters relating to the activities carried out by and through the Institute and the policies respecting such activities; and

"(B) matters relating to activities carried out by the Secretary and the National Institutes respecting the disease, disorder, or other aspect of human health with which the advisory council is concerned.

"(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for—

"(A) study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established;

"(B) the acquisition of grounds for the institute; or

"(C) the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research;

"(ii) shall review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 507(e)(2), and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge; and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the national research institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of ex officio members and not more than 12 members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the national research institute for which the advisory council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

"(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy, economics, and management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be 2 years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least 3 times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) Section 217 is amended—

(1) by striking out subsections (a), (b), (c), and (d);

(2) by striking out "(e)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "(2)" and inserting in lieu thereof "(b)";

(4) by striking out "(3)" and inserting in lieu thereof "(c)";

(5) by striking out "(4)" and inserting in lieu thereof "(d)"; and

(6) by redesignating clauses (A) and (B) of subsection (c) (as redesignated by the amendment made by paragraph (4) of this subsection) as clauses (1) and (2), respectively.

SEC. 4007. PUBLIC HEALTH EMERGENCIES.

Part A of title V (as amended by section 4006 of this Act) is further amended by adding at the end thereof the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 508. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of Food and Drugs, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of a national research institute

constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year.".

SEC. 4008. RESEARCH AUTHORIZATION.

(a) Section 513 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart $69,000,000 for fiscal year 1987.".

(b) Section 517 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart $129,000,000 for fiscal year 1987.".

SEC. 4009. STUDIES ON THE HEALTH EFFECTS OF ALCOHOL CONSUMPTION.

(a) The Congress finds that—

(1) the most abused drug in America is alcohol;

(2) alcohol use costs the American economy nearly $120,000,000,000 per year, including increased medical expenses and decreased productivity;

(3) in 1984, 53 percent of the traffic fatalities in the United States, accounting for more than 23,500 deaths, were related to the consumption of alcohol;

(4) over 12,000,000 American adults have one or more symptoms of alcoholism, and this represents an 8.2 percent increase in problem drinking since 1980;

(5) in 1984, almost 3,300,000 individuals between the ages of 14 and 17 experienced serious problems at home, in school, or with the law because of alcohol consumption;

(6) fetal alcohol syndrome is the third leading cause of birth defects, and is the only preventable cause of birth defects among the top three causes;

(7) nearly 5,000 babies per year are born with birth defects related to fetal alcohol syndrome;

(8) the statistics cited in the preceding paragraphs of this subsection indicate that many Americans are not aware of the adverse effects that the consumption of alcoholic beverages may have on health;

(9) it is necessary to undertake a serious national effort to educate the American people of the serious consequences of the consumption of alcoholic beverages; and

(10) carefully drafted warning labels on the containers of alcoholic beverages concerning the effects on health resulting from the consumption of such beverages would assist in providing such education.

(b) Therefore, it is the sense of the Senate that—

(1) the Public Health Service should focus attention on the problem of educating the American people on the effects on health resulting from alcoholic beverage consumption;

(2) the Public Health Service should conduct studies on the most effective means of providing such education, including studies on the effectiveness of warning labels on the containers of alcoholic beverages concerning the effects on health resulting from the consumption of such beverages; and

(3) the Public Health Service should transmit a report to the Congress within 6 months after the date of enactment of this Act concerning any studies described in paragraph (2) which have been conducted, and should include in such report recommendations concerning the effectiveness of the labels described in such paragraph and recommendations for specific language for such labels.

SEC. 4010. SUICIDE.

Section 501 is amended by adding at the end thereof the following new subsection:

"(i)(1) The Secretary shall—

"(A) develop and publish information respecting the causes of suicide among individuals under the age of 21 and the means of preventing suicide among such individuals, and

"(B) make such information generally available to the public and health professionals.

"(2) By January 1, 1988, and every 3 years thereafter, the Secretary shall report to the Congress on the activities undertaken under paragraph (1) during the period reported on and shall include in each such report an assessment of the effectiveness of such activities.".

SEC. 4011. PREPARATION OF PUBLIC SERVICE ANNOUNCEMENTS.

(a) The Secretary of Health and Human Services shall increase and expand activities conducted under paragraphs (1) and (4) of section 503(d) of the Public Health Service Act.

(b) Section 503(d)(4) is amended—

(1) by inserting "and documentary films" after "television"; and

(2) by inserting "and films" before the period.

SEC. 4012. NATIONAL PLAN TO COMBAT DRUG ABUSE.

By October 1, 1988, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report which sets forth a comprehensive national plan to combat drug abuse. The report shall include—

(1) a description of a model program for activities to be conducted by the States to combat drug abuse;

(2) an analysis of the social and economic costs of drug abuse to the Nation, including amounts expended by public agencies and private organizations—

(A) for the treatment of individuals for drug abuse, including a division of such amounts among the types of settings in which such treatment is provided;

(B) for treatment of individuals for health problems resulting from drug abuse; and

(C) to meet other costs resulting from drug abuse, such as costs resulting from lost employee productivity;

(3) an assessment of current treatment and rehabilitation needs and the current integration and financing of drug treatment and rehabilitation into the Nation's health care system;

(4) recommendations for the National Institute on Drug Abuse for research on, and plans for the development of, chemical antidotes and narcotic antagonists for use in the treatment of cocaine and heroin addiction;

(5) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

(6) a statement of specific goals and objectives to meet the Nation's current treatment, rehabilitation, and personnel needs in the area of drug abuse;

(7) estimates of public and private resources needed to accomplish the goals and objectives referred to in paragraph (6) and estimates of savings in resources that can be anticipated from the achievement of such goals and objectives.

SEC. 4013. CLEARINGHOUSE.

(a) The Secretary of Health and Human Services, through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, health and drug treatment and rehabilitation networks, and the general public. The clearinghouse shall—

(1) disseminate publications by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the Department of Education concerning alcohol abuse and drug abuse;

(2) disseminate accurate information concerning the health effects of alcohol abuse and drug abuse;

(3) collect and disseminate information concerning successful alcohol abuse and drug abuse education and prevention curricula; and

(4) collect and disseminate information on effective and ineffective school-based alcohol abuse and drug abuse education and prevention programs, particularly effective programs which stress that the use of illegal drugs and the abuse of alcohol is wrong and harmful.

(b) The Secretary of Health and Human Services shall ensure that the clearinghouse established under subsection (a) coordinates its activities with similar activities conducted by the Secretary of Education.

SEC. 4014. EXPANSION OF DRUG ABUSE RESEARCH.

Section 515(a)(5) is amended to read as follows:

"(5) effective methods of drug abuse prevention, treatment, and rehabilitation, particularly methods of intervention to treat abuse of specific drugs.".

SEC. 4015. STUDY ON ALKYL AND BUTYL NITRATES.

The Secretary of Health and Human Services, through the Commissioner of Food and Drugs, should conduct a study on alkyl and butyl nitrates and report to the appropriate committees of the Congress recommendations concerning whether alkyl and butyl nitrates should be treated as a drug under the Food, Drug, and Cosmetic Act.

SEC. 4016. ADMINISTRATION.

The Secretary of Health and Human Services shall not establish any new administrative unit in the Department of Health and Human Services to administer alcohol abuse

and drug abuse programs, and shall carry out such programs through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration.

Subtitle B—Drug-Free Schools and Communities Act of 1986

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools and Communities Act of 1986".

SEC. 4102. FINDINGS.

The Congress finds that:

(1) Drug use and alcohol abuse is widespread among American students, not only in secondary schools, but increasingly in elementary schools as well.

(2) The use of drugs and the abuse of alcohol by students constitutes a grave threat to their physical and mental well-being and significantly impedes the learning process.

(3) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and their Nation, which can ill afford to lose their skills, talents, and vitality.

(4) In communities, schools and local organizations have a special responsibility to work together to combat the scourge of drug use and alcohol abuse.

(5) Prompt action by our Nation's schools, families, and communities can bring us significantly closer to the goal of a drug-free generation and a drug free society.

SEC. 4103. PURPOSE.

The purpose of this subtitle is to assist States in their efforts to educate concerning, and to prevent, drug use and alcohol abuse through school and community based programs.

SEC. 4104. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this subtitle, there are authorized to be appropriated $150,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

SEC. 4105. RESERVATIONS AND ALLOTMENTS.

(a) The Secretary shall reserve $20,000,000 of the amounts appropriated under section 4104 for any fiscal year for national programs under section 4109.

(b)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsection (a) for such fiscal year, the Secretary may reserve up to 1 per cent for allotments to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) The Secretary shall allot the amounts reserved under paragraph (1) among Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, on the basis of need for amounts to carry out the activities described in section 4107.

(c)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsections (a) and (b) for such fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such remainder as the number of children aged five to seventeen, inclusive, in the State bears to the total number of such children in all States, except that the allotment of each State under this subsection shall not be less than $500,000. For purposes of this subsection, the number of children aged five to seventeen, inclusive, in a State and in all the States shall be determined by the Secretary on the basis of the most recent available data satisfactory to the Secretary.

(2)(A) The Secretary may reallot all or a portion of the State's allotment under paragraph (1) for any fiscal year if the State does not submit a State application under section 4106, or otherwise indicates to the Secretary that it does not need or cannot use the full amount of its allotment for that fiscal year. The Secretary may fix one or more dates during a fiscal year upon which to make reallotments.

(B) The Secretary may reallot amounts available under subparagraph (A) for a fiscal year on a competitive basis to one or more States that demonstrate a need for additional amounts to carry out the activities described in section 4107. Any funds reallotted to a State under this subparagraph shall be deemed to be part of its allotment under this subtitle for the fiscal year in which the funds are reallotted.

(3) For purposes of this subsection, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 4106. PAYMENTS UNDER ALLOTMENTS TO STATES.

(a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section 1205 from amounts appropriated for that fiscal year.

(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

SEC. 4107. USE AND DISTRIBUTION OF FUNDS.

(a) At least 62 percent of the total amount paid to a State under section 4106 for a fiscal year from its allotment under section 4105 for such fiscal year shall be used by the State educational agency in accordance with subsection (c).

(b)(1) After the application of subsection (a), the remainder of the total amount paid to a State under section 4106 for a fiscal year from its allotment under section 4105 for a fiscal year shall be used by the chief executive officer of a State for drug abuse and alcohol abuse prevention and education activities, and to ensure the coordination of local drug abuse and alcohol abuse prevention and education activities. Activities by the chief executive officer of a State under this subsection may include:

(A) Grants to local governments or other public and nonprofit private entities, including parent groups, in the State for the improvement of programs and activities such as—

(i) local broad based programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education directed toward all age groups, and

(ii) training programs for teachers and other school personnel, parents, local law enforcement officials, and judges.

(B) The development and distribution of educational and informational materials, including curricula, and public information, including media campaigns, aimed at a drug-free America.

(C) Activities to increase drug abuse and alcohol abuse education and prevention efforts targeted at children and youth in kindergarten through the twelfth grade.

(2) In carrying out paragraph (1), the chief executive officer of a State shall ensure that model, innovative, community based programs of multiple coordinated services for high risk youth are given the highest priority. For purposes of this paragraph, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(A) is the child of a substance abuser;

(B) is a victim of physical, sexual, or psychological abuse;

(C) has dropped out of school;

(D) has become pregnant;

(E) is economically disadvantaged;

(F) has committed a violent or delinquent act;

(G) has experienced mental health problems;

(H) has attempted suicide; or

(I) is disabled by injuries.

(c)(1) The State educational agency of a State shall use 90 percent of the amounts available to such agency under subsection (a) for grants to, and contracts with, local educational agencies in the State, pursuant to subsection (d), provided that in fiscal years 1989 and 1990 the State educational agency shall allot to each local educational agency an amount which bears the same ratio to such remainder as the number of children aged five to seventeen, inclusive, in the local school district bears to the total number of such children in the State.

(2) Any amounts available to a State educational agency after the application of paragraph (1) may be used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education which will be conducted in elementary, secondary, and postsecondary schools;

(B) training and technical assistance programs for local educational agencies, including teachers, administrators, and other school personnel, parents, local law enforcement officials, and judges;

(C) the development, dissemination, implementation, and evaluation of drug abuse education curricula and teaching materials in elementary and secondary schools throughout the State; and

(D) demonstration projects in drug abuse education.

(3) The State educational agency shall submit to the chief executive officer of the State a plan which—

(A) describes how the State will coordinate its efforts with appropriate State health, law enforcement, and drug abuse prevention agencies, in particular, the State authority which administers the Alcohol, Drug Abuse, and Mental Health block grant;

(B) describes how funds will be allocated among local educational agencies in fiscal years 1987 and 1988;

(C) provides for an annual evaluation of the effectiveness of programs assisted under this subtitle;

(D) provides that the State educational agency will keep such records and provide such information to the chief executive officer of the State as may be required for fiscal audit and program evaluation; and

(E) contains assurances that there is compliance with the specific requirements of this subtitle.

(d)(1) Any amounts made available to a local educational agency pursuant to a grant or contract under paragraph (1) may be

used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) the development and implementation of drug abuse and alcohol abuse education curricula for elementary and secondary schools;

(B) drug abuse and alcohol abuse prevention counseling programs including peer and professional counseling;

(C) programs of drug abuse and alcohol abuse treatment referral;

(D) programs of in-service and pre-service training in drug abuse and alcohol abuse prevention for teachers, counselors, and other educational personnel, public service personnel (including law enforcement officials), and community leaders, including cooperative programs with higher education institutions;

(E) programs in primary prevention and early intervention, such as the interdisciplinary school-team approach developed by the Department of Education;

(F) community education programs and other activities to involve parents and communities in the fight against drug abuse and alcohol abuse;

(G) public education programs on drug abuse and alcohol abuse, including programs utilizing professionals, and former drug abusers and alcohol abusers and drug dependent and alcohol dependent individuals;

(H) on-site efforts in schools to enhance identification and discipline of such drug abusers and alcohol users, and to enable law officials to take necessary action in cases of drug possession and of drug and alcohol supplying to the student population; or

(I) other programs of drug abuse and alcohol abuse education and prevention consistent with the purposes of this subtitle.

(2) A local educational agency may receive its allocation of funds under this subtitle for any fiscal year for which its application to the State educational agency has been certified to meet the requirements of this subsection. The State educational agency shall certify any such application if such application—

(A) provides assurances of compliance with the provisions of this subtitle;

(B) describes how drug and alcohol abuse prevention curricula will be implemented in each elementary and secondary school from the early elementary level through grade twelve, including a description of provisions to target education efforts to students most at risk of drug abuse and to schools with the greatest need of drug abuse prevention programs;

(C) provides assurances that the applicant's drug and alcohol education and prevention programs will involve school administrators, teachers, athletic staff, and other school personnel, as well as parents, law enforcement officials, medical professionals, and other groups with interest and expertise in drug abuse and alcohol abuse prevention;

(D) provides assurances that the applicant will coordinate its efforts with appropriate State and local drug abuse and alcohol abuse, health, and law enforcement agencies, in order to effectively conduct drug and alcohol abuse education, intervention, and referral for treatment and rehabilitation for the student population;

(E) provides for an annual evaluation of the effectiveness of programs assisted under this subtitle; and

(F) agrees to keep such records and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this subtitle.

(e) Any program supported with amounts paid to a State under section 4106 shall, where appropriate, provide information to individuals about local drug abuse and alcohol abuse treatment and rehabilitation programs.

(f) Any materials produced or distributed with amounts paid to a State under section 4106 shall reflect the message that the use of illegal drugs and the abuse of alcohol is wrong and harmful. The Secretary shall not review curricula and shall not promulgate regulations to carry out this subsection.

SEC. 4108. STATE APPLICATIONS.

(a) In order to receive an allotment under subsection (b) or (c) of section 4105 for a fiscal year, a State shall submit an application to the Secretary. As part of such application, the chief executive officer of the State shall agree to use the amounts paid to the State under section 4106 in accordance with the requirements of this subtitle.

(b) Each application submitted under subsection (a) shall—

(1) cover a period of three fiscal years;

(2) be submitted at a time, in such manner, and contain such information, as the Secretary may require;

(3) contains assurances that no more than 2 per cent of the total amount paid to a State under section 4106 for a fiscal year will be used by the State, and 2 per cent by the State educational agency, to pay the costs of administering programs under this subtitle;

(4) contain assurances that the Federal funds made available under this subtitle for any period will be so used as to supplement and increase the level of State, local, and non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under this subtitle and will in no event supplant such State, local, and other non-Federal funds; and

(5) designate the State educational agency as the agency responsible for the administration and supervision of programs assisted under subsections (c) and (d) of section 4107 includes the plan for use of funds under subsection (c)(3) of such section.

SEC. 4109. NATIONAL PROGRAMS.

(a) The Secretary shall use—

(1) $10,000,000 of the amount reserved under section 4105(a) for a fiscal year to maintain the regional centers authorized by subsection (c);

(2) $8,000,000 of such reserved amount for a fiscal year to carry out the national programs described in subsection (b); and

(3) $2,000,000 of such reserved amount for the grants described in subsection (d).

(b)(1) The Secretary shall use the amount described in subsection (a)(2) for a fiscal year for national programs described in paragraph (2). Such programs shall be designed to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools. The Secretary may carry out such programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions. The Secretary shall, when appropriate, coordinate activities under this subsection with activities conducted by the Secretary of Health and Human Services, the Secretary of Labor, the Director of ACTION, and the heads of other appropriate agencies.

(2) The Secretary shall use amounts available under this subsection to—

(A) collect and disseminate information about drug use and alcohol abuse among students in elementary and secondary schools;

(B) develop curricula for schools which warn against the use of drugs and the abuse of alcohol;

(C) provide training or technical assistance to States consistent with the purposes of this subtitle;

(D) coordinate drug abuse and alcohol abuse education and prevention efforts with similar efforts by other Federal agencies; and

(E) collect data concerning, and evaluate, programs that reduce drug abuse and alcohol abuse among students.

(3) The Secretary shall coordinate activities conducted under this subsection with similar activities conducted by the Secretary of Health and Human Services, particularly the clearinghouse established under section 4013.

(c) The Secretary shall use the amount described in subsection (a)(1) for a fiscal year to maintain at least 5 regional centers to—

(1) train school teams to access the scope and nature of their drug abuse and alcohol abuse problems, mobilize the community to address such problems, design appropriate curricula, identify students at highest risk and refer them to appropriate treatment, and institutionalize long term effective drug and alcohol abuse programs, including long range technical assistance, evaluation, and followup on such training;

(2) assist State educational agencies in coordinating and strengthening drug abuse and alcohol abuse education and prevention programs;

(3) assist local educational agencies and higher education institutions in developing appropriate preservice and inservice training programs for educational personnel; and

(4) evaluate and disseminate information on effective drug abuse and alcohol abuse education and prevention programs and strategies.

(d)(1) From the amounts described in subsection (a)(3) for a fiscal year, the Secretary shall reserve—

(A) $1,700,000 for grants to Indian tribes and tribal organizations, and

(B) $300,000 for grants to Hawaiian natives.

(2) From the funds reserved pursuant to paragraph (1)(A), the Secretary shall make grants to Indian tribes and tribal organizations to plan, conduct, and administer programs, or portions thereof, which are authorized and consistent with the provisions of this subtitle for the benefit of tribal members.

(3) From the funds reserved pursuant to paragraph (1)(B), the Secretary shall enter into contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this subtitle for the benefit of Hawaiian natives.

(4) For the purposes of this subsection, the terms—

(A) "Indian tribe" and "tribal organization" have the same meaning given such terms in sections 4(b) and 4(c) of the Indian

Self-Determination and Education Assistance Act, and

(B) "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

SEC. 4110. INTERAGENCY COORDINATION.

The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, and the Director of ACTION shall each designate an officer or employee of the Departments of Education, Health and Human Services, and Labor, and ACTION, respectively, to coordinate interagency drug abuse activities.

SEC. 4111. TRAINING, TECHNICAL ASSISTANCE, AND DATA COLLECTION.

(a) The Secretary of Health and Human Services and the Secretary of Education shall provide training and technical assistance to States and public and nonprofit private entities in planning and operating activities to be carried out under this subtitle.

(b) The Secretary of Health and Human Services and the Secretary of Education may conduct data collection activities to enable the Secretary to carry out this subtitle.

SEC. 4112. REPORT.

Within 6 months after the date of enactment of this Act, the Secretary of Education and the Secretary of Health and Human Services shall prepare and transmit to the appropriate committees of the Congress a report on the implementation of this subtitle. The report shall include a description of the manner in which activities conducted under this subtitle are being coordinated with activities conducted under subtitle A.

SEC. 4113. CONFORMING AMENDMENTS.

Section 583(b) of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3851(b)) is amended by—

(1) inserting "and" at the end of paragraph (2);

(2) striking out paragraph (3); and

(3) redesignating paragraph (4) as paragraph (3).

SEC. 4114. DEFINITIONS.

The definitions of terms contained in section 595 of the Education Consolidation and Improvement Act of 1981 shall apply to this subtitle.

SEC. 4115. PRIVATE SCHOOLS.

The provisions of section 557 of the Education Consolidation and Improvement Act of 1981 shall apply to this subtitle.

SEC. 4116. SENSE OF THE SENATE URGING THE MOTION PICTURE ASSOCIATION TO LABEL PRO-DRUG FILMS.

(a) The Senate finds that—

(1) the abuse of alcohol and the use of drugs has become a societal problem of epidemic proportions;

(2) it is in the interest of all citizens to contribute to the reduction of alcohol abuse and drug use, particularly among youth;

(3) the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts alcohol abuse and drug use in a benign, even glamorous way;

(4) the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth; and

(5) the motion picture industry has recognized the need to inform parents about the content of movies regarding violence, theme, sex, language, and nudity; and therefore currently employs a voluntary rating system.

(b) It is the sense of the Senate that the Motion Picture Association of America should incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict alcohol abuse and drug use in a benign or favorable light, and give a special rating to movies that so depict alcohol abuse and drug use, in order that parents can make an informed choice about the movies their children attend.

Subtitle C—Indians and Alaska Natives

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986".

PART I—GENERAL PROVISIONS

SEC. 4202. FINDINGS.

The Congress finds and declares that—

(1) the Federal Government has a historical relationship and unique legal and moral responsibility to Indian tribes and their members,

(2) included in this responsibility is the treaty, statutory, and historical obligation to assist the Indian tribes in meeting the health and social needs of their members,

(3) alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today and nothing is more costly to Indian people than the consequences of alcohol and substance abuse measured in physical, mental, social, and economic terms,

(4) alcohol and substance abuse is the leading generic risk factor among Indians and Indians die from alcoholism at over 4 times the age-adjusted rates for the United States population and alcohol and substance misuse results in a rate of years of potential life lost nearly 5 times that of the United States,

(5) 4 of the top 10 causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent),

(6) primarily because deaths from unintentional injuries and violence occur disproportionately among young people, the age-specific death rate for Indians is approximately double the United States rate for the 15 to 45 age group,

(7) Indians between the ages of 15 and 24 years of age are more than 2 times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related,

(8) Indians between the ages of 15 and 24 years of age are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related,

(9) the Indian Health Service, which is charged with treatment and rehabilitation efforts, has directed only 1 percent of its budget for alcohol and substance abuse problems,

(10) the Bureau of Indian Affairs, which has responsibility for programs in education, social services, law enforcement, and other areas, has assumed little responsibility for coordinating its various efforts to focus on the epidemic of alcohol and substance abuse among Indian people,

(11) this lack of emphasis and priority continues despite the fact that Bureau of Indian Affairs and Indian Health Service officials publicly acknowledge that alcohol and substance abuse among Indians is the most serious health and social problem facing the Indian people, and

(12) the Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members and the resources made available under this subtitle will assist Indian tribes in meeting that responsibility.

SEC. 4203. PURPOSE.

It is the purpose of this subtitle to—

(1) authorize and develop a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members,

(2) provide needed direction and guidance to those Federal agencies responsible for Indian programs to identify and focus existing programs and resources, including those made available by this subtitle, upon this problem,

(3) provide authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level, and

(4) to modify or supplement existing programs and authorities in the areas of education, family and social services, law enforcement and judicial services, and health services to further the purposes of this subtitle.

SEC. 4204. DEFINITIONS.

For purposes of this subtitle—

(1) The term "agency" means the local administrative entity of the Bureau of Indian Affairs serving one or more Indian tribes within a defined geographic area.

(2) The term "youth" shall have the meaning given it in any particular Tribal Action Plan adopted pursuant to section 4205, except that, for purposes of statistical reporting under this subtitle, it shall mean a person who is 19 years or younger or who is in attendance at a secondary school.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "prevention and treatment" includes, as appropriate—

(A) efforts to identify, and the identification of, Indians who are at risk with respect to, or who are abusers of, alcohol or controlled substances,

(B) intervention into cases of on-going alcohol and substance abuse to halt a further progression of such abuse,

(C) prevention through education and the provision of alternative activities,

(D) treatment for alcohol and substance abusers to help abstain from, and alleviate the effects of, abuse,

(E) rehabilitation to provide on-going assistance, either on an inpatient or outpatient basis, to help Indians reform or abstain from alcohol or substance abuse,

(F) follow-up or after-care to provide the appropriate counseling and assistance on an outpatient basis, and

(G) referral to other sources of assistance or resources.

(5) The term "service unit" means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act through which the services are provided, directly or by contract, to the eligible Indian

population within a defined geographic area.

PART II—COORDINATION OF RESOURCES AND PROGRAMS

SEC. 4205. INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—The Secretary of the Interior and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

(1) determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth,

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs and Indian Health Service, and

(B) other Federal, tribal, State and local, and private resources and programs,

which would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people, including those programs and resources made available by this subtitle,

(3) develop and establish appropriate minimum standards for each agency's program responsibilities under the Memorandum of Agreement which may be—

(A) the existing Federal or State standards in effect, or

(B) in the absence of such standards, new standards which will be developed and established in consultation with Indian tribes,

(4) coordinate the Bureau of Indian Affairs and Indian Health Service alcohol and substance abuse programs existing on the date of the enactment of this subtitle with programs or efforts established by this subtitle,

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

(6) direct Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit directors to cooperate fully with tribal requests made pursuant to section 4206, and

(7) provide for an annual review of such agreements by the Secretary of the Interior and the Secretary of Health and Human Services.

(b) CHARACTER OF ACTIVITIES.—To the extent that there are new activities undertaken pursuant to this subtitle, those activities shall supplement, not supplant, activities, programs, and local actions that are ongoing on the date of the enactment of this subtitle. Such activities shall be undertaken in the manner least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and local control, in accordance with section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

(c) CONSULTATION.—The Secretary of the Interior and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a), consult with and solicit the comments of—

(1) interested Indian tribes,

(2) Indian individuals,

(3) Indian organizations, and

(4) professionals in the treatment of alcohol and substance abuse.

(d) PUBLICATION.—The Memorandum of Agreement under subsection (a) shall be submitted to Congress and published in the Federal Register not later than 90 days after the date of enactment of this subtitle. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this subtitle and the Memorandum of Agreement under subsection (a) to each Indian tribe.

SEC. 4206. TRIBAL ACTION PLANS.

(a) IN GENERAL.—The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a Tribal Action Plan to coordinate available resources and programs, including programs and resources made available by this subtitle, in an effort to combat alcohol and substance abuse among its members. Such resolution shall be the basis for the implementation of this subtitle and of the Memorandum of Agreement under section 4205.

(b) COOPERATION.—At the request of any Indian tribe pursuant to a resolution adopted under subsection (a), the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 4205, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a).

(c) PROVISIONS.—

(1) Any Tribal Action Plan entered into under subsection (b) shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director, or their representatives,

(ii) have primary responsibility for the implementation of the Tribal Action Plan,

(iii) have the responsibility for on-going review and evaluation of, and the making of recommendations to the tribe relating to, the Tribal Action Plan, and

(iv) have the responsibility for scheduling Federal, tribal or other personnel for training in the prevention and treatment of alcohol and substance abuse among Indians as provided under section 4228, and

(B) the incorporation of the minimum standards for those programs and services which it encompasses which shall be—

(i) the Federal or State standards as provided in section 4205(a)(3), or

(ii) applicable tribal standards, if such standards are no less stringent than the Federal or State standards.

(2) Any Tribal Action Plan may, among other things, provide for—

(A) an assessment of the scope of the problem of alcohol and substance abuse for the Indian tribe which adopted the resolution for the Plan,

(2) the identification and coordination of available resources and programs relevant to a program of alcohol and substance abuse prevention and treatment,

(3) the establishment and prioritization of goals and the efforts needed to meet those goals, and

(4) the identification of the community and family roles in any of the efforts undertaken as part of the Tribal Action Plan.

(d) GRANTS.—The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to provide technical assistance in the development of a Tribal Action Plan. The Secretary shall allocate funds based on need. There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989 for grants under this subsection.

(e) FEDERAL ACTION.—If any Indian tribe does not adopt a resolution as provided in subsection (a) within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this subtitle for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a).

SEC. 4207. DEPARTMENTAL RESPONSIBILITY.

(a) IMPLEMENTATION.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, and the Secretary of Health and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this subtitle in cooperation with Indian tribes.

(b) OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.—

(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this subtitle, there is established within the Office of the Assistant Secretary of Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office shall be appointed by the Assistant Secretary on a permanent basis at no less than a grade GS-15 of the General Schedule.

(2) In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205, and

(B) serving as a point of contact within the Bureau of Indian Affairs for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this subtitle, the Memorandum of Agreement, and any Tribal Action Plan established under section 4206.

(c) INDIAN YOUTH PROGRAMS OFFICER.—

(1) There is established in the Office of Alcohol and Substance Abuse the position to be known as the Indian Youth Programs Officer.

(2) The position of Indian Youth Programs Officer shall be established on a permanent basis at no less than the grade of GS-14 of the General Schedule.

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian Youth, such Officer shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of

this subtitle and the Memorandum of Agreement entered into under section 4205 as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office of Alcohol and Substance Abuse as they relate to Indian youth.

SEC. 4208. CONGRESSIONAL INTENT.

It is the intent of Congress that—

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this subtitle.

SEC. 4209. FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.

(a) FACILITY AVAILABILITY.—In the furtherance of the purposes and goals of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities, property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior's jurisdiction: *Provided*, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) COSTS.—Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) may be borne by the Secretary of the Interior and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) furthers the purposes and goals of this subtitle, the use of funds other than those funds appropriated to the Department of the Interior or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

SEC. 4210. NEWSLETTER.

The Secretary of the Interior shall, not later than 120 days after the date of the enactment of this subtitle, publish an alcohol and substance abuse newsletter in cooperation with the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

(1) be published once in each calendar quarter,

(2) include reviews of programs determined by the Secretary of the Interior to be exemplary and provide sufficient information to enable interested persons to obtain further information about such programs, and

(3) be circulated without charge to—

(A) schools,

(B) tribal offices,

(C) Bureau of Indian Affairs' agency and area offices,

(D) Indian Health Service area and service unit offices,

(E) Indian Health Service alcohol programs, and

(F) other entities providing alcohol and substance abuse related services or resources to Indian people.

PART III—INDIAN YOUTH PROGRAMS

SEC. 4211. REVIEW OF PROGRAMS.

(a) REVIEW.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider—

(1) Federal programs providing education services or benefits to Indian children,

(2) tribal, State, local, and private educational resources and programs,

(3) Federal programs providing family and social services and benefits for Indian families and children,

(4) Federal programs relating to youth employment, recreation, cultural, and community activities, and

(5) tribal, State, local, and private resources for programs similar to those cited in paragraphs (3) and (4),

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) PUBLICATION.—The results of the review conducted under subsection (a) shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan under section 4206.

SEC. 4212. INDIAN EDUCATION PROGRAMS.

(a) PILOT PROGRAMS.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.".

(b) USE OF FUNDS.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

SEC. 4213. EMERGENCY SHELTERS.

(a) IN GENERAL.—A Tribal Action Plan adopted pursuant to section 4206 may make such provisions as may be necessary and practical for the establishment, funding, licensing, and operation of emergency shelters or half-way houses for Indian youth who are alcohol or substance abusers, including youth who have been arrested for offenses directly or indirectly related to alcohol or substance abuse.

(b) REFERRALS.—

(1) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974, under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriately licensed and supervised emergency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(2) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

(c) DIRECTION TO STATES.—In the case of any State that exercises criminal jurisdiction over any part of Indian country under section 1162 of title 18 of the United States Code or section 401 of the Act of April 11, 1968 (25 U.S.C. 1321), such State is urged to require its law enforcement officers to—

(1) place any Indian youth arrested for any offense related to alcohol or substance abuse in a temporary emergency shelter described in subsection (d) or a community-based alcohol or substance abuse treatment facility in lieu of incarceration to the extent such facilities are available, and

(2) observe the standards promulgated under subsection (d).

(d) STANDARDS.—The Assistant Secretary of Indian Affairs shall, as part of the development of the Memorandum of Agreement set out in section 4205, promulgate standards by which the emergency shelters established under a program pursuant to subsection (a) shall be established and operated.

(e) AUTHORIZATION.—For the planning and design, construction, and renovation, of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. For the operation of emergency shelters or half-way houses there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989. The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.

SEC. 4214. SOCIAL SERVICES REPORTS.

(a) DATA.—The Secretary of the Interior, with respect to the administration of any family or social services program by the Bureau of Indian Affairs directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to the number and types of child abuse and neglect cases seen and the type of assistance provided. Additionally, such data should also be categorized to reflect those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring, and those cases which involve other minor siblings.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal

Action Plan and shall also be submitted to the Indian Health Service service unit director who will have responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out the requirements of subsections (a) and (b), the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals.

PART IV—LAW ENFORCEMENT AND JUDICIAL SERVICES

SEC. 4215. REVIEW OF PROGRAMS.

(a) LAW ENFORCEMENT AND JUDICIAL SERVICES.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

(1) the various programs established by Federal law providing law enforcement or judicial services for Indian tribes, and

(2) tribal and State and local law enforcement and judicial programs and systems to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION OF REVIEW.—The results of the review conducted pursuant to subsection (a) shall be made available to every Indian tribe as soon as possible for their consideration and use in the development and modification of a Tribal Action Plan.

SEC. 4216. ILLEGAL NARCOTICS TRAFFIC ON THE PAPAGO RESERVATION.

(a) INVESTIGATION AND CONTROL.—The Secretary of the Interior shall provide assistance to the Papago Indian Tribe (Tohono O'odham) of Arizona for the investigation and control of illegal narcotics traffic on the Papago Reservation along the border with Mexico. The Secretary shall ensure that tribal efforts are coordinated with appropriate Federal law enforcement agencies, including the United States Customs Service.

(b) AUTHORIZATIONS.—For the purpose of providing the assistance required by subsection (a), there is authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989.

PART V—BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT

SEC. 4217. TRIBAL COURTS, SENTENCING AND FINES.

To enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations, paragraph (7) of section 202 of the Act of April 11, 1969 (25 U.S.C. 1302) is amended by striking out "for a term of six months and a fine of $500, or both" and inserting in lieu thereof "for a term of one year and a fine of $5,000, or both".

SEC. 4218. LAW ENFORCEMENT SERVICES.

(a) For the purpose of maintaining law and order and of protecting persons and property within Indian country as defined in section 1151 of title 18, United States Code, the Secretary of the Interior (hereinafter referred to as the "Secretary") may charge any officer or employee of the Department of the Interior with law enforcement responsibilities and authorize such officer or employee to exercise such of the following authorities as the Secretary may deem appropriate:

(1) Carry firearms within Indian country and while transporting prisoners or on other official duties outside Indian country.

(2) Secure and execute or serve within Indian country any order, warrant, subpoena, or other process which is issued under the authority of the United States or of an Indian tribe.

(3) Make an arrest without a warrant—

(A) for any offense committed within Indian country against the United States committed in the presence of the officer or employee;

(B) for any offense committed within Indian country against the United States constituting a felony if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; or

(C) for any offense committed within Indian country against an Indian tribe that has commissioned the officer or employee to enforce its laws if the officer or employee has reasonable grounds to believe that the person to be arrested is committing the offense in the officer's or employee's presence or view.

(4) Offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense committed within Indian country or in the apprehension of an offender.

(5) Make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is material or relevant to the enforcement within Indian country of the laws of the United States or of any Indian tribe that has commissioned the officer to enforce its laws.

(6) Perform any other law enforcement duty that the Secretary may designate.

(7) Upon request, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement of the laws, ordinances, or regulations which they administer or enforce, but no Indian tribe, State, or political subdivision shall be deprived, by this section or by any such request, of any civil or criminal jurisdiction it may have.

(b)(1) The Secretary may utilize by agreements, with or without reimbursement, the personnel services and facilities of any Federal, tribal, State, or local Governmental agency to the extent he deems is necessary and appropriate for effective enforcement of any Federal or tribal laws or regulations in Indian country. The Secretary may commission law enforcement personnel of such agencies to exercise such of the authorities set out in the first section of this Act as the Secretary deems appropriate. Appropriate representatives of Federal agencies are hereby authorized to enter into and carry out such agreements with the Secretary or with duly authorized tribal officials.

(2) While acting in the capacity of a person commissioned by the Secretary pursuant to this section, any person who is not otherwise a Federal employee, shall be deemed a Federal employee for purposes of—

(A) section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code.

(3) For purposes of subchapter III of chapter 81 of title 5, United States Code, an employee of a tribal, State, or local governmental agency shall be considered an eligible officer while acting in the capacity of an officer commissioned pursuant to this section.

(c) The Secretary of the Interior may make and publish such rules and regulations as the Secretary deems necessary or proper for officers or employees of the Department of the Interior charged with law enforcement responsibilities and for employees of any Federal, tribal, State, or local governmental agency whose services are being utilized pursuant to subsection (b).

(d)(1) Nothing in this section shall be construed to invalidate any delegations of authority or law enforcement commissions issued by the Secretary, or the Secretary's designates, prior to the date of enactment of this Act.

(2) The authorities provided by this section are in addition to, and not in derogation of, any existing authorities. Nothing in this section shall be construed to alter in any way the law enforcement, or investigative, or judicial authorities of any Indian tribe, State, or political subdivision thereof, or of any department, agency, court, or official of the United States other than the Department of the Interior and agencies or officials thereof.

(e) Notwithstanding section 5901(a) of title 5, United States Code, the uniform allowance for Bureau of Indian Affairs law enforcement officers shall not exceed $400 annually.

SEC. 4219. BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT AND JUDICIAL TRAINING.

(a) IN GENERAL.—The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in subsection (a) shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 787.

(b) AUTHORIZATION.—For the purpose of providing the training required by subsection (a), there are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4220. MEDICAL ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS.

The Memorandum of Agreement entered into pursuant to section 4205 shall include a specific provision for the development and implementation at each Bureau of Indian Affairs agency and Indian Health Service unit of a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection—

(1) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well-being,

(2) shall occur as soon as possible after the arrest or detention of an Indian youth, and

(3) shall be provided by the Indian Health Service, either through its direct or contract health service.

SEC. 4221. JUVENILE DETENTION CENTERS.

(a) PLAN.—The Secretary of the Interior shall construct and renovate juvenile deten-

tion centers and shall ensure that the construction of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974.

(b) AUTHORIZATION.—For the purpose of subsection (a), there are authorized to be appropriated $10,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4222. MODEL INDIAN JUVENILE CODE.

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

SEC. 4223. LAW ENFORCEMENT AND JUDICIAL REPORT.

(a) COMPILATION OF LAW ENFORCEMENT DATA.—The Secretary of the Interior, with respect to the administration of any law enforcement or judicial services program by the Bureau of Indian Affairs, either directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to calls and encounters, arrests and detentions, and disposition of cases by Bureau of Indian Affairs or tribal law enforcement or judicial personnel involving Indians where it is determined that alcohol or substance abuse is a contributing factor.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service unit director who will have the responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals involved.

PART VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

SEC. 4224. REVIEW OF PROGRAMS.

(a) IN GENERAL.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall review and consider—

(1) the various programs established by Federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and treatment, and

(2) tribal, State and local, and private health resources and programs,

(3) where facilities to provide such treatment are or should be located, and

(4) the effectiveness of public and private alcohol and substance abuse treatment programs in operation on the date of the enactment of this subtitle,

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION.—The results of the review conducted under subsection (a) shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan.

SEC. 4225. INDIAN HEALTH SERVICE RESPONSIBILITIES.

The Memorandum of Agreement entered into pursuant to section 4205 shall include specific provisions pursuant to which the Indian Health Service shall assume responsibility for—

(1) the determination for the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Indian Health Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost,

(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse, and

(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

SEC. 4226. INDIAN HEALTH SERVICE PROGRAM.

The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

(1) prevention, through educational intervention, in Indian communities,

(2) acute detoxification and treatment,

(3) community-based rehabilitation, and

(4) community education and involvement, including extensive training of health care, educational, and community-based personnel.

The target population of such a program shall be the members of Indian tribes. Additionally, efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

SEC. 4227. INDIAN HEALTH SERVICE YOUTH PROGRAM.

(a) DETOXIFICATION AND REHABILITATION.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

(b) CENTERS.—The Secretary shall construct or renovate a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office. For purposes of the preceding sentence, the area offices of the Indian Health Service in Tucson and Phoenix, Arizona, shall be considered one area office. The regional treatment centers shall be appropriately staffed with health professionals. There are authorized to be appropriated $6,000,000 for the construction and renovation of the regional youth treatment centers, and $3,000,000 for the staffing of such centers, for each of the fiscal years 1987, 1988, and 1989.

(c) FEDERALLY OWNED STRUCTURES.—

(1) The Secretary of Health and Human Services, acting through the Indian Health Service, shall, in consultation with Indian tribes—

(A) identify and use, where appropriate, federally owned structures, suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth, and

(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary of Health and Human Services and the agency having responsibility for the structure.

(3) There are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

(d) REHABILITATION AND FOLLOW-UP SERVICES.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Indian Health Service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

(3) For the purpose of providing the services authorized by paragraph (1), there are authorized to be appropriated $9,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4228. TRAINING AND COMMUNITY EDUCATION.

(a) COMMUNITY EDUCATION.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to the critical core of each tribal community, including political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical parties.

(b) TRAINING.—The Secretary of Health and Human Services shall, either directly or through contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Indian Health Service, and personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Indian Health Services, including supervisors of emergency shelters and halfway houses described in section 4213.

(c) AUTHORIZATION.—There are authorized to be appropriated $4,000,000 for the fiscal year 1987 and such sums as are necessary to carry out the purposes of this section for the fiscal years 1988 and 1989.

SEC. 4229. NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM.

(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

(b) EVALUATION AND REPORT.—The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate Committees of Congress by January 1, 1990.

(c) AUTHORIZATION.—There are authorized to be appropriated for the purposes of grants under subsection (a) $200,000 for each of the fiscal years 1988, 1989, and 1990. Not more than 10 percent of the funds appropriated for any fiscal year may be used for administrative purposes.

SEC. 4230. INDIAN HEALTH SERVICE REPORTS.

(a) COMPILATION OF DATA.—The Secretary of Health and Human Services, with respect to the administration of any health program by an Indian Health Service service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents which any of the Indian Health Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

(b) REFERRAL OF DATA.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan.

(c) COMPREHENSIVE REPORT.—Each Indian Health Service service unit director shall be responsible for assembling the data compiled under this section and section 4204 into an annual tribal comprehensive report which shall be provided to the affected tribe and to the Director of the Indian Health Service who shall develop and publish a biennial national report on such tribal comprehensive reports.

Subtitle D—Action Grants

SEC. 4301. ACTION GRANTS.

The Domestic Volunteer Service Act of 1973 is amended—

(1) in title I by adding after section 123 the following new section:

"SPECIAL INITIATIVES

"SEC. 124. The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (such as, but not limited to, grants, contracts, conferences, public service announcements, speakers bureau, public-private partnerships and technical assistance to nonprofit and for-profit organizations). In fulfilling the authority of this section, the Director is authorized to (1) coordinate the agency efforts with the White House and other Federal agencies, and (2) accept in the name of the ACTION agency funds received through solicitation of profit and nonprofit entities.";

(2) by amending subsection (c) of section 501 to read as follows:

"(c) There is to be authorized to be appropriated to carry out programs under part C of title I of this Act $4,484,000 for the fiscal year 1987 (of which $2,500,000 shall be available for drug abuse prevention), $1,984,000 for fiscal year 1988, and $1,984,000 for fiscal year 1989."; and

(3) by amending section 504 to read as follows:

"ADMINISTRATION AND COORDINATION

"SEC. 504. There is authorized to be appropriated for the Administration of this Act, as authorized in title IV of this Act, $25,812,000 for fiscal year 1987 (of which $500,000 shall be available for support of drug abuse prevention), $25,312,000 for fiscal year 1988, and $25,312,000 for fiscal year 1989.".

TITLE V—ANTI-DRUG TRUST FUND

DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND

(a) Subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to returns and records) is amended by adding at the end thereof the following new part:

DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND

"Sec. 6097. Designation by individuals.

"SEC. 6097. DESIGNATION BY INDIVIDUALS.

"(a) IN GENERAL.—With respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that—

"(1) any amount of an overpayment of such tax for such taxable year, or

"(2) in the absence of any overpayment of such tax, any contribution which the taxpayer includes with such return.

be paid over to the Anti-Drug Trust Fund.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made either on the 1st page of the return or on the page bearing the taxpayer's signature.

"(c) DESIGNATED AMOUNTS NOT DEDUCTIBLE.—No amount designated pursuant to subsection (a) shall be allowed as a deduction under section 170 or any other section for any taxable year.

"(d) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if late, the date the return is filed.".

(b) Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to Trust Fund Code) is amended by adding at the end thereof the following new section:

"SEC. 9505. ANTI-DRUG TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Anti-Drug Trust Fund', consisting of such amounts as may be appropriated or credited to the Anti-Drug Trust Fund as provided in this section and section 9602(b) (relating to crediting of interest, etc.).

"(b) TRANSFERS TO ANTI-DRUG TRUST FUND.—There are hereby appropriated to the Drug Addiction Prevention Trust Fund amounts equivalent to the amounts designated under section 6097 and received in the Treasury.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Anti-Drug Trust Fund shall be available as provided by appropriation Acts, for making expenditures to carry out the purposes of the Drug Enforcement Act of 1986.".

(c)(1) The table of parts for subchapter A of chapter 61 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"PART IX. Designation of overpayments and contributions for Anti-Drug Trust Fund.".

(2) The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9505. Anti-Drug Trust Fund.".

(d) The amendments made by this section shall take effect on January 1, 1987.

Mr. DOLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1024

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.

CLOTURE MOTION

The PRESIDING OFFICER. One hour having passed since the Senate convened, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the motion to proceed to S. 2760, the Product Liability Reform Act.

Bob Kasten, Jim Broyhill, Phil Gramm, Steve Symms, Don Nickles, Larry Pressler, Nancy Landon Kassebaum, Dick Lugar, Mitch McConnell, Jesse Helms, Pete Wilson, Jake Garn, Jim McClure, Chic Hecht, Jim Abdnor, Dan Quayle, Edward Zorinsky, and Lowell Weicker.

CALL OF THE ROLL

The PRESIDING OFFICER (Mr. LAXALT). Pursuant to rule XXII, the Chair now directs the clerk to call the roll to ascertain the presence of a quorum.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum Vote No. 10 Leg.]

Byrd	Hollings	Zorinsky
Dole	Kasten	
Grassley	Laxalt	

The PRESIDING OFFICER. A quorum is now present. The clerk will call the names of the absent Senators.

The assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

Abdnor	Biden	Broyhill
Andrews	Bingaman	Bumpers
Armstrong	Boren	Burdick
Baucus	Boschwitz	Chafee
Bentsen	Bradley	Chiles

Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Goldwater
Gore
Gorton
Gramm
Harkin
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Humphrey
Inouye
Johnston
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson

□ 1100

VOTE

The PRESIDING OFFICER (Mr. STEVENS). A quorum is present.

The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of S. 2760, the Product Liability Reform Act, shall be brought to a close? The yeas and nays are automatic under the rule, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GRAN]. is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR], is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Arkansas [Mr. PRYOR] would each vote "yea."

The yeas and nays resulted—yeas 97, nays 1, as follows:

[Rollcall Vote No. 291 Leg.]

YEAS—97

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Goldwater
Gore
Gorton
Gramm
Grassley
Harkin
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—1

Stennis

NOT VOTING—2

Garn
Pryor

□ 1124

The PRESIDING OFFICER. On this vote there are 97 yeas and 1 nay. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

PRODUCT LIABILITY REFORM ACT

Mr. KASTEN. Mr. President, when I spoke to the delegates at the White House Conference on Small Business, many of whom had businesses that were literally on the edge of survival, many of whom had businesses whose very existence depended upon the needed reforms of the product liability system, I promised them that this legislation, this bill, would be on the floor of the Senate.

I also promised them, as did the majority leader and others, that we would find out who supported them and were concerned about their problems and who supported the trial lawyers. I am doing everything I can, and I am going to do everything I can, to move this bipartisan consensus bill, the package which I proposed as an amendment in the nature of a substitute on behalf of Senators on both sides of the aisle—to do everything I can to work with this bipartisan consensus until those who support the small businessmen and women across the country are given an opportunity to vote.

I am not a lawyer, but I understand that one of the things that attorneys do, particularly trial lawyers, is they drag things out in court. They stall in court. They use legal technicalities in court to prevent a solution or to prevent any decision from being made.

These legal technicalities that we are seeing now is a process under which a small number of people who are using legal technicalities and not willing to vote up or down on an issue are dragging out this issue on the floor of the Senate, just as trial attorneys drag out an issue in a courtroom.

We cannot let them get away with that on the floor of the Senate. I strongly urge my colleagues to vote for the Kasten-Inouye-Gorton-Stevens-Kassebaum-Riegle amendment to Senate bill 2760, the Product Liability Reform Act. I believe we have a strong, bipartisan consensus.

I do not believe, Mr. President, that we ought now to go through this dragging out process, which would include up to 30 hours, possibly, of debate, now that we have invoked cloture on the motion to proceed. I shall not use my time, and I do not believe that any of us who are fighting for the small business men and women across this country want to use their time, because we do not want to participate in this delay. Instead, I hope that we can move forward relatively quickly to a vote, first of all, on the motion to proceed, then to a vote on the substitute.

So, Mr. President, in the interest of trying to move along, at the same time giving people an opportunity to debate—and I know there are some Senators on the floor who desire to debate—I ask unanimous consent that, notwithstanding the provisions of rule XXII, a vote occur on the motion to proceed on S. 2760, the Product Liability Act, at 12:30 today.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KASTEN. I ask unanimous consent that, notwithstanding the provisions of rule XXII, a vote occur on the motion to proceed on S. 2760 at 1 o'clock today.

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KASTEN. Mr. President, let me just say to the Senator from South Carolina, I am trying, if we can, to expedite the process of the Senate. We would be willing to try a vote at 1:30 or 2 o'clock.

I ask unanimous consent that, notwithstanding the provisions of rule XXII, a vote occur on the motion to proceed to S. 2760 at 2 p.m.

Mr. HOLLINGS and Mr. HART. I object.

The PRESIDING OFFICER. Two objections are heard.

Mr. KASTEN. Mr. President, I yield the floor.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. What is the time situation, Mr. President?

The PRESIDING OFFICER. There are 30 hours of consideration that began at 11:23 a.m.

Mr. HART. Mr. President, if I may, I wish to direct an inquiry to the distinguished Senator from South Carolina as to whether a statement on behalf of the position which he has taken on this measure would be in order by the Senator from Colorado at this point?

Mr. HOLLINGS. By all means, Mr. President. I suggest the Senator go right ahead.

Mr. HART. I thank the Senator.

Mr. President, at a time when the Senate ought to be very seriously considering trade legislation, a true deficit reduction measure such as an oil import fee, or overdue revisions of the farm bill—measures to help the American people—we are considering something else: an unjust and unwise meas-

ure to injure people who have already been hurt.

I cannot support legislation to make it more difficult for victims of dangerous and defective products to be compensated for their injuries. Most of the provisions of the product liability bill would undercompensate the injured or insulate the guilty. The consumers of this Nation and the firms which conscientiously apply the highest standards in manufacturing both deserve better.

This legislation is based on the false premise that economic losses are somehow more worthy of compensation, while other damages, more difficult to quantify, are deemed less worthy of compensation. The $250,000 cap on pain and suffering and the elimination of joint and several liability for so-called noneconomic losses illustrate a favoritism for arithmetic but a moral blindspot when it comes to human suffering.

Mr. President, pain and suffering constitute real losses, not a fiction or a nasty plot designed to benefit the lawyers.

Consider for a moment the fairness of a $250,000 cap as applied in the case of a young girl who has suffered severe burns after her pajamas caught fire. Her scars are permanent; plastic surgery will not restore her appearance. Disfiguring injuries will guarantee her a lifetime of pain and personal regret. The $250,000 cap in this bill does not permit adequate compensation for this victim, this child.

Under this unfair legislation, manufacturers will make an offer just to limit the amount they will eventually pay to a victim, like the little girl. The cap would not encourage plaintiffs to settle. Seriously injured patients already have an incentive to resolve disputes, to get along with their lives. Instead, this cap acts as an incentive for manufacturers to ignore their responsibilities for justifiable damage awards. A nonflexible formula for calculating compensable loss will do a substantial injustice in individual cases.

When compensation is based chiefly on economic factors, like wage loss and medical bills, the victim's recovery rights are drastically and unfairly reduced. Many injured consumers are not wage earners, and horrendous injuries may be untreatable.

The woman who used a Dalkon Shield and is now unable to bear children, for example, will not be prevented from actively pursuing her career. A liability formula that is biased toward economic damages, by definition, cannot begin to compensate her inability to start and/or add to her family. And that is wrong, Mr. President.

There has been much discussion in this debate about deep-socket liability. I prefer to call it "guilty-pocket" liability. Under the longstanding doctrine of joint and several liability, the plaintiff cannot recover from any defendant without showing the defendant caused the harm. It is fair to require that anyone who caused the injury pay for it. It is eminently unfair to force the innocent victim of a product accident to absorb any shortfall in compensation. Revisions in the doctrine of joint and several liability, which force the innocent victim to subsidize wrongdoers, is unsound public policy, regardless of whether this subsidy consists of economic or noneconomic losses.

It is well documented that the tort system has functioned to drive from the market dangerous products—flammable fabrics, unsafe automobiles, birth control pills which cause cancer and stroke, and others. The threat of damages forces otherwise irresponsible manufacturers to pay close attention to the safety consequences of their products. With legislation freeing them of liability concerns, that attention to safety will disappear.

Sound reforms of this Nation's tort liability system can be accomplished. But solutions to those problems which do exist must involve contributions from all parties—insurers and consumers, manufacturers and attorneys. That would be a principled approach.

But this legislation is a bailout. It seeks to protect manufacturers from the consequences of their actions at the expense of consumers who have been injured.

I congratulate the distinguished Senator from South Carolina [Mr. HOLLINGS], who has been this Chamber's conscience on product liability legislation. I commend him for his leadership in opposition to this flawed bill.

Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Would a statement unrelated to the pending matter be in order at this point?

The PRESIDING OFFICER. It is not in order at this time.

Mr. HART. Would it be in order if unanimous consent were obtained?

The PRESIDING OFFICER. It would be in order to ask unanimous consent for that purpose.

Mr. HART. Mr. President, I ask unanimous consent that it be in order to present brief remarks on the occasion of the memorial service to the late Governor Harriman.

Mr. KASTEN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HART. I am sure the friends of Governor Harriman appreciate that.

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

The PRESIDING OFFICER. Business has not intervened since the last quorum call; therefore——

Mr. HOLLINGS. No business has intervened, Mr. President?

The PRESIDING OFFICER. That is the rule, that during a cloture period, there cannot be another quorum call unless business has intervened in the interim since the last rollcall.

Mr. HOLLINGS. Mr. President, may I inquire of the Chair—we have had some talk. What constitutes business?

The PRESIDING OFFICER. The Chair states that that is a very technical question. There are a series of things that constitute business. Ordering the yeas and nays on a motion would be business.

Mr. HOLLINGS. But not debate?

The PRESIDING OFFICER. Not debate. There must be action by the Senate disposing of pending business before another quorum call is in order.

Mr. HOLLINGS. I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second for that purpose? There is not a sufficient second for that purpose.

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

The PRESIDING OFFICER. A quorum is not in order.

Mr. HOLLINGS. Oh, yes, Mr. President; now business has occurred.

The PRESIDING OFFICER. The Chair is corrected by the Parliamentarian. The Senator having appealed the ruling of the Chair, it is now in order to have a quorum call to get sufficient time to get seconders for the request. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1150

Mr. KASTEN. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. KASTEN. Mr. President, it is our intention to move to the yeas and nays on this question now if the Senator from South Carolina is agreeable.

Mr. HOLLINGS. I object right now. Let me get this understood. You can move it, but I would be recognized to talk. I misunderstood the request of the distinguished Senator.

The PRESIDING OFFICER. The Senator from Wisconsin has the floor and has made a request.

Mr. HOLLINGS. Is it unanimous consent?

The PRESIDING OFFICER. Is there sufficient second for the yeas and nays?

Mr. HOLLINGS. Parliamentary inquiry. What is the motion?

The PRESIDING OFFICER. It is the Chair's understanding the Senator from Wisconsin has asked for the yeas and nays on the appeal.

Mr. HOLLINGS. The appeal was out and then we got the quorum call.

The PRESIDING OFFICER. No. The appeal was not out because the Senator had appealed the ruling of the Chair and asked for the yeas and nays and there was not a sufficient second. And then the Senator asked for a quorum call, which leaves the Senator's motion remaining before the Senate and that is the appeal of the ruling of the Chair.

Mr. HOLLINGS. I withdraw the appeal. Is that all right?

The PRESIDING OFFICER. The Senator has that right. The appeal is withdrawn.

QUORUM CALL

Mr. HOLLINGS. The appeal is withdrawn and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 11]

Bentsen	Gorton	Kasten
Boschwitz	Hart	McClure
Bumpers	Helms	Pressler
Dodd	Hollings	Stevens
Goldwater	Kassebaum	Thurmond

The PRESIDING OFFICER (Mrs. KASSEBAUM). A quorum is not present.

The clerk will call the names of absent Senators.

The assistant legislative clerk proceeded to call the roll.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Madam. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Michigan [Mr. LEVIN] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

The result was announced—yeas 90, nays 5, as follows:

[Rollcall Vote No. 292 Leg.]

YEAS—90

Abdnor	Ford	McConnell
Andrews	Glenn	Melcher
Armstrong	Gore	Metzenbaum
Baucus	Gorton	Mitchell
Bentsen	Gramm	Moynihan
Biden	Grassley	Murkowski
Bingaman	Harkin	Nickles
Boren	Hart	Nunn
Boschwitz	Hatch	Packwood
Bradley	Hatfield	Pell
Broyhill	Hawkins	Pressler
Bumpers	Hecht	Riegle
Burdick	Heflin	Rockefeller
Byrd	Heinz	Roth
Chafee	Helms	Rudman
Chiles	Hollings	Sarbanes
Cochran	Humphrey	Sasser
Cohen	Inouye	Simon
Cranston	Kassebaum	Simpson
D'Amato	Kasten	Specter
Danforth	Kennedy	Stafford
DeConcini	Kerry	Stennis
Dixon	Lautenberg	Stevens
Dodd	Laxalt	Symms
Dole	Leahy	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Wallop
Eagleton	Matsunaga	Warner
Evans	Mattingly	Wilson
Exon	McClure	Zorinsky

NAYS—5

Goldwater	Proxmire	Weicker
Johnston	Quayle	

NOT VOTING—5

Denton	Levin	Pryor
Garn	Mathias	

So the motion was agreed to.

□ 1230

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

PRODUCT LIABILITY REFORM

Mr. KASTEN. Madam President, I ask for regular order.

The PRESIDING OFFICER. Regular order is the motion to proceed.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. The distinguished Senator from Wisconsin Madam President, has referred to the trial lawyers.

Mr. KASTEN. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator yield for a parliamentary inquiry?

Mr. HOLLINGS. No, I do not. I would like to make this thought. I have not spoken today on this particular matter. I would like to be heard because there have been some misleading statements made.

The American Bar Association writes to this Senator and all Senators, as you were, to try to clarify the record. Beginning in their letter dated September 24, they say:

DEAR SENATOR: Yesterday on the Senate floor during debate on S. 2760, Senator KASTEN stated that "most lawyers support some kind of bill" on product liability. We believe this is misleading. The American Bar Association—

I am not talking about trial lawyers.

The distinguished Senator would couch this all as insurance company versus trial lawyers. I daresay that an injured party cannot go to an insurance company. You cannot go and get a corporate lawyer. Those folks charge $500 and $600 an hour. So they do go, thank Heavens, to trial lawyers, the little man in town.

The American Bar Association, which encompasses trial lawyers, corporate lawyers, and insurance lawyers, states:

The ABA, with a membership of approximately 320,000 lawyers, supports federal legislation in two discrete areas of the product liability law. However, we have opposed broad federal product liability legislation such as S. 2760 since February 1981 when the ABA went on record against such proposals.

In February 1983, the ABA's House of Delegates reconsidered the matter and voted by a substantial majority to reaffirm its earlier position of opposition to broad federal preemptive product liability legislation. At that time, it also voted to approve two recommendations supporting federal attention in two limited areas: Litigation involving certain latent occupational diseases, and the question of how to allocate liability risks between the federal government and its contractors.

The approximately 380-member ABA House of Delegates, which is carefully structured to represent all aspects of the Bar, thoroughly studied all facets of this matter before making its decisions on this issue in 1981 and 1983.

Operating in a manner similar to the U.S. Congress, our House of Delegates is the legislative body for the ABA. The House of Delegates represents not only various groups within the Association but also the legal profession as a whole. Its membership is made up of delegates elected by Association members in each state, delegates from every state bar association, the larger local bar associations, other national organizations of the legal profession and delegates elected by the ABA Assembly and the ABA Sections.

Enclosed is a letter from our Immediate-Past President setting forth our reasons for opposing broad federal product liability legislation.

Mr. KASTEN. Madam President, I ask for regular order. The Senator from South Carolina has already spoken twice on this issue. Under the rules, he cannot speak again on this issue.

Mr. HOLLINGS. I have not yielded the floor, Madam President.

The PRESIDING OFFICER. Regular order has been requested.

Mr. HOLLINGS. I am in regular order, having been recognized. How can he be recognized? He has already made five motions. I have not made one talk. I am trying to complete it.

The PRESIDING OFFICER. The Senator from Wisconsin does not have to be recognized. He made a call for regular order. Under regular order, the Senator from South Carolina has

already delivered two speeches on the same subject. A third speech would be out of order.

Mr. HOLLINGS. As you were. I respectfully—I disrespectfully, I should say—object to that ruling, Madam President. That is babble from the Parliamentarian. You cannot rule in the U.S. Senate that when I made a request for a quorum, that is a speech. The only other thing I made was an appeal from the ruling of the Chair. If that is a case of being recognized, he has already been recognized, made six talks this morning. I make the point of order that he is out of order, has been recognized because he made two speeches so you could not recognize him. That is utter nonsense. I never heard of such a thing in my life—there is no precedent. The Parliamentarian referred to page 625. I have read it. I say he is wrong. I respect you, Madam President. I know you take that nonsense from him. I am going to appeal it, if you please.

If a motion in the U.S. Senate is a speech, if an absence of a quorum is a speech, if an appeal is a speech, we are in sad shape if we are going to take the majority or minority leader and rule him out of order because that is two speeches. He knows that. He has been recognized for three unanimous-consent requests and four others so on a point of order, he was not in order to be recognized. Therefore, he could not call for regular order under that nonsensical ruling.

I still have the floor. I thank the distinguished chairman.

The PRESIDING OFFICER. The Senator from South Carolina knows a ruling of the Chair is not debatable. An appeal of the ruling is not debatable.

Mr. METZENBAUM. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[Quorum No. 12]

Evans	Kassebaum	Simpson
Exon	Kasten	Stennis
Goldwater	McConnell	Symms
Harkin	Metzenbaum	Thurmond
Hollings	Pressler	

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

Mr. HOLLINGS. I object.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

□ 1250

Mr. KASTEN. Madam President, I move that the Sergeant at Arms call for the return of the absent Senators.

Mr. HOLLINGS. Madam President, I object. A rollcall is in progress and he has not taken off the quorum.

Mr. METZENBAUM. Madam President, I invoke the two-speech rule. I invoke the two-speech rule.

Mr. HOLLINGS. That is right. He is out of order.

Mr. METZENBAUM. For that and seven other reasons why I object.

Mr. KASTEN. Madam President, I ask for the yeas and nays.

Mr. HOLLINGS. We are still in a quorum call.

The PRESIDING OFFICER. The quorum has been completed. The clerk just announced a quorum is not present.

Mr. METZENBAUM. I invoke the two-speech rule.

Mr. KASTEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. METZENBAUM. May we have a ruling on the two-speech rule?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HOLLINGS. I raise a point of order that he not be recognized because this is his seventh speech.

The PRESIDING OFFICER. A point of order cannot be the absence of a quorum and there is not a sufficient second. The question is, Shall the Sergeant at Arms call for the return of the absent Senators? All those in favor say "aye."

All those opposed.

The ayes appear to have it.

Mr. METZENBAUM. The what?

The PRESIDING OFFICER. The ayes appear to have it.

Mr. METZENBAUM. Madam President, there was 1 yea and 1 nay.

Mr. KASTEN. I ask for a division.

The PRESIDING OFFICER. Those in favor stand and be counted.

Mr. METZENBAUM. Madam President, I ask for a rollcall. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Maryland [Mr. MATHIAS], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New York [Mr. MOYNIHAN] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

The result was announced—yeas 87, nays 6, as follows:

[Rollcall Vote No. 293 Leg.]

YEAS—87

Abdnor	Ford	Matsunaga
Andrews	Glenn	Mattingly
Armstrong	Gore	McClure
Baucus	Gorton	McConnell
Bentsen	Gramm	Melcher
Biden	Grassley	Metzenbaum
Bingaman	Harkin	Mitchell
Boren	Hart	Murkowski
Boschwitz	Hatch	Nunn
Bradley	Hatfield	Packwood
Broyhill	Hawkins	Pell
Bumpers	Hecht	Pressler
Burdick	Heflin	Riegle
Byrd	Heinz	Rockefeller
Chafee	Helms	Roth
Chiles	Hollings	Rudman
Cochran	Humphrey	Sarbanes
Cohen	Inouye	Sasser
Cranston	Johnston	Simon
Danforth	Kassebaum	Simpson
DeConcini	Kasten	Specter
Dixon	Kennedy	Stennis
Dodd	Kerry	Stevens
Dole	Lautenberg	Symms
Domenici	Laxalt	Thurmond
Durenberger	Leahy	Trible
Eagleton	Levin	Warner
Evans	Long	Wilson
Exon	Lugar	Zorinsky

NAYS—6

D'Amato	Proxmire	Wallop
Nickles	Quayle	Weicker

NOT VOTING—7

Denton	Mathias	Stafford
Garn	Moynihan	
Goldwater	Pryor	

So the motion was agreed to.

□ 1320

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. BYRD. Mr. President, I am allowed 1 hour—or 2 or 3 if yielded to me, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. I understand that some problem has risen with respect to the rule XIX, involving two speeches in the same legislative day on the same subject, the contention being that Senator HOLLINGS, on the suggestion of the absence of a quorum, was being charged with one of his two speeches to which he is entitled under the rule.

I was not on the floor at the time. I have asked for a transcript, and it is quite lengthy, as I see here. I would like to have an opportunity to read this transcript, and I shall shortly complete my one speech on the same subject during the same legislative day.

But, before I do so, I shall record the pertinent provisions of rule XIX:

> * * * and no Senator shall speak more than twice upon any one question in debate on the same legislative day without leave of the Senate, which shall be determined without debate.

Mr. President, if I am correct in the understanding that Mr. HOLLINGS got recognition, suggested the absence of a

quorum, and that that action on his part constituted a speech. I would ask the Chair if I am correct in that the Chair has rendered such an opinion.

The PRESIDING OFFICER. It is the interpretation of the Parliamentarian that any recognition is considered in this context as a speech and, of course, the reading of the transcript would give full evidence of the exact request of the Senator from South Carolina.

Mr. BYRD. I will read the transcript in a moment to ascertain in facts in that regard.

But we are told by the Chair, upon the advice of the Parliamentarian, that any recognition for any purpose when the Senate is proceeding under the cloture rule, the Senate having voted cloture, that such recognition constitutes a speech; am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. If I might ask the Chair to inquire of the Parliamentarian: What is the basis for the Parliamentarian's recommendation or advice on that point?

The PRESIDING OFFICER. The precedent is set by the debate on June 12, 1935. During consideration of an amendment from the House, the President pro tempore, in reply to a parliamentary inquiry by Mr. Huey P. Long, from Louisiana, held that he would lose the floor if he made a motion for a recess. In reply, then, to a parliamentary inquiry of Mr. Pat McCarran, of Nevada, if any other Member than the Senator who occupied the floor could move a recess without the other Senator losing the floor, the President pro tempore said:

> If there is any business intervening, then the Senator is construed as starting another speech. If any business intervenes and the Senator allows it to intervene, having the power to prevent the intervention of any business, then if he is recognized it will be regarded as the beginning of a second speech.

And then, in reply to a parliamentary inquiry by Mr. Alben Barkley, of Kentucky, the President pro tempore held that where a Senator yielded to another Senator to make a motion to recess or adjourn or for any other motion, that constituted business, and if such Senator was again recognized, it would be for a second speech.

□ 1330

There is more to that precedent that I can share with the Democratic leader.

Mr. BYRD. I thank the Chair.

Would the Chair, with the advice of the Parliamentarian, indicate where in the footnotes that such precedent is referred to?

The PRESIDING OFFICER. It is on page 626 of Senate Procedure, footnote No. 487.

Mr. BYRD. I thank the Chair.

Mr. President, if Senators will pay close attention, the Senate will be called upon to make a decision on this point. It is going to be a serious impairment to any leader, whether majority or minority, if this ruling which has been taken as stated by the Chair, with the advice of the Parliamentarian, is allowed to stand.

Let me just say that I have been studying these rules for 20 years and have been a constant companion on the floor pretty much of that time and have probably been instrumental in establishing more pecedents than any other Senator before my time or during my time.

Let me hastily say that I can be wrong, and I am the first to recognize that I have been wrong on some occasions, have been shown to be wrong, and have admitted that I have been wrong.

But let us proceed now in connection with this matter.

All Senators have the book titled Senate Procedure. It may be in their desks or may be in their offices.

Let me read to Senators therefrom.

The Chair has cited a so-called precedent on page 626 of the book on Senate Procedure. We find a footnote, 487, "See June 12, 1935," the 74th Congress, 1st Session, RECORD pages 4495, 4496.

If each Senator will also look at the preface in this book, which is on page small Roman numerals xi, I will read this paragraph.

> It will be observed that the footnotes divide themselves into two classes: those without, and those with the word "See" and "See also." Those without

Meaning those without the word "See" or "See also,"

> are rulings by the Presiding Officer or decisions by the Senate.

Those are precedents. Whether they are "rulings" by the Presiding Officer or "decisions" by the Senate, that is what we mean when we refer to a "precedent." The Senate guards zealously its rules and precedents because, like the common law of England which is based on precedents from time immemorial rules and precedents are what we depend on here in this body, in addition to the unwritten rules of courtesy, comity, and mutual respect.

Reading further:

> Those with "See" are responses by the Chair to parliamentary inquiries in cases where the opinions expressed are in keeping with the practices of the Senate, even though in such cases an appeal from an opinion expressed by the Presiding Officer in reply to a parliamentary inquiry is not in order.

Where the Chair, therefore, expresses an opinion in response to a parliamentary inquiry, that opinion is not a precedent and, therefore, not subject to appeal. The Chair expressed opinions in only the footnote cited. The footnote cited says "See", and "See" is in italics which means that it was a response by the Chair to a parliamentary inquiry.

A response by the Chair to a parliamentary inquiry is not a precedent. I have already indicated that a precedent is a "decision", by the Senate or a "ruling" by the Chair. The Chair rules on a question of order.

If the Chair's ruling is not contested by the Senate, the ruling stands as a precedent of the Senate. If the ruling is appealed, the Senate decides. Whatever the Senate decides, whether it is in support of the Chair or opposes the Chair, that is a precedent of the Senate. A decision by the Senate is the stronger of the two precedents.

A ruling by the Chair, uncontested by the Senate, is a precedent, but not as strong a precedent as a decision by the Senate.

But in this footnote, we are being referred to responses by the Chair in answer to a parliamentary inquiry.

The Presiding Officer has already read the responses. The Chair was not asked to rule. A Senator simply arose and asked a parliamentary inquiry. The Chair responded that it was the Chair's opinion, thus and so. It may be the Chair's opinion based on a past precedent set by the Senate, but if there is such a precedent established by a Senate decision or a ruling by the Chair that would back up the Chair's opinion, it ought to be in the footnote also and we ought to see what it is, but none is indicated.

So the Chair's ruling today is not based on precedent. It is against all commonsense, it seems to me; it is against logic, to maintain that simply because a Senator rises and suggests the absence of a quorum, that that in itself constitutes a speech.

If this is going to be the rule here, then the distinguished majority leader, if he wishes to put in a quorum call, that is going to constitute a speech.

Well, he will be allowed to do that twice. Then, of course, when he has done that twice, the leader is going to be confronted with having spoken twice already on the same legislative day, and without the consent of the Senate, he cannot proceed. We all know that is impractical, it is implausible, it is illogical, it does not make sense. I think it would be a very serious thing if the Senate were to allow this matter to stand that, on the basis of the Senator from South Carolina's having arisen, having addressed the Chair, having gotten recognition, having suggested the absence of a quorum, that constitutes a speech within the two-speech rule.

□ 1340

I hope the Senate will not allow that ruling, if the ruling has indeed been

made, to stand unchallenged. I hope the Senate will not allow that to become a precedent.

Any Senator has the right to—does a Senator have to be recognized to ask for the yeas and nays, I ask the Chair?

The PRESIDING OFFICER. It is so that a Senator would have to be recognized to ask for the yeas and nays.

Mr. BYRD. I thank the Chair.

The Constitution gives any Senator the right to ask for the yeas and nays on any question and he is entitled to have the yeas and nays if one-fifth of those Senators present signify that they support that call for the yeas and nays. But if he does that, under today's ruling, that is one speech. If he asks for the yeas and nays twice, he has made his two speeches.

Is that logical? Does that make sense, that a Senator who asks for the yeas and nays on a given matter, to which he is entitled if supported by one-fifth of Senators present, under the Constitution of the United States—which is on a much higher plane than the rules of the Senate or the precedents of the Senate—then, is he going to render himself further speechless on a matter that may be vitally important to his State? No State shall be deprived of equal representation in the Senate without its own consent. Is he, by virtue of the fact that he asked for the yeas and nays twice unable to speak on a matter vital to his State, thus denying representation for his State?

The majority leader may say, "I move that the Sergeant at Arms be instructed to request the attendance of absent Senators." The majority leader may then say, "I ask for the yeas and nays." He has made two speeches? Is that what we are being told?

Mr. HART. Will the Senator yield for a question?

Mr. BYRD. Yes, I am happy to yield.

Mr. HART. Is it the contention of the Senator from West Virginia that the precedent cited by the Chair is incorrect or that the interpretation placed upon that precedent by the Chair is incorrect?

Mr. BYRD. I am saying that, No. 1, it is not a precedent.

The Chair is referring not to precedents. The Chair is referring, rather, to an opinion expressed by a previous Chair in response to a parliamentary inquiry. That is not a precedent. I am saying, furthermore, that the interpretation based upon the nonprecedent is incorrect, and illogical.

I shall read this paragraph on page 626 which the Chair has cited:

> If a Senator in possession of the floor yields to another Senator to make a motion to recess or makes such a motion himself he would lose the floor, and would have no prior right to recognition, and if recognized again, it would be his second speech.

If Senator HOLLINGS had had the floor and had spoken, let us say, for 2 minutes, 3 minutes, 10 minutes or 15 minutes—whatever it was—and he yields to another Senator to make a motion to recess, or makes the motion himself, he would indeed lose the floor, and he would have indeed made a speech, but the motion to recess, standing alone, would not, in and only of itself, constitute a speech. If he has the floor and speaks for an hour and a half and then puts in a quorum, of course, he has made a speech.

Or he speaks for 20 minutes and yields to me on another matter and I put in a quorum call, of course he has made a speech. No one would argue that he has not done so.

But for the Senator simply to stand and say, "Mr. President, I ask for the yeas and nays on this question," who in the name of common sense would maintain that that request for the yeas and nays—which he has a right to make under the Constitution of the United States, the organic law which created this Senate—constitutes a speech?

I hope the Senators will think about this carefully, because——

Mr. METZENBAUM. Will the minority leader yield for a question?

Mr. BYRD. Mr. President, I do not have to ask unanimous consent to yield to the distinguished Senator if he is going to ask a question. I have not taken my hour.

The PRESIDING OFFICER. There will be no objection.

Mr. METZENBAUM. If we follow this procedure, that any kind of recognition is tantamount to a speech, is it not the fact that the majority leader, as well as the minority leader, in their responsibilities are called upon day in and day out to seek recognition not only 2 times but 22 times in connection with a matter? And that any Senator seeing fit to do so could totally tie the Senate up in knots and tie up the leadership, preclude them from accepting their responsibilities? Does not the minority leader believe that would be the case?

Mr. BYRD. Mr. President, there is no question in my mind that this ruling would be a ball and chain around both hands and both feet of any leader, in addition to having a gag thrust in his throat. No leader could lead the Senate if this ruling is going to stand. If what is being maintained by the Chair, and I say this with all respect to the Chair—and the distinguished Senator in the Chair at the moment is there by reason of having answered the call to preside. I answer by simply saying, yes, that would be a serious impairment to the leaders and to managers of bills, and to any Senator who wishes to offer an amendment and is required repeatedly to explain or defend his amendment.

□ 1350

Mr. METZENBAUM. Another question I would then pose to the minority leader is, so far as the Chair's ruling as based upon the Parliamentarian's advice would put the Senate in a very tight bind and one that I believe would totally frustrate the ability to run this body in an orderly fashion, does the minority leader have an opinion as to how the Senate might act in order to make it clear that recognition for the yeas and nays, or for a quorum call, or for any one of number of other issues, might be resolved and make it clear that that is not the position of this body? I am wondering if the minority leader, who is unquestionably the most renowned authority on the Senate rules we have in this body, could suggest how we might clarify the situation?

Mr. BYRD. Yes, by appealing the Chair's ruling. In a few minutes I am going to suggest the absense of a quorum so that I can read the transcript. I want to see what the facts are. I was not on the floor when the situation developed. I want to see if the distinguished Senator from South Carolina was indeed making a speech. He has indicated he was not. I will take his word for it. But the transcript I want to read. Was he indeed making a speech, after which he put in a quorum. That is one thing. But he says he was not making a speech. He got recognition and suggested the absence of a quorum and then at a later time he was speaking and someone in the middle of the speech called for the regular order. It is appropriate for another Senator to ask for the regular order even in the middle of a Senators' speech. If then he is charged with having made a second speech and therefore he cannot proceed because the Chair rules that he has already made two speeches, why then, I want to see by the transcript just what it was all about.

But it will have to be challenged if it is the ruling by the Chair that the Senators' call for a quorum, in and of itself and standing alone constituted a speech. That cannot be allowed to remain unchallenged.

Mr. METZENBAUM. I thank the minority leader. As a matter of fact, when the Senator from South Carolina was involved in this issue, the Senator from Ohio suggested the absence of a quorum and then learned, to my total surprise after inquiry of the Parliamentarian, that that constituted one speech. And I am frank to say that I have been on this floor for a number of years and involved in a number of parliamentary debates and issues and, to the best of my recollection, I have never heard of a ruling that suggesting the absence of a quorum, or asking for the yeas and nays, or any one of a number of other

items that call for recognition but do not involve a speech are considered to be a speech within the interpretation of the two-speech rule.

Would the minority leader care to clarify my thinking on that subject and am I wrong that that has been the general interpretation in the past? At least the issue has never been raised to my recollection.

Mr. BYRD. I regret to say I was distracted by my own thoughts.

Mr. METZENBAUM. I understand.

Mr. BYRD. I beg the Senator's pardon. Here is what I was thinking. Here is what ran through my mind. A Senator asks for the yeas and nays. That is one speech. The Chair says, "Is there a sufficient second? There is not a sufficient second." Then the same Senator says, "I suggest the absence of a quorum." He wants to get a quorum here so he can get his yeas and nays. Well, he has made two speeches. He made two speeches. In suggesting the absence of a quorum, he has made a speech.

Mr. METZENBAUM. Right.

Mr. BYRD. The Chair says, "Is there a sufficient second?" He looks around. Only one hand goes up. The Chair says, "There is not a sufficient second." The same Senator, determined to get a rollcall on the question—and it is a vital question, perhaps vital to the Nation, vital to his State or whatever—says, "I suggest the absence of a quorum." He is out of the ball game for the rest of——

Mr. METZENBAUM. He cannot ask for it the next time.

Mr. BYRD. He is out of the ball game for the rest of the legislative day on that question. He cannot then get up and express the views of his constituents, not once. He has already run out his time by asking for the yeas and nays, and that demand not having been supported by an adequate show of seconds, he suggests the absence of a quorum, he has had it for the day—go home.

Mr. DODD. Will the Senator yield?

Mr. DECONCINI. Will the Senator yield for a further question?

Mr. METZENBAUM. As a matter of fact, is it not the case that he could not ask for the yeas and nays the second time because he has already used up his right to recognition twice?

Mr. BYRD. Of course. Of course he has.

Mr. DODD. If the leader will yield for a question, presumably he would have made a speech on the matter that was before the Senate.

If he had then asked for the yeas and nays and only one Senator raised his hand, then proceeded to make a point of order that a quorum was present, another Senator could call for regular order and he could not even make the point of order because the point of order would be a second speech, a third speech.

Let me just try to explain that again. Assuming there was a matter before the Senate. The Senator gives a speech on it. The Senator from West Virginia has a very important matter affecting his State. He has given an hour-long speech on the matter. No one else wishes to speak on the matter and so the Senator from West Virginia says he would like to have the yeas and nays on the amendment. He asks for the yeas and nays. Only one Senator raises his hand. The Chair says there is an insufficient second. At that point the Senator from West Virginia says, "Well, I would make a point of order that a quorum is not present."

Mr. BYRD. Yes.

Mr. DODD. Having a speech, having asked for the yeas and nays, he would be out of order even making the point of order that a quorum was not present. Is that correct?

Mr. BYRD. No. No, I would not agree with that. He makes the speech and then asks for the yeas and nays. That is not two speeches. He has the floor. He has recognition already. He speaks and, in closing says, "I ask for the yeas and nays." That is only one speech. The Chair says that recognition—recognition—for any purpose—the Senator already has recognition. I am standing here speaking. In closing my speech, and before yielding the floor, if I would say, "Mr. President, I ask for the yeas and nays," I have not made two speeches. That is not what the Chair maintained, because I shall have had recognition already for a true speech. I do not have to seek recognition again at the close thereof to ask for the yeas and nays, because I already have the floor.

Mr. DODD. If another Senator had spoken, if the Senator from West Virginia had given his speech on the matter and then yielded the floor, another Senator had risen and addressed the same matter, that concluded the debate; then the Senator from West Virginia came back at that point and asked for the yeas and nays, and then made the point of order that a quorum was not present. Would that be the third speech?

Mr. BYRD. I am sorry, I am still wrapped up in my own thoughts. The question occurs to me—I beg the Senator's pardon. Would he ask that again.

Mr. DODD. The Senator from West Virginia had an amendment on the floor and he gave a speech about his amendment. The Senator from North Carolina then decided he wanted to address the same amendment and gave a speech on the subject. The Senator had yielded the floor at the conclusion of his speech. Once the Senator from South Carolina had finished his speech, no one else wished to address the matter. At that point, the Senator from West Virginia, since it was his amendment hypothetically, asked for the yeas and nays on his amendment. Now he has given a speech on the amendment.

Mr. BYRD. Yes.

Mr. DODD. He has now had an intervening speaker. He has now arisen and said, "I would like the yeas and nays on my amendment."

Mr. BYRD. Yes.

Mr. DODD. The Chair says there is an insufficient second, at which point the Senator then comes back and says, "I would make a point of order that a quorum is not present." What I understand the Senator, the minority leader is saying is that that request, or making a point of order that a quorum was not present would be a third speech? That would be the scenario that I described.

□ 1400

Mr. BYRD. I do not know if it would ever get to that point, because he has already run his speech out. He made one speech on his amendment and then another Senator spoke, and the Senator asked for the yeas and nays. That is recognition. That is his second speech.

Let me ask the Chair: The Chair has said, I believe, that to get the yeas and nays, the Senator has to be recognized. Am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Once he asks for the yeas and nays, if the Chair says that there is not a sufficient second, has the Senator lost the floor when he asked for the yeas and nays and there is not a sufficient second and the Chair says, "There is not a sufficient second"? Has the Senator lost the floor, and does he have to be recognized again to suggest the absence of a quorum?

The PRESIDING OFFICER. The Senator has lost the floor under those circumstances. That is correct.

Mr. BYRD. So the point of order that a quorum is not present would constitute three speeches. He is knocked out when he made the second. That is what I was trying to say.

Mr. DODD. I thank the Senator.

Mr. BYRD. I think the question is an incisive one and a good one, because what the Senator is saying is that he has been recognized twice and cannot even suggest the absence of a quorum.

Mr. DODD. That was my question.

Mr. BYRD. That is a good point. I am sorry I was a little slow.

Mr. EXON. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. EXON. I appreciate the Democratic leader yielding for a question.

I hesitate, as a nonlawyer, even to speak on the floor of the U.S. Senate on this subject, because I do not want

to bring any commonsense into this argument or discussion. [Laughter.]

Mr. HOLLINGS. Don't worry.

Mr. EXON. But, as a nonlawyer, it sounds to me as though if the ruling of the Parliamentarian, and backed by the Chair, becomes the precedent that we are going to follow in the future, what we are basically saying is that we nonlawyers are not going to be doing much speaking in postcloture situations in the future in the U.S. Senate.

In asking my question of the minority leader, it appears to this nonlawyer that we are wasting a great deal of time on a nonsensical question that, if the Parliamentarian is right—and I do not know whether he is right or wrong—must be changed immediately.

Therefore, I think that what transcends our discussion here—and I happen to be on the side of the Senator from Wisconsin on the underlying debate that is taking place here, and not on the side of my great friend and colleague, the Senator from South Carolina—but as long as I have one speech or two speeches or have to stand here as long as I can within my hour, I am going to do everything I can to defend the right of my friend from South Carolina to at least proceed under the rules as is normally presented.

My question is this: The minority leader has indicated that he was about to put in a quorum call so that he would have a chance to read the transcript, to determine whether or not, under the reasonable interpretation of the rule, the Senator from South Carolina had offered two speeches. It seems to me that what we have brought out in the very interesting discussion, which I have listened to with great interest, is that whether or not the Senator in this case made two speeches, the question before us—and it is a very vital one—the question, more important, is whether the ruling of the Parliamentarian, through the Chair, in this particular case is going to be the ruling from here on out.

I cannot imagine any Senator, regardless of how he feels about this issue, backing up the ruling of the Parliamentarian, through the Chair, in this instance.

I simply ask the question: Aside from the immediate consideration of whether the Senator from South Carolina has given one, two, or no speeches, how does the minority leader suggest, with his skill and expertise in this area, that we extricate ourselves from the position we are presently in? What suggestion would he have in that area? I think he agrees with me that, aside from the rights of the Senator from South Carolina, the overriding issue is going to be the rights of all of us in postcloture situations in the future. What do we have to do? Do we overrule the Chair; and if we do, would that set the precedent that would keep this from happening in the future?

Mr. BYRD. Mr. President, I shall answer the question. It is an incisive and good question and appropriate.

In the first place, if the facts are as they have been described to me, then the Senator from South Carolina has been wrongfully—wrongfully in the context of Senate rules and precedents—deprived of his right to speak. But, more important, and I am sure the Senator from South Carolina will agree with me, what we have here is a matter before the Senate that involves whether or not the Senator from South Carolina will be deprived of his right to speak tomorrow, or a year from now.

It involves the right of every Senator on this floor—the right of the Senator from Nebraska—to speak twice, to make two real speeches in the same legislative day, on the same question, once another Senator has challenged his right, under the circumstances as found here today. That is what is at stake here.

As a matter of fact, some people may not realize it, but this question here is more important in the long term, in the overall future of this unique body's rules which give Senators the right to stand and speak as long as their feet will hold them—in the long run it is a more far-reaching question than the legislative matter that is being debated.

Mr. EXON. How do we get out of it?

Mr. BYRD. How do we get out of it? By appealing the ruling. First of all, I said I was not in here when this all happened.

I will have to ask whether or not the Chair has actually ruled. If the Chair has ruled, then I will appeal that ruling. If a Senator wants to move to table the appeal, he can move to table it, and I will ask for the yeas and nays, and the Senate will decide.

If the Senate refuses to table my appeal, or if the Senate sustains my appeal, then the Chair's ruling is overturned, and we then have a real precedent, not just an opinion expressed by different occupants of the chair, as referred to in the footnote involving the June 12, 1935, date.

□ 1410

Mr. HARKIN. Mr. President, will the minority leader yield on that?

Mr. BYRD. Yes.

Mr. HARKIN. I am intrigued by what the leader has said earlier in reading the preface to the Senate rules, trying to understand the difference between the word "without" and the words "see" and "see also." Then I referred back to page 785 of the Senate rules where it discusses a parliamentary inquiry.

I could direct the leader's attention to page 785.

Mr. BYRD. Yes; I am looking on that page. Yes.

Mr. HARKIN. And where it speaks of the parliamentary inquiry on that third paragraph from the top it said:

> Unlike rulings of the Chair, the responses to parliamentary inquiries do not create precedents for the Senate; if there are a series of responses to parliamentary inquiries over a long period of time on which nothing to the contrary has occurred, such responses are used as guidelines for decisions.

I emphasize that—"guidelines for decisions" but not rulings.

> The reason that a response to a parliamentary inquiry is not considered as a precedent is due to the fact that a Senator may not take an appeal from the Chair on the response to a parliamentary inquiry.

Mr. BYRD. That is right.

Mr. HARKIN. So we had the strange situation that according to the footnotes the Parliamentarian has suggested to the Chair a ruling not based upon precedents but based upon a parliamentary inquiry. It could not have been a precedent because no appeal could have been taken from the Chair on that.

So we have the strange situation here of the Chair being advised by the Parliamentarian to make a ruling on something which could not have ipso facto been a precedent of the Senate.

So now how can we appeal from a ruling of the Chair which on the face of it had to be based upon an erroneous interpretation of what was and what was not a precedent of the Senate? It seems it is almost like we are in a bit of a grid lock here on this if in fact that was the ruling of the Chair because the ruling could not have been based upon a precedent because it could not have been a precedent.

Mr. BYRD. Let me say at this point, the Chair is called upon to make a ruling, whether or not there has been a precedent and I am trying to answer the Senator's inquiry.

If a question of order is raised, the Chair has to make a ruling or submit the matter to the Senate for its decision. If there is no precedent—as the Senator states—the Chair still is required to make a ruling or submit the question to the Senate.

Let us say the Chair rules. He may make his ruling on the basis of opinions that have been expressed by the occupants of the chair in previous years in response to parliamentary inquiries. I am not saying the Chair has no right to make a ruling thereon. There may be no precedent. There may be no clear rule. Yet, he is required either to rule or to submit the question to the Senate for its decision.

In making his ruling, if there is no previous precedent, he may depend upon previous responses to parliamentary inquiries, but they are not precedents.

The Chair, indeed, is setting a precedent, launching out on his own when he does that, and in this instance it is my contention that the ruling not only has no basis in precedent but that it also is a bad ruling and that it will wreak havoc upon the deliberations of the Senate in the future and certainly upon the rights of Senators to speak if it is allowed to stand.

Mr. HARKIN. Mr. President, if the minority leader will yield further on that, I thank him for that response. That is the response I thought would be elicited from my inquiry. I know this Senator would have to think long and hard about overturning an opinion of the Chair that was based upon precedents because we have to rely on precedents if we are going to have orderly running of the Senate. My point was this ruling is not based upon precedents.

Mr. BYRD. No, it is not.

Mr. HARKIN. Not whatsoever.

Mr. BYRD. None whatsoever if nothing more can be shown than the two or more responses by the Chair that were made to parliamentary inquiries back in 1935, cited in the footnote.

The Senator can during any time during the day whether under cloture or not, stand and ask the Chair, "Mr. President, a parliamentary inquiry." The Chair will say "The Senator will state his parliamentary inquiry." And the Senator will ask the Chair question. The Chair will render an opinion in response.

That is not a precedent. That is merely an opinion of the Chair.

Now, I came into the Chamber, there was a quorum call under way, and Senator HOLLINGS told me what had happened.

Someone had called for the regular order. The Chair interpreting, I will say the rule—there is no rule—but the Chair in response to the call for the regular order took Mr. HOLLINGS off his feet and said, "The Senator has already made his two speeches." I would like to know what the Chair said.

The PRESIDING OFFICER. The Chair did rule under the regular order the Senator from South Carolina has already delivered two speeches on the same subject and a third speech would be out of order.

Mr. BYRD. Mr. President, before I appeal the ruling of the Chair, I yield to the distinguished Senator from South Carolina for a question.

Mr. HOLLINGS. Will the distinguished Senator from West Virginia, since I am not allowed to talk, ask unanimous consent to include the authority that the Parliamentarian relies upon because, as the book says, it says "See" and when you see it that means read it and understand it and if you read it and understand it a fifth grader will tell you this is no authority, no precedent, no basis for the point we are talking about, absolutely none. He has no precedent; he has no authority.

So I would ask the distinguished Senator from West Virginia as a personal favor to me please include by unanimous consent his so-called authority in the RECORD so anyone can read the full RECORD and look at his authority and understand the nonsensical nature of this particular rule.

Mr. BYRD. Mr. President, I will do that but at the moment does the Senator from Wisconsin wish me to yield to him?

Mr. KASTEN. No, I do not wish that.

Mr. BYRD. Yes.

Mr. President, I shall appeal the ruling of the Chair just in a moment but before doing so I shall ask unanimous consent, first of all, so that Senators in a future day may have the whole matter before them, in a future day.

I ask unanimous consent that beginning on page 624 of the book on Senate Procedure by Floyd M. Reddick, the Parliamentarian Emeritus, copyright 1981, beginning on page 624 paragraph titled "Speeches Allowed in Same Legislative Day" page 625 through page 626 and down to the close of the paragraph on 627 be printed in the RECORD.

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

SPEECHES ALLOWED IN SAME LEGISLATIVE DAY

"No Senator shall speak more than twice upon any one question in debate on the same legislative day without leave of the Senate, which shall be determined without debate,"[470] and "day" as used in Rule XIX means a legislative day,[471] but the rule is not self enforcing.[471a]

A Senator has a right to speak twice only in the same legislative day on the same question,[472] for example, on a conference report,[473] on a bill or on any amendment thereto.[474]

If a Senator has spoken twice on an amendment in the same day, he is entitled to make two additional speeches on an amendment proposed to that amendment,[475] or any different question brought before the Senate, as a motion to recommit.[476]

A Senator may make two speeches upon the same question in the same legislative day, and if he yields for a speech by another Senator he will lose the floor upon a point of order being made, and his speech will thereby be terminated.[477]

Under Rule XIX, a Senator is not entitled to speak more than twice in the same legislative day on the same question and when called to order during his third speech will lose his right to the floor.[478]

A Senator who has spoken twice on the same question may be recognized to make a motion,[479] and by leave of the Senate or the adoption of a motion to that effect, to be determined without debate, a Senator may speak more than twice upon the same question on the same legislative day.[480]

When a conference report taken up on motion is displaced by another matter taken up on motion, and such conference report is subsequently taken up again, a Senator who spoke on the report when it was first under consideration will have two speeches on the report when taken up the second time.[481]

In one instance, in 1948, when a Senator made a speech on an extraneous matter without knowledge that it would be counted as a speech on the pending question, he was by unanimous consent excused from the operation of the rule.[482]

In the event a speech is continued over from one day until the next by unanimous consent, it counts as only one speech, although the Senate recessed in the meantime, since the rule on recognition and number of speeches may thus be waived.[483]

A Senator who yields for a motion to recess loses the floor, and if he is recognized on the reconvening of the Senate he will be making a second speech on the pending question.[484]

The speech of a Senator who is called to order for a violation of Rule XIX, reflecting upon Senators, if he is permitted to proceed in order, is not terminated.[485]

When a bill or resolution is under consideration, a statement by a Senator concerning an extraneous matter will be counted as a speech by him on the pending question.[486]

If a Senator in possession of the floor yields to another Senator to make a motion to recess or makes such a motion himself he would lose the floor, and would have no prior right to recognition, and if recognized again, it would be his second speech.[487]

A Senator who twice yielded in debate in the same day for motions to take a recess is not entitled to recognition again upon the same question,[488] or who, during a second

[470] Rule XIX, par. 1; Nov. 30, 1973, 93-1, Record, pp. 38902-03; see May 24, 1978, 95-2, Record, p. 15224; July 25, 1979, 96-1, Record, pp. 20532-33.

[471] July 8, 1937, 75-1, Journal, p. 404; see also Feb. 28, 1949, 81-1, Record, p. 1585; Jan. 19, 1938, 75-3, Record, pp. 751-52; May 24, 1978, 95-2, Record, p. 15224.

[471a] July 25, 1979, 96-1, Record, pp. 20532-33.

[472] Jan. 19, 1938, 75-3, Record, pp. 752, 753; Dec. 27, 1920, 66-3, Record, p. 742; May 21, 1935, 74-1, Journal, p. 365; Apr. 15, 1940, 76-3, Record, pp. 4486-88; July 8, 1937, 75-1, Journal, p. 403; Feb. 18, 1927, 69-2, Journal, p. 189; see also Feb. 22, 1923, 67-4, Record, p. 4248; May 31, 1924, 68-1, Record, p. 10012; Mar. 2, 1911, 61-3, Record, pp. 3900-06; Mar. 4, 1960, 86-2, Record, pp. 4472-73; Aug. 31, 1959, 86-1, Record, p. 17389; June 20, 1947, 80-1, Record, p. 7426; June 19, 1948, 80-2, Record, p. 9138; Sept. 20, 1950, 81-2, Record, p. 15184; Oct. 1, 1940, 76-3, Record, p. 12926; Sept. 24, 1951, 82-1, Record, p. 11954.

[473] Feb. 18, 1927, 69-2, Journal, p. 189, Record, p. 4148.

[474] See Mar. 16, 1954, 83-2. Record, pp. 3330-31.

[475] See Jan. 24, 1938, 75-3, Record, p. 1001.

[476] Sept. 18, 1914, 63-2, Record, p. 15358; see May 24, 1978, 95-2, Record, p. 15224.

[477] July 8, 1937, 75-1, Journal, p. 403, Record, pp. 6896-97.

[478] Dec. 16, 1970, 91-2, Record, pp. 41747-49; May 3, 1921, 67-1, Record, pp. 965-66.

[479] See June 20, 1947, 80-1, Record, p. 7426.

[480] Mar. 4, 1917, 64-2, Journal, p. 230, Record, p. 5019; Rule XIX, clause 1.

[481] Sept. 20, 1950, 81-2, Record, p. 15184.

[482] Mar. 1, 1949, 81-1, Record, p. 1658.

[483] July 13, 1949, 81-1, Record, p. 9381; July 13, 1937, 75-1, Record, pp. 7111-12.

[484] Jan. 24, 1938, 75-3, Record, p. 1001.

[485] See June 12, 1935, 74-1, Record, p. 9170.

[486] See Mar. 1, 1949, 81-1, Record, p. 1658.

[487] See June 12, 1935, 74-1, Record, p. 9127.

[488] Feb. 23, 1927, 69-2, Journal, p. 207, Record, pp. 4495, 4496.

speech on the same day on a question, yields for a motion to adjourn loses the floor, and cannot proceed again in the face of objection which may be made after a Senator has started his third speech.[489]

A Senator who yields for the purpose of a quorum call has concluded one speech,[490] but if he yields for a quorum call on condition that his right to the floor will be preserved, a subsequent point of order that his speech was terminated by yielding for the quorum call and that he had made one speech will not lie.[491]

Under an agreement to speak only once on a bill, a Senator cannot divide the time so as to speak more than once;[492] an agreement to speak only once on a bill, or any amendment thereto, would make a second speech of the same question and would not be in order,[493] but a Senator would be entitled to speak upon a new amendment.[494]

Under an agreement limiting debate on the part of a Senator to one speech of not more than 20 minutes on any resolution or amendment thereto, a Senator may speak on an amendment to an amendment.[495]

Under an agreement to speak once on a question, a Senator having the floor cannot yield time to another Senator.

Under an agreement for a limitation of debate to speak only once on a bill, a Senator who was interrupted at a specified hour for a joint meeting was permitted to proceed with his remarks after reconvening.

Mr. BYRD. Mr. President, I ask unanimous consent that paragraph 3 on page 626 be printed in the RECORD together with the footnote citation.

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

If a Senator in possession of the floor yields to another Senator to make a motion to recess or makes such a motion himself he would lose the floor, and would have no prior right to recognition, and if recognized again, it would be his second speech.[487]

Mr. BYRD. I ask unanimous consent to have printed in the RECORD the actual opinions expressed by the Chair referred to in that footnote which says "See June 12, 1935, RECORD page 9127."

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

A Senator, in the course of an address, would lose the floor if he made a motion to recess, or yielded to another Senator to make such motion.

If a Senator is again recognized after yielding for such a motion, it would be a second speech.

A Senator yielding for such a purpose would have no prior right of recognition.

On June 12, 1935 (in 74th Congress, 1st session, Record p. 9127), during the consideration of an amendment of the House of Representatives to S.J. Res. 113, extending certain provisions of the National Recovery Act, the President pro tempore (Mr. Key Pittman, of Nevada), in reply to a parliamentary inquiry by Mr. Huey P. Long, of Louisiana, held that he would lose the floor if he made a motion for a recess. In reply to a parliamentary inquiry by Mr. Pat McCarran, of Nevada, if any other Member than the Senator who occupied the floor could move a recess without the other Senator losing the floor, the President pro tempore said:

If there is any business intervening, then the Senator is construed as starting another speech. If any business intervenes and the Senator allows it to intervene, having the power to prevent the intervention of any business, then if he is recognized it will be regarded as the beginning of a second speech.

In reply to a parliamentary inquiry by Mr. Alben W. Barkley, of Kentucky, the President pro tempore held that where a Senator yielded to another Senator to make a motion to recess or adjourn or for any other motion, that constituted business, and if such Senator was again recognized, it would be for a second speech.

The President pro tempore further held that a Senator losing the floor under such circumstances had no prior right of recognition upon the disposition of the motion, but that if he rose and addressed the Chair first, then it was the duty of the Chair to recognize him.

□ 1420

Mr. BYRD. Mr. President, I will not make my appeal at the moment because two Senators wish first to speak. As I understand it, the distinguished majority leader wishes to speak and the distinguished Senator from Wisconsin wishes to speak.

I will not at this moment make my appeal. I do not waive my right to make such an appeal and will make such an appeal.

I ask unanimous consent that I be recognized for that purpose if I so seek recognition following the speeches by Mr. DOLE and by Mr. KASTEN.

The PRESIDING OFFICER. Without objection.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1520

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

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent that I be permitted to proceed as if in morning business for a period not to exceed 10 minutes.

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

Mr. KERRY. Mr. President, I ask unanimous consent that my remarks appear at a point other than in the proceedings regarding the current debate on product liability.

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

(At this point, Mr. KERRY addressed the Senate. His remarks appear earlier in today's RECORD.)

□ 1530

The PRESIDING OFFICER (Mr. CHAFEE). The majority leader.

Mr. DOLE. Mr. President, I listened with great interest to most of what the distinguished minority leader had to say earlier about the two-speech rule. As I understand, he is now framing an appeal to the ruling of the Chair. The Chair ruled that Senator HOLLINGS had already spoken twice on the same issue during the same legislative day and therefore cannot speak again on the Product Liability Act during this same day.

I have visited at some length with the Parliamentarian, Mr. Dove.

I must say in reading the transcript I could not find anything but one speech. But I also have gone over the transcript with the Parliamentarian.

As I understand, it is the Chair's interpretation that there were in fact three speeches, the first of which is on page 55 of the transcript that I have. I understand some transcripts have different pages because the reporters rotate and thereby a different number.

The first speech would be by the distinguished Senator from South Carolina [Mr. HOLLINGS] saying:

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

The PRESIDING OFFICER. Business has not intervened since the last quorum call. Therefore——

Mr. HOLLINGS. No business intervened, Mr. President?

That is interpreted as speech No. 1.

The second speech of the distinguished Senator from South Carolina [Mr. HOLLINGS]:

Mr. President, may I inquire of the Chair—we have had some talk. What constitutes business?

Then a response from the Presiding Officer. Then Mr. HOLLINGS.

But not debate?

The PRESIDING OFFICER. Not debate. There must be action by the Senate disposing of pending business before another quorum call is in order.

Mr. HOLLINGS. I appeal the ruling of the Chair and ask for the yeas and nays.

And then there is the question:

Is there a sufficient second?

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

The PRESIDING OFFICER. A quorum is not in order.

Mr. HOLLINGS. Oh, yes, Mr. President; now business has occurred.

That constitutes the second speech, as I understand the Chair has indicated.

---

[489] Sept. 18, 1914, 63-2, Record, pp. 15346, 15357.

[490] July 13, 1937, 75-1, Journal, p. 411, Record, p. 7102; June 28, 1945, 79-1, Record, p. 6890; see also Apr. 12, 1940, 76-3, Record, p. 4419; Apr. 15, 1940, 76-3, Record, pp. 4487-88.

[491] May 9, 1949, 81-1, Record, p. 5877.

[492] See Feb. 4, 1944, 78-1, Record, p. 1246.

[493] Jan. 31, 1928, 70-1, Record, p. 2239; Nov. 7, 1921, 61-7, Record, p. 7474; Dec. 21, 1926, 69-2, Record, p. 843.

[494] Dec. 21, 1926, 69-2, Record, p. 843.

[495] See Feb. 26, 1947, 80-1, Record, p. 1439.

[487] See June 12, 1935, 74-1, Record, p. 9127.

Then the third speech, which I thought was the first speech, started on page 68 of the transcript that I have. It is probably different in the others.

In any event, I guess the question I would have is, what constitutes a speech and how, maybe perhaps, we would be better able to discuss this after the distinguished minority leader has framed the question in his appeal.

I do share the view unless it is clarified, particularly the leaders would have a difficult time in trying to operate the Senate if we were to conclude, after suggesting the absence of a quorum, or being recognized on two occasions, that is all we could do or nearly all we could do for the remainder of the legislative day.

Mr. President, I would hope the distinguished minority leader might be prepared to frame the question. I guess the only question I would not have at this time but, after the question is framed would be: What would be the result if the appeal of the ruling of the Chair is overruled, what would be the precise impact overruling of the Chair would have? That will depend, in part, on how tightly or how loosely the question is framed.

Mr. KASTEN. Will the majority leader yield?

Mr. DOLE. I yield the floor.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Mr. President, it is important that we maintain the two-speech rule. I believe, however, that the current interpretation is too narrow and the procedural motions such as asking for the yeas and nays, calling for a quorum call, moving to instruct the Sergeant at Arms, asking for a division, making a unanimous-consent request for a committee to meet, as I did, and I am told that that counted as a speech, these kinds of procedural provisions ought not to be interpreted as speeches under the two-speech rule.

So because I believe these procedural motions ought not to be considered as speech, I will vote with the leadership to overturn the ruling of the Chair. However, it is crucial that we maintain the two-speech rule and that Senators be limited to two speeches on the same subject on the same day. Our challenge, I think, as the majority leader said, is to define a speech. I am hopeful that we will define a speech in a way that will not be so narrow as to permit Senators, particularly the leadership but all Senators, to be able to have their rights to make procedural motions and not have those procedural motions be counted against them with the two-speech rule.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. Does the Senator from South Carolina wish to be recognized?

Mr. HOLLINGS. Will they let me talk? Yes.

Mr. President, I ask unanimous consent that I be recognized for a minute or two.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, I only refer to page 51 of the transcript when the Presiding Officer asked did I yield, and my answer was, according to the record:

> No, I do not. I would like to make this thought. I have not spoken today on this particular matter. I would like to be heard because of certain misleading statements.

I realized I had not made a talk. In fact, I was waiting for other Senators to talk. So it boiled down into the fundamental. The fundamental is, shall motions, mere recognition and motions, whether it is a call to order, whether it is really technically a motion to require a quorum, a motion to make a parliamentary inquiry, whether any recognition for a motion in a parliamentary body is considered a speech.

Obviously, it is not. There is no precedent whatsoever to sustain.

We have asked the distinguished minority leader. The distinguished minority leader has included those things referred to by the Parliamentarian as his authority.

I would request respectfully of my colleagues to look at those so-called precedents or authorities and you will immediately see that they are not precedents; they are not authority. They have to do with rulings where speeches are being made and interruptions are suffered or the speech maker turns to make a motion for a recess, losing the floor, and then constituting a second speech.

It all relates to making a speech but not to actually being recognized and making a motion.

We could not constitute a parliamentary body if mere recognition constituted a second speech. The distinguished leaders, not just the managers of the bill but every day the leaders on both sides of the aisle, have the duty of trying to keep the flow of business flowing and they would talk several times under that strained ruling.

This does not refer just to the matter of postcloture but this refers generally to the two-speech rule. That would be a very, very strained rule and inhibit any orderly proceedings.

That never was the rule. It is not the rule. The rule is very clear. It says do not make more than two speeches.

□ 1540

Do not make more than two motions, do not make more than two inquiries of the Chair, whether for a quorum or a parliamentary ruling. This is strained nonsense. It has no support whatsoever in any precedent in any parliamentary body.

Mr. DOLE. Mr. President, I just want a point of clarification. As I understand it, the two-speech rule applies to two speeches on the same issue. If I had 10 amendments, I could make 20 speeches, is that correct?

The PRESIDING OFFICER. Two speeches on the same question.

Mr. DOLE. So whatever the question was, if there were dozens of questions, I could make dozens of speeches?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I think that is precisely what the Senator from South Carolina had in mind. It is important that we understand that, I think.

Mr. HOLLINGS. Right.

Mr. BYRD. Mr. President, precisely what was the Chair's ruling?

The PRESIDING OFFICER. The Chair ruled as follows:

> Under regular order, the Senator from South Carolina has already delivered two speeches on the same subject. A third speech would be out of order.

Mr. BYRD. Mr. President, if that constitutes the ruling of the Chair, then the appeal to that ruling—which, under cloture, is not debatable, and to which I intend to speak—this may be my second speech; it is, I guess. But I shall still have some time under the hour, I suppose, and I can get additional time, maybe. That rings up another point. If my hour runs out, that is the end of my second speech. Can another Senator yield me an additional hour under the cloture rule? I ask the Chair.

The PRESIDING OFFICER. Another hour can be yielded to the Senator as leader.

Mr. BYRD. Suppose at the end of my second speech, my hour runs out. The Chair says the time has expired. I no longer have recognition, am I correct, at that point?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Then Mr. DOLE very graciously says, "Well, I will yield the Senator from West Virginia an additional hour." But I have already made two speeches. What good does it do for him to yield me a second hour, or third hour, to which I am entitled under rule XXII as a leader or as a manager or as the ranking manager? Under this ruling, I am just pointing out that such a ruling in essence would, to all practical intents and purposes, invalidate the provision under rule XXII whereby other Senators may yield additional time to the majority leader or to the minority leader or to the manager of the bill or to the ranking manager. They may yield, but the recipient cannot be recognized for

what would then constitute a third speech.

The ruling says:

Under regular order, the Senator from South Carolina has already delivered two speeches on the same subject. A third speech would be out of order.

If we simply appeal that ruling, the Senate would be doing this:

It would be simply saying that the Senator from South Carolina had not delivered two speeches on the same subject and he will be allowed to speak the third time. That is all we would achieve. We would just be saying, no, the Chair was wrong, Senator HOLLINGS has not delivered two speeches.

Second, the Senate would be making a very bad judgment in that case, because the Chair said a third speech would be out of order. We all agree that the third speech is out of order. So if we appeal the ruling of the Chair just based on that language alone, we are saying the Chair is wrong, a third speech would not be out of order.

The verbiage of the ruling itself is not sufficient alone for the Senate to clarify this simple matter simply by appealing the ruling of the Chair.

The PRESIDING OFFICER. The Senator's 1 hour has expired.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak further in advance of the appeal which I shall make.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, the Presiding Officer said, reading from the transcript:

It is the interpretation of the Parliamentarian that any recognition is considered in this context as a speech and, of course, the reading of the transcript will give full evidence of the exact request of the Senator from South Carolina.

I had asked the question as to whether or not, Mr. HOLLINGS having gotten recognition and having suggested the absence of a quorum, that action on his part in suggesting the absence of a quorum constituted a speech. The Chair says:

It is the interpretation of the Parliamentarian that any recognition is considered in this context as a speech——

We are told by the Chair, upon the advice of the Parliamentarian, that any recognition for any purpose when the Senate is proceeding under cloture rules, the Senate having voted cloture, that such recognition constitutes a speech. That is one speech.

Mr. LONG. Will the Senator yield?

Mr. BYRD. Yes.

Mr. LONG. I ask the Senator to yield on my time.

Mr. President, the precedent to which the Senator addresses himself is the precedent made by the father of the Senator speaking. My father was standing right there at that chair. At that time, the National Recovery Act had been declared unconstitutional when Franklin Delano Roosevelt was President. My father knew the public was overwhelmingly disgusted with the whole thing and he tried to make a revised National Recovery Act. My father was joined by a minority of the Senate—they were Democrats, by the way. They undertook to speak against the National Recovery Act, that the public was disgusted with the whole thing, it should be declared a lousy idea and forgotten and dispensed with. But the administration was trying to save what it could of an act that had been declared unconstitutional under the Constitution of the United States by the Supreme Court.

I recall my father standing there and going on at great length about what fine, courageous justices they were, to have the courage to stand up against a powerful President of the United States and the rest of it. I was about 15 years old at that time, sitting right over there on that side of the family gallery that we are looking at from here.

So, as his speech went on and on, he suggested the absence of a quorum. Now, prior to that time, the record for a filibuster was set by Senator Robert La Follette of Wisconsin. He spoke for about 18 hours, but he had about a dozen quorum calls in the course of all that. In the tradition of the La Follette speech, the great Senator from Wisconsin, Huey Long suggested the absence of a quorum. So someone made the point of order that by suggesting the absence of a quorum, he had terminated his first speech and commenced a second speech.

□ 1550

John Nance Garner, in loyalty to the White House, sitting there in the chair, proceeded to rule that that was correct, and in doing so he overruled all the precedents prior to that time. How could Bob La Follette get away with it a dozen times and Huey Long not get away with it once? Well, it was because, I assume, the powers that be decided Huey Long should not be accorded the same courtesy as accorded Bob La Follette so such a ruling was handed down, and he proceeded to go on from there notwithstanding that ruling.

Now, at the conclusion of that speech, there was a Senator from one of the other States—either Senator Gore or Senator Schall—who was in total agreement. There were two blind Senators, it turned out at that time, both of them strong supporters of my father's position, so one of these blind men got up and submitted a transcript that would stand about a foot just in the written pages. He sent it to the desk and asked under usual courtesy that the speech might be read. The clerk proceeded to rifle through that speech about five pages at a turn. He would lower his voice and turn about five pages; lower his voice and turn about five pages, and disposed of a 150-page speech in about 5 minutes. And those who were on my father's side thought that was not fair at all. I recall that the man who was then my father's assistant clerk, who today is described as administrative assistant—his name was Bob Christianberry—was outraged about that and he said, "How dare you do something like that? That speech would have taken at least 2 hours to read, maybe 5 hours." And I recall one speaking from the other side said, "Well, now, let me ask you fellows how long it would have taken that gentleman when you were Governor?" And Mr. Christianberry said, "Well, we probably would have gotten through it in about half that time."

But it is best to recognize practicality on occasion. The practical matter was that rule was set. It was something of a usurpation at the time.

Now, to suggest that a mere parliamentary inquiry, for example, would be a speech, in my judgment is an outrage. At some point we ought to be willing to be fair about a matter like this and to recognize that a speech means more than just making a point of order or to ask a parliamentary inquiry or something of that sort. Now, as one who has been in many filibusters in years gone by, if it is a crime—and a filibuster by definition is an act of piracy—then I would assume that one could have a very tight rulebook on anyone who is filibustering in the Senate, if that is what it be. But what would it gain one to deny a Senator his rights to speak on the motion to proceed when you look at what lies just beyond that? For example, when you get the bill before the Senate, a Senator can offer an amendment—he can offer any number of them—so that one can still speak at great length even when the motion to proceed has been agreed to.

So my thought about the matter is we should be reasonable and tolerant about this matter. And I say that as one who voted for the bill and one who intends to vote for it.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Louisiana. The Chair referred to the occasion when the distinguished Senator's illustrious father was speaking and made the point about a quorum.

Mr. President, let me also make it clear that the two-speech rule does not obtain just when the Senate is operating under cloture. It obtains at any time on any day. Am I correct, may I ask the Chair?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Now, Mr. President, looking at the Chair's ruling and laying the predicate for my appeal, the Chair said: "The Senator from

Wisconsin does not have to be recognized. He made a call for the regular order."

Well, obviously, none of that constitutes the ruling of the Chair. No one disagrees.

The Chair went on to say, "A third speech would be out of order." Well, nobody disagrees with that. That is clear. So we must confine ourselves in crafting the appeal and in voting thereon, confine ourselves to address the ruling—it being that under regular order, "the Senator from South Carolina has already delivered two speeches on the same subject."

Now, the Chair had to have some rationale on which to base that ruling. Now, if I could ask the Chair at this point if the Chair would please state the reasonings behind its ruling, the rationale behind the ruling to wit, that the Senator from South Carolina had already delivered two speeches on the same subject.

The PRESIDING OFFICER. Since it is the responsibility of the Chair to keep time, the Chair had noted that on at least two occasions the Senator from South Carolina has used at least 1 minute in debate.

Mr. BYRD. Mr. President, would the Chair cite those two instances?

The PRESIDING OFFICER. The Chair now has the transcript which it did not have at that point and has ascertained that the Senator from South Carolina spoke on 11 different occasions in that period.

Mr. BYRD. Mr. President, has the Chair just stated that the Senator from South Carolina had made 11 speeches?

The PRESIDING OFFICER. The Chair did not say that the Senator from South Carolina had made 11 speeches. The Chair said that the Senator from South Carolina had spoken 11 times.

Mr. BYRD. Would the Chair cite for the RECORD those 11 instances?

The PRESIDING OFFICER. The Chair will read each instance.

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

The PRESIDING OFFICER. Business has not intervened since the last quorum call; therefore——

□ 1600

Mr. BYRD. Mr. President, will the Chair indulge me for a suggestion? We are reading from the same transcript. So that I might follow the Chair, will the Chair indicate the page numbers on which the Senator from South Carolina spoke 11 times?

The PRESIDING OFFICER. The first instance the Chair read from is on page 55.

Mr. BYRD. I thank the Chair.

The PRESIDING OFFICER. The second is also on page 55:

Mr. HOLLINGS. No business has intervened, Mr. President?

Mr. HOLLINGS. That is a motion, not a speech.

The PRESIDING OFFICER. The third instance is on page 56.

Mr. LONG. Is the Chair saying that that was a speech?

The PRESIDING OFFICER. The Chair did not say there was a speech. The Chair said the Senator from South Carolina spoke on 11 occasions.

Mr. LONG. Will the Chair state which one was a speech?

Mr. BYRD. I ask the Chair be allowed to state the 11 instances, so that the RECORD will be concise and clear.

The PRESIDING OFFICER. The third instance is on page 56:

Mr. HOLLINGS. Mr. President, may I inquire of the Chair—we have had some talk. What constitutes business?

The fourth instance, on page 56:

Mr. HOLLINGS. But not debate?

The fifth instance, on page 56:

Mr. HOLLINGS. I appeal the ruling of the Chair and ask for the yeas and nays.

The sixth instance, on page 56:

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

The seventh instance, on page 56:

Mr. HOLLINGS. Oh yes, Mr. President; now business has occurred.

The eighth instance, on page 68:

Mr. HOLLINGS. Parliamentary inquiry. What is the motion?

Page 68, the ninth instance:

Mr. HOLLINGS. The appeal was out and then we got a quorum call.

The tenth instance, on page 68:

Mr. HOLLINGS. I withdraw the appeal. Is that all right?

The eleventh instance:

Mr. HOLLINGS. The appeal is withdrawn and I suggest the absence of a quorum.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. Mr. President, it is obvious to anyone who is willing to look the facts in the eye that we are not talking the same language in this Chamber. I have searched this transcript. There is one speech, which everyone would have to agree, by Mr. HOLLINGS—one speech—and that was before he could finish. That was on page 51 of the transcript—it began on page 51 of the transcript—and that was interrupted, without his having yielded the floor. That was interrupted by Mr. KASTEN when he asked for the regular order, saying:

The Senator from South Carolina has already spoken twice on this issue * * *

Mr. HOLLINGS. I have not yielded the floor, Madam President.

That was one speech.

The instances the Chair has cited make it very clear that the Chair, on the advice of the Parliamentarian, is defining any motion, any request for the yeas and nays, any quorum call, any appeal, any of such motions which require any action whatsoever of the Senate, as a speech, in the interpretation of the two-speech rule.

Mr. HOLLINGS. Mr. President, will the distinguished minority leader yield at that point?

The PRESIDING OFFICER. The Chair only said there were two speeches.

Mr. HOLLINGS. Will the distinguished Senator ask the Parliamentarian to designate the two speeches? Then we will know where they are.

Mr. BYRD. Yes, I will be glad to.

The PRESIDING OFFICER. The first speech is on page 55 to page 56, and the second one is on page 68.

Mr. BYRD. On page 55, would the Chair read the first speech by the Senator from South Carolina?

The PRESIDING OFFICER. All that the Chair read, the statements, 1 through 7, constitute the first speech.

Mr. HOLLINGS. All of that, 1 through 7, constitutes the first speech? Come on.

Mr. BYRD. And the second speech?

The PRESIDING OFFICER. The second speech, page 68, includes items 8 to 11.

Mr. HOLLINGS. That is when I was objecting to the ruling.

Mr. BYRD. Mr. President, the ruling of the Chair having been that "The Senator from South Carolina has already delivered two speeches on the same subject," and that, from a careful study of the transcript, it having been shown that in the ordinary understanding of the English language, the Senator from South Carolina made one speech, that being the one which begins on page 68 of the transcript, and which speech was interrupted by the call for the regular order by Mr. KASTEN, I appeal that ruling on the basis——

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. BYRD. I yield.

Mr. LONG. Mr. President, I hope the Senator will withhold that appeal for a moment. I would like to claim the floor for a moment or two.

The PRESIDING OFFICER (Mr. EVANS). The Democratic leader has the floor.

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

Mr. BYRD. I will yield.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BYRD. If the Senator will allow me, I yield, Mr. President, with the understanding that I do not lose the right to the floor.

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

The Senator from Louisiana.

Mr. LONG. Mr. President, in situations such as this, the Senator from Louisiana has been involved on both sides of these issues. The Senator from Louisiana has been in filibusters on occasion, and on occasion he has been on

the other side, seeking to shut off a filibuster. One finds himself in that situation, having served 38 years in this body.

□ 1610

And when these type situations occur, this Senator has always asked himself, Does the end justify the means? In other words, Do you want to deny the person the right to further proceed, or are you justified under the circumstances?

While that moral question has troubled me many times, I finally conclude it is all a matter of degree.

In this situation the Senator from South Carolina has been opposing a motion. Cloture has been voted. He is entitled to 1 hour and that is all he is entitled to. He is entitled to speak for 1 hour.

But the way I read the ruling of the Chair he would be denied the right to speak for 5 minutes.

I found myself in situations where I went to the then majority leader, Mr. BYRD, now the minority leader, and suggested to him that we were going to have to make some new precedents because one exercising his rights after cloture has been voted was unduly delaying the Senate and it gave the then majority leader, Mr. BYRD, problems that he provide leadership to cut off the filibuster which was necessary to do under the circumstances.

But in this situation, Mr. President, for the life of me I do not understand why we need to rule that a Senator has made a speech when he has talked about 1 minute, when he has merely made a motion or spoken about one line in the RECORD.

It just seems to this Senator that that is not justified. If he had 1 hour, let the Senator from South Carolina speak his 1 hour and during his 1 hour he has the right to make several motions.

I do not think anyone can find any precedent in the record, and I will invite the Parliamentarian to find one if he can, where the mere making of a motion was regarded as a speech by the occupant of the chair. That will be the first time we had such a ruling. If it were made, it would be wrong.

Mr. President, in situations like this, every Senator better consider his own situation. There may be a time it has served us here but he might be strongly opposed to something that is transpiring in the Senate. He may need to claim his rights on the floor to speak, and to suggest that the one who speaks five or six words or makes a motion or makes an appeal that he has made a speech would be a trespass upon the rights of every Member of this body.

The worst thing about all that is that it would set a precedent that the Senate should not be asked to live with. There is nothing that this Senator ever suggested that should be done even in terms of making new precedents that would go that far.

I have heard the quotations in the RECORD that have been read, and please understand, Mr. President, I am for the bill, voted for it in the committee and in due course if the bill reaches final passage I intend to vote for it, but I respect the rights of the Senator from South Carolina, and he is not speaking for a few votes. He is speaking the views of many Senators.

In my judgment, Mr. President, I could not support a proposal to say that the Senator has made two speeches based on that which has been cited for the RECORD.

I would think, Mr. President, that those who want to pass the bill should do what you have to do in this body when you do not agree with the speech the Senator is making, sit there, or if you want to do what they have done now, vacate your seats, just walk on out and let someone else protect your rights. But the Senator has the right to speak under these circumstances and if it is forced to a vote, even though I for one would like to see the bill passed, I would be compelled to vote to protect the rights of the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, could I have unanimous consent for 30 seconds?

Mr. BYRD. Mr. President, I yield for that purpose with the same understanding as before.

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

Mr. HOLLINGS. Just 30 seconds.

Mr. President, looking at the RECORD right quickly, Mr. HOLLINGS objected on page 50, which is disregarded by the Parliamentarian. On page 51, he disregards again another appearance of mine in recognition for an objection, and again on page 51 down at the bottom of that page, again on page 52 when I said: "By all means, I suggest the Senator go right ahead."

He just disregards that, and he starts in after his disregard of those appearances, starts counting on page 55 with one and then he goes down and counts 11 instances, and in the 11 instances he says now a quorum call one, a question two, a question three, a question four, appealing of the Chair five, a quorum call six, and seven a statement, "Oh, yes, but business has occurred." Those first seven that constitutes a speech.

Maybe that is why I was not understood on the Presidential campaign if that is the thought.

Then, the second speech I have is 8, 9, and 10 when I asked for a parliamentary inquiry and object and appeal.

I still had not gotten to the talk, and then when I talk it is the third talk.

It is quite obvious that the Parliamentarian is a moving target. He was trying to get authority in the books and he could not find authority in the rules or in the precedents and now when asked just a moment ago he moves over to time and he culminates an objection or motion or request for a quorum and he packages those nicely together and he calls that speech one, and then culminates all times and calls that speech two.

We are going to have to get a magician for a Parliamentarian up here for the regular, ordinary, sane, and prudent man to determine when a speech is made.

This is absolutely ludicrous.

I thank the distinguished minority leader.

Mr. BYRD. Mr. President, I suggest the absence of a quorum, but before doing so, I ask unanimous consent that I may be recognized immediately upon the termination of the quorum call.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1620

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

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

The minority leader is recognized.

Mr. BYRD. Mr. President, I appeal the ruling of the Chair, to wit, that the Senator from South Carolina had already delivered two speeches on the same subject. I appeal the ruling of the Chair and I make my appeal to the Senate and base it upon the fact that procedural motions or requests, such as, for example, parliamentary inquiries, appeals from the ruling of the Chair, points of order, suggesting the absence of a quorum, the withdrawal of appeals, requests for the yeas and nays, do not, in and of themselves, constitute a speech within the context of the two-speech rule. And I ask for the yeas and nays on this motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Appeals after cloture are not debatable.

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for 2 minutes.

The PRESIDING OFFICER. Is there objection? The majority leader is recognized for 2 minutes.

Mr. DOLE. Mr. President, I do this just to make—and I am certain the distinguished minority leader has given this a lot of thought and with a lot of experience.

71-059 O-87-34 (Pt. 18)

I guess the question of the Chair would be: If the Chair is overruled, then what would be the consequences?

The PRESIDING OFFICER. If the Chair is overruled, the Senator from South Carolina would still be making his first speech and would be recognized.

Mr. DOLE. And then, any additional speaker, or from this time on then, in addition to the impact it would have on the distinguished Senator from South Carolina, any of the requests that the distinguished minority leader pointed out at a future time would not, in any event, constitute a speech?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Are there any others that come to mind of the Chair that should be included?

The PRESIDING OFFICER. The only additional element that comes to mind is a request to divide an amendment as a procedural request.

Mr. DOLE. In addition, there were, I think——

Mr. BYRD. Would that not be included within the verbiage of the appeal that I made? I said any procedural motion——

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Or request.

And besides, I did not phrase my appeal in such a way that it is the alpha and omega; it is not all inclusive. But these specifics were all set out only as examples.

The PRESIDING OFFICER. The Senator's statement was not all-inclusive. It was by example.

Mr. BYRD. Exactly.

□ 1630

Mr. DOLE. In this case, the Senator from Wisconsin, Senator KASTEN, made a unanimous-consent request that committees be allowed to meet. Would that be covered by the distinguished minority leader's request?

Mr. BYRD. That would be in the language I included.

The PRESIDING OFFICER. The Chair understands it would tend to include all unanimous-consent requests as being within the purview of this motion and not counted as intervening material.

Mr. BYRD. I said they were procedural. That is in the appeal language now, and we can have the official reporter read it back. It is there.

Mr. DOLE. As I understand, the unanimous-consent request itself would be covered by the distinguished minority leader's appeal.

Mr. BYRD. Yes, and not counted as a speech, standing alone.

The PRESIDING OFFICER. The Chair believes that since the motion is intended to become precedent to the Senate, the motion should be available in printed form so that everyone clearly understands precisely what the request is.

Mr. BYRD. The Chair is correct. I would like to prepare it in written form.

□ 1650

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

The PRESIDING OFFICER. There is no quorum call in progress.

Mr. BYRD. Mr. President, in response to the Chair's request that the appeal be made in writing, which the Chair has a right to make and any Senator has a right to make, I have prepared the following appeal in writing:

I appeal the ruling of the Chair, and I make the appeal to the Senate on the basis that, standing alone, procedural motions or requests such as, but not limited to, the following shall not constitute a speech within the context of the two-speech rule: Parliamentary inquiries, appeals from the ruling of the Chair, points of order, suggesting the absense of a quorum, withdrawal of appeals, requests for the yeas and nays, requests for a division vote, requests for reading of amendments, requests for division of amendments.

The PRESIDING OFFICER. Can the Chair ask for a clarification on the term "standing alone"? Is it the Democratic leader's intention that if a motion of the sort he has mentioned is preceded by as little as two or three sentences of explanation, that would constitute a speech?

Mr. BYRD. I am attempting to avoid a situation in which a Senator in making a motion to table, for example, or making a point of order, or making an appeal, stands and lays the predicate for his point of order and speaks thereon; the motion itself would not be standing alone. It would have been preceded by a speech. What I am trying to say is that the motion itself, standing alone, in and of itself, does not constitute a speech.

The PRESIDING OFFICER. For further clarification, the Senator is really speaking of the words that constitute the motion itself?

Mr. BYRD. I beg the Chair's pardon.

The PRESIDING OFFICER. The Senator is speaking then of simply those words that constitute the motion itself?

Mr. BYRD. Yes; the procedural motion.

The PRESIDING OFFICER. Yes.

Mr. BYRD. Or request. And we should keep in mind what we are talking about is the two-speech rule, and that the two-speech rule refers to two speeches on the same question in the same legislative day.

In the case that brought all this colloquy about, the Senator from South Carolina was speaking—he began one speech—and it was on the motion to proceed to the product liability bill.

We are speaking now on an appeal. I am not speaking on the motion to proceed to the product liability bill right now. I am speaking about the Chair's ruling. So what I am saying is in explanation of the appeal.

There may be those who say, "Well, if he makes a point of order, he has to state why he makes the point of order." Is that going to constitute a speech? Well, it might very well. It will constitute a speech on that point of order. But, the point of order without the speech, does not, in itself, constitute a speech.

The PRESIDING OFFICER. The Chair says to the Democratic leader that the motion is not debatable.

Mr. BYRD. I understand that. I was only trying to respond to the Chair's appropriate inquiry.

□ 1700

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOLE. Mr. President, earlier, I made an inquiry. I think the word "request" was used in the earlier appeal, and I asked whether or not that would cover unanimous-consent requests. Would that be covered in this appeal?

The PRESIDING OFFICER. The latest statement, as put by the Democratic leader, did not include unanimous-consent requests.

Mr. BYRD. May I clarify that? It did include unanimous-consent requests. I said: "I make the appeal of the Senate on the basis that, standing alone, procedural motions or requests * * *"

Mr. DOLE. The reason I am concerned about that particular one is that I can envision somebody making a unanimous-consent request that might take a couple of hours. It seems to me that we, in effect, invoke cloture and then permit somebody to speak for hours, propounding some unanimous-consent request.

He could get up and say, "I ask that the Committee on Agriculture be permitted to meet," and then read the bill.

I know that the distinguished minority leader does not intend that.

So I hope it did not include unanimous-consent requests, unless we had some way to circumscribe the request.

The PRESIDING OFFICER. The term "unanimous-consent request" was not in the written version, but the term "request" was in there, and presumably it could be concluded that unanimous-consent requests are requests.

Mr. BYRD. Mr. President, I ask unanimous consent that I may respond to the distinguished Senator's question, which is an appropriate

question, and that the time not be charged against him.

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

Mr. BYRD. Mr. President, the predicate itself is the appeal. The examples I have set forth are for explanatory purposes. That is precisely what they are—they are specific examples, and they are not all-inclusive, because I used the verbiage "not limited to." The appeal is all one sentence.

If I wanted to take out the "such as" and the providing of examples, I would simply say: "on the basis that, standing alone, procedural motions or requests shall not constitute a speech within the context of the two-speech rule."

So I have used the words "requests" and "procedural motions."

Parenthetically, as it were, I am saying, "such as, but not limited to, the following." That is the parenthetical, explanatory material: parliamentary inquiries, appeals from the ruling of the Chair, points of order, and so on. But it is clear from the verbiage that unanimous-consent requests are included; so that if the leader rises and makes a straightforward unanimous-consent request—nothing more—that does not constitute a speech within the context of the two-speech rule. If the Chair's ruling were to be upheld, the leaders unanimous-consent request would constitute a speech.

Besides, we have the legislative history, so certainly the readers of the RECORD 100 years from now will understand what we are talking about, especially now that the majority leader has asked specific the question.

I thank the distinguished majority leader.

Mr. DOLE. I thank the distinguished minority leader.

Mr. President, I will suggest the absence of a quorum, and I would like to discuss the appeal with two of my colleagues who have just come to the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

□ 1750

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the clerk dispense with the reading of the roll.

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

OMNIBUS BUDGET RECONCILIATION ACT, 1987

Mr. DOMENICI. Mr. President, I have cleared the unanimous consent request that I am going to make with reference to reconciliation with both sides and with the majority and minority leader.

Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 5300; that all after the enacting clause be stricken and the text of Senate bill 2706, as passed the Senate, be inserted in lieu thereof; that the bill as amended be passed; that the Senate insist on its amendment and request a conference with the House, and that the Chair be authorized to appoint conferees.

Mr. BYRD. Mr. President, reserving the right to object, and I do not intend to object, I do want this vote to occur on the motion to appeal which I have pending. Will the Senator confine this action to, say, no more than 2 minutes and that it not be with prejudice to the pending appeal?

Mr. DOMENICI. I so request, Mr. President.

Mr. BYRD. I thank the Senator.

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

The PRESIDING OFFICER (Mr. MCCONNELL) appointed Agriculture, Nutrition and Forestry: HELMS, DOLE, LUGAR, ZORINSKY, LEAHY;

Appropriations: HATFIELD, COCHRAN, ABDNOR, DECONCINI, BURDICK;

Banking, Housing and Urban Affairs: GARN, HEINZ, ARMSTRONG, HECHT, PROXMIRE, CRANSTON, RIEGLE;

Budget: DOMENICI, ARMSTRONG, KASSEBAUM, BOSCHWITZ, CHILES, HOLLINGS, JOHNSTON;

Commerce, Science, and Transportation: DANFORTH, PACKWOOD, KASSEBAUM, HOLLINGS, LONG, Conrail, subconference 9;

DANFORTH, PACKWOOD, STEVENS, HOLLINGS, INOUYE, Maritime, subconference 10;

Energy and Natural Resources: MCCLURE, WALLOP, WARNER, JOHNSTON, FORD;

Environment and Public Works: STAFFORD, CHAFEE, SIMPSON, DURENBERGER, SYMMS, BENTSEN, MITCHELL, MOYNIHAN, BURDICK;

Finance: PACKWOOD, DOLE, DANFORTH, CHAFEE, LONG, BENTSEN, MATSUNAGA, general;

HEINZ, DURENBERGER, MOYNIHAN, BAUCUS, Medicare, Medicaid, and Maternal and Child Health, subconferences 19, 20, 21;

Governmental Affairs: ROTH, STEVENS, COHEN, DURENBERGER, EAGLETON, LEVIN, GORE;

ROTH, COHEN, DURENBERGER, EAGLETON, LEVIN, subconference 15;

Labor and Human Resources: HATCH, NICKLES, STAFFORD, KENNEDY, METZENBAUM, ERISA and Railroad Retirement;

HATCH, STAFFORD, WEICKER, KENNEDY, PELL, GSL/Education Asset;

Small Business: WEICKER, RUDMAN, BUMPERS, conferees on the part of the Senate.

Mr. DOMENICI. Mr. President, was the unanimous consent granted?

The PRESIDING OFFICER. Yes, it was.

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1820

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

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

ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Senate now turn to morning business for a period not to exceed 15 minutes and the Senator from Ohio be accorded an opportunity to make a statement.

Mr. BYRD. Mr. President, reserving the right to object, and I will not object. I just want to be sure that nothing is done that is prejudicial to my appeal at the moment. What is the request?

Mr. METZENBAUM. Mr. President, I further ask unanimous consent that the position of the Senate and all Senators therein not be prejudiced in any way by reason of the request of the Senator from Ohio and that the Senate be in the same condition that it was prior to my request having been made.

Mr. BYRD. I have no objection.

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

TRANSITION RULES IN THE TAX REFORM BILL

Mr. METZENBAUM. Mr. President, the U.S. House has just passed the tax reform bill without being able to find out what is really in it. Included in that bill are $10.6 billion in special tax breaks that have become the most closely guarded multi-billion-dollar secret in Washington.

I should know about there being a secret because I have been trying to unlock that secret every day for weeks. On June 24, at my urging, the Senate passed a sense of the Senate resolution calling for a list of the transition rules, their beneficiaries, their costs and their rationale.

That language reads as follows:

Sense of the Senate on transition rules.

It is vital for the Senate to be fully informed about every matter that comes before it. Therefore, it is the sense of the Senate that the conference report on H.R.

3838 shall contain, one, the name of each business corporation or group receiving a special or unique treatment in the bill; two, the reason for the special or unique treatment; and, three, the costs of the unique or special treatment.

Mr. President, that could not be any clearer. But, for some inexplicable reason, the House refused to go along, preferring to legislate in the dark.

To his credit, Senate Finance Committee chairman BOB PACKWOOD promised me we could get that list, and he has just delivered. I have that list now. I do wish we could have gotten this list earlier so that Senators might have more time to study these so-called transition rules.

But certainly we all—every Member of the Senate—have to be embarrassed by the kind of attention these rules have been getting. The newspapers are entertaining their readers with quizzes that poke fun at the way our taxwriters have discussed these transition rules. But the joke has been on us, all of us, because we do not know what they are, either.

Can you believe it? There is $10.6 billion in transition rules and the Members of the House just overwhelmingly passed the bill and the Senate is about to be called upon to pass the bill and nobody knows what is in it.

Let me give you some idea of how you can find out. Do you know who benefits from this rule that is to be found in the transition rules?

It is located on lands submerged under the waters of a Great Lake or on adjacent lands which formerly were submerged under the waters of such lake.

What does that mean? There is not anybody in the United States that knows what that means except those who put it in the bill in order to take care of certain special interests.

The average man in America or the average woman did not have anybody putting those transition rules in providing for special privilege. What is the reason for that kind of mumbo jumbo? If these tax rules are justified, why not spell them out clearly? Why did the taxwriters have to turn them into a riddle that would stump the Sphinx?

I am not sure that many of these transition rules can be justified. I am not opposed to transition rules, in and of themselves. And I make no bones about it. I sought several for projects in my own State, every one of which can be justified on the basis of the facts and the merits. But these projects are exactly the kind that deserve transition rules.

There should be some transition rules. But the rules that we find included in this bill are included to help ease the switch to this new tax system for projects and companies that have long-term investments based on the current system.

I would guess that most of the transitional rules will turn out to be justified once we study the list. I am equally convinced that a great number of them will turn out to be unjustified and will turn out to be in the bill in order to buy a vote, in order to get somebody to go along that did not want to go along. And maybe even that is justified. I am not going to stand here and say that is a terrible thing.

But, I am saying that when somebody's vote was bought, the people of the United States and the U.S. Senate and the House of Representatives are entitled to know from whom it was bought and what was the price.

What concerns me are rules that are really giveaways and new loopholes. I am happy that we were able, when this bill was on the floor of the Senate, to knock some of those loopholes out of the Senate bill.

But, Mr. President, I want this body to understand something. In this list of 400 transition rules, we find something that we do not find around here very often, although it does occur on occasion. There are 400 new transition rules that were created in the conference committee that did not appear in either the House or the Senate bill.

Let me repeat that. Normally, a conference has to do with the differences between the House and the Senate. But in this bill, there are 400 special transition rules that neither the House nor the Senate have ever heard of before and the only people that know what is in there now are those who participated in the drafting.

□ 1830

It is my opinion that even the members of the conference committee do not know all of the details of what is in all of those new transition rules.

I have not had time to study them as yet. But I know this: some Members did not have to study them, Member X, Y, Z, P and Q. They were told, "We took care of this, that, and that for you," and each of them put out press releases chortling about how the American taxpayer had been ripped off and how they got some special benefit for their State.

That may be the way some people think we should legislate around here. This Senator does not think so. This Senator thinks if some Senator got something for his own State that may or may not be justified and may be just a transition rule and may be just a way of purchasing the vote, whatever the circumstances the Members of the Senate are entitled to know the facts. At this moment, we do not know the facts.

I would say that some chortling has been made, and some would make me worry a good deal about what has occurred. Much of that makes me feel that some of these transition rules mean nothing more than special tax loopholes for those who had the proper lobbyist or proper Member of Congress on their side. Maybe that is the price that the tax writers had to pay to earn the vote for passage. But I believe it is a shame we could not vote for this bill on its merits. I believe this is not the proper way to legislate. I believe the Members of the House, the Members of the Senate, and every American are entitled to know who is getting what and at what expense to all the rest of the taxpayers.

I have been supportive of this tax bill, and I intend to continue to be supportive of the tax bill. But I say that this is the wrong way for the House and the Senate to conduct themselves. It is legislation without information. It is legislation in the dark. It is legislating in a way of which we cannot be proud.

I think it is a shameful way to legislate. Although the end result and the total package may have much merit, this way of legislating is exactly the wrong way. I expect, Mr. President, to address myself further to the whole question of these transition rules when I get an opportunity to learn more about the details of what is in those specific transition rules.

I yield the floor.

Mr. LEVIN. Mr. President, would the Senator from Ohio yield for a question?

Mr. METZENBAUM. I do indeed.

Mr. LEVIN. Did the Senator receive this afternoon a copy of the transition rules? Has that now been received?

Mr. METZENBAUM. The answer is I have received a summary but I did not receive a copy of the rules themselves.

Mr. LEVIN. I missed the first part of the Senator's speech. Was that placed into the RECORD, that summary?

Mr. METZENBAUM. No; it has not been placed in the RECORD and at this point I am not prepared to place it in the RECORD until I actually know what is contained therein.

Mr. LEVIN. Mr. President, If I could, on the Senator's time on the morning business that he received unanimous consent to proceed under, he and I both have been seeking to obtain information on these transition rules. I have great admiration for the determination of my friend from Ohio for doing exactly that. He happens to be one who voted for this bill despite some of these transition rules. I happen to be one who voted against this bill in part because of the way in which these rules were written and placed in this bill, in a way that no one can understand them, both when they came through the Senate and now from conference.

I think it is something other than a coincidence that we get these transi-

tion rules in this form finally this afternoon after the House has voted.

Mr. METZENBAUM. I do not think it is any coincidence, I want to respond to the Senator from Michigan. It is no coincidence at all. I think there is no secret about it. I was very deliberate and intended that the Members of Senate would have the information made available to them but not until the House has acted.

I do not wish to stand on the floor of the Senate and in my way reflect upon the conduct of the House. That is a matter for them to determine for themselves. But I do have concerns about this matter with reference to our actions in the Senate.

Mr. LEVIN. Mr. President, just one other quick comment, if I might.

At some point we will be given a copy of these rules. We have requested them for many, many weeks now. The Joint Tax Committee staff is putting together answers to those questions and a number of other questions which have been asked. We ought to get this information in sufficient time so that we can consider it prior to the debate on the conference committee report. I would hope, and I think the Senator from Ohio might agree with me, that we have information we have been seeking, including the fleshing out of these transition rules, in enough time so that we can consider them.

Mr. METZENBAUM. The Senator from Michigan is not in disagreement with me. As a matter of fact, I had heard some word that there was maybe some intent to move to the tax bill tomorrow. I certainly hope the tax bill does proceed appropriately, but I would hope the leadership would not see fit to move to it tomorrow but give us sufficient time to analyze the transition rules.

Mr. LEVIN. In addition to the transition rules, which we are still awaiting information on, there are a number of other questions that we are awaiting information on, which we should also receive sufficiently in advance before considering the conference report.

Mr. METZENBAUM. I yield the floor.

PRODUCT LIABILITY REFORM ACT

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak for 30 seconds.

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

Mr. BYRD. Mr. President, I hope Members of the Senate do not feel that I have held up the Senate from voting. I have been ready to vote for the last hour or hour-and-a-half. There was some question concerning the appeal. But I think ample time has now transpired so that the Senate may proceed to vote on the appeal.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I ask that I may proceed for 2 minutes.

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

Mr. DOLE. I think we are ready to proceed. I want to thank the minority leader for his having been ready to proceed for a couple of hours. We have been having discussions. There are some differences of opinion. I have discussed with Parliamentarian, and I think the Senator from Wyoming has a couple of questions to ask.

We have to keep in mind that this is a postcloture situation. As I understand, any of these things could be ruled dilatory. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I am ready to support the distinguished minority leader's appeal.

Mr. BYRD. I thank the majority leader. I may say I seek no partisan advantage. I have been seeking to protect the rights of all Senators on both sides of the aisle.

Mr. SIMPSON. Mr. President, I ask unanimous consent to inquire of the minority leader two questions, if I may.

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

Mr. SIMPSON. Mr. President, I think our majority leader has covered it nicely. I do appreciate what the Democratic leader has done. I do not sense that he seeks partisan advantage. If we follow on, we will be severed by the same sword. I do not feel that way at all, I assure the Democratic leader.

I believe we have answered the question that any of these could be ruled dilatory by the Chair under this particular unique procedure in these cloture-type proceedings. Is that correct?

□ 1740

As a matter of fact, there are few precedents that the quorum calls in a postcloture situation can be ruled as being dilatory and various other motions and requests and actions.

The final question, Mr. President, is that I am assured then, and I think any of us in the legislative body would want to be assured, that this presentation, this procedure, this rule change, does not have any deleterious or lessening effect upon the essence or the effectiveness of the two-speech rule under our present procedure?

Mr. BYRD. May I say it is not the intent of this Senator to in any way impair the two-speech rule. I would prefer—I think the question is a good question and should be answered on the record, not only by the offerer of the appeal, the mover of the appeal. But I would like it if the distinguished majority whip would propound this question to the Chair so we can get an answer from the Chair through the advice of the Parliamentarian, aside from the answer by the mover of the appeal.

Mr. SIMPSON. I do direct that to the Chair of the Chair's determination of that.

The PRESIDING OFFICER. This appeal will certainly change the interpretation of the two-speech rule from a mechanical interpretation to a rule of reason.

Mr. SIMPSON. I thank the Chair. I thank the distinguished Democratic leader.

The PRESIDING OFFICER. The yeas and nays have been ordered on the appeal. The question is, shall the decision of the Chair stand as the judgment of the Senate?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Arkansas [Mr. PRYOR] would vote "nay."

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 5, nays 92—as follows:

[Rollcall Vote No. 294 Leg.]

YEAS—5

Hatch	McClure	Wallop
Helms	Stevens	

NAYS—92

Abdnor	Ford	McConnell
Andrews	Glenn	Melcher
Armstrong	Goldwater	Metzenbaum
Baucus	Gore	Mitchell
Bentsen	Gorton	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grassley	Nickles
Boren	Harkin	Nunn
Boschwitz	Hart	Packwood
Bradley	Hatfield	Pell
Broyhill	Hawkins	Pressler
Bumpers	Hecht	Proxmire
Burdick	Heflin	Quayle
Byrd	Heinz	Riegle
Chafee	Hollings	Rockefeller
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Thurmond
Dole	Levin	Trible
Domenici	Long	Warner
Durenberger	Lugar	Weicker
Eagleton	Mathias	Wilson
Evans	Matsunaga	Zorinsky
Exon	Mattingly	

NOT VOTING—3

Garn Pryor Symms

□ 1900

The PRESIDING OFFICER. The decision of the Chair does not stand as the judgment of the Senate.

Mr. CHILES. Mr. President, I move to reconsider the vote.

Mr. BIDEN. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I apologize for talking too long today.

It is the intent of the distinguished Senator from Wisconsin and myself to move to a motion to proceed.

Mr. FORD. Mr. President, I make the point of order that the Senate is not in order. We cannot hear the distinguished Senator from South Carolina.

The PRESIDING OFFICER. The Senator is correct. Those Senators who are conversing in the aisles will please retire to the cloakroom.

Mr. HOLLINGS. I thank the Chair.

Mr. President, it is our intent to move to a motion to proceed and get a rollcall vote very promptly.

In that spirit, I ask unanimous consent that the following documents be printed in the RECORD: a letter from the American Bar association, which I was in the process of reading this morning, dated August 11, 1986; a letter from the American Bar Association dated September 24; a letter from Public Citizen, Consumer Federation of America, Consumer's Union, and the U.S. Public Interest Research Group, dated September 24; a letter from the American Federation of Labor and Congress of Industrial Organizations, dated September 23, 1986, and the testimony of Ernest Dubester; a paper entitled "Fifteen Fallacies of Product Liability Reform."

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

AMERICAN BAR ASSOCIATION,
Washington, DC, August 11, 1986.

Hon. STROM THURMOND,
Chairman,
Committee on the Judiciary,
U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: It is our understanding that your Committee has expressed interest in considering the proposed "Product Liability Reform Act" that was ordered reported June 26, 1986, from the Senate Committee on Commerce, Science and Transportation. We take this opportunity to tell you of our strong opposition to this bill or any other broad federal legislation pre-empting state product liability laws.

The American Bar Association opposes such legislation because it believes that the area of tort and insurance law is one which traditionally and appropriately has been handled at the state, not the national, level. Product liability laws have evolved historically from the common law developed by state courts and supplemented by state legislation. This gradual, state-by-state evolution of product liability law attests to one of the basic values inherent in our system of federalism, namely, that local communities in most situations are best able to regulate the day-to-day conduct of their citizens and are in the best position to address their specific social and economic needs.

Broad pre-emptive legislation such as the Commerce Committee proposal would introduce uncertainty and instability in the area of state product liability laws—results exactly contrary to the stated purpose of the proposed legislation. The current laws in each state have been carefully crafted and refined over the decades. In contrast, a new, untested system of laws would inevitably result in a rash of litigation in an effort to interpret it.

We have given serious consideration to "reform" proposals in the product liability area and have not taken a position of blanket opposition to all federal legislation in this area. We would support, for example, federal legislation dealing with occupational diseases with long latency periods, when the number of such claims and the liability for such damages in fact threaten the solvency of a significant number of manufacturers engaged in interstate commerce, and the number of such claims has become clearly an excessive burden on the judiciary. Similarly, we would support federal legislation allocating product liability risks between the federal government and its contractors and providing, in certain instances, indemnity against those risks. We are continuing to study this whole area to see if other portions of the product liability laws should be appropriately addressed at the federal level.

However, we cannot support legislation which would sweep aside the decades of careful legal drafting which has taken place in the fifty states in the product liability area and replace it with a sweeping new national standard. Such federal legislation may seriously impair the rights of those who have been injured and the consuming public generally by introducing great uncertainty and confusion into a judicial system that, with rare exception, has been working on the state level in a sound and rational way.

We urge you to vote against the Commerce Committee proposal when and if your Committee considers this bill.

Sincerely,

WILLIAM W. FALSGRAF.

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, September 24, 1986.

Re S. 2760, board Federal product liability legislation.

DEAR SENATOR: Yesterday on the Senate floor during debate on S. 2760, Senator Kasten stated that "most lawyers support some kind of bill" on product liability. We believe this is misleading.

The ABA, with a membership of approximately 320,000 lawyers, supports federal legislation in two discrete areas of the product liability law. However, we have opposed broad federal product liability legislation such as S. 2760 since February 1981 when the ABA went on record against such proposals.

In February 1983, the ABA's House of Delegates reconsidered the matter and voted by a substantial majority to reaffirm its earlier position of opposition to broad federal preemptive product liability legislation. At that time, it also voted to approve two recommendations supporting federal attention in two limited areas: litigation involving certain latent occupational diseases, and the question of how to allocate liability risks between the federal government and its contractors.

The approximately 380-member ABA House of Delegates, which is carefully structured to represent all aspects of the Bar, thoroughly studied all facets of this matter before making its decisions on this issue in 1981 and 1983.

Operating in a manner similar to the U.S. Congress, our House of Delegates is the legislative body for the ABA. The House of Delegates represents not only various groups within the Association but also the legal profession as a whole. Its membership is made up of delegates elected by Association members in each state, delegates from every state bar association, the larger local bar associations, other national organizations of the legal profession and delegates elected by the ABA Assembly and the ABA Sections.

Enclosed is a letter from our Immediate-Past President setting forth our reasons for opposing broad Federal product liability legislation.

Sincerely,

ROBERT D. EVANS.

SEPTEMBER 24, 1986.

DEAR SENATOR: We are writing to clarify the consumer organizations' position on the product liability legislation currently pending before the Senate. Contrary to the claims of some proponents of S. 2760, we continue to find that numerous provisions of the bill and of the Kasten substitute—even without caps on recoveries—would eviscerate vital consumer protections of current product liability law.

Like S. 2760, the Kasten substitute would tip the balance of current law firmly against consumers by denying victims adequate compensation and weakening incentives to produce safe products. Specifically, both proposals would:

partially repeal the doctrine of joint and several liability and thus deny some victims who happened to be injured by more than one wrongdoer the full compensation to which they were legally entitled:

offer some manufacturers, particularly general aviation and pharmaceutical manufacturers, unjustifiable protection from punitive damages;

limit the liability of sellers of dangerously defective products notwithstanding the crucial role that product sellers play in bringing products, both safe and unsafe, to the market;

preclude absolutely people injured by faulty equipment more than 25 years old from recovering anything at all for their injuries.

Our goal has long been to provide consumers injured by dangerously defective products fair compensation in a speedy and efficient way. Unfortunately, the Kasten substitute would not create an effective mechanism for meeting these goals.

Thank you for your consideration in this matter.

JOSEPH GOFFMAN,
Staff Attorney,
Public Citizen.
GENE KIMMELMAN,
Legislative Director,
Consumer Federation of America.

LINDA LIPSEN,
Legislative Counsel, Consumers Union.
PAMELA GILBERT,
Staff Attorney, U.S. Public Interest Research Group.

AFL-CIO,
DEPARTMENT OF LEGISLATION,
Washington, DC, September 23, 1986.

DEAR SENATOR: On behalf of the AFL-CIO I urge to oppose S. 2760, the so-called "Product Liability Reform Act", which is on the Senate floor this week. There may be votes either on a motion to proceed or on a petition to invoke cloture which the AFL-CIO would also urge you to oppose.

The subject of product liability is of profound importance to working men and women and therefore to the labor movement. Every year, thousands of workers suffer occupational injuries or diseases as a result of working on unsafe machinery or with toxic substances.

Many of these workers have found that product liability litigation affords their only recourse for full redress for their injuries. For this reason, any change in product liability law that would impair the ability of injured persons to be made whole for the losses they suffer would strike a severe blow at American workers.

In May of this year, the Executive Council of the AFL-CIO issued a statement on Liability Insurance and Tort Law which called upon Congress to adopt comprehensive and balanced reforms designed to protect both consumers and providers of safe goods and services. S. 2760, in our judgment, is not such a measure.

To the contrary, S. 2760 is a one-sided approach that would undermine the two principle functions which the product liability system should serve—namely, to provide fair and timely recompense to individuals who are harmed by unsafe products and to impose economic disincentives that induce manufacturers to act responsibly. This is especially evidenced by the so-called "expedited settlement system" contained in Title II of the bill. In our view, the settlement scheme would benefit only the least deserving plaintiffs and those manufacturers who have inflicted the most grievous injuries. The tort-law reforms contained in Title III add to the bill's imbalance.

There is an additional respect in which S. 2760 fails to deal with one of the fundamental problems currently confronting the product liability system. Thus, the bill does not meaningfully address the responsibility of the insurance industry for the so-called liability insurance problem. As suggested, our Executive Council Statement expressed the AFL-CIO's willingness to entertain proposals for modest and sensible reforms in the tort system only if such reforms are part of a balanced package which includes fuller regulation of the rates charged by insurers, aimed at producing a workable liability system.

Finally, S. 2760 is deficient in our view because it does not contain provisions for determining cause and providing compensation to workers who incur occupational diseases related to toxic substance exposure. Any balanced and comprehensive effort to reform the product liability system should adequately deal with the increasingly serious problem of toxic injuries.

For these reasons, the AFL-CIO urges you to oppose S. 2760 and to oppose any procedural efforts designed to expedite consideration of this bill.

Sincerely,

ROBERT M. MCGLOTTEN,
Director.

TESTIMONY OF ERNEST DUBESTER, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE SENATE JUDICIARY COMMITTEE ON S. 2760, THE PRODUCT LIABILITY REFORM ACT

Mr. Chairman, the AFL-CIO appreciates this opportunity to state its opposition to S. 2760, the so-called "Product Liability Reform Act" that the Senate Commerce Committee has reported.

The subject of product liability is of profound importance to working men and women and therefore to the labor movement. Every day, thousands of workers are injured and killed in the workplace as a result of defects in the products—principally the machinery and equipment—with which they work. And every day thousands of workers inhale, ingest, or absorb toxic chemicals that permeate the air in which they work, resulting in occupational diseases.

In theory, the workers' compesation system exists to provide fair recompense to such workers and their families, and the Occupational Safety and Health Act exists to assure each worker "safe and healthful working conditions." But in practice, state workers' compensation laws provide inadequate relief to those suffering traumatic injuries and little or no relief to those suffering illnesses associated with exposures to toxic substances. And in practice, the Occupational Safety and Health Administration has defaulted on its duty to protect workers' safety and health, especially during the past six years.

Because of these developments, many workers have found their only recourse for full redress for their injuries to be product liability litigation. Indeed, studies indicate that up to half of the money paid for product liability claims goes to workers who have been injured on the job. Accordingly, any change in product liability law that would repair the ability of injured persons to be made whole for the losses they suffer would strike a severe blow at the American worker.

At the same time, millions of workers are employed by product manufacturers, and all workers are consumers of goods made by such manufacturers. Given current legal realities, most product manufacturers have concluded that to stay in business they must be able to obtain adequate levels of liability insurance at affordable prices. Recently, the insurance industry has ceased offering adequate levels of product liability insurance at any price, or has set the cost of such insurance of prohibitively high prices.

These developments in the product liability area paralleled developments in the area of liability insurance generally. No sector of the economy has been spared the effects of the insurance industry's actions. The American worker and consumer have been the ultimate victims of these developments.

In May of this year, the Executive Council of the AFL-CIO issued a Statement of Liability Insurance and Tort Law which sets forth in detail our position on these critical subjects. That Statement recognizes that the causes of the current situation with respect to liability insurance are "multiple and complex" and that, while "the insurance industry must accept the major responsibility," the "tort system has contributed to the cost of insurance" as well. The Statement therefore called for "comprehensive and balanced reforms" of a "multi-faceted" nature designed to "accommodate the legitimate yet conflicting interests of providers and of injured persons."

The bill reported by the Senate Commerce Committee is not such a measure. It is, rather, the sort of "one-sided approach" which the AFL-CIO Executive Council's Statement rightly warns "will only exacerbate, rather than alleviate, the present problem." That is expecially true with respect to the so-called "expedited settlement system" contained in Title II of the bill, although it is also true with respect to the tort-law reforms contained in Title III. Because the settlement system forms the heart of the Commerce Committee's bill, we wish to focus our comments on that system.

The Commerce Committee's report accompanying S. 2760 states that "Title II of the bill establishes a scheme for expedited settlement of product liability claims . . . based on incentives for settlement that will reduce the delays, excessive transaction costs, and uncertainties associated with such claims."[1] In truth, however, Title II does not add anything to the benefits that, in the nature of things, the parties to litigation inherently derive from reaching a mutually-satisfactory resolution of a case. What Title II does instead to "encourage" settlements is to establish penalties for those who reject a settlement offer if the offer meets certain specifications. And it is the one-sided nature of these penalties and these specifications that make the bill so imbalanced and unfair.

The requisites for a settlement offer whose rejection will trigger Title II's sanctions are set forth in section 201 of the Commerce Committee's bill. That section states that an injured person may only demand by way of settlement—and all that a manufacturer need offer—is payment for net economic loss and, in the most serious cases of intangible injury, payment of $100,000 in general damages. In contrast, under persent law, a wrongdoer manufacturer is not the payor of last resort for economic injury but is liable for the full amount of such injury the manufacturer causes, without regard to whether the injured individual has some other source of payment. Moreover, in most jurisdictions, the manufacturer is also liable for the full amount of the intangible or non-economic injury the manufacturer inflicts, without any arbitrary cap.

What this means, then, as the minority views to the Commerce Committee's report demonstrate, is that almost invariably, a Title II settlement offer will represent a small fraction of the manufacturer's actual exposure. Thus, the only plaintiffs who are likely to have any interest in inducing a manufacturer to settle on Title II's terms are plaintiffs who would be the least likely to recover in court because of some serious flaw in the plaintiffs claim of liability. These are the least deserving plaintiffs. In contrast, manufacturers are often likely to desire to coerce a plaintiff to accept a Title II settlement, especially in cases in which the manufacturer's misdeeds have inflicted grave harm and in which the manufacturer's potential liability is especially high.

It is at this point that the one-sidedness of the sanctions for refusing a Title II settlement offer, as set forth in sections 203 and

---

[1] S. Rep. 99-422, 99th Cong., 2d Session at 31.

204 of the Committee's bill, becomes so significant. The penalties for a plaintiff who rejects such an offer are severe in the extreme. Such a plaintiff forfeits his claim for compensation for any economic loss for which the plaintiff received reimbursement from another source, such as from insurance the plaintiff purchased, or from a government social welfare program. In addition, a plaintiff who rejects a Title II settlement also forfeits his claim for any non-economic or general damages in excess of $50,000 in all but the most serious of cases, and in excess of $250,000 in such cases.

In other words, in most cases, the maximum amount of compensatory damages that a plaintiff who refuses a Title II settlement offer will be able to recover will be $50,000 more than the offer; in cases of especially grave, non-economic injury—such as cases involving the death of a parent or child, or the loss of a bodily function like sight, sound, or motion—the maximum compensatory recovery will be $150,000 more than the settlement offer. Given how relatively little can be won by a plaintiff who rejects a Title II offer and then prevails in court, the offer will truly be one that most plaintiffs cannot refuse.

In contrast, the penalties imposed upon manufacturers who reject Title II settlement offers from plaintiffs are modest, indeed. Whereas a plaintiff who rejects a proper offer is penalized even if the plaintiff is fully vindicated in the ensuing litigation, a manufacturer who refuses an offer will suffer a sanction only if the manufacturer eventually is required to pay to the plaintiff damages that exceed more than the settlement offer. Moreover, even in that case, the sanctions are weak.

In earlier drafts of S. 2760 that were circulated during the Commerce Committee's deliberations, the Commerce Committee considered requiring manufacturers who insist on litigating and who are found liable to pay the plaintiff's attorneys fees, interest at a high rate (2% per month) on the judgment awarded, and also to pay liquidated damages up to double the judgment. The Committee also considered relaxing the substantive rules of law for imposing liability on manufacturers who force litigation. However, in the bill the Commerce Committee has reported, the only sanction that remains on the nonsettling manufacturer is payment of fees to the plaintiff's attorney, calculated on an hourly fee basis without regard to the risk the attorney assumed, in taking the case, that the attorney would receive no compensation. And even this sanction is diluted by placing a $100,000 ceiling on the manufacturer's liability and by mandating a reduction in liability for fees if the manufacturer "had a reasonable basis for rejecting the offer of settlement." In sum, the most that a manufacturer can be penalized for rejecting a Title II settlement offer is $100,000—a relatively small amount for most manufacturers—and it is extremely unlikely that the penalty will ever reach even that level.

The short of the matter is simply this. Few victims of defective products are likely to want to submit Title II settlement offers because of the rigid limits on what can be included in such offers, and few manufacturers who receive such offers are likely to feel constrained to accept the offer because of the weak sanctions placed upon manufacturers who refuse. Many wrongdoing manufacturers, however, are likely to make Title II offers in order to obtain a cheap settlement—especially where the manufacturer has caused grievous injury—and most victims who receive such an offer are likely to be bludgeoned into submission because the stiff sanctions for litigating all but eliminate any possible gain from continuing to litigate. We submit, therefore, that by any definition, this is a one-sided and imbalanced settlement system.

There is one further, and perhaps even more fundamental respect, in which the settlement system which forms the heart of the Commerce Committee's bill is one-sided: it treats with only one aspect of the multifaceted problems currently confronting the product liability system. The Committee's bill does nothing of substance to address the responsibility of the insurance industry for those problems. Yet as we noted, the insurers bear a large measure of blame for what has been happening to the cost and availability of liability insurance. And we believe that the federal government has an active role to play in monitoring the insurance industry and in developing a set of basic regulatory requirements for state regulators to follow with respect to the industry.

In this regard, the Commerce Committee's bill should be contrasted with laws recently enacted by the Florida and New York legislatures. Those bodies have enacted statues—each quite different from the other—which make substantial modifications in the tort law. Those laws, however, couple these tort-law amendments with effective regulation of the insurance industry, including mandatory premium reductions, ceilings on rate increases, and protections against arbitrary cancellations of insurance. Although we by no means agree with all of the tort modifications made by these laws, the labor movement in those states nonetheless joined in supporting the enactment of these balanced measures.

Our point in noting the Florida and New York laws is not that federal legislation in this area is necessarily inappropriate; we repeatedly have made clear that we hold the opposite view. But at a time when the states are beginning to find ways of developing balanced measures that address all of the relevant interests and considerations, it would be most tragic if the federal government were to lead in the opposite direction by enacting a regressive and one-sided law like S. 2760.

For these reasons, the AFL-CIO opposes passage of the Commerce Committee's bill and we urge this Committee to do all within its power to prevent that bill from being enacted.

FIFTEEN FALLACIES OF PRODUCTS LIABILITY "REFORM"

ABSTRACT

Products liability "reform" is supported by manufacturers of defective products and the liability insurance industry. As the ones who stand to gain from the limitation of the rights of their victims, they have built their proposed "reforms" on a series of fifteen basic fallacies:

(a) The Fallacy of the Insurance "Crisis."

(b) The Fallacy of the "Litigation Explosion."

(c) The Fallacy of Excessive Jury Awards.

(d) The Fallacy of Lack of Uniformity.

(e) The Fallacy of Liability Without Fault.

(f) The Fallacy of Liability for Unforeseeable Injury.

(g) The Fallacy of Lower Litigation Costs.

(h) The Fallacy of Expediting Products Cases.

(f) The Fallacy of Double Recovery.

(j) The Fallacy of Windfalls in Future Damages Awards.

(k) The Fallacy of the "Deep Pocket."

(l) The Fallacy of Excessive "Transaction Costs."

(m) The Fallacy of Fairness.

(n) The Fallacy of "Reform."

The greatest fallacy of all is the use of the word "reform." Rather than reform, these proposals will bring chaos and confusion to our courts and despair to the lives of seriously injured victims of defective products. This pamphlet describes these fifteeen fallacies and the adverse effects of pending products liability "reform" proposals on our current system of American justice.

(a) *The Fallacy of the Insurance "Crisis."*—In the report of the Administration's "Tort Policy Working Group," they state that "the property-casualty industry in the past two years has suffered significant underwriting losses." [1] The truth of the matter is shown in a recent report of the United States General Accounting Office [2] which concluded that, during the past 10 years, the property/casualty insurance industry "had a net gain of about $75 billion" [3] and was expected to experience a "net gain before taxes of more than $90 billion over the years 1986-1990." [4] The only crisis that the insurance industry is really suffering is a "credibility crisis." [5]

Additional evidence of the fallacy of this alleged insurance crisis can be found in what Wall Street analysts call "the long bull market in property and casualty stocks." [6]

Since June of 1984, the stock price index for property and casualty insurance stocks has almost doubled, outperforming the Standard and Poor 500 Stock Index by a substantial margin.[7]

Wall Street analysts are predicting "explosive industry-wide earnings gains" as a virtual certainty in 1986.[8]

One element in their predicted "bullish scenario" [9] is the monumental rate hikes of 1985.[10]

Another is the expected boost in bulging insurance industry earnings from pending "tort reform proposals." [11]

(b) *The Fallacy of the "Litigation Explosion."*—The Administration's Tort Policy Working Group claims that "in the past decade there has been a veritable explosion of tort liability in the United States." [7a]

However, a recent study by the National Center for State Courts found no evidence of a "litigation explosion" in state trial courts in the United States: [8a]

"Careful examination of current available trial court data relating to tort, contract, real property rights and small claims cases, from a representative group of state courts, provides no evidence to support the existence of a national 'litigation explosion' in state trial courts during the 1981-1984 time period." [9a]

According to this study, the increase in tort litigation roughly approximates the increase in total population:

". . . For the entire period 1978-84, total tort filings increased by nine percent, but the population also increased by eight percent." [10a]

This study concludes with the observation that "the often cited litigation explosion . . . appears to be exaggerated. . . ." [11a]

Another study has concluded that the number of lawsuits filed per capita has remained constant since 1959.[12]

Footnotes at end of article.

(c) *The Fallacy of Excessive Jury Awards.*—In introducing the Administration's proposed Product Liability Reform Act on April 30, 1986, Senator Kasten said:

". . . The provisions in this legislation result from the report of the President's Tort Policy Working Group issued this past February. . .

"The working group found that in the past decade there had been a veritable explosion in tort liability in the United States. Between 1974 and 1985. . ., the average jury verdict in product liability cases increased from under $400,000 to over $1.8 million."[13]

When questioned about these statistics in Senate Commerce Committee hearings by Senator ERNEST F. HOLLINGS of South Carolina, Assistant Attorney General Richard K. Willard admitted that one of the primary sources for the working group's "statistics" was Jury Verdict Research, Inc., of Solon, Ohio.[14] Mr. Willard further admitted that there were "limitations on the methodology" used by Jury Verdict Research,[15] that their statistics were not scientific,[16] and that their statistics are gathered from newspaper clippings and other similar sources:

"Senator HOLLINGS. Well, how do they gather it? That is what I'm asking.

"Mr. WILLARD. They gather it from people who write in and report it to them, from newspaper clippings, from a variety of services.

"Senator HOLLINGS. Come on now, you are an Attorney General. You are not going to come up and testify about newspaper clippings.

"Mr. WILLARD. Well, Senator, we do not use Jury Verdict Research, Inc., statistics as being accurate as to absolute data as to average jury verdicts."[17]

Despite this admission, President Reagan told the American Tort Reform Association ten days later that, "Between 1975 and 1985, the average award in a products liability case quadrupled, to some $1.8 million."[18]

Whether the President knew better, or was misinformed, history does not yet record. Whichever, is true, it is clear to us that products liability "reformers" have used their concocted statistics much as a drunken man uses lamp posts: "for support rather than illumination."[19]

The fact is, there are no accurate, comprehensive statistics on jury verdicts in products cases.[20]

In South Carolina, we have taken steps to fill this void by establishing the South Carolina Jury Verdict Research Project.[21]

This project is being conducted by the University of South Carolina School of Law and will catalog and report all jury verdicts, in both state and federal courts in South Carolina for the past ten years.

A preliminary feasibility study showed that during the last five years there were no state court products verdicts in the largest county in South Carolina[22] in excess of $100,000.[23]

That's a far cry from an average verdict of $1.8 million.

"The argument that jury verdicts and expanded tort doctrine contributed to the product-liability 'Crisis' lacks substance. Complaints about the excessive generosity of jurors in products cases collapse under the weight of the available data. . . ."[24]

The same conclusions hold true with respect to punitive damages.

Preliminary findings from a recent study by the American Bar Foundation indicate that "punitive damage awards are not routine", are not typically given in excessive amounts, and are rarely awarded in product liability cases.[25]

In addition, under the longstanding common law procedure that Lord Coke refers to as a "wise distribution of power" in which "the judge and jury are a check upon each other",[26] the trial judge has both the power and the duty to set aside or reduce[27] the amount of any verdict which the trial judge considers to be excessive.

"As a general rule, the fact that the jury . . . have given excessive damages is ground for a new trial, and the trial court has both the power and the duty, where a new trial is sought on this ground, to determine whether the damages awarded to plaintiff are excessive so as to warrant a new trial."[28]

For those who are interested in learning the whole truth of the matter, there are no less than 21 recent Annotations on the subject.[29]

(d) *The Fallacy of Lack of Uniformity.*—The three legal theories upon which almost all products cases are based are (a) negligence, (b) breach of implied warranty, and (c) liability for manufacture and sale of defective and unreasonably dangerous products.[30] The principle that a product manufacturer is responsible for personal injury or death caused by negligent design and manufacture of defective products is uniformly applied in all 50 states.[31]

Virtually all states currently impose liability on manufacturers for injuries caused by their negligent failure to warn consumers of the dangerous nature or condition of their products.[32]

The Uniform Commercial Code, adopted on all 50 states, provides that manufacturers shall be liable to consumers for injuries resulting from breach of an implied warranty that their products are reasonably fit for the purpose for which they are intended.[33]

Forty-six of 50 states apply the principle that a manufacturer is liable to the ultimate consumer for personal injury and death caused by the defective and unreasonably dangerous nature of its products.[34]

These are the basic, underlying principles of products liability. To say that there is lack of uniformity here is flagrantly false.

(e) *The Fallacy of Liability Without Fault.*—One of the unfounded claims most often repeated by the liability insurance industry is that existing products liability law imposes liability without fault.[35] In making this claim, they refer to the provisions of ¶ 402A of the Restatement of Torts, 2d by the American Law Institute which is commonly called "strict liability".[36]

Strict liability, however, is not absolute liability.[37]

It applies only in cases where the injured consumer proves that the product in question is defective and unreasonably dangerous.[38]

How, you may ask, can a product manufacturer who produces a defective and unreasonably dangerous product be without fault?[39]

The question answers itself.

(f) *The Fallacy of Liability for Unforeseeable Injury.*—Another of the more popular claims of the products liability reformers is that, under existing law, manufacturers are held liable for unforeseeable product-related injury.[40]

This is simply not the case. Under existing law, the injured victim must prove, not just one, but three types of foreseeability: (1) that the risk of harm was reasonably foreseeable, (2) that the use to which the product was put was reasonably foreseeable, and (3) that the injured party fell within the class of reasonably foreseeable victims.[41]

Liability based on the manufacturer's negligent failure to warn of the dangerous nature of its product requires proof of reasonable foreseeability.[42]

Liability for breach of implied warranty also requires proof that the damages were the "natural" or foreseeable results of the product defect,[43] and the same foreseeability requirement applies to an action based on "strict liability" for defective and unreasonably dangerous products.[44]

In our experience, product manufacturers will claim that almost any product injury was unforeseeable.

Automobile manufacturers will claim that gasoline tank explosions from rear-end collisions are unforeseeable.

Power press manufacturers will claim that amputation of workers' hands in the unguarded jaws of the press are unforeseeable.

Crane manufacturers will claim that electrocutions from contact with high voltage power lines are unforeseeable. Yet, how can these documented dangers be unforeseeable if they have happened thousands of times before?

The majority of the claims that product manufacturers are held liable for unforeseeable product related injury come from manufactures who have unsuccessfully argued that position before juries who found otherwise. Their disgruntled complaints lend support to the old maxim: "He who feels the halter draw has a poor opinion of the law."[45]

(g) *The Fallacy of Lower Litigation Costs.*—The claim of the products liability "reformers" that their proposed legislation will result in lower litigation cost is another unfounded contention.[46] The exact opposite will inevitably occur. Abolition of joint and several liability will result in multiple defendants in almost all products cases.[47] Caps on recoveries of damages for pain and suffering, disfigurement and loss of companionship will virtually eliminate settlements.[48] Abolition of "strict liability" for defective and unreasonably dangerous products will require more extentive discovery and proof of negligence.[49] Separate claims procedures[50] will prolong litigation. All of these factors will lead to increased litigation costs.

It is difficult for the products liability "reformers" to conceive of the practical effects of their legislative proposals because few, if any have had any significant practical experience in the trial of products cases. Their wayward feet are unlit by the lamp of experience.[51]

(h) *The Fallacy of Expediting Products Cases.*— In his testimony to the Senate Commerce Committee on May 20, 1986, Attorney General Meece referred to certain aspects of the Administration Bill [52] which were designed to "alleviate burgeoning case loads" and to allow the injured victim to be compensated "in a more timely fashion".[53] As with litigation costs, the opposite result is inevitable if the legislation is adopted.

For example, the practical effects of adding multiple defendants will increase costs and prolong litigation.[54] In any case where a produce related injury is followed by less-than-optimal medical care, abolition of joint and several liability[55] will encourage the manufacturer to attempt to shift a portion of the responsibility of the treating physician.[56] A products case will then become both a products case and a malpractice case. This will inevitably result in skyrocketing litigation costs and inordinate delays in the litigation process.

(i) *The Fallacy of Double Recovery.*—Under the collateral source rule, the injured victim may recover his hospital expenses

from the negligent manufacturer despite the fact that a portion of his hospital expenses have been paid from his own hospital insurance.[57] Products liability "reformers" contend that this rule allows for double recovery by the injured victim.[58]

In actuality, hospital insurance payments are not payments from a "collateral" source. They are payments made by the injured victim himself. The victim pays his insurance premiums over a period of years so that an insurance fund will be established to cover any future hospitalization.

Quite often, by the time of his injury, he has paid more to his insurance company in premiums than the amount of his hospital bill. The same rationale applies to other types of insurance such as life, disability, or accident insurance.[59]

To abolish the collateral source rule by penalizing the conscientious victim who has had the foresight to purchase insurance does not prevent double recovery. It prevents single recovery. It rewards the wrongdoer at the expense of the victim.[60]

(j) *The Fallacy of Windfalls in Future Damage Awards.*—The proposed "Product Liability 'Reform' Act" permits product manufacturers to make payments of awards for future damages "periodically as costs are incurred."[61] In his testimony before the Senate Commerce Committee, Attorney General Meese described this as a provision providing "for future economic damages to be paid in periodic installments, to take away the windfall[62] effect.[63] In fact, there is no windfall, as existing law requires future damages to be reduced to their present cash value.[64]

(k) *The Fallacy of the "Deep Pocket."*—The Report of the Tort Policy Working Group refers to existing tort doctrines which supposedly "shift liability to 'deep pocket' defendants even though they did not cause the underlying injury, or had only a limited or tangential involvement."[65] The first answer to this absolute absurdity is that existing tort law does not impose liability on defendants who "did not cause the underlying injury or had only a limited or tangential involvement".[66] The second answer to this absolute absurdity is that there is no credible authority to support this "deep pocket" theory.[67] The only real evidence appears to support a contrary view.[68]

(l) *The Fallacy of Excessive "Transaction Costs."*—Those who support products liability "reform" cite what they refer to as "excessive transaction costs"[69] in support of their recommendation to "schedule contingency fees" for the lawyer of the injured victim.[70] It is significant that, although the Senate Commerce Committee determined that attorney's fees of defective product manufacturers exceeded those of injured product victims,[71] the products liability "reformers" only recommend that the attorney's fees of the injured victim be cut. The real reason is not to limit so-called "transaction costs", but to limit the attorney's incentive to obtain an appropriate award for his injured client. This is dramatically demonstrated by the Insurance Information Institute's $6.5 million pamphlet[72] entitled, "The Lawsuit Crisis" which contains "10 Reforms for the Lawsuit Crisis", including:

"Regulating Contingency Fees: To make sure everyone has access to an attorney, 'contingency fees' provide for lawyers to be paid a percentage of the final settlement. *Sometimes this encourages lawyers to push for higher awards* to create higher fees. . . ."[73]

(m) *The Fallacy of Fairness.*—Those who are pressing so vigorously for products liability "reform" claim that their proposals are fair. Nothing could be further from the truth. Here are a few examples:

1. Caps on Damages: Even the most ardent supporters of the proposed "Product Liability 'Reform' Act" admit that "numerous studies have found that the tort system" currently is guilty of "underpaying people with the most serious losses."[74] The "Product Liability 'Reform' Act" would compound this injustice by placing caps on damages awards,[75] further depriving the catastrophically injured victim of his right to just compensation.[76]

2. Exclusion of Commercial Loss: The "Product Liability 'Reform' Act" deprives the injured victim of his right to a jury trial, the collateral source rule, joint and several liability, implied warranty of the product seller, and just compensation, but excludes actions for "commercial loss"[77] so that one big business can still sue another big business and enjoy the benefits of a jury trial, the collateral source rule, joint and several liability, implied warranty of the product seller, and "uncapped" just compensation.

3. Abolition of Rights, But Not Defenses: In the name of uniformity,[78] the "Product Liability 'Reform' Act" deprives the injured product victim of causes of action against sellers of defective products for implied warranty, failure to warn, and strict liability for defective and unreasonably dangerous products, but preserves all the available defenses of the product manufacturer and product seller currently existing under state law.[79]

4. Periodic Payments for Future Damages: The "Product Liability 'Reform' Act" permits product manufacturers to make periodic payments for future damages even though existing law requires the jury to reduce future damages to their present cash value.[80]

5. Abolition of the Collateral Source Rule for Victims: Provisions of the "Product Liability 'Reform' Act" abolishing the collateral source rule give the product manufacturer credit against actual economic damages suffered by victim for all benefits which the victim has received or entitled to receive, including life, health, accident and disability insurance paid for entirely by the victim, and even for food stamps or welfare which the victim may be entitled to receive, but may not have applied for.[81] To compound this outrage, the product manufacturer may place whatever amount it "reasonably anticipates the claimant will receive from collateral sources" in "an interest-bearing escrow account."[82]

6. Proposal to Limit Contingency Fees: Although the insurance industry itself appears to have concluded that attorneys' fees paid to defense attorneys exceed those paid to plaintiffs' attorneys,[83] the Administration's Tort Policy Working Group only recommended cutting the product victim's attorney's fees and not those of the product manufacturer.[84] Although this recommendation was not included in the Senate Commerce Committee Bill, "a bitter Senator Bob Kasten (R-Wis.)" said that he "remained optimstic and would try again on the Senate floor."[85]

(n) *The Fallacy of Broad-Based Support.*—Products liability "reformers" and their allies have gone to great lengths to create the impression of broad-based support.[86] The fact is, their support comes primarily from the liability insurance industry,[87] product manufacturers,[88] and other special interest groups who stand to benefit most from the elimination of the rights of victims.[89] This callous coalition has set about to create a crisis[90] by raising rates and cancelling coverage of unsuspecting policyholders.[91] Thus far, however, their attempts to blackmail[92] a bewildered public have largely failed and through the smokescreen, the American consumer sees the situation for what it is: "The Manufactured Crisis."[93]

(o) *The Fallacy of "Reform".*—The word "reform" does not mean to change simply for the sake of change and it does not mean to change for the worse. It means to change for the better.[94-172] Product liability "reform," as presently proposed by the manufacturers of defective and unreasonably dangerous products and by the liability insurance industry, definitely means to change for the worse by literally destroying our present system of civil justice. This sweeping legislation will affect the lives of all Americans for years to come. It will abolish or severely limit the application of beneficial doctrines slowly and carefully developed and refined by the combined wisdom of 1,000 years of English and American common law. Two of the most prominent victims of this so-called "reform" movement are "equal and exact justice to all men" and the right of trial by jury.[173] Others include:

(1) The Collateral Source Rule: An equitable doctrine which recently celebrated its bicentennial birthday.[174]

(2) Joint and Several Liability: An equitable doctrine which dates back to the The Edicts of Ulpian, a Roman jurist in the 3rd Century A.D.[175]

(3) Liability of the Product Seller for Failure to Warn.[176] Liability to the ultimate consumer for negligent failure to warn of the dangerous nature of a product dates back to the turn of the century.[177]

(4) Liability of the Product Seller for Breach of Implied Warranty.[178] Liability for breach of implied warranty of product defects dates back to the Code Napoleon.[179]

(5) Liability of the Product Seller for Sale of Defective and Unreasonably Dangerous Products.[180] Commonly called "strict liability", this concept dates back to the 13th Century.[181] It was applied to sellers of food by judicial decision before the birth of Colombus.[182] It was applied to sellers of food by American courts in the early 19th Century.[183] Following World War II, its application was extended from food to such products as soap, hair dye and grinding wheels.[184] By 1963, it was being applied to products generally[185] and in 1964, its application to products generally was adopted by the American Law Institute.[186] Strict liabilities is now applied to products generally in 46 of the 50 states.[187]

(6) The Right of Equal Access to the Courts: The right of equal access to the courts necessarily implies the right of counsel: not just any counsel, but equal counsel. The contingent fee system provides the poor and moderate-income American with access to counsel equal in experience and ability to that of the richest and most powerful corporation. By drastically limiting contingent fees, the products liability "reformers" would deprive the average American citizen of this important right. Although this recommendation is not included in the Committee's proposed "Product Liability 'Reform' Act", Senator Kasten has vowed to reintroduce this restriction on the Senate floor.[188]

(7) The Right of Trial by Jury: This ancient right dates back to the Magna Carta. By severely limiting this right, the products

liability "reformers" would deprive the average American of an essential element of equal justice.[189]

(8) The Right of Just Compensation: The term "just" means "guided by truth, reason, justice and fairness." [190] Limiting the jury's right to award appropriate compensation by placing an arbitrary cap on damages, regardless of the nature and extent of injury, is certainly not guided by truth, reason, justice or fairness.[191]

Product liability "reform" as presently proposed is not reform, but regression and destruction: regression backward in time to the Dark Ages of the law and destruction of the fundamental freedoms of the American public. It like a spreading cancer fed by the insatiable greed of the liability insurance industry and the callous disregard of product manufacturers. It must be opposed and it must be defeated.

"Victims don't ask for sympathy or charity. Neither do they ask for apathy, indifference, and injustice. Instead they seek compassion, fair play, and a right to obtain justice from a jury of their peers."[192]

FOOTNOTES

[1] See, Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability, p. 1 (February, 1986).

[2] See, Statement of John C. Finch, Senior Associate Director, General Government Division, Before the Subcommittee on Oversight, Committee on Ways and Means of the House of Representatives on the Profitability of the Property/Casualty Insurance Industry, pp. 1, 4, 7 (April 28, 1986).

[3] *Id.* at page 4.

[4] "Available industry estimates show that over the next five years the [property/casualty insurance] industry expects substantial net gains. Our calculations, made from the industry estimates, indicate an expected net gain before taxes of more than $90 billion over the years 1986-1990."

[5] See, also, Bellotti, et al., "An Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance", prepared by the Attorneys General of the States of Massachusetts, California, North Carolina, Texas, West Virginia and Wisconsin for the National Association of Attorneys General. This extensive report contains several conclusions, including: "Conclusion #1: The property/casualty industry is in adequate and improving financial condition"; and "Conclusion #4: Changes in the civil justice system are not likely to solve the current or future problems in availability and affordability of liability insurance."

[6] Curran, "Bargains Beckon in Insurance", *Fortune Magazine*, p. 217 (August 4, 1986). See, also, "Yoo-Hoo, Big Blue", *Barron's*, p. 30 (June 2, 1986), which shows, "The 50 largest institutional holdings" and the "top 50 net purchases" by institutions as including at least four large liability insurance companies: Firemans Fund, St. Paul Companies, Chubb Corporation, and Kemper Corporation."

[7] Curran, *supra*, Note 6, p. 217. "The two year bull market in property and casualty stocks is far from over, analysts say. . . ." *Id.*

[8] Salmon Brother Analysts . . . are positively bubbly about the long term earnings outlook for property and casualty insurers. In a recent review of First Quarter results, they predict that 'explosive industry-wide earnings gains are virtually assured for 1986' because of commercial-rate strategies already in place." Henriques, "A Look at Insurers", *Barron's*, p. 44 (August 4, 1986).

[9] Curran, *supra*, Note 6, p. 217.

[10] Referring to "premium rate increases averaging 45% on traditional commercial policies in 1985", a recent *Fortune Magazine* article states that "analysts insist the earnings outlook for major insurers remains unusually bright." Curran, *supra*, Note 6, page 220.

[11] "Analysts' favorites run the gamut from the primary insurers who write the policies to reinsurers who take a piece of the action. [A] Salomon Brothers [analyst] thinks American International Group stands to be *a prime beneficiary of the trend toward the kind of tort reform that limits the size and type of awards.* 'This company writes esoteric coverage,' he says. 'Liability insurance for skating rinks, day care centers, ski lifts—just the type of business that will be helped by tort reform.' He expects AIG to earn . . . a gain of 73% over 1985, as higher policy prices reach the bottom line. In 1987 he expects a 35% boost . . . ." Curran, *supra*, Note 6, p. 220. See, also, "The Bullish Case for Casualty Stocks", *Barron's*, p. 13 (July 7, 1986), which states: "Generally, we think tort reform is good for the insurance industry . . . . We, ourselves, harbor a few reservations on the subject—*if tort reform brings about the desired result, it could encourage immoderate insurance company behavior* at some point. . . ."

[12] See, "Report of the Tort Policy working Group on the Causes, Extent and Policy Implications of the Current Crisis of Insurance Availability and Affordability", page 2 (February, 1986). In his introduction of the Administration bill (Kasten Amendment), Senator Kasten also referred to this alleged "products liability explosion". See *Congressional Record—Senate* S-5107 (April 30, 1986).

[13] See, "A Preliminary Examination of Available Civil Criminal Trend Data in State Trial Courts for 1978, 1981 and 1984", produced by the Court Statistics and Information Management Project of the National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187-8798 (April, 1986).

[13a] See page 1 of study cited in Footnote 8 above. To the same effect, see "The Assault Upon Personal Injury Lawsuits: A Study of Reality vs. Myths" *Public Citizen*, Washington, D.C., p. 1 (August, 1986), which concludes as follows: "Available data indicate that there has not been a dramatic increase in tort cases filed in state courts, where approximately 95 percent of these lawsuits are filed. Data for the years 1978, 1981 and 1984 show that for state courts representing about 35 percent of the U.S. population, tort filings have paralleled growth in population." See, also, Bellotti, et al., "An Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance", pp. 21-36, a Report by the Attorneys General of the States of Massachusetts, California, North Carolina, Texas, West Virginia and Wisconsin prepared for the National Association of Attorneys General (May, 1986), which concludes that "the evidence shows no vast or explosive increases in claims or payments to victims."

[13b] See page "ADD ONE" of study cited in Footnote 8 above.

[13c] See page "ADD TWO" of study cited in Footnote 8 above. "Whatever the explanation, there is no evidence to support the notion of a nationwide increase in lawsuits in the state trial courts between 1981-84." See Part II, second page, of study cited in Footnote 8 above.

[14] Statement of Gustave Shubert, Director, Rand Institute For Civil Justice, before the National Conference of State Legislatures, Denver, Colorado, January 4, 1986. Source: National Insurance Consumer Organization Memo, page 2, entitled, "Insurance Industry Tall Tales." National Insurance Consumer Organization, 121 N. Payne Street, Alexandria, Virginia 22314.

[15] *Congressional Record—Senate* S-5107 (April 30, 1986).

[16] Concerning this source, see National Insurance Consumer Organization memo entitled, "Insurance Industry Tall Tales" which states in part as follows: "The figures disseminated by the insurance industry are the average of awards to plaintiffs reported by Jury Verdict Research, Inc., of Solon, Ohio, which collects cases it learns about through a clipping service it subscribes to, through legal publications such as the ATLA Law Reporter, through reports directly from plaintiff's lawyers, and through reports by a small fraction of court's clerks. Since the popular press, understandably, report only the big cases, and since plaintiff's lawyers report only their great victories, the average of awards to plaintiffs collected by JVR is far higher than the average of awards to all plaintiffs. Moreover, JVR's data do not include defense verdicts, which consistently account for more than half . . . of all jury verdicts. Finally, JVR includes in its database both verdicts that were remitted by the judge . . . and verdicts that were later reversed on appeal."

[17] See May 20, 1986, Transcript of Senate Commerce Committee, Subcommittee on Consumer Affairs Hearing, p. 25 (15-16).

[18] See Transcript, *supra*, Note 15, pp. 27(25)-28(2).

[19] See Transcript, *supra*, Note 15, p. 27(3-13).

[20] See release of the White House Office of the Press Secretary, "Remarks by the President to the American Tort Reform Association," page 2 (May 30, 1986).

[21] Andrew Lang, *The Penguin Dictionary of Quotations*, page 230, ¶ 15 (1960). It is also interesting to note that the President also made several references to Mark Twain in his remarks to the American Tort Reform Association. Mark Twain is generally credited with the famous reference to statisticians: "There are liars, damn liars, and statisticians."

[22] The Rand Institute for Civil Justice reports that during the period 1960-1979, the median jury award in products cases was approximately $37,000 in San Francisco County, California, and $115,000 in Cook County, Illinois. See Shanley & Peterson, "Comparative Justice: Civil Jury Verdicts in San Francisco and Cook Counties, 1959-1980", pp. 14-15 (Rand Institute for Civil Justice, 1983).

[23] This study is being conducted under the supervision of Professor Patrick Hubbard of the University of South Carolina School of Law. Statistics are being gathered from the Office of the South Carolina Court Administration, the Federal District Court for the District of South Carolina, and 26 of South Carolina's 46 counties which account for approximately 80% of the cases filed during the 10-year period 1976-1985. Results of this phase of the study are expected to be published during the Fall of 1986.

[24] Greenville County.

[25] See, Minority Views of Senator Ernest F. Hollings, Report on the "Product Liability 'Reform' Act", Report #99-422 (Calendar #856), page 110 (August 15, 1986). The "South Carolina Verdict Survey" By Jury Verdict Research, Inc., states that jury verdicts in South Carolina are 15% above the national average and that verdicts in Greenville County are 3% above the national average.

[26] Page & Stephens, "The Product Liability Insurance 'Crisis'," 13 *Capital Univ. L. Rev.* 387, 401 (1984). See, also, Report of the Attorney General of the States of Massachusetts, California, North Carolina, Texas, West Virginia and Wisconsin, cited in Footnote 7 above, which concludes: "The statistics cited do not show meaningful increases in the number or size of awards, or in the non-economic damage portion of the awards."

[27] Daniels, "Punitive Damages: The Real Story", pp. 60-63, *American Bar Association Journal* (August 1, 1986): "Product liability cases accounted for less than 5% of all [punitive damages] verdicts at all sites except Los Angeles County, where the percentage was 9.6%." *Id.* at 61.

[28] ". . . Nor is it any small merit in this arrangement . . . to have the benefit of a trial, in which the judge and jury are a check upon each other; and that this *benefit* may always be enjoyed. . . . Thus considered, the distinction between the office of judge and jury seems to claim our utmost respect. May this wise distribution of power between the two long continue to flourish, unspoiled . . . ." *Coke's Institutes on the Laws of England*, Vol. I, § 234, p. 155b (1628).

[29] On motion for a new trial, the trial judge has the discretion to grant a conditional new trial or a new trial *nisi* unless the plaintiff agrees to remit [reduce] a portion of the verdict. The practical effect of this procedure is to grant the trial judge with discretionary power to reduce the verdict.

[30] 66 *C.J.S.*, New Trial, § 76, page 241.

[31] See Annotations: 35 ALR4th 441 (1985); 16 ALR4th 238 (1982); 16 ALR4th 736 (1982); 16 ALR4th 1127 (1982); 15 ALR4th 294 (1982); 15 ALR4th 519 (1982); 14 ALR4th 328 (1982); 14 ALR4th 539 (1982); 13 ALR4th 183 (1982); 13 ALR4th 212 (1982); 12 ALR4th 96 (1982); 52 ALR3d 1289 (1973); 49 ALR3d 934 (1973); 47 ALR3d 909 (1973); 47 ALR3d 971 (1972); 46 ALR3d 680 (1972); 46 ALR3d 733 (1972); 12 ALR3d 117 (1967); 12 ALR3d 475 (1967); 11 ALR3d 9 (1967); 11 ALR3d 370 (1967).

[32] Although § 402A of the "*Restatement of Torts, 2d* is commonly referred to as "strict liability", it only applies to products which, at the time of manufacture or sale, are defective and unreasonably dangerous. *Comment i.* specifically states that "the rule stated in this section applies only where the defective condition of the product makes it unreasonably dangerous to the user or consumer. . . ."

[33] *Restatement of Torts, 2d*, § 395, by the American Law Institute provides that "a manufacturer who fails to exercise reasonable care in the manufacture of a [product] . . . involving an unreasonable risk of . . . physical harm . . . is subject to liability for physical harm caused to them by its lawful use in a manner and for a purpose for which it is supplied." According to the reporter's notes, this rule, based on *MacPherson v. Buick Motor Co.*,

217 N.Y. 382, 111 N.E. 1050 (1916), "is now all but universally accepted in the United States." See Appendix to *Restatement of Torts, 2d*, § 395, page 416. "Mississippi was perhaps the last jurisdiction to accept *MacPherson*". *Frumer & Friedman, Products Liability*, § 5.03[1], page 26, citing *Stone Mfg. Co. v. Hodges*, 189 So.2d 113 (Miss. 1966), *cert. den.* 386 U.S. 912 (1967).

[32] *Restatement of Torts, 2d*, § 388, adopted by the American Law Institute provides that "one who supplies . . . a [product] for another to use is subject to liability . . . for physical harm . . . if the supplier . . . has reason to know that the [product] is . . . likely to be dangerous for the use for which it is supplied, and . . . fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous." For authorities supporting this rule, see Appendix to *Restatement of Torts, 2d*, § 388, and Frumer & Friedman, *supra*, Note 31, ¶ 8.

[33] *Uniform Commercial Code*, § 2-315, provides that "where the seller . . . has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose."

[34] This principle is embodied in *Restatement of Torts, 2d*, § 402A, adopted by the American Law Institute in 1964. Commonly called "strict liability", the principle has been adopted in all states except Massachusetts, North Carolina, Virginia and Wyoming.

[35] In his introduction of the Administration's proposed Product Liability Reform Act, Senator Kasten speaks of a "return to a fault-based liability standard for product designs and warnings." See *Congressional Record—Senate* (April 30, 1986).

[36] *Black's Law Dictionary*, page 1275 (5th Ed., 1979) defines "strict liability" as follows: "A concept applied by the courts in product liability cases in which a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety. . . ."

[37] "The liability we are considering is 'strict' in the sense that there is no need to prove that the manufacturer was negligent. . . . Yet, the manufacturer is not an insurer of the product's safety; *strict liability is not absolute liability*. As a [requirement] to recovery, the plaintiff must prove the product was defective." Schwartz, "A Products Liability Primer", 33 *ATLA J.* 64, 69-70 (1970) [Emphasis added].

[38] The headnote to 72 *C.J.S. Supp*, Products Liability, § 11, p. 17, states as follows: "There can be no liability for injury owing to a product unless that product is defective, regardless of whether the recovery is sought on the theory of strict liability, breach of warranty, or negligence."

[39] Section 2(a)(4) of the proposed "Product Liability Reform Act of 1986" (the Administration Bill or "Kasten Amendment") states: "Where product liability law is not based on fault or wrongdoing by the defendant, product liability law often operates to punish and deter conduct and activities which are beneficial and promote the public welfare." It is difficult for us to see how the manufacture and distribution of defective and unreasonably dangerous products is a "beneficial" activity which "promotes the public welfare".

[40] In introducing the Administration Bill (Kasten Amendment), Senator Kasten stated that, "Our courts have held persons liable for failing to warn about product dangers which were unknowable at the time; . . . and held liable those who failed to warn about product uses which were totally unforeseeable." *Congressional Record—Senate* (April 30, 1986). Having researched, followed and practiced products liability law for 20 years, I have no knowledge of any such cases. In any event, it seems that Senator Hollings' comment to one of the product liability reform witnesses at the May 20, 1986, Senate Commerce Committee Hearing is particularly appropriate here: "It strikes me that what you need are some better lawyers." [Transcript, p. 93 (19-20)].

[41] Kimble & Lesher, *Products Liability*, § 73, pp. 121-124 (West's Handbook Series 1979). This rule is contained in § 395 of the *Restatement of Torts, 2d* by the American Law Institute. Comment *b.* to this section states as follows: "This section states the rule thus generally adopted. The justification for it rests upon the responsibility assumed by the manufacturer toward the consuming public, which arises, not out of contract, but out of the relation resulting from the purchase of the product by the consumer, *upon the foreseeability of harm if proper care is not used;* upon the representation of safety implied in the act of putting the product on the market; and upon the economic benefit derived by the manufacturer from the sale and subsequent use of the [product]."

[42] "The duty to warn unquestionably rests on foreseeability, as does liability in negligence on other grounds in products liability cases." Frumer & Friedman, *Products Liability*, Vol. I, § 8.03[1], p. 161. "Foreseeability must be based on the manufacturer's notice or knowledge of the danger. But . . . the manufacturer must keep abreast of scientific advances, is under the duty to make tests to ascertain the nature of his product, and either has or should have a superior knowledge of his product. . . ." *id.* at p. 164.

[43] See 77 *C.J.S.*, Sales, § 374, p. 1318, at footnote 7. The "essential issue" in products cases based both on negligence and implied warranty is foreseeability. The manufacturer "must be expected to anticipate the environment which is normal for the use of his product and . . . he must anticipate the reasonably foreseeable risks of the use of his product in such an environment." *Gardner* v. *QHS, Inc.*, 448 F.2d 238, 242-243 (4th Cir. 1971), quoting from *Spruill* v. *Boyle-Midway, Inc.*, 308 F.2d 79, 83-84 (4th Cir. 1962).

[44] "The ordinary tort rules of causation are applicable in products liability cases, whether the basis of recovery is negligence or strict liability. Recovery in any products liability action requires that the injury incurred must have been actually caused by the defective condition of the product. In addition . . . the defect must be the legal or proximate cause of the harm. . . . This requirement of proximate cause is usually phrased in terms of foreseeability of danger or harm, with foreseeability held to mean that which it is objectively reasonable to expect, not merely what might conceivably occur. . . ." 72 *C.J.S. Supp*, Products Liability, § 30, pp. 46-48.

[45] "No man e'er felt the halter draw, with good opinion of the law," John Trumbull, from Evans, *Dictionary of Quotations*, p. 378 (1968).

[46] See, Minority Views of Senator Slade Gorton, who stated that the proposed "Product Liability 'Reform' Act", "rather than reducing transaction costs, is likely to increase them significantly." See, Report on "The Product Liability 'Reform' Act", *supra*, Note 23, page 102. See, also, Minority Views of Senator Gore, who stated: "Instead of establishing an efficient system of prompt and fair recoveries while reducing transaction costs, the Committee Bill will serve only to complicate and lengthen the litigation process. . . ." Report, *supra*, page 123.

[47] "This revision of the joint and several liability doctrine will prohibit a victim from recovering for any harm committed by a potential defendant that has not been sued. Consequently, [it] encourages victims to identify and sue each and every party that may be remotely responsible for the injury. That change will increase the number of parties before the court, the number of issues and motions to be resolved, the cost of litigation, and, in many instances, the complexity of a given case." Minority Views of Senator Gore, Report, *supra*, Note 23, page 123.

[48] See, Minority Views of Senator Slade Gorton, Report, *supra*, Note 23, page 101.

[49] See, for example, Prosser, "The Assault Upon the Citadel (Strict Liability to the Consumer)", 69 *Yale Law J.* 1099, 1115-1116 (1960) and Prosser, "The Fall of the Citadel (Strict Liability to the Consumer)", 32 *ATLA J.* 21-25 (1968).

[50] See, so-called "expedited settlements" provisions in Title II of the proposed "Product Liability 'Reform' Act", Senate Bill 2760, 99th Congress, Second Session, Calendar No. 856, §§ 201-206.

[51] "I have but one lamp by which my feet are guided, and that is the lamp of experience." Patrick Henry, *Bartlett's Familiar Quotations*, p. 465A (14th Ed., 1968). This is one of the great advantages of the common law. In each case, the court considers, not only the philosophy of abstract legal principles, but the practical effect of rules of law in a variety of individual situations.

[52] Referred to as "alternative dispute resolution mechanisms". [Transcript, 13 (18-19)].

[53] Transcript of May 20, 1986, hearing, p. 13 (18-20). In introducing his Bill on May 20, 1986, Senator Danforth referred to "a simple alternative settlement system that makes injured persons whole on an expedited basis and without the costs associated with prolonged litigation."

[54] See, Minority Views of Senator Gore quoted in Footnote 47 above.

[55] The proposed "Product Liability 'Reform' Act", Senate Bill 2760, *supra*, Note 50, § 308, proposes to abolish joint and several liability for "non-economic damages".

[56] Under the proposed "Product Liability 'Reform' Act" § 308(a), the manufacturer's responsibility for resulting damages would be reduced by the pro rata fault of both parties and non-parties. See, Minority Views of Senator Gore, quoted in Footnote 47 above. The practical effect of such provisions would be to encourage the manufacturer to point the blaming finger in each case in as many directions as possible and to force the plaintiff, for his own protection, to add all of them as parties to the action.

[57] "Under this rule, if an injured person receives compensation for his injuries from a source wholly independent of the [defendant] the payment should not be deducted from the damages which he would otherwise collect from the [defendant]. . . . In other words, a defendant . . . may not benefit from the fact that the plaintiff has received money from other sources as a result of the defendant's tort, *e.g.* sickness and health insurance." *Black's Law Dictionary*, p. 238 (5th Ed., 1979).

[58] In describing the proposed Product Liability Reform Act of 1986 (Administration Bill—Kasten Amendment) to the Senate Commerce Committee, Attorney General Meese stated that this proposed legislation "provides for the modification of collateral compensation doctrines to eliminate double recoveries by the plaintiffs." Transcript of May 20, 1986, Hearing, p. 13 (15-17).

[59] Under §§ 102(a)(3), 102(a)(11), 201(b), 201(c), and 204, if the defendant makes a settlement offer, the injured product victim's recovery for economic damages is restricted to "net economic loss" after deducting all so-called "collateral benefits", including "all benefits and advantages received or entitled to be received" under "any life, health or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance or any benefit received or to be received as a result of participation any prepaid medical plan or health maintenance organization." Proposed Act, *supra*, § 102(a)(3).

[60] As to the collateral source rule, see generally, *Helfend* v. *Southern California Rapid Transit District*, 84 Cal.Rptr. 173, 465 P.2d 61 (1970); *Hudson* v. *Lazarus*, 217 F.2d 344, 346 (D.C. Cir. 1954); *Hueper* v. *Goodrich*, 314 N.W.2d 828 (S.Ct. Minn. 1982); *Harding* v. *Town of Townshend*, 43 Vt. 534 (1870); *Restatement of Torts, 2d*, § 920A, Comment *b.*; Hogan, "The Collateral Source Rule: Its Justification and Its Defense", 19 *Trial* 58 (February, 1983); Stein, "Compensation from a Collateral Source", Chapter 10 in *Damages and Recovery—Personal Injury and Death Actions*, pp. 287-324 (1972); Averbach, "The Collateral Source Rule", 21 *Ohio St. L.J.* 231 (1960); Maxwell, "The Collateral Source Rule in the American Law of Damages", 46 *Minn. L.Rev.* 669 (1962); Comment, "Damages—The Collateral Source Rule", 63 *Va. L.Rev.* 177 (1961).

[61] Senate Bill 2760, 99th Congress, Second Session, Calendar No. 856, § 205(a).

[62] "Excess . . . proceeds." See *Winston* v. *United States*, 342 F.2d 715 (9th Cir. 1965). "An unexpected gain, piece of good fortune, or the like." *Random House Dictionary of the English Language*, p. 1636 (Unabridged Ed., 1973). See 46 *Words and Phrases*, p. 36.

[63] Senate Commerce Committee Transcript, p. 13 (12-14), (May 20, 1986).

[64] "*Present value of future damages.* An allowance for future damages must be reduced to its present value, and in passing on such damages, the jury may allow only such sum as put at simple interest would, with interest accumulations, amount to such damages at the time or times in the future when the jury find from the evidence they will be sustained." 25A *C.J.S.*, Damages, § 194, p. 259. See, also, *Am.Jur.2d*, Damages, §§ 26-29.

[65] Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability, pp. 2, 33-34 (February, 1986).

[66] Under the *Restatement of Torts, 2d*, § 431, there is no liability unless the defendant's conduct "is a substantial factor in bringing about the harm." *Comment a.* to § 431 states: "In order to be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent. . . . This is necessary, but it is not of itself sufficient. The negligence must also be a substantial factor in bringing about the plaintiff's

harm." Listed in the Appendix to § 431 are no less than 44 pages of citations to cases which have repeatedly applied this principle in virtually every American jurisdiction.

[67] The Report of the Tort Policy Working Group, *supra*, Note 65, cites no authority for its "deep pocket" theory. See, pp. 33-34, Footnotes 28-34. The Rand Institute's booklet by Chin & Peterson entitled, "Deep Pockets, Empty Pockets, Who Wins in Cook County Jury Trials" (1985) is based on one data source only [page xi] and admits: "Patterns that we observed could reflect differences in liability issues among trials. . . ." [page x]. "These findings do not necessarily mean that juries treated types of litigants differently. It is possible that trials differed among types of defendants in ways not examined in our analyses. Most important, our analyses did not take liability issues into account. . . ." [page v].

[68] "Some researchers have hypothesized that plaintiffs receive large jury awards because jurors view certain defendants as having 'deep pockets'. However, interviews with jurors in federal and state courts in southeast Pennsylvania revealed no significant finding that awards were based on the ability of the defendant to pay. The jurors' decisions rested primarily on their consideration of whether the plaintiff deserved to win based on the facts of the case and the applicable law, as well as the necessity to deter misconduct." Minority Views of Senator Ernest F. Hollings, Report on the "Product Liability 'Reform' Act", *supra*, Note 23, page 113, citing Guinther, "The Jury in America" (Preliminary Report prepared for delivery at Earl Warren Conference, Cambridge, Mass., June, 1986).

[69] See, Report of Tort Policy Working Group, *supra*, Note 65, page 2.

[70] See, Testimony of Attorney General Meese, Senate Commerce Committee Hearing, p. 13, lines 23-25 (May 20, 1986); Report of Tort Policy Working Group, *supra*, Note 65, pp. 72-74.

[71] The Report of the Senate Commerce Committee on page 3 cites a study by the Insurance Organization on approximately 25,000 closed claims which concluded that, of every $1 paid in claims, the insurance industry paid "an average of 42¢ in defense costs", 67¢ went to the victim and 33¢ went to the victim's attorney. Therefore, of each $1.42, 47% went to the product victim, 30% to the product manufacturer's attorney, and only 23% to the injured victim's attorney.

[72] See, "Media Blitz: Insurers Claim Lawsuit Crisis", 72 *American Bar Association Journal* 19 (June 1, 1986). The Insurance Information Institute is "supported by more than 300 insurance companies". See "The Lawsuit Crisis" cited in Footnote 73 below, page 7.

[73] Insurance Information Institute pamphlet entitled, "The Lawsuit Crisis", p. 4 (April, 1986). Pushing for "higher awards" for catastrophically injured victims is required by Canon VII of the *Code of Professional Responsibility* which requires a lawyer to represent his client "zealously within the bounds of the law." Even the supporters of products liability "reform" admit that "numerous studies have found that the tort system" is guilty of "underpaying people with the most serious losses." Senate Commerce Committee Report on the "Product Liability 'Reform' Act", Report 99-422 (Calendar No. 856), page 4 (August 15, 1986).

[74] Majority Report of Senate Commerce Committee on the Proposed Product Liability Reform Act, Report 99-422 (Calendar No. 856), p. 4 (August 15, 1986).

[75] See, Senate Bill 2760, § 204(c).

[76] See, for example, Additional and Minority Views in Senate Commerce Committee Report. Senator Stevens called the caps "inappropriate" [p. 98]. Senator Rockefeller called them arbitrary and "nowhere near sufficient" [p. 99]. Senator Gorton called them an "incredible injustice" [p. 101]. Senator Hollings quoted an insurance executive, who said they would inflict "substantial injustice" [p. 104]. Senator Inouye called them "unjust to the point of absurdity." [p. 116]. And Senator Gore said that caps "would work the greatest injustice against individual victims" [p. 118] and concluded that "Congress must not sacrifice justice to reduce the cost of litigation." [p. 119]. "The [provisions of the Product Liability 'Reform' Act] effectively leave injured persons without anything approaching fair compensation for pain and suffering. . . ." [Senator Gore, p. 124].

[77] Senate Bill 2760, § 103(a).

[78] Senate Bill 2760, §§ 103(e) and 302.

[79] See, Senate Bill 2760, §§ 103, 301, and 302.

[80] Senate Bill 1760, § 205. "*Present value of future damages.* An allowance for future damages must be reduced to *its present value*, and in passing on such damages, the jury may allow only such sum as put at simple interest would, with interest accumulations, amount to such damages at the time or times in the future when the jury finds from the evidence they will be sustained." 25A *C.J.S.*, Damages, § 194, p. 259. See, also *Am.Jur.2d.*, Damages, §§ 26-29.

[81] See, Senate Bill 2760, § 102(a)(3). Laws which would give the wrongdoer, regardless of the degree of his guilt, a credit for the injured victim's life insurance or hospital insurance, no matter what the sacrifice or amount of premiums which the victim has scrimped and saved to pay, demonstrates the incredible injustice of the entire concept of this so-called "Product Liability 'Reform' Act".

[82] Senate Bill 2760, § 102(b).

[83] See, Senate Commerce Committee Report on Senate Bill 2760, *supra*, Note 23, p. 3, which cites a 1977 survey of approximately 25,000 closed claims conducted by the Insurance Services Office. This survey found that "insurers paid an average of 42¢ in defense costs" per $1 of claims paid against a typical plaintiff's "contingent fee of 33¢ in legal costs."

[84] See, Report of Tort Policy Working Group, Recommendation No. 7, pp. 72-74 (February, 1986), which recommends "scheduling contingency fees". See, discussion in § (1) on pp. 22-23 above.

[85] *Liability Week*, Vol. 1, No. 8, p. 1 (June 23, 1986).

[86] See, for example, the recent publication entitled, *The Need for Legislative Reform of the Tort System* (May, 1986), which lists 134 "endorsing organizations." However, two-thirds of these organizations are made up of medical groups such as the American Medical Association, trade associations such as the National Association of Manufacturers, and professional groups such as the American Institute of Architects. The remaining one-third are mainly made up of contractors, business executives, manufacturers, and insurance industry organizations such as the National Constructors Association, U.S. Business and Industrial Council, the American Insurance Association, General Motors, and AMOCO.

[87] See, for example, "Media Blitz: Insurers Claim Lawsuit Crisis", 72 *ABA J.* 19 (June 1, 1986), which states that "the property and casualty insurance industry has launched a $6.5 million television and print advertising campaign seeking changes in tort laws. . . . The insurance industry's campaign began in March with ads in Sunday newspaper magazines in 12 states. . . . Ads have since appeared in *Time*, *Newsweek*, and *Readers' Digest*. The television ads were slated to run on the NBC Nightly News. . . . The print ads include a coupon that can be sent to the Insurance Information Institute for 'The Lawsuit Crisis' pamphlet. . . ." according to this pamphlet, the Insurance Information Institute "is supported by more than 300 insurance companies." See "The Lawsuit Crisis", p. 7 (Insurance Information Institute) (April, 1986).

[88] See, for example, "Issue Brief, A Public Policy Summary on Product Liability Tort Reform" by the National Association of Manufacturers (January, 1986) in which the NAM claims to have "provided substantial additional input during the drafting process" of the so-called "Product Liability 'Reform' Act".

[89] This would include physicians who want immunity from liability for medical malpractice, architects who want immunity from liability for defectively designed structures such as the falling skywalks of Kansas City, industrial polluters who seek immunity from liability for toxic waste, the asbestos industry, manufacturers of the Dalkon Shield, etc.

[90] See, for example, Olender, "The Great Insurance Fraud of the Eighties," *National Law Journal*, p. 15 (July 21, 1986); Stewart, "The 'Tort Reform' Hoax", *Trial* 89-94 (July, 1986); Butler, "'Insurance Crisis' A Camouflage for Greed," *Atlanta Journal/Constitution* (August 17, 1986; Hunter & Angoff, "Insurance Industry Fouls its Own Nest," *Los Angeles Times* (February 4, 1986).

[91] According to *Consumer Reports*, "In June, 1985, John Byrne, then Chairman of the Board of Geico, a major insurance company, told the Casualty Actuaries of New York that 'the insurance industry should quit covering doctors, chemical manufacturers, and corporate officers and directors.' Byrne also said, 'It is right for the industry to withdraw and let the pressure for [tort] reform build in the courts and in the state legislatures.'" "The Manufactured Crisis: Liability Insurance Companies Have Created A Crisis And Dumped It On You," *Consumer Reports*, p. 544-545 (August, 1986).

[92] See, *e.g.*, "'Industry Blackmail' Forces State Reversal of Insurance Reform," *Greenville News* (February 4, 1986).

[93] See, "The Manufactured Crisis," *supra*, Note 91, which states: "In its advertising and in most statements to the press and public, the insurance industry lays blame for the crisis on lawyers, juries, or victims . . . A more objective analysis suggests that the 'crisis' is of the insurance industry's own making. . . ." *Consumer Reports* cites a Washington State task force report which concluded that the so-called "crisis" is "mostly a result of poor management practices by the (insurance) companies" and a report by the New York Governor's Advisory Commission on Liability Insurance which said that the insurance industry's allegedly poor financial condition [only $75 billion in net profits during the past 10 years] "largely reflects self-inflicted wounds." See, also, "Tort Study Scorecard," *ABA J.*, p. 26 (September 1, 1986), which states that "ABA officials testified in February before a Senate subcommittee that a 5-year ABA tort study showed the system is working."

[94-172] See, *Random House Dictionary of the English language*, p. 1206 (Unabridged Ed., 1973), which defines the word "reform" as "the improvement or amendment of what is wrong, corrupt, unsatisfactory, etc."

[173] "Equal and exact justice to all men, . . . freedom of religion; freedom of the press, . . . and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages and the blood of our heroes has been devoted to their attainment. They should be the creed of our political faith . . .; and should be wander from them in moments of error or alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety." Thomas Jefferson, First Inaugural Address, *Bartlett's Familiar Quotations*, page 472 (14th Ed., 1968). The 7th Amendment to the United States Constitution, ratified December 15, 1791, provides for the right of trial by jury in civil cases: "In suits at common law . . . the right of trial by jury shall be preserved . . ."

[174] From *Mason* v. *Sainsburry*, 3 Douglas 61 (Eng. 1782) and *Yeates* v. *White*, 132 Eng. Rep. 793 (Eng. 1838), it was adopted in the United States in *Propeller Monticello* v. *Mollison*, 58 U.S. 152 (1854) and *Althorfe* v. *Wolfe*, 22 N.Y. 355 (1860). It is now almost universally followed in the United States. See *Restatement of Torts, 2d*, § 920A, *Comment b.*, by the American Law Institute, which provides as follows: "*Benefits from collateral sources* . . . It is the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor. If the plantiff was himself responsible for the benefit, as by maintaining his own insurance or by making advantageous employment arrangements, the law allows him to keep it for himself. . . . One way of stating this conclusion is to say that it is the tortfeasor's responsibility to compensate for all harm that he causes. . . ." See, also, *Annotation*: "Collateral Source Rule: Hospital or Medical Insurance", 77 ALR3d 415 (1977).

[175] See Scott, *The Civil Law*, Vol. 4, p. 84 adn Vol. 6, p. 147 (1932). See, also, League, *Roman Private Law*, pp. 345-347 (1906) and Buckland, *A Manual of Roman Private Law*, § 141, p. 349 (1939).

[176] § 302(b) of Senate Bill 2760 provides that a product seller could be held liable for failure to warn only if he failed to pass on "written warnings or instructions received while the product was in the product seller's possession and control." This would apply regardless of the product seller's own independent knowledge of the dangerous nature of the product. Therefore, proof that the product seller knew of the danger, or that he received oral warnings from the product manufacturer, or written warnings from some other source, would not be sufficient to establish liability under this so-called "reform".

[177] See, for example, *Waters-Pierce Oil Co.* v. *Deselms*, 212 U.S. 159, 177-178, 29 S.Ct. 270, 275-276, 53 L.Ed. 453 (1909); *Huset* v. *J.I.Case Threshing Machine Co.*, 120 Fed. 865 (8th Cir. 1903); *Louis* v. *Terry* 111 Cal. 39, 43 Pac. 398 (1896); *Schubert* v. J.R. Clark Co., 49 Minn. 331, 51 N.W. 1103 (1892). See cases collected in the Reporter's Notes to the Appendix to § 388 of the *Restatement of Torts, 2d*,

pp. 373-374. See, also *Restatement of Torts, 2d*, § 388.

[178] § 302(a) of the Senate Bill 2760 limits the product seller's liability to "independent acts of negligence or breach of express warranty" independent of any express warranty made by [the] manufacturer." Therefore, by necessary implication, § 302(a) abolishes §§ 2-314 and 2-315 of the *Uniform Commercial Code* which has been adopted in all 50 states. See, generally, 3 Squillante & Fonseca, *Williston on Sales*, §§ 15-19 through 15-23, pp. 387-412 (Lawyers Co-op., 1974).

[179] Section 1641 of the *Code Napoleon*, adopted in France in 1804, provides that "the vendor is bound to warranty by reason of concealed defects in the thing sold which render it unfit for the use to which it is destined. . . ." Liability for implied warranty is now codified in § 2-315 of the *Uniform Commercial Code* adopted in all 50 states. Implied warranties under English common law have existed for more than 200 years. See *Blackstone's Commentaries on the Laws of England*, Vol. III, page 158, which states that implied contracts "are such as reason and justice dictate, and which therefore the law presumes that every man has contracted to perform; and, upon this presumption, makes him answer to such persons, as suffer by his nonperformance." See, also, *Blackstone*, Vol. III, page 165, which states: "In contracts for provisions it is always implied that they are wholesome; and, if they be not, the same remedy may be had. Also if he, that selleth any thing, doth upon the sale warrant it to be good, the law annexes a tacit contract to this warranty, that if it be not so, he shall make compensation to the buyer: else it is an injury . . . for which an action . . . will lie to recover damages."

[180] See, § 320(a) of Senate Bill 2760 quoted in Footnote 78 above, which abolishes by necessary implication strict liability and implied warranty on the part of the product seller.

[181] See Reporter's Notes to § 402A of the *Restatement of Torts, 2d*.

[182] "Beginning about 1431", according to Dean Prosser. See Prosser, "The Assault Upon the Citadel (Strict Liability to the Consumer)", 69 *Yale Law J.* 1099, 1104 (1960). Columbus was born around 1446.

[183] *Van Bracklin* v. *Fonda*, 12 Johns. 468 (N.Y. 1815) called it "a principle, not only salutary, but necessary to the preservation of life and health." See Prosser, *supra*, Note 46, page 1104.

[184] See "Beyond Food", Prosser, *Supra*, Note 46, pp. 1110-1114.

[185] "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being." *Greenman v. Yuba Power Products, Inc.*, 59 Cal.2d 57, 27 Cal. Rptr. 697, 377 P.2d 897 (1963).

[186] See § 402A of the *Restatement of Torts, 2d*.

[187] The exceptions are Massachusetts, Virginia, North Carolina, and Wyoming.

[188] See, Footnote 185 above.

[189] By abolishing the collateral source rule, the proposed Act would effectively abolish the right of most product victims to recover for their medical expenses and loss of wages. To the extent that "net economic loss" exists, Senate Bill 2760, § 201(g), places the determination of all such issues in the hands of the judge. Arbitrary caps on damages deprive the catastrophically injured product victim of his right to a jury trial. See, §§ 102(a)(6) and 204(c). The victim's current rights to a jury trial against the product seller are effectively abolished by the abolition of strict liability, implied warranty, and failure to warn on the part of the product seller. See, §§ 302(a) and 302(b).

[190] *Random House Dictionary of the English Language*, p. 775 (Unabridged Edition 1973).

[191] See, Minority Views of Senator Daniel K. Inouye of Hawaii, who stated: "A cap [on damages] . . . amounts to telling a victim that, as a matter of Congressional policy, the pain that he has suffered or quality of life he has lost is worth only $150,000, $250,000, or some arbitrary figure selected because it sounds fair. I believe this is unjust to the point of absurdity." Senate Commerce Committee Report on Senate Bill 2760, page 116. See, also, Minority Views of Senator Albert Gore, Jr., of Tennessee, who stated that, "The Committee Bill . . . fails to assure justice, fairness and adequate compensation for those injured by defective products. . . ." Report, *supra*, page 117. Senator Gore stated that the Bill would "Effectively leave injured persons without anything approaching fair compensation for pain and suffering. . . ." Report, *supra*, page 124.

[192] Perlman, "All Pain and Suffering Is Not Equal," *Trial, p. 5 (June, 1986)*.

The PRESIDING OFFICER. Is there further debate on the motion to proceed?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if I could have the attention of the majority leader for a moment.

I wonder if the majority leader might help me by answering a question, if he can. Since the vote of some could be affected by what happens after the vote, is the majority leader in a position to tell us what his plans are relative to this bill in the event that the motion to proceed is agreed to?

Mr. DOLE. Mr. President, if I had my "druthers," we would pass the bill. But it is fairly obvious, after two or three votes—and we have given this a pretty good shot—that it is not going to happen this year.

I hope to adjourn by October 3. I think we have a real opportunity to do that.

I have discussed this with the distinguished Senator from Wisconsin [Mr. KASTEN] who feels very strongly about this bill. I have discussed it with the chairman of the Commerce Committee, Senator DANFORTH, and I think that, realistically, after this vote, I will pull the bill from the calendar.

The PRESIDING OFFICER. Is there further debate on the motion to proceed?

Mr. KASTEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO PROCEED

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed. On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Arkansas [Mr. PRYOR] would vote "yea."

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 84, nays 13, as follows:

[Rollcall Vote No. 295 Leg.]

YEAS—84

Abdnor	Glenn	McConnell
Andrews	Goldwater	Mitchell
Armstrong	Gore	Moynihan
Bentsen	Gorton	Murkowski
Biden	Gramm	Nickles
Bingaman	Grassley	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Pressler
Broyhill	Hecht	Proxmire
Bumpers	Heinz	Quayle
Burdick	Helms	Riegle
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Chiles	Kassebaum	Rudman
Cochran	Kasten	Sarbanes
Cohen	Kennedy	Sasser
Danforth	Kerry	Simon
Denton	Lautenberg	Specter
Dixon	Laxalt	Stafford
Dodd	Leahy	Stevens
Dole	Levin	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Wallop
Eagleton	Mathias	Warner
Evans	Matsunaga	Weicker
Exon	Mattingly	Wilson
Ford	McClure	Zorinsky

NAYS—13

Baucus	Hart	Metzenbaum
Cranston	Heflin	Simpson
D'Amato	Hollings	Stennis
DeConcini	Johnston	
Harkin	Melcher	

NOT VOTING—3

Garn	Pryor	Symms

So the motion to proceed was agreed to.

□ 1930

Mr. KASTEN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. KASTEN. Mr. President, I think this vote shows there is not only strong support but tremendous support for product liability reform

This overwhelming vote shows that almost all of my colleagues are ready to provide national uniformity and clarity to the product liability system. Only a tiny minority of my colleagues still resist a Federal solution to this national crisis. During the waning days of this 99th Congress, unfortunately, that minority has effectively prevented enactment of this legislation.

I find it particularly ironic that the tactics of delay, obfuscation, and use of legal technicalities have been used by this minority to prevent tort reform. These are the very tactics the trial attorneys use in the courtroom which have compelled the American public to demand Federal relief from the tort crisis. This is now the third Congress in which we have attempted to reform our product liability system. With each year, more and more of my colleagues have become convinced that Federal tort reform is absolutely essential. I am confident that next Congress we can begin action in the

other body and the Senate simultaneously and early so that we will not again be prevented from achieving reform by the special interests of a handful of trial attorneys. The American people are sick and tired of paying what is in effect a trial attorneys tax on every product they buy. They have a right to a fair, equitable, and uniform product liability system.

Next year, Congress can and will provide it.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I want to thank both the distinguished Senator from Wisconsin, Senator KASTEN, and the distinguished Senator from South Carolina, Senator HOLLINGS. As I indicated earlier, in my view there is strong support for this legislation, but it is obvious we are not going to conclude this year. We are in the last, hopefully, 6 or 7 days of the session. I commend the distinguished Senator from Wisconsin and others who support this. It is a bipartisan bill. But I believe those who oppose it feel just as strongly. It is fairly obvious to me that the best way to proceed at this point would be to ask unanimous consent that the product liability bill, S. 2760, be returned to the calendar.

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

Mr. HOLLINGS. I thank the distinguished majority leader.

Mr. President, let me ask unanimous consent that, since we brought this matter to a prompt close, Senators who wish to include their speeches be permitted to place their speeches into the RECORD if they send them to the desk during the next hour.

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

Mr. DODD. Mr. President, for years, the Congress has been bombarded with stories from manufacturers about how they have been found liable for huge judgments in cases where either their conduct was not negligent or where the injured party grossly misused the product, thereby causing the injury. The early efforts at product liability reform reflected the manufacturers' concerns and were directed at changing the legal standards by which we assess liability in order to make them fairer for manufacturers.

However, when one examines the premises for these changes, it seems clear that such a tort "reform" effort was doomed from the start. The tort reform approach had two basic premises. First, it assumed that judges and juries had become sympathetic to victims and were twisting tort laws to find ways to compensate injured people. The notion was that injured people had inadequate other resources to care for themselves and that manufacturers, either because of their size or their insurance, were in a better position to absorb the losses. If this theory is correct, and I think there are good reasons to believe it, then it seems logical to me that the Congress could not devise any tort standards that a sympathetic judge and jury could not pervert if they really wanted to compensate people.

Second, the supporters of tort reform believed that by establishing Federal tort rules we would be able to reduce transaction costs because lawyers would not have to spend their time trying to determine the law in 51 different jurisdictions. Unfortunately, that premise does not reflect what attorneys bill their clients for in product liability cases. Rather than spending their time researching the law, lawyers spend the vast bulk of their time developing the facts, and tort reform would not change that need one iota.

To conclude that tort reform would not be a panacea for the manufacturers is not to conclude that we should keep the present system. In 1984, I set out to examine the existing data to see if perhaps the tort system was a bad one for victims as well, to see if there might be a common interest among victims and manufacturers in improving the present system. What I found should distress anyone concerned about providing prompt and adequate compensation for innocent people injured by defective products. I found a system that fails to pay a significant number of people we would all consider worthy of compensation; a system that grossly overpays people with small losses and sadly underpays those with the most serious losses; a system that takes too long to pay the people it does pay; and a system that is so inefficient that it pays more to lawyers than to victims.

These findings are consistent with other studies of the deficiencies of the tort system, dating back to 1933. A comprehensive survey of 24,452 claims done by the insurance services office in 1977 produced the following profile of claims:

One-third of all claims were closed with no payment whatsoever. While some of these claims undoubtedly involved negligent "vicims," they also included situations where we would all agree that the victims were innocent. For example, the tort system provides nothing for children injured for life by childhood vaccines because vaccines are "unavoidably unsafe" products. That is to say, they help more people than they hurt. Unfortunately, many of the people they hurt end up physically and mentally handicapped for the rest of their lives and their parents and relatives get no help from the manufacturers to care for them.

People with economic losses between $1 and $1,000 who were successful in their claims recovered an average of 482 percent of their economic losses—the amount over 100 percent being for noneconomic losses. On the other hand, people with the most serious injuries, those with losses over $100,000 recovered less than 100 percent of their economic losses. The most dramatic disparity between losses and recoveries was for the 10 people whose losses exceeded $1 million. Their recovery, net of their attorneys' fees, was only 6 percent.

The importance of compensating people with serious injuries is brought home equally graphically by the fact that people with losses over $100,000 were only 2 percent of the victims, but they incurred 78 percent of the losses.

For those people fortunate enough to recover, the average time to recover the average amount was fully 5 years, with people with the largest losses waiting even longer to recover. For people with inadequate other resources to pay for their medical and rehabilitation losses and their work losses, 5 years is an unconscionably long time.

Finally, analysis of the ISO data revealed that attorneys for both sides received slightly more than the victims.

The fact that attorneys make so much money from the system is not a criticism of attorneys; it is the logical result of a system that requires attorneys for resolution.

While the ISO data dates back to 1977, the basic conclusions have been confirmed in subsequent studies, including a July, 1986 Rand Institute for Civil Justice study of transaction costs and two Alliance of American Insurer studies of people with tort recoveries over $100,000.

If the tort system is a pernicious one for both victims and manufacturers, what can we do to improve it for all concerned? My answer, contained in Senate Amendment 10 to S. 100, was to create a system designed to encourage resolution of product liability cases outside of the legal system.

Thereafter I worked with Senator DANFORTH, and consumer, labor and business people to try to find an acceptable formulation of these standards. When Senator DANFORTH introduced S. 1999 in November, 1985, I cosponsored it because I hoped it would bridge the gap among the interested parties, although I was concerned that the standard for payment in the claims system was getting too complicated to be workable.

Unfortunately, after almost a year's work, we were unable to devise standards that the different parties were comfortable with. In brief, it seemed as if the business community was concerned that it would have to pay all persons injured by products and consumer groups were afraid that not enough people would be compensated. While I understand the difficulties and uncertainties when one is dealing

with new concepts, I was very disappointed that we could not get agreement to try a reasonable alternative to the tort system.

Nevertheless, I was extremely encouraged when Senator DANFORTH sought to devise a system using economic incentives to try to produce similar results. In light of the fact that many of the groups that were having difficulty with new standards had recommended such an alternative, I was hopeful that it might prove a second best solution.

The result of that process was S. 2760. It has some shortcomings in my mind—all actions having to be initiated through a court proceeding would increase transactions costs unnecessarily; the failure to include new standards for limited recoveries will mean that some innocent injured persons will not recover; manufacturers need more information to decide whether to pay; and limitations on recoveries can be unfair in some cases.

On the other hand, I think the test on this bill must be whether it would create a system which is demonstrably better than the present one; not whether it would create the ideal system. By this standard I think the arguments for enacting S. 2760 are very strong.

First, let me remind you about the present system. For victims, it is a lottery. Some recover big judgments. Some recover small ones. And some recover nothing. Far too often what you recover has little to do with how you were injured and the extent of your injuries. Instead, it has a lot to do with what State you were injured in; whether you have the economic resources to wait out a good settlement; how good your lawyer is; and how sympathetic your judge and jury are. No study of the tort system has ever shown that similarly injured people receive similar treatment. Such a system is not a system of individualized justice. It is a lottery.

And it is a system in which the victorious are often losers as well. While victims are waiting to recover—an average of 5 years—they are often forced to expend their assets and cannot afford to pay for needed rehabilitation. Oftentimes the uncertainty of future recovery creates every bit as much pain and suffering as the injury itself.

The system has similar deleterious effects on manufacturers. Small ones run the risk of being put out of business if they lose a suit, which might be appropriate if they were at fault but in many cases they are not. Large manufacturers can sometimes use their resources to wait out the victims and settle for very little. Sometimes they gamble and lose.

What will S. 2760 do to put an end to this lottery? The answer is that it will give manufacturers strong incentives to make fair settlements—payment of all net economic losses, without limitation on time, for small injury cases and payment of all net economic losses and $100,000 for noneconomic losses in cases of very serious injury.

And why will manufacturers make such offers when they don't today? Because if they make such an offer, and the injured person turns it down, the manufacturer's liability will be capped—at $50,000 for noneconomic damages in small cases and $250,000 in cases of very serious injury or death.

These numbers are arbitrary by definition, but I think the premise is sound—in order to encourage manufacturers to pay victims fair amounts, you are going to have to give them an incentive to do so. Having failed to find an acceptable incentive in terms of changes in the tort system, then economic incentives are one such option.

That brings me to the most controversial part of the bill—the caps. Many have said that $250,000 is not enough for the person who suffers a lifelong injury. In the abstract, I agree. But remember what we are doing here: we are comparing S. 2760 to the present system. So let me explain why I think the cap is beneficial:

While $250,000 for pain and suffering—before subtraction for attorneys' fees—may offend your and my sense of adequacy for a paraplegic, remember that the present system may pay that person nothing, for a whole host of reasons, or if the person is lucky enough to win, the data tells us that in cases of losses of $1 million or more, the average recovery is 6 percent.

The $250,000 cap would apply only in cases where a manufacturer agrees to pay that person's net economic losses and $100,000 for pain and suffering and makes the offer within 120 days after a suit is filed. That is vastly superior to the more than 5 years such a person would have to wait today.

If the manufacturer does not make such an offer, there would be no cap.

If you have no cap for serious injury cases, then the manufacturer has no incentive to make a settlement offer, because he knows he can wait out most victims and settle for a pittance. Furthermore, the present system gives the manufacturer little incentive to make an offer because such would be viewed as an admission of liability that would be the starting point for negotiations and because the offer would have to be large enough to cover the plaintiff's attorney's standard one-third fee.

In sum, the answer to the paradox of how a cap on a victim's recovery can produce fairer recoveries lies in comparison with the present system. The right of a seriously injured person to sue is important, but it does not compare with the right of that person to recover a fair amount in a timely fashion.

Finally, Mr. President, while I think the approach contained in S. 2760 is a fair one, it is evident that there is no magic to the numbers or even to the formulation. What is clear is that we must produce a system that is fairer than the present one for all parties and that we can do so. I respect the concerns expressed by Senator INOUYE and others and stand prepared to work with them to devise a better system to achieve this vital objective. We cannot guarantee the American public the ideal system, but we owe them our best effort to produce a better one.

Mr. LUGAR. Mr. President, there is no more important issue facing businesses today than the cost and availability of liability insurance, and the underlying need for product liability reform. Some of our colleagues have noted that our Nation's small business community spoke with a strong, unified voice last month in making liability reform the top policy priority at the White House Conference on Small Business. It is also important to note that ranking ninth on the Conference's list of 60 final recommendations was a call for enactment of S. 2760, with the Kasten-Lugar fault-based defense amendment. I urge my colleagues to move to consideration of this S. 2760 so that the Senate may consider this important issue of product liability and various amendments designed to improve the legislation.

The underlying legislation would be improved with the addition of some fault standards. Traditionally, tort law has held that those whose wrongful acts cause harm should be held responsible, and those who have not acted wrongfully should not be held responsible. But court actions in recent years have breached this longstanding principle of tort law.

The fault-based amendment Senator KASTEN and I want to offer does not establish a Federal product liability standard. The strict liability standards used in most States would continue to apply. The amendment does place an outer limit on State law by providing two defenses that preclude the imposition of "strict strict" or absolute liability.

Even though the amendment would affect the law in only a few States, it is nevertheless important to liability reform. Because national manufacturers are potentially liable for products that are sold and used in many States, their insurance costs must take into account the law in the most extreme State.

Adoption of a Federal product liability law and, specifically, a fault-based amendment is necessary for several reasons. First, a fault-based standard would restore some predictability to tort law. Holding manufacturers re-

sponsible for harm caused by the misuse of their products, or for risks that could not reasonably have been known at the time of manufacture, creates completely unlimited exposure. No one can predict all the ways a product might be misused, or what risks a new scientific process could discover in products manufactured years ago. The unpredictability, more than actual monetary awards, has created the crisis in liability insurance. The Kasten-Lugar amendment would eliminate two areas of unpredictability and, in the process, help to alleviate the liability crisis.

Adoption of a fault standard would also add fairness to the tort law. If an individual is harmed by his or her own actions in misusing or altering a product, it is unfair to hold someone else responsible. If a manufacturer could not reasonably have prevented harm, it has not acted wrongfully. In these two instances, this amendment would preclude the imposition of liability against innocent manufacturers. Clearly, however, if a business manufactures a defective product it should be responsible. Our efforts to reform the tort system should not change this important concept.

Continuation of the status quo is unacceptable. We should not continue an unpredictable system of tort law which lends itself to upward pressure on insurance premiums. We should not continue the unfairness of holding innocent manufacturers liable when their products are misused and when they could not reasonably have known about risks at the time of manufacture. We should not inhibit the development of new products nor should we continue a system that leads to the withdrawal of beneficial products from the market.

I urge my colleagues to move to the consideration of S. 2760. We should not and cannot maintain the status quo.

FEDERAL-AID HIGHWAY ACT OF 1986

Mr. DOLE. Mr. President, I understand clearance has been obtained from the distinguished minority leader that we can proceed with the appointment of conferees on the highway bill. I ask that the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer appointed the following as conferees on the part of the Senate:

ENVIRONMENT AND PUBLIC WORKS

First. For Title I of S. 2405 and Title I of H.R. 3129, and for section 204, 55 mph speed limit; section 202 (a)(1) Bridge replacement and rehabilitation program authorizations, (a)(2) Elimination of hazards authorization, (a)(5) FHWA highway safety construction authorization; (a)(6) FHWA highway safety research and development authorization; section 209 Use of certain reports as evidence; section 210 Emergency call boxes; section 211 Railroad-highway crossings authorization; section 215 Railroad-highway crossing needs.

Mr. STAFFORD, Mr. SYMMS, Mr. CHAFFEE, and Mr. ABDNOR.

Mr. BENTSEN, Mr. BURDICK, and Mr. MITCHELL.

FINANCES

Second. For Title III of S. 2405 and Title V of H.R. 3129, extending the Highway Trust Fund.

Mr. PACKWOOD, Mr. DOLE, and Mr. ROTH.

Mr. LONG, and Mr. BENTSEN.

BANKING, HOUSING AND URBAN AFFAIRS

Third. For provisions dealing with urban mass transportation (including title II of S. 2405 and title III of H.R. 3129).

Mr. GARN, Mr. HEINZ, and Mr. HECHT.

Mr. PROXMIRE, and Mr. DIXON.

COMMERCE SCIENCE AND TRANSPORTATION

Fourth. For provisions dealing with highway safety (including title II of H.R. 3129 except for Section 202 (a)(1) Bridge replacement and rehabilitation program authorizations, (a)(2) Elimination of hazards authorization, (a)(5) FHWA highway safety construction authorization, (a)(6) FHWA highway safety research and development authorization; Section 209 Use of certain reports as evidence; Section 210 Emergency call boxes; Section 211 Railroad-highway crossings authorization; Section 215 Railroad-highway crossing needs.).

Mr. DANFORTH, and Mr. PACKWOOD.

Mr. HOLLINGS.

GOVERNMENTAL AFFAIRS

Fifth. For provisions dealing with the Uniform Relocation Act.

Mr. DURENBERGER, and Mr. ROTH.

Mr. CHILES.

HIGHER EDUCATION ACT AMENDMENTS—CONFERENCE REPORT

Mr. STAFFORD. Mr. President, I submit a report of the committee of conference on S. 1965 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their repective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 22, 1986.)

Mr. STAFFORD. Mr. President, I rise to urge the passage of S. 1965, the Higher Education Act Amendments of 1986. As chairman of the Subcommittee on Education, Arts, and Humanities, it has been my privilege to work with my colleagues in the Congress to develop and refine this vital piece of education legislation. Resolving over 600 items of disagreement in the Senate and House passed versions of this bill was no small task for the conferees to undertake. A prevailing spirit of compromise and a deep commitment to Federal support to students pursuing higher education enabled us to bring this bill before you today.

The compromises that were reached not only provide for continued Federal support of student financial aid programs, but they do so in a fiscally responsible manner. Included in S. 1965 are the legislative provisions necessary to meet the reconciliation instructions contained in the first concurrent resolution on the budet for fiscal year 1987. These provisions do not diminish the availability of financial assistance to eligible student borrowers. In fact, the conferees were able to reduce overall costs in the program by over $1.09 billion over 5 years while at the same time increasing the amount of loan assistance available for students for the first time in over 15 years.

When the reauthorization process began on the Senate side in February of 1985, the subcommittee members had two very important goals in mind in extending the student aid programs for 5 years. First, we wanted to make sure that 95 percent of Federal aid to higher education continued going directly to students. Our second priority was to restore the balance between grant and loan support. S. 1965 meets both of these targets. The maximum limits for the Pell grant, supplemental educational opportunity grant and State student incentive grant programs have been increased significantly, and the campus based aid programs have been better targeted on the neediest students.

At a time when Federal spending is so carefully scrutinized, and in order to increase the amount of assistance available to individual students, the question of eligibility had to be addressed as well. S. 1965 contains important revisions to the system of needs analysis which will serve to insure the fact that recipients of increased levels of Federal grants and loans are truly entitled to such assistance. Demographics on college campuses around the Nation have changed dramatically in the past 5 years and will continue to do so in the future. Barely 50 percent of students attending college today are in the 18-22-year

age range that we most often think of for students. Many students now have dependents of their own to support while attending classes and are working part time as well. S. 1965 fairly and equitably takes the financial needs of this new population on our campuses into account. An example of this consideration is the inclusion of child costs as an allowable expense in the revised need analysis system. Students with dependents, who have child-care costs, will be able to present a realistic budget of their school expenses to financial aid officers when their amount of Federal aid is determined.

Overall spending in S. 1965, though somewhat higher than in the Senate passed version of this legislation, is far less than our House counterparts would have liked. In December of last year, the House passed a higher education reauthorization with an $11.6 billion level in fiscal year 1987. In spite of that, all conferees agreed to a $10.2 billion cap with an overall 5 percent increase for the Higher Education Act in the out years. Furthermore, this cap is $1.6 billion less than current authorizations for the Higher Education Act.

I have included with my statement a summary of the conference agreements contained in S. 1965. I would also like to mention two technical corrections to the statement of managers. In the Guaranteed Student Loan Program Senate and House conferees worked out a compromise proposal pertaining to American students attending offshore medical schools. Two criteria for receipt of GSL's are described in the bill. Those provisions are to be interpreted as follows: either 60 percent of the students enrolled must be nationals of the country where the school is located or 45 percent of the U.S. students must pass the foreign medical graduates examination in 1987.

A second technical error that needs clarification pertains to title XI. Funds appropriated for that title are to be divided between parts a and b on a two-thirds one-third basis respectively.

□ 1940

In closing, S. 1965 is a bill which I am very proud to bring before my colleagues. It represents the bipartisan efforts of all members of the Senate and House Education Subcommittees. Most importantly, it restates to the American public the Federal commitment to educational opportunity and excellence.

I want to thank my Senate colleagues on the Labor and Human Resources Committee for their great assistance and cooperation throughout this long process. I can truthfully say that all members of the Education, Arts and Humanities Subcommittee and their very capable staff have made significant contributions to S. 1965 at every step of the process, and I am proud to be chairman of a subcommittee with such fine members who care so greatly about education. I would like to read their names now: Senators HATCH, QUAYLE, WEICKER, WALLOP, THURMOND, PELL, KENNEDY, DODD, MATSUNAGA, and SIMON.

Finally, I want to especially acknowledge the constant support and guidance I have received from my partner, CLAIBORNE PELL. As usual he has made this process a pleasant one and has at every step in our sometimes difficult journey conducted himself with the utmost integrity, demonstrating once again that he is a gentleman and a leader.

Mr. President, at this time, I am delighted to yield the floor to Mr. PELL.

I ask unanimous consent to have a summary of the conference agreement printed in the RECORD.

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

SUMMARY OF CONFERENCE AGREEMENT ON HIGHER EDUCATION AMENDMENTS OF 1986

COST

Current Law Authorization: $11.827 billion.

Current Appropriation: $8.796 billion.

Conference Agreement: $10.200 billion.

TITLE I—POSTSECONDARY PROGRAMS FOR NONTRADITIONAL STUDENTS

This is basically a rewrite of the discretionary grant program to provide assistance to adult and continuing education at the postsecondary level.

Current authorization: $63 million.

Current appropriation: 0.

Conference agreement : $10 million.

TITLE II—LIBRARIES

Part A—College Library Resources.—Program for College Library Resources provides assistance to needy libraries. Colleges would be eligible for grants of $2,000 to $10,000 depending upon the size of the institution and the number of disadvantaged students attending the school. This is a rewrite of the old program but with a targeting of funds to needy libraries. Initial authorization: $10 million.

Part B—Training and Development and Part C—Research Libraries.—These programs would be continued without major changes, but they would receive modest authorization increases.

Part D—College Library Technology and Cooperation.—This is a new discretionary grant program designed to help college libraries take advantage of technological advancements. Initial year authorization: $5 million.

Current authorization: $86 million.

Current appropriation: $6.7 million.

Conference agreement: $30 million.

TITLE III—INSTITUTIONAL AID

Strengthening Institutions provision would initially authorize $120 million to improve the academic quality, institutional management and fiscal stability of institutions that serve large numbers of disadvantaged students.

Strengthening Historically Black Institutions would initially authorize $100 million to upgrade the quality of these institutions.

Challenge Endowment Grants would be 50-50 matching grants to help institutions achieve financial independence. Initial year authorization of $20 million.

In addition, there would be a specific set-aside for community colleges—$51.4 million.

Current authorization: $270 million.

Current appropriation: $135 million.

Conference agreement: $245 million.

TITLE IV—STUDENT ASSISTANCE

Part A—Grants to Students.—

Subpart 1—Pell Grants.—The maximum grant (now at $2100) would go to $2,300 for 1987, $2,500, for 1988, $2,700 for 1989, $2,900 for 1990, and $3,100 for 1991.

Cost of attendance would be held at 60%, which means a maximum grant in the first year would be either $2,300 or 60% of the cost of attendance, whichever is less.

The Secretary of Education would be required to develop a simplified needs test for very low income families. The Secretary would also be encouraged to develop a simplified application form for the Pell Grant program.

Eligibility period: five full academic years for four-year programs; six full years for five-year programs.

Up to $1,000 in child care costs would be allowed in the calculation of eligibility for assistance in the Pell Grant program.

Students would be required to contribute up to $800 in self-help before being eligible for grant or loan assistance.

Less than half time students would become eligible for Pell Grant assistance in Fiscal 1989 if their families had a $0 expected family contribution. Those with expected family contributions between $0 and $200 would become eligible in Fiscal 1991.

Current authorization: $4.444 billion.

Current appropriation: $3.578 billion.

Conference agreement: $4.600 billion.

Subpart 2—Supplemental Educational Opportunity Grants.—The maximum grant would be increased from $2,000 to $4,000.

The minimum grant would be decreased from $200 to $100.

Priority in grant awards would be given to those students with the lowest expected family contribution at the school. This will make sure that this program is targeted to serving the most needy, deserving students.

Less than half time students would be eligible to receive supplemental grants. If counted, such students would receive a reasonable proportion of the institution's funds.

Current authorization: $725 million.

Current appropriation: $395 million.

Conference agreement: $490 million.

Subpart 3—State Student Incentive Grants.—These are federal grants to the states to support state scholarship and student aid programs. The maximum grant would be increased from $2,000 to $2,500.

Up to 20% of a state's funds could be used for a state work study program or community service work learning projects or both. Participation would be limited to students eligible for SSIG assistance and based upon need.

Current authorization: $250 million.

Current appropriation: $73 million.

Conference agreement: $85 million.

Subpart 4—Student Support Service Programs—TRIO Programs.—These programs include Upward Bound, Talent Search, Educational Opportunity Centers, and Special Services.

$1 million would be provided to fund a program giving special assistance to recruit

and help minority students pursue graduate study.

Current authorization: $490 million.

Current appropriation: $176 million.

Conference agreement: $205 million.

Subpart 5—Migrant Programs.—These programs include the High School Equivalency Program and the College Assistance Migrant Program.

Current authorization: $18 million.

Current appropriation: $7.5 million.

Conference agreement: $9.0 million.

Subpart 6—Byrd Honors Scholarship Program.—Program provides scholarships to talented high school graduates.

Current authorization: $8 million.

Current appropriation: None.

Conference agreement: $8 million.

Part B—Guaranteed Student Loans.—Every applicant would have to demonstrate financial need in order to obtain a loan. Currently, only families with incomes above $30,000 have to show need.

Loan limits would be increased in the following manner: from $2500 to $2625 for freshmen and sophomores; from $2500 to $4000 for juniors and seniors; from $5000 to $7500 for graduate students.

Deferment provision would be expanded in the following manner: New deferment for single parents with disabled dependents, borrowers on maternity leave, elementary and secondary teachers in shortage fields or regions, and members of the NOAA Corps; the deferment for unemployed borrowers would be extended from one to two years.

Interest rate would be held at 8% while the student is in school and would be increased to 10% in the fifth year after the student graduates.

The insurance premium would be renamed and correctly called an administrative fee. It would be limited to a one-time charge of no more than 3% for the first year of the loan.

State Guaranty Agencies would be required to provide a lender of last resort in every state.

The special allowance would be decreased from 3.5% to 3.25%.

Sallie Mae's general authority would be modified. They would be prohibited from purchasing a bank. Their actions would be limited to secondary market functions and they would have to notify Congress of new policies they were pursuing under their general grant of authority.

Provision also included allowing students to consolidate outstanding loans into one payment and to extend the length of repayment to 15 years, and up to 25 years where indebtedness exceeds $45,000. Student must have at least $5,000 in outstanding loan indebtedness in order to qualify for consolidation. Program could be offered by any bank, state guaranty agency, or Sallie Mae. The idea behind consolidation is that the student would make one payment of a reduced amount of money over a longer period of time. The interest rate on consolidated loans would be at a rate of 9% or the weighted average rate of the consolidated loan, whichever is greater.

PLUS/ALAS Loans.—Limits would be increased from $2,500 to $3,500 a year for undergraduates, and from $3,000 to $4,000 for graduate students.

Interest rate for new and refinanced loans would be at the rate of T-bill plus 3.75% or 12%, whichever is lower.

Current authorization: none, entitlement program.

Current appropriation: $3.260 billion.

Conference agreement: $3.200 billion.

Part C—Work Study Programs.—Institutions would be allowed to use up to 10% of their college work study funds for community service projects. If they opted to do this, they would have to come up with only a 10% match, as opposed to the 20% match currently required.

Current authorization: $830 million.

Current appropriation: $567 million.

Conference agreement: $656 million.

Part D—Income Contingent Loan Program.—A $5 million program is authorized to implement an income contingent loan program to test the concept of tying repayment to the income of the loan recipient.

Part E—Perkins Loans.—NDSL Loans would be called "Perkins Loans."

Cumulative loan limits would be increased to $4,500 for the first two years of undergraduate work, $9,000 for undergraduates who have completed more than two years of academic work, and $18,000 for graduate students.

Loans would be re-targeted to go to student demonstrating exceptional financial need.

Interest would remain at 5%.

A new cancellation provision would be implemented for Peace Corps and VISTA volunteers, and new deferments would be added for members of the NOAA Corps and for elementary and secondary school teachers in shortage fields or regions.

Current authorization: $653 million.

Current appropriation: $208 million.

Conference agreement: $275 million.

Part F—General Student Aid Provisions.—Major provisions of need analysis are incorporated into the federal law in order to prevent the Administration from altering the program and its direction through regulatory change.

Simplified needs test and application form for families with very low incomes.

No student in default on a GSL or a Perkins loan may receive any form of federal assistance while in default.

New authorization of $10 million for special Child Care Services to provide grant to institutions of postsecondary education to offer day care services to children of low income students.

Satisfactory Progress. Requires that a student, in order to remain eligible for federal student aid, must after the completion of second year in college maintain a cumulative "C" average, its equivalent, or academic standing consistent with the requirements of graduation at the institution of attendance.

Aid to students who attend college on a less than half time basis is available in the campus-based programs. If such students are counted, the institution would have to serve them in a reasonable proportion to their numbers on the campus. For the Pell Grant program, less than half time students would become eligible for assistance in Fiscal 1989 if they have a zero expected family contribution.

Ability to Benefit. Aid applicants without a high school diploma must obtain a GED diploma prior to graduation or pass a standardized test measuring the student's aptitude to complete the course of study in which they are enrolled. If the student does not pass the test, they must receive remedial basic skills instruction.

Independent student definition is changed. Student must be 24 years or older. If not 24, must be an orphan, ward of the court, not married with legal dependents, a veteran. If the student is married or is a graduate or professional student under 24, independence can be conferred by a decision, with documented evidence, of the financial aid administrator.

TITLE V—TEACHER TRAINING AND DEVELOPMENT

Part A—Midcareer Teacher Training for Nontraditional Students.—Discretionary grant program to assist individuals who want to change careers and prepare for the teaching profession. Would have an initial year authorization of $3.5 million.

Part B—School, College and University Partnerships.—Discretionary grant program for cooperative projects to improve the quality of instruction at the secondary education level. Initial year authorization of $15 million.

Part C—Professional Development and Leadership Program.—

Subpart 1—Professional Development Resource Centers.—This is a discretionary grant program to provide for inservice upgrading of teacher skills through centers established at the local level. Initial year authorization of $15 million.

Subpart 2—Leadership in Educational Administration Development.—Discretionary grant program to improve the quality of educational administration. Authorization level: $10 million.

Part D—Teacher Scholarships and Fellowships.—

Subpart 1—Congressional Teacher Scholarship Program.—Authorization of $13.5 million for scholarship for talented high school students interested in the teaching profession.

Subpart 2—Christa McAuliffe Fellowship Program.—Authorization of $2 million for fellowships to talented teachers to upgrade teaching skills.

Current authorization: $81 million.

Current appropriation: $9.8 million.

Conference agreement: $60 million.

TITLE VI—INTERNATIONAL EDUCATION

Reauthorization of revised and expanded International Education program which includes graduate and undergraduate language and area centers, establishment of language resource centers, provision for intensive summer language institutes, and fellowships for advanced graduate training for exceptional students studying foreign languages.

Current authorization: $87.5 million.

Current appropriation: $25.5 million.

Conference agreement: $55 million.

TITLE VII—CONSTRUCTION AND RENOVATION

Continuation of existing programs of grants and loans for construction, reconstruction, and renovation of graduate and undergraduate facilities.

College Housing Program is transferred to Higher Education Act and is expanded to include construction, reconstruction and renovation of academic facilities.

College Construction Loan Insurance Association.—New program with authorization of $20 million to guarantee and insure bonds and loans for the construction and renovation of academic facilities primarily for institutions that do not have access to financing in the private market.

Current authorization: $260 million.

Current appropriation: $51.4 million.

Conference agreement: $100 million.

TITLE VII—COOPERATIVE EDUCATION

Reauthorization with minor changes of existing cooperative education program.

Current authorization: $35 million.

Current appropriation: $13.8 million.

Conference agreement: $17 million.

TITLE IX—GRADUATE PROGRAMS

Part A—Grants to Institutions to Encourage Minority Participation in Graduate Education.—New program with initial year authorization of $10 million to identify promising minority students and to provide encouragement for them to pursue graduate education.

Part B—Patricia Roberts Harris Fellowships.—Existing program of fellowship assistance to encourage minorities and women to pursue graduate study has been renamed to honor the late Patricia Roberts Harris. Stipends would be increased from the current $4,500 to $10,000 a year. Initial year authorization of $30 million.

Part C—Jacob K. Javits Fellows Program.—National Graduate Fellows program has been renamed to honor the late Senator Javits. Program provides fellowships to graduate students in the humanities. Initial year authorization of $10 million.

Part D—Graduate Assistance in Areas of National Need.—New program of grants to institutions for students to pursue graduate study in areas of national need. Initial year authorization of $30 million.

Training in the Legal Profession and Law School Clinical Experience Programs, which provide assistance for disadvantaged students to study law, are continued without change.

Current authorization: $130 million.
Current appropriations: $16.5 million.
Conference agreement: $90 million.

TITLE X—IMPROVEMENT OF POSTSECONDARY EDUCATION

No fundamental changes in this program. Special authorization of $3 million to establish demonstration grant program for community service projects.

A new Part C transfers the Minority Institutions Science Improvement Act from the National Science Foundation to the Higher Education Act with an authorization of $7.5 million.

Current authorization: $50 million.
Current appropriations: $12.2 million.
Conference agreement: $25.0 million.

TITLE XI—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE

Part A—Partnerships for Economic Development.—This is a new program to identify and disseminate effective models for partnerships between education institutions and other agencies involved in area or regional development. Has an initial year authorization of $10 million.

Part B—Urban Community Service.—Authorizes $5 million to extend on a revised based the Urban University Grant program.

Current authorization: $55 million.
Current appropriations: $0.
Conference agreement: $17 million.

TITLE XII—GENERAL PROVISIONS

This title includes provisions for a National Commission to Study the Institutional and Programmatic Recognition Process. The accreditation commission is to examine in detail the process for accrediting schools.

TITLE XIII—EDUCATION ADMINISTRATION

This title authorizes a series of studies to be conducted by the Secretary of Education or the General Accounting Office. Also authorized is a National Commission on Responsibilities for Financing Postsecondary Education. Further, the title requires a study of the re-targeted College Library Resources program.

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

Mr. PELL. Mr. President, it is with considerable enthusiasm that I rise in support of the conference report on S. 1965, the Higher Education Amendments of 1986. When we began the conference in July, we had some 700 points of specific disagreement with the House. In all candor, I can say to my Senate colleagues that the Senate conferees, and particularly our leader, the distinguished senior Senator from Vermont [Mr. STAFFORD] were hard and tough in bargaining with the House. The main load of that conference was carried by him; there is no question about it. The result is a conference report that adheres in large part to basic principles laid down in the original Senate legislation.

Under the agreement worked out in conference, the initial year cost of this legislation would be $10.2 billion. That is more than $1½ billion below current higher education authorizations, and more than $1 billion below the legislation originally passed by the House. More than anything, this demonstrates a strong and successful commitment to prudent fiscal restraint on the part of the Senate while, at the same time, making sure that as much aid as financially possible would go to those needing it.

As was true with S. 1965, the primary focus of the conference report is student aid. Over 94 percent of the funds authorized will go directly to students in the form of grants, loans, college work study, and special instructional assistance.

When Chairman STAFFORD and I originally started work on this legislation, we formed an agreement that at least 90 percent of the funds had to go to student aid. I am very proud of the fact that we stuck to our guns and that the result is even better than the target we set at the start.

In the Pell Grant Program, which is the foundation of our Federal student aid efforts, we have produced very significant changes. The maximum grant, which is now set at $2,100, would start at $2,300 in the first year and increase by $200 each year of the 5-year reauthorization. This is a critically important achievement in light of the fact that the value of Pell grants has actually declined by 20 percent over the last 4 years, while the cost of a college education has increased by almost 40 percent.

Second, we have mandated the Secretary of Education to develop a simplified needs test for very low-income families, and encouraged him to develop a simplified application form for the Pell Grant Program. For parents who are poor and often lacking in basic skills, this is very important. It will, I am hopeful, produce an application form that is brief, clearly written, and without unnecessary detail.

Third, I am very proud of two provisions for which I worked hard. One of these provides that up to $1,000 in the costs of child care will be allowed in the calculation of eligibility for assistance in the Pell Grant Program. This provision is particularly important for single parents who want to pursue a postsecondary education, but often find there is no consideration in Federal student assistance for the costs of child care.

The other provision would increase the home asset protection from $25,000 to $30,000. This is important to low income home owners who have struggled hard in order to purchase a home and often find that its inflated value has unfairly affected their Pell grant eligibility. The plain fact is that the inflated cost of the home is something they cannot realize and cannot, therefore, use in financing a child's education. Yet, it is something for which they have been penalized in the past.

There is another provision related to child care that was also agreed to in Conference. It provides a $10 million authorization for on-campus child care facilities for low-income parents. This, too, is very important if educational opportunity is to be available to low-income students with children.

Finally, we agreed in conference that in fiscal 1989 less than half-time students would become eligible for Pell grants if their families had a zero expected family contribution. Those students from families with expected family contributions between zero and $200 would become eligible in 1991. The minimum Pell grant would remain at $200 and there is the important provision that the entrance of less than half time students into the Pell Grant Program cannot diminish aid to students who are eligible for Pell grant assistance and attending school more than half time.

Both the supplemental grant and direct loan programs would be retargeted to serve students who demonstrate exceptional financial need. The maximum grant in the supplemental program would be increased from $2,000 to $4,000. In direct loan program, which will now be called Perkins loans, the cumulative loan limits would be increased to $4,500 for the first 2 years of undergraduate work, $9,000 for undergraduates who have completed more than 2 years of academic work, and $18,000 for graduate students. The interest rate for Perkins loans would remain at the current 5 percent. These, too, are important changes for students with limited means, and for whom Federal student aid is an absolute necessity if the dream of a college education is to become a reality.

In the Guaranteed Student Loan Program, the conference agreement contains a series of changes that are crucial to the future viability of this

important program. Every student who seeks a GSL must now demonstrate financial need. The interest rate on such loans would remain at 8 percent while the student is in school and until the student reaches the fifth year of repayment. At that time, it would increase to 10 percent. The special allowance paid to banks would decrease from 3.5 to 3.25 percent. State guaranty agencies would be required to provide a lender of last resort, and would pay a reinsurance fee that would increase according to the agency's default rate. Loan limits would be increased from $2,500 to $2,625 for freshmen and sophomores, to $4,000 for juniors and seniors, and from $5,000 to $7,000 for graduate students.

These changes combine to produce two very crucial results. On the one hand, they help make sure that the GSL Program will remain a viable instrument in helping needy students finance their college education. On the other hand, they make sure that the savings we must achieve in this program are spread among all parties and are not borne solely by the students.

In both the College Work Study and the State Student Incentive Grant Programs we have incorporated a new emphasis upon community service. I am very hopeful that these changes will spur institutions throughout America to become more fully involved in their communities, and to make community service an integral part of the student's education.

In graduate education, we have made several extremely important changes. The grant program to enhance graduate education opportunities for women and minorities has been renamed to honor the late Patricia Roberts Harris, and the annual stipend has been increased to a maximum of $10,000. This increase was necessary in order that this program adquately reflect the higher costs of graduate education.

The National Graduate Fellows program, which provides fellowships in the humanities, has been renamed to honor our late colleague, Jacob K. Javits, and its authorization has been increased to allow three full classes of fellows.

The Senate conferees also accepted a House provision to establish a new National Graduate Fellowship Program in areas of national need.

If our Nation is to remain competitive in the world economy, it is crucial that those who teach our teachers, train our scientists, and constitute the leadership of America technology be of the highest quality possible. The reforms made in graduate education in this reauthorization legislation will be a giant stride forward in the realization of that goal.

The conference agreement also incorporates a provision which I have advocated for a number of years, and which was part of the original Senate bill. This provision requires that a student must, after completion of the second year in college, maintain a cumulative "C" average, its equivalent, or academic standing consistent with the institution's graduation requirements. This provision applies to all Federal student aid programs. Its effective implementation will insure that our limited student aid dollars go only to those students who have need and are serious about their work—students who are completing and passing the courses in which they are enrolled.

The conference report also includes another Senate provision which mandates a study of the accreditation process. Since accreditation is an important link in the determination of whether or not an institution can ultimately receive Federal student aid funds, it is important that we in Congress have a better understanding of how this process functions. This study can also provide us with critical information regarding whether or not the accreditation process insures that we have a postsecondary education system of the very highest quality.

Mr. President, as we developed the higher education reauthorization legislation in subcommittee, in full committee, and on the floor of the Senate, we were mindful of the need to develop and maintain a broad consensus of support. The conference report we bring back to the Senate today represents that kind of consensus. It is in that spirit that I urge my colleagues to approve this conference report on the Higher Education Amendments of 1986.

I add also that we could not have done our work on this bill had it not been for the able help of the counsel for the majority and minority sides, Mrs. Polly Gault and Mr. David Evans. I thank them and their associates for all they did so we could come up with this bill.

Mr. METZENBAUM. Mr. President, the conference report on the reauthorization of the Higher Education Act is a significant achievement, and in general I strongly support it. This legislation represents the Federal commitment to providing all students, regardless of income, with the opportunity for a higher education. The majority of the funds authorized through the bill will be used to extend and improve programs providing financial assistance to needy students: Pell grants, guaranteed student loans, campus-based grant and loan programs, and the College Work Study Program. These programs will provide to millions of lower and middle income students each year the opportunity to grow and achieve a better life through higher education.

While the primary emphasis of the bill is on financial aid, the Higher Education Act will also provide support for college libraries, cooperative education, graduate programs, teacher education, and for traditionally black colleges and institutions which serve minority and low-income students.

Mr. President, while I strongly support the continuation of these vital programs and commend the conferees for their achievement, I am very concerned by the action taken in conference on one provision of the bill: the College Construction Loan Insurance Association.

This new program was created to provide bond insurance to assist colleges which have had difficulty in obtaining the capital necessary to make badly needed improvements in their educational facilities. I am very sympathetic to the problems facing these schools, and during Senate consideration of S. 1965, I worked with other committee members to ensure that the program would target assistance on those schools currently having problems obtaining financing. Under the Senate bill, bonds insured through the CCLIA could only be used for education facilities purposes, and only schools which could not obtain financing elsewhere were eligible to participate. The Senate bill also ensured that no changes would be made in the tax rules governing bonds insured by the association. In addition, the Senate accepted my amendment prohibiting schools which discriminate from participating in the Loan Insurance Program.

Although the conferees retained the antidiscrimination language, the rest of the Construction Loan Insurance Program has been changed so significantly that I believe it will no longer serve the purpose for which it was created. The program will no longer concentrate its resources on providing access to construction capital for colleges and universities which do not now have such access. Instead, it will be permitted to spend most, if not all, of its resources reinsuring bonds which are already insured by the private sector, rather than providing new insurance for schools that cannot sell their below-commercial-grade bonds. The CCLIA is no longer an assistance program for colleges; it has become nothing more than a subsidy program for the insurance industry.

In addition, the CCLIA will be able to insure tax-exempt bonds, a direct violation of the Internal Revenue Code, which prohibits direct or indirect Federal guarantees of tax-exempt bonds. The CCLIA anticipates insuring more than $1.5 billion of such bonds annually.

Mr. President, I do not believe that this program in its present form will serve the needs of our colleges and universities, and I intend to oppose efforts to provide appropriations for it. In my view, the needs of colleges and

universities can be better served by funding other worthwhile programs.

Mr. WALLOP. Mr. President, 2 years ago, I accepted assignment to the Senate Labor and Human Resources Committee. As part of my work on the committee, I have served on the Subcommittee on Education, Arts, and Humanities, which is ably chaired by my colleague from Vermont, Mr. STAFFORD. The ranking member is the Senator from Rhode Island, Mr. PELL. These two members have overseen the development of our Federal program of assistance for higher education since the passage of the original Higher Education Act in 1965.

Most of my service the past 2 years on the subcommittee has focused on the reauthorization of the Higher Education Act. It has taken literally 2 full years to reach the point we are at today. We held extensive hearings on the issue of financing higher education. I personally chaired a field hearing in Laramie, WY, the home of the University of Wyoming. We eventually drafted an excellent bill. Unfortunately, the House of Representatives did not recognize many attributes in our bill, and we were forced into a lengthy conference.

At times, it appeared that the House Members had learned nothing from our experiences of the past 10 years. The House presented us with a bloated bill—including unrealistic funding levels and reauthorization of questionable programs. On our side, we had a firm commitment by all the Members to putting together a realistic bill, one that targeted most of the act's resources to loans and grants for low-income students in a fiscally responsible manner. Our firm determination convinced the House conferees that there would not be any legislation this year if they insisted on their position.

We have put together a good bill. Even the White House, reluctantly perhaps, agrees that we made tremendous progress with this reauthorization of the Higher Education Act. We set the first year authorization level at $10.2 billion, well below the original House level. We revamped and streamlined the qualification procedures for Pell grants and guaranteed student loans. Subsidies to the lenders have been cut back. The bill contains incentives for nontraditional students, in particular women who are single parents. My chairman has provided a thorough explanation of the bill. I urge the adoption of this conference report.

Mr. CHAFEE. Mr. President, I commend the distinguished Senator from Vermont on his outstanding work in putting together the Higher Education Act reauthorization. Both he and the distinguished senior Senator from Rhode Island worked tirelessly on this extremely important legislation, and they have done an excellent job.

Their dedication to quality educational institutions and student financial assistance programs is well known in this body, and indeed, throughout the Nation, and comes through clearly in this legislation. Working under difficult budgetary constraints, they crafted a responsible and equitable Senate bill that was applauded on all sides. I was proud to be a cosponsor of that legislation, and now I am pleased to vote in favor of the conference report, which I understand is the product of many days' hard work.

One particular provision of this legislation means a great deal to me, and I would like to take a moment to point it out to my colleagues. The conference has seen fit to include in this reauthorization the Leadership in Educational Administration Act [LEAD], of which I was the original Senate sponsor. This act became law in 1984, as part of the Human Services Reauthorization Act, and I have been working hard with the Department of Education to guide its actual implementation.

LEAD will eventually establish in each State a technical assistance and training center in which practicing and prospective elementary and secondary school administrators will learn the skills they need to succeed. These include management techniques, goal-setting, curriculum development, budgetary expertise, and many other skills that add up to effective leadership. Although the school administrator is in many ways the linchpin of his or her school, the needs of these educational leaders are often overlooked. In my view, one can have a school stocked with wonderful teachers, but without the leadership and vision of a skilled administrator the school can fail its students.

Although authorized at the level of $20 million per year, in fiscal year 1986 LEAD received an appropriation of $7.5 million. While I would have preferred a greater appropriation, in these days of budget cuts I was pleased that LEAD received a large enough sum to get the program off the ground. I am happy to report that just last week the Department of Education released proposed regulations, which means that state and local education agencies, intermediate school districts, private management organizations and nonprofit organizations can begin writing up proposals.

This conference report extends the authorization of LEAD through fiscal year 1991, with an authorization level of $10 million for fiscal year 1987. This is a 2-year extension of the original authorization, which I am very happy to see. More importantly, I am pleased that the conferees had a strong enough interest in this program to transfer it to the Higher Education Act reauthorization. Getting this program rolling has been something of an uphill struggle, in part because school administrators do not get the attention they deserve in discussions of education reform. Support for LEAD on the part of the conferees is certainly encouraging for the future of the program.

Finally, Mr. President, I would like briefly to mention a question that has arisen with the regulations for LEAD, regarding the eligibility of the District of Columbia. The language of the original LEAD legislation states only that the a LEAD center shall be established in each "State," but never indicates whether the District of Columbia should be included. I would like to make clear that, as the author of the original bill, I never intended to make the District of Columbia ineligible. It is my hope that regulations for LEAD will include the District of Columbia as eligible to participate in this exciting program along with the 50 States. I am sure that there are legal ways of defining the District of Columbia as a state, for the purposes of a particular program, and I will support such a definition in the case of LEAD.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I wish to take this opportunity as one of the conferees on S. 1965 to commend my colleagues, the distinguished Senator from Vermont and the distinguished Senator from Rhode Island.

I hope Americans across this country who have received a higher education over the last several years, fully appreciate the tremendous work that the Senator from Vermont and Senator PELL have done to see to it that lower and middle income families have the opportunity to see their children get an education.

The conference that we have just been through was an extensive one. It went on for a great deal of time. As the Senator from Rhode Island pointed out, there were some 700 items in disagreement. Yet because of the persistence of the Senator from Vermont and the Senator from Rhode Island, we were able to present this bill for substantially less than the Senate wanted to pay, yet in a way which provides for the needs of students across this country for the next 5 years.

□ 1950

I am very proud to have been a part of that effort and I am delighted that a number of provisions that I offered, which I will not go into at this point, are a part of this conference report. I thank personally the chairman, Senator STAFFORD, for his willingness to listen to my ideas and to offer constructive criticism and improvement to those ideas, and my colleague as well, from Rhode Island, Senator PELL, for

the extensive time that he put into that effort as well. I would be remiss if I did not also express the gratitude of all of us on the committee to David Evans, the minority staff director; Polly Gault, who did a tremendous job, and Rich Tarplin in my office, who spent tremendous hours working not only on the issues that were of particular importance to me but also on the larger provisions of the bill as well.

So I am honored to have my name associated with this conference report. I think the chairman and the ranking minority member have done more than just their job; They have done a tremendous service to an awful lot of people across this country who will have a better opportunity to get a higher education because of their efforts.

John F. Kennedy once wrote:

> The future of young people and the Nation rests in large part on their access to college and graduate education. For this country reserves its highest honors for only one kind of aristocracy—that which the Founding Fathers called an "aristocracy of achievement arising out of a democracy of opportunity".

Just 2 short years after President Kennedy penned these visionary words, Congress enacted the Higher Education Act of 1965. Since that time, the Federal role in higher education has been shaped by the two philosophical foundations which underlie this landmark Federal statute. First, HEA embodies the uniquely American principle which President Kennedy first outlined almost 25 years ago: That all young people in America should have access to and choice of postsecondary educational opportunities, regardless of their personal wealth. Second, HEA symbolizes our conviction that the long-term economic vitality and security of our Nation depend on its ability to sustain a pool of educated citizens who can serve our country's needs in defense, science, communications, health, commerce, and a host of other areas.

Mr. President, it is a distinct pleasure and a high honor for me to report to the Senate that the conference report which is now before us maintains and expands the Federal Government's two historic responsibilities in higher education. The Higher Education Act of 1986 reauthorizes and expands important student aid programs like Guaranteed Student Loans, Pell Grants, and College Work-Study. This legislation also establishes an innovative Supplemental Loan Program to help middle-income families meet the rising costs of higher education without unreasonable sacrifice. These programs represent the best of our national character; they ensure that a student's choice of college is based not on the depth of his pocketbook but on the depth of his intellect.

This legislation also expands HEA's categorical programs which represent vital Federal investments in the scholarly and scientific research which has led to advancement and innovation across all areas of our national life. These programs include foreign language and international education, funds for the construction and renovation of academic and research facilities, research library assistance, graduate and professional fellowships, and funds for teacher training.

Mr. President, as a member of the Senate Subcommittee on Education, Arts, and Humanities, and as a Senate conferee on this historic legislation, I am proud to have authored several initiatives which are contained in the conference report before us today. First, I authored an amendment to establish a private corporation which will guarantee and insure bonds and loans for the construction and renovation of academic facilities and research equipment. While this corporation will not actually issue bonds or loans itself, it will provide access to private financial markets for a broad range of higher education institutions which currently have no recourse to such financing. In order to determine which institutions are eligible for its services, the corporation will apply the financial rating criteria currently utilized by nationally recognized statistical rating agencies. This corporation will also be fully independent from the Federal Government and will comply with all relevant State insurance and the qualification laws.

Second, I authored an amendment to reauthorize and expand title VI of HEA: foreign language and international education. In addition to the national foreign language and area studies resource centers already contained in title VI, this provision establishes intensive summer language institutes, foreign language resource centers, and a two-tiered stipend program for advanced language study. While this is a relatively small Federal program in terms of actual dollars, title VI is one of those vital Federal investments in higher education: We need a pool of human resources who can speak the languages of other nations and understand the nuances of other cultures.

Third, I authored an amendment which requires the Department of Education to conduct a major study—the first ever—on the rising cost of higher education. In conducting this study, the Department will evaluate the effects of rising costs on middle-income students and their families, and make recommendations on steps which Government and educational institutions themselves can take to stem the tide of rising costs in the future.

Together with Congressman TERRY BRUCE of Illinois, I also authored the Higher Education and Economic Development Act of 1986, which has been incorporated into title XI of HEA. This measure will provide Federal funds for partnerships between colleges and universities, local governments, labor, business, and industrial organizations, to assist in the development and implementation of comprehensive economic development plans in local communities.

Fifth, I offered an amendment to the College Work-Study Program which sets aside up to $62 million per year for community-service learning projects which benefit low-income individuals and families. Together with the other community service initiatives included in the conference report, my amendment signals our strong congressional interest in promoting service initiatives which utilize the unique skills and energies of our Nation's young people.

I authored another service-oriented amendment included in the conference report which establishes partial loan cancelation for Peace Corps and Vista Volunteers. Under the terms of this provision, volunteers will be able to have up to 15 percent of their national direct student loan canceled for their first year of service, and 20 percent canceled for each of their second and third years of service. My amendment is intended to be both an incentive and a reward for service in these two important national programs.

Last, I authored an amendment which authorizes $1.3 million for the construction of biobehavioral research facility at the University of Connecticut. If appropriated, these funds will help our State university establish a research facility of national significance in this important scientific area.

Mr. President, before I conclude my remarks, I would like to take a moment to pay tribute to two Senators without whom this reauthorization could not have been accomplished: Senators ROBERT STAFFORD and CLAIBORNE PELL. In an era of fiscal constraint, they crafted a Senate bill and later a conference report which expands our Nation's commitment to higher education while actually reducing the total authorization for this act. I have no doubt that Senators STAFFORD and PELL will be remembered by our children as visionary leaders in American education.

Mr. STAFFORD. Mr. President, I thank the able Senator from Connecticut for his kind words. His contribution to getting this conference put together and agreed to was a very major one.

Mr. HATCH. Mr. President, I welcome the Senate's consideration of the conference report on S. 1965, the Higher Education Amendments of 1986. I encourage its overwhelming adoption by the Senate.

The Higher Education Act of 1965 was a landmark piece of legislation. That bill, by authorizing programs of financial assistance for postsecondary education for many of our Nation's citizens, provided the necessary access to full participation in all that our society has to offer. Under that bill, students in my home State of Utah received nearly $38,500,000 in Federal student financial assistance last year. Its reauthorization in the Higher Education Amendments of 1986 is equally landmark legislation.

We have reauthorized many of those financial aid programs, all the while refining them so that the most deserving students will receive this assistance. We have also added new programs designed to recognize the changing character and changing needs of today's student population. Some aid is also directed to institutions of higher education—for library assistance or to help our historic black colleges and universities and other worthy "developing institutions" such as community colleges, for example. And, I am pleased to say, institutions may now receive grants for demonstration projects for child care facilities for disadvantaged and low-income students and for innovative continuing education programs.

Beyond this reaffirmation of the old and the addition of innovative programs, we have been as fiscally responsible as possible with this legislation. Refining programs to target aid to needy students and institutions and establishing reasonable authorization levels and maximum yearly growth rates have brought the level of the first year of this authorization bill, fiscal 1987, below the current year's authorization level. Furthermore, I would remind my colleagues that a prudent investment in the further education of our Nation's students can be a wise and fiscally responsible investment of the taxpayer's dollar.

In closing, Mr. President, I would like to add a word of thanks to my colleagues of both parties on the Education Subcommittee and the Labor and Human Resources Committee. They labored long and diligently to draft this bill and sent it to the Senate floor. It is a truly bipartisan and responsible effort. I would particularly like also to thank Senators STAFFORD and PELL, the chairman and ranking minority members, of the Education Subcommittee who shepherded this bill through the long conference with the House of Representatives. They have done a yeoman's job.

Mr. President, I urge my colleagues to pass this conference report and send it on to the President for his signature. Our country will be better for the passage of this bill, for its reaffirmation of the principle that access to educational opportunity and achievement is fundamental to the success of representative government.

Mr. WEICKER. Mr. President, I rise in support of the conference agreement on S. 1965, the Higher Education Amendments of 1986. This agreement was reached after many hours of deliberation and negotiations with our colleagues on the House side. I must, at the outset of my remarks, commend the leadership of my colleagues Senator ROBERT STAFFORD, chairman of the Education Arts and Humanities Subcommittee, and the ranking minority members, Senator CLAIBORNE PELL. Because of their commitment to higher education we have legislation before us of which we can all be proud.

Higher education has long been a part of American life and Federal Government has had an interest in its quality for over a century. In recent years the Federal role has reflected a commitment to both the quality of the Nation's institutions of higher education and access to that education for all qualified students who wish to pursue a postsecondary education. The bill before us recognizes the current and changing needs of the higher education system; and most importantly, student access to that system.

The legislation we are about to send to the President is fiscally sound. Savings have been achieved, and steps have been taken to address the costly problem of loan default. Most programs have received only modest increases in authorization levels over current appropriations; however, student aid to the neediest students has been increased. In this regard we can take great pride. S. 1965 recognizes the economic pressures of the 1980's but refuses to ignore the economic needs of our Nation's young people. Today we reaffirm our commitment to higher education. We reassert that a strong system of higher education which is accessible to all who wish to pursue it is a critical aspect of our nation's strength.

Again, I commend my good friend and colleague, the distinguished Senator from Vermont, for his commitment but most of all his leadership in this area.

Mr. WALLOP. Mr. President, 2 years ago, I accepted assignment to the Senate Labor and Human Resources Committee. As part of my work on the committee, I have served on the Subcommittee on Education, Arts, and Humanities, which is ably chaired by my colleague from Vermont, Mr. STAFFORD. The ranking member is the Senator from Rhode Island, Mr. PELL. These two members have overseen the development of our Federal program of assistance for higher education since the passage of the original Higher Education Act in 1965.

Most of my service the past 2 years on the subcommittee has focused on the reauthorization of the Higher Education Act. It has taken literally 2 full years to reach the point we are at today. We held extensive hearings on the issue of financing higher education. I personally chaired a field hearing in Laramie, WY, the home of the University of Wyoming. We eventually drafted an excellent bill. Unfortunately, the House of Representatives did not recognize many attributes in our bill, and we were forced into a lengthy conference.

At times, it appeared that the House Members had learned nothing from our experiences of the past 10 years. The House presented us with a bloated bill—including unrealistic funding levels and reauthorization of questionable programs. On our side, we had a firm commitment by all the Members to putting together a realistic bill, one that targeted most of the act's resources to loans and grants for low-income students in a fiscally responsible manner. Our firm determination convinced the House conferees that there would not be any legislation this year if they insisted on their position.

We have put together a good bill. Even the White House reluctantly perhaps, agrees that we made tremendous progress with this reauthorization of the Higher Education Act. We set the first year authorization level at $10.2 billion, well below the original House level. We revamped and streamlined the qualification procedures for Pell grants and guaranteed student loans. Subsidies to the lenders have been cut back. The bill contains incentives for nontraditional students, in particular women who are single parents. My chairman has provided a thorough explanation of the bill. I urge the adoption of this conference report.

Mr. QUAYLE. Mr. President, as a conferee on the bill, I am pleased to rise in support of the conference report to accompany S. 1965, the Higher Education Act reauthorization. This bill is the product of many hours of work and deliberation, and it truly represents a bipartisan approach to what the future of Federal assistance for higher education should be in our country.

This bill extends until 1991 the Federal student aid programs, the centerpiece of the Federal Government's commitment to higher education. In particular, the Pell Grant Program and the Guaranteed Student Loan Program are expanded to account for the changing demographics in higher education as well as to account for the rising cost of tuition.

I would like to commend the chairman of the Senate Subcommittee on Education, Arts and Humanities, Senator STAFFORD, and the ranking member on the subcommittee, Senator PELL, for their many efforts at putting this bill together and guiding it through the Senate and through conference

with the House. Both gentlemen have been a pleasure to work with, and I appreciate their willingness to address the concerns of the members of the Education Subcommittee.

S. 1965 represents a renewed commitment to providing access to all students to higher education. This bill places the emphasis of Federal funding on the student aid programs, which was always the priority of the Senate. The conferenced bill also tightens the student aid programs to better focus aid on the needier student, and it expands the size of the grant awards and loan amounts that needy students can receive.

This legislation authorizes $10.2 billion for student aid and institutional aid programs. While this is approximately $600 million more than the Senate had in its bill, the conferees agreed to put much of the increase into the student aid programs.

This bill also takes into account the need for cost control in the Guaranteed Student Loan [GSL] Program, and meets the savings targets established by the fiscal year 1987 budget resolution. The major change made in the GSL Program to achieve these savings is to require that all students undergo a needs test to establish the amount of money they are eligible to borrow.

I have strongly supported a universal needs test for many years, and am pleased that this bill contains such a needs test. This needs test will also have the effect of reducing defaults, because students will, in some cases, be borrowing only what they need.

The bill also contains many new provisions in the GSL Program designed to reduce defaults and to prevent them. This is another area that I have consistently worked hard in. Defaults in the GSL Program run over $1 billion and are cause for concern if we want to keep a strong, viable GSL Program. Many of the provisions in the Senate bill to prevent defaults have been agreed to by the House conferees, and I am hopeful that schools, States and lenders will do all they can to reduce defaults as required by many Senate programs.

At the same time, the conferees have been careful not to let the default problem override the access question. It would be easy to reduce defaults in the GSL Program by simply limiting loans to students that are projected to have a good chance of repayment. But the GSL Program has always been one of access, and the conferees have made numerous clear statements that the GSL Program should and must be available to all students, regardless of their course of education, the length of that education course, or other factors, such as economic status.

The bill also contains a number of provisions designed to assist the nontraditional student and the student who is returning to school for further education in between careers. More aid will be available for students attending less than full time, and deferments for GSL repayments will be allowed for students attending less than full time who are current GSL borrowers.

A significant, and very major change if made to the Pell Grant Program to allow less-than-half-time students eligibility for Pell grants beginning in 1989. The Senate bill did not include this expansion to less-than-half-time students because we did not want to see money taken away from the students who are attending full time or more than half time. However, the House was insistent on providing some type of assistance to the less than half time students through Pell grants.

The Senate conferees, I believe, made clear throughout the negotiations that money should not be taken away from the current Pell grant recipients to pay for the less-than-half-time student. While we have contained a provision for the 1989-90 award year protecting current recipients, I, for one, will be closely watching their results of this expansion to see if large amounts of funds are being diverted from the full-time student.

The conference bill contains a number of new programs which the conferees discussed in great detail. I am not pleased that we have several brand new programs and continued authorizations for programs that have not received funding for the past 5 years. I would make my position clear that I will always support appropriations for the student aid programs over the appropriations for these new programs.

Throughout the process of reauthorization, I have been helped and counseled by many of the college and university presidents and many of the financial aid officers, lenders and state officials in Indiana. I am happy to report to them that a great number of their recommendations have been picked up in this bill and that their imput was seen as a wise course by many Senators and their staffs.

For example, the Indiana Task Force on Higher Education made the following recommendations for student aid, all of which are now part of S. 1965: that all students undergo a needs test for the GSL Program; that the National Direct Student Loan and the Supplemental Education Opportunity Grant Program be more tightly focused on needy students; that a master calendar by which certain actions related to the delivery of student aid must occur be written into law; that a separate needs analysis be used for the Pell Grant Program, in order to better target that program to the neediest students; that GSL loan limits be increased to take into account the increases in cost of education; that GSL checks be made in multiple disbursements; that a loan consolidation program be made available; and that the definition for independent student be tightened up to avoid some of the current program abuses.

These are only some of the provisions on which the Indiana group advised me, and it gives me great pleasure that their sound advice was heeded. I continue to look forward to working with the higher education community in Indiana to ensure that S. 1965 does indeed provide the dollars to the students that need them most.

In closing, Mr. President, I want to express my support for S. 1965, which is a fair bill, and which will enable millions of students to obtain a postsecondary education. An educated citizenry is vital to the health and well-being of our economy and our Nation. S. 1965 reaffirms the commitment of the Federal Government to providing an opportunity for all to a higher education. I urge my colleagues to support this conference report.

Mr. GORTON. Mr. President, I wish to speak in support of the conference report on the higher education amendments. The committee of conference is to be commended for its work on this legislation, and I am proud to be listed as a cosponsor of the underlying bill, S. 1965. As approved by the conference committee, this legislation authorizes $10.7 billion for higher education programs in 1987.

The higher education amendments will make many significant changes in our higher education programs. Some of the most important provisions in the bill are aimed at alleviating the harsh impact that rising tuition has had on students' ability to pay for their educations. As approved by the conference, the bill will raise the maximum award for the Pell Grant Program from $2,100 to $2,300 in 1987. After 1987, the Pell grant ceiling will increase in $200 increments each year until the maximum award is $3,100 in 1991. The Supplemental Grant Program also will be improved by raising the maximum grant from $2,000 to $4,000.

The popular Guaranteed Student Loan Program also has been improved in this bill. Loan limits will be raised from $2,500 to $2,625 for freshmen and sophomores, and to $4,000 for juniors and seniors. The cumulative loan limit for undergraduate students will increase from $12,500 to $17,250. The limit on graduate student loans will increase from $5,000 to $7,500. Loan limits for the National Direct Student Loan Program also will go up under the bill—from $3,000 to $4,500 for the first 2 years of undergraduate study, and from $6,000 to $9,000 for the second 2 years. Furthermore, students with $5,000 or more in Guaranteed Student Loans, National Direct Student Loans, health professions student

loans, and PLUS/ALAS loans will be able to consolidate their loans.

I extend my special appreciation to the Senator from Vermont, Senator STAFFORD, and his staff for their willingness to work with me in clarifying some of the questions surrounding the International Education Program. Our Nation has a unique resource and a substantial investment in our comprehensive centers of international studies. A glowing example of the value of these centers can be found in my home State of Washington at the Jackson School of International Studies in Seattle. The knowledge of other countries and ability to communicate in other languages that students learn at these centers truly promote the long-term economic and security interests of our Nation. Title VI of the higher education amendments will preserve this legacy of excellence by sustaining and deepening the Nation's capacity for advanced training in foreign languages and international studies through comprehensive centers.

Mr. President, the Senator from Vermont [Mr. STAFFORD] and the ranking member, Senator PELL, are to be congratulated for their efforts on the higher education amendments. I urge my colleagues to join me in clearing this measure for the President.

Mr. KENNEDY. Mr. President, this conference report represents literally years of work by the Senate and the House. And it represents the extraordinary American commitment to provide higher education to people all across this country. There are few efforts more worthy of the attention, time and toil of the Congress than this legislation. Literally millions of Americans have received college degrees as a result of the Higher Education Act. It is one of the glories of this Nation that higher education is available to so many or our people. Wide access to our colleges and universities is one of our best defenses against the dangers of a closed society.

At a time when the educational standing of this Nation against its international competitors is eroding, a reduction in our commitment to higher education is a mistake for which we would pay for decades. But that price at least would only be paid in dollars and cents. The higher but more intangible price of lowering our commitment to higher education would be the erosion of equal educational opportunity.

So I applaud the Congress today. For all of the criticism to which this body is often subjected, there are great moments in public policy that ably serve our deepest shared values and this is one of them. This Nation is committed to educational excellence, and to the ideal of equal opportunity, and this vital legislation continues those commitments.

Mr. SIMON. Mr. President, I am pleased to join my colleagues in support of S. 1965, the Higher Education Amendments Act of 1986 and in urging adoption of the conference report. The distinguished chairman of the Committee on Labor and Human Resources, and my friend and colleague from Vermont, Senator STAFFORD, who is chairman of the Subcommittee on Education, Arts, and Humanities, and who along with the ranking Democratic member, Senator CLAIBORNE PELL, have demonstrated outstanding leadership in fashioning this reauthorization bill. S. 1965 contains several new titles and improvements in existing programs under the act, however, its basic thrust is to reaffirm Congress' and the Federal Government's commitment to equity and quality in higher education.

I was pleased to serve on the subcommittee which wrote the original Senate bill and to have participated fully in those deliberations and decisions under Chairman STAFFORD's skillful leadership. I was also able to serve as a Senate conferee, for the first time since my election to the Senate, and to share in the shaping of the final product we present here today. The final bill is not all that we would like it to be, but it takes a major stride toward achieving the twin goals of quality and equity by: First, expanding grant aid available to low- and middle-income students through the Pell grant and the Supplemental Educational Opportunity Grant [SEOG] programs; and second, enhancing Federal institutional assistance to libraries, to historically black colleges and universities and community colleges, and to postsecondary institutions generally for facilities and instrumentation—through a new program of direct and reinsurance on loans.

When the Committee on Labor and Human Resources reported its reconciliation bill to the Budget Committee on July 25, we were still in conference with the House of Representatives on the reauthorization of the Higher Education Act. That conference with the other body was concluded on September 12, 1986. For that reason, it was not possible for the committee to include all of its final decisions in the Senate-passed reconciliation bill adopted on Friday, September 19. Final decisions and the actual drafting of legislative language were not completed until Monday of this week. I am concerned and want the Members to know that they are voting today on the changes in the student aid provisions adopted by the conferees and which we believe will achieve the necessary changes requested by the Budget Committee. The changes in this conference report will be implemented and not those included in last week's reconciliation bill. The House-Senate conference on the reconciliation is expected to incorporate these changes in their conference report.

All of my colleagues who represented the Senate on the conference are justifiably proud of the conference report on S. 1965, especially those provisions affecting student aid.

First, we abolished the old "two-tiered" system for determining need in the Guaranteed Student Loan [GSL] Program which has existed since 1981. All students, regardless of family income will have to demonstrate need under a statutory needs analysis system. Prior to implementation of this new needs analysis in fiscal year 1988—annual year 1988-89—the current needs analysis—without the look-up tables will be used for all GSL borrowers. The conferees adopted the extension of the current needs analysis to all GSL borrowers in the belief that it is fair and equitable, in view of the increases we recommend for the Pell grant—$2,300 in fiscal year 1987—and SEOG—$4,000—to all students.

Second, the higher education conference report incorporates the new GSL interest rate, already included in the reconciliation bill adopted earlier this month. The interest rate for new borrowers will be increased from 8 percent—or the appropriate interest rate—to 10 percent once the student begins repayment.

Third, the rule governing reinsurance based on default rates is substantially revised to assure equitable treatment for all State guaranty agencies. The conferees agreed to establish a reinsurance fee based on default rates to be paid to the Federal Government by the guaranty agencies. Agencies with a default rate less than 5 percent will pay a fee equal to 0.25 percent of the total principal amount of loans on which that issued insurance during the fiscal year. Agencies with default rates equal to or greater than 5 percent will pay a fee equal to a 0.5 percent of such amount. This was an essential accommodation given two critical factors: First, current default rates and State efforts to reduce defaults; and second, varying State lending practices affecting categories of students and sectors of higher education served, especially low-income students in proprietary institutions and in community colleges—who are most likely to default.

A fourth difference is the special allowance paid to lenders on guaranteed loans. The reconciliation bill includes a 3.0 special allowance, identical to the provision in S. 1965 when it passed the Senate. The Higher Education Act conference report provides for a 3.25 percent special allowance and a provision for a major study of the return that banks earn on GSL's. This study will provide the Congress with a great deal more information than we now have on exactly how much banks earn

for their willingness to invest in the futures of America's human resources.

I am personally very gratified with the conferees work in developing a new definition for "independent student." That definition will eliminate the subjective and largely nonverifiable eligibility criteria and substitute solid, objective factors for determining whether or not a student is financially independent of their parents and should receive more Federal student assistance to help pay for college costs. The new definition of independent student means any individual: First, who is 24 years of age or older by December 31 of the award year; second, is a ward of the court, an orphan, or a veteran of the Armed Forces of the United States; third, who is a graduate or professional student who was not claimed as a dependent for income tax purposes by his or her parents, or guardian, for the first calendar year of the award year; fourth, who has legal dependent other than a spouse; fifth, who is a single undergraduate student with no dependents who was not claimed as a dependent for income tax purposes for the 2 calendar years preceding the award year and demonstrates to the financial aid administrator total self-sufficiency during those 2 years a total annual income of at least $4,000; or sixth who is a student for whom a financial aid administrator makes a documented determination of independence by reason of unusual circumstances.

S. 1965 makes a new commitment to the Pell Grant Program and to redressing the longstanding imbalance between the amount of Federal student aid awarded in the form of grants as opposed to that provided in the form of loans. The best way to redress that imbalance is to make the Pell grant an entitlement, however, our current budgetary situation will not permit us to take that step at this time. I hope we will before I leave the U.S. Senate. We have taken the next best step and that is to provide for increases in the maximum grant and to provide for automatic increases in the nontuition expenses when the maximum is raised. We have also doubled the SEGO maximum—making it possible for low-income students attending public institutions and lower cost private colleges to pay most of their college costs through grants. That is essential if we are to make college a real option for the poor and the middle-income student. Since 1975, the amount of Federal student aid has shifted from 805 grants and 20-percent loans to 51-percent loans, 45-percent grants and 4-percent-work study. Reducing student debt burdens of low- and middle-income students and reducing student loan defaults are inseparately tied to altering the shift in Federal aid from grants to loans.

Finally Mr. President, we have also focused on the issues of quality. We have reestablished the College Library Program in title II of the act. We have dramatically altered the title III, strengthening institutions Program for historically black colleges and universities, smaller public and private 4-year institutions, and community colleges. The new Black College and University Act in part B of title III represents a landmark commitment to the Nation's historically black colleges. Along with Senator THURMOND, I was glad to be advocate for this bill in the committee. In the conference, we received the cooperation of the chairman of the House Education and Labor Committee and the chairman of the Postsecondary Education Subcommittee. Without their help, we could not have worked the differences and brought this important legislation forward.

Several other provisions will also contribute to quality and higher academic standards:

Restoration of the 5-year limit on student participation in the Pell Grant Program.

Establishment of new satisfactory academic progress and ability to benefit requirements which will assure that students using Federal aid make progress toward a degree or certificate and make good grades, and assure that students who enter postsecondary institutions without a high school diploma or GED learn the skills they need to succeed in their chosen field; and

Creation of two new programs to encourage minority and first-generation college student to enter graduate education—one in title IV, postbaccalaureate achievement under the TRIO programs and a second under title IX of the act.

Again, I want to commend all of my colleagues on both sides of the aisle who worked hard on this reauthorization.

Mr. STAFFORD. Mr. President, I now urge adoption of the conference report on S. 1965.

The PRESIDING OFFICER. Is there further debate on the conference report?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I thank the Senator from Connecticut for his kind remarks and for his help.

The PRESIDING OFFICER. Is there further debate on the conference report? If not, the question is agreeing to the conference report.

The conference report was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

CORRECTION OF TECHNICAL ERRORS

Mr. STAFFORD. Mr. President, I now urge passage of a package of purely technical amendments contained in House Concurrent Resolution 394 which are necessary to correct mistakes made in the final draft of S. 1965. These amendments have been cleared by members of the conference in the House and Senate and should be passed at this time.

The PRESIDING OFFICER. Is there objection to giving immediate consideration to the resolution? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A resolution (H. Con. Res. 394) to correct technical errors in the enrollment of the bill (S. 1965).

Mr. PELL. Mr. President, I urge the passage of these technical amendments and concur with my chairman and leader.

The PRESIDING OFFICER. Is there further debate on the resolution? If not, the question is on agreeing to the resolution.

The concurrent resolution (H. Con. Res. 394) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 2020

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.

S. 2878—ANTI DRUG ABUSE ACT OF 1986

Mr. DOLE. Mr. President, I send a bill to the desk on behalf of myself, the distinguished minority leader, Senator THURMOND, Senator BIDEN, Senator HAWKINS, Senator CHILES, Senator DECONCINI, Senator WILSON and others and ask for immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, and I will not object.

And I will be very happy to let the distinguished Senator from Connecticut precede me if he wishes.

Mr. WEICKER. Mr. President, reserving the right to object, I think that the RECORD should show that the introduction of this legislation relative

to drugs comes at a time and in such a form that none of us have had an opportunity to see in its entirety what it is that we are being asked to give our unanimous consent to. And, I might add, this applies, since this is a joint leadership bill, to both the Democratic and Republican side. And so that it is understood, we are going ahead and doing this by unanimous consent because it is not following the rules of the Senate. And maybe that is deemed proper and necessary at this juncture.

But the reason I am raising this point now is I think we will find, throughout the course of the legislation or the progress of the legislation, that time and again we will be asked to set aside normal procedure and normal consideration because of the urgency of the moment or, I might add, the politics of the time. And, of course, involved here is not any quick fix to a drug problem but rather the Constitution of the United States; whether the end to be achieved will be achieved by sacrifice on all of our parts or whether it is to be achieved by the sacrifice of others who need our special care and who are the weakest among us. These are all important issues that will arise in the course of the next 48 to 72 hours.

So I do not intend, in any manner, shape, or form, to prohibit or lengthen consideration of the matter, but I make the point that normally what is being done here would have to lay over for at least a day or two before we could move to its consideration. That is not going to happen. So the first exception has been made.

I will accept it. I will not object to the unanimous-consent request, but only point out at this juncture—and then I will take my seat—that however important the problem of drugs, the resolution of it will have to be done constitutionally and will have to be done with sacrifice by all in a nonpolitical way. Otherwise, this matter is better resolved after election day 1986.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, Mr. President. The distinguished Senator from Connecticut is right. The bill that is on the calendar was put on there via rule XIV, but the measure that the distinguished majority leader is calling up is not even on the calendar. And it is only by unanimous consent that it could be called up, the Senator from Connecticut is right.

I make the reservation only for the purpose of asking a question or so, one being: Will there by any amendments offered to the bill this evening? I already know the answer, but I would be expected to ask these questions.

Mr. DOLE. No I think the record should reflect we indicated to a number of Members that there would be no amendments offered or considered this evening.

Mr. BYRD. Will any opening statements be made today?

Mr. DOLE. We also made the representation to a number of Senators who wish to make statements that we would not do that this evening.

Mr. BYRD. I thank the majority leader.

One final question: What will be the business of the Senate tomorrow and, if I may ask the majority leader at this point—tomorrow will be Friday—what will be the business of the Senate on Saturday, as far as the distinguished majority leader can say at this moment?

Mr. DOLE. Well, what I had hoped to do tomorrow was to bring up the tax reform conference report which passed the House today by an overwhelming vote. I was advised by at least three Senators that they prefer I would not do that; that they had not had a chance to look at the transition rules. Another Senator on this side is involved in a Conrail discussion tomorrow, Senator DANFORTH, who strongly opposes the bill. It would not be a good time for him.

I have indicated to everyone that, if we really are trying to leave here next Friday, we do not have many days left.

What I will probably do tomorrow morning, unless there if some strenuous objection, is to go ahead and make opening statements on the drug bill. I have talked with the distinguished Senator from Ohio, Senator METZENBAUM, who wanted to take a look at the transition rules in the tax bill. He believes maybe, by 1 o'clock, he would be prepared to let us move, which we could do in any event, on the conference report on the tax bill. But maybe we would accommodate him in that way.

But tomorrow morning we will bring up the drug enforcement bill, make statements, and then I would try to work out with all parties their concerns on the tax reform bill.

We will have a Saturday session, which will probably either be on tax reform or drug enforcement.

Mr. BYRD. In other words, if tax reform had not been completed, the Senate would still be on tax reform, I take it, and, otherwise, we would on the drug package.

Mr. DOLE. That is as I presently see it.

Mr. BYRD. Yes. Well, I think the distinguished majority leader has answered as far as he can at this point. I know that Senator METZENBAUM was concerned about the transition rules.

Mr. President, I thank the majority leader. I remove my reservation.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2878) to strengthen the laws against illegal drugs, and for other purposes.

The Senate proceeded to consider the bill.

□ 2030

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I make a point of order this bill proposes to raise revenue and it is being offered as a Senate-originated bill. Under the U.S. Constitution, it is not in order.

The PRESIDING OFFICER. The point of order based on the constitutional precedents in the Senate is submitted to the will of the Senate.

Mr. WEICKER. Mr. President, I understand that. I am perfectly willing that this matter be the opening matter of debate at such time as the leadership cares to debate it. I wanted to raise the point at the outset, which would be the proper time. What I am saying is whatever the will of the leadership in this matter is fine with me.

Mr. DOLE. Mr. President, it is debatable, is that correct?

The PRESIDING OFFICER. The question is debatable.

Mr. DOLE. Mr. President, I assume the Senator from Connecticut wishes a record vote on that?

Mr. WEICKER. I have not asked for a record vote because all of us realize, leadership included, we are all now just looking at the bill. There is no point that the point I have raised cannot be remedied. If it can be remedied, that is fine.

Mr. DOLE. It needs to be remedied.

Mr. WEICKER. With all deference to the distinguished Senator from Kansas, I think it has to be remedied. In other words, I do not want to lock us into a vote.

I want to reiterate the point I made earlier. There is no question in my mind we are going to have a drug bill, but a very serious defect is the one that I raise as a point of order. I do not care to go ahead and either prolong debate or in any way raise a roadblock, except that we go ahead and make it constitutionally proper. If that can be done as an accommodation among all the parties, fine. If it requires a rollcall, we are going to do it. As I said before, I will be guided by the leadership on this matter.

Mr. DOLE. The Senator has made his point and I do not have any quarrel with it. I wonder if the Senator would be willing to withdraw it and offer it the first thing tomorrow morning.

Mr. WEICKER. Absolutely. I will do that, as long as I have the assurance I

can make it the first thing in the morning.

The PRESIDING OFFICER. Is the Senator withdrawing his point of order?

Mr. WEICKER. Mr. President, just by way of explanation, it will be my intention to withdraw and, quite frankly, as far as I am concerned, if more of my colleagues would operate on this basis I think more bills would move through faster. I think the majority leader has announced his good intention. I am not asking for unanimous consent or anything of that nature. His word is good enough for me and I withdraw my point of order.

The PRESIDING OFFICER. The Senator has that right.

Mr. DOLE. I thank the distinguished Senator from Connecticut. I would indicate this is a 250-page bill. I will not make a statement on it, but it does deserve serious consideration by every Member. If we can work out the schedule tomorrow, I would hope that Members would have most of tomorrow just to study it and take a look at it. There will be a number of amendments offered. We could not agree on everything. This is a consensus package. We could agree on it on a bipartisan basis. There will be other very controversial amendments, I assume, coming from each side. We at least wanted to start off with the indication that there is strong bipartisan support. We have that and we hope we can conclude action on a good bill very quickly.

I also ask unanimous consent that the bill be printed in the RECORD.

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

(The text of the bill was printed earlier in today's RECORD.)

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, not to extend beyond the hour of 8:45 p.m.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, 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.)

REPORT WITH RESPECT TO THE NATIONAL EMERGENCY IN SOUTH AFRICA—MESSAGE FROM THE PRESIDENT—PM-173

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

On September 9, 1985, in Executive Order 12532, I declared a national emergency to deal with the threat posed by the policies and actions of the Government of South Africa to the foreign policy and economy of the United States. Those actions and policies continue to pose an unusual and extraordinary threat to the foreign policy and economy of the United States, and in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I continued the national emergency with respect to South Africa on September 4, 1986. Pursuant to Section 204(c) of the International Emergency Economic Powers Act (50 U.S.C. 1703(c)), I am today reporting on the developments since my last report of March 17, 1986.

In Executive Order 12532, I prohibited: (1) the making or approval of bank loans to the South African Government, with certain narrow exceptions; (2) the export of computers and related goods and technology to certain government agencies and any apartheid-enforcing entity of the South African Government; (3) nuclear exports to South Africa and related transactions, with certain narrow exceptions; (4) the import into the United States of arms, ammunition, or military vehicles produced in South Africa; and (5) the extension of export marketing support to U.S. firms employing at least twenty-five persons in South Africa that do not adhere to certain fair labor standards.

In addition, I called for (6) consultations with other parties to the General Agreement on Tariffs and Trade with a view toward adopting a prohibition on the import of Krugerrands; (7) the completion of a report on the feasibility of minting U.S. gold coins; (8) an increase in the amount provided for scholarships in South Africa to victims of apartheid and an increase in the amount allocated for South Africa in the Human Rights Fund; and (9) the establishment of an Advisory Committee to provide recommendations on measures to encourage peaceful change in South Africa.

Executive Order 12535 of October 1, 1985, prohibited the importation of the South African Krugerrand into the United States, effective October 11, 1985 (50 Fed. Reg. 40325, Oct. 3, 1985). This implemented the course of action contemplated in Executive Order 12532. The Office of Foreign Assets Control of the Department of the Treasury issued South African Transactions Regulations on October 9, 1985 (50 Fed. Reg. 41682, Oct. 15, 1985), to implement the Krugerrand ban. There have been no changes in these regulations in the past six months.

In addition, the Bureau of Alcohol, Tobacco, and Firearms of the Department of the Treasury issued regulations on the Importation of Articles on the United States Munitions Import List on October 7, 1985, implementing the prohibition of certain arms imports contained in Executive Order 12532 (50 Fed. Reg. 42157, Oct. 18, 1985). The Department of State issued final regulations on South Africa and Fair Labor Standards on December 23, 1985, implementing the fair labor provisions of the Order (50 Fed. Reg. 53308, Dec. 31, 1985). The Office of Foreign Assets Control of the Treasury Department issued South African Transactions Regulations on November 6, 1985, implementing the Order's bank loan prohibition (50 Fed. Reg. 46726, Nov. 12, 1985). The International Trade Administration of the Department of Commerce issued Regulations on Export Controls on the Republic of South Africa on November 14, 1985, implementing the computer and nuclear export prohibitions in the Executive Order (50 Fed. Reg. 47363, Nov. 18, 1985). With the exception of some minor technical amendments, there have been no changes in any of these regulations in the past six months.

With the publication of a notice in the *Federal Register*, the Department of State established the Advisory Committee on South Africa on October 22, 1985 (50 Fed. Reg. 42817, Oct. 22, 1985). The Committee has met several times since and shall render a report to the Secretary of State within one year of its first meeting, which was held on January 29-30, 1986.

The Secretary of the Treasury submitted a report on the feasibility of minting U.S. gold coins on November 8, 1985. On December 17 of that year, I signed the Gold Bullion Coin Act of 1985 (Public Law 99-185), requiring the minting of such coins.

The expenses incurred by the Federal government in the period from September 9, 1985, through September 8, 1986, that are directly attributable to the exercise of powers and authorities conferred by the declaration of the national emergency with respect to South Africa are estimated at $536,813, of which approximately $404,230 represents wage and salary costs for Federal personnel and ap-

proximately $132,583 represents out-of-pocket expenses. Personnel costs were largely centered in the Department of the Treasury, Department of State, Department of Commerce, and Department of Energy.

I shall continue to exercise the powers at my disposal to apply the measures contained in Executive Orders 12532 and 12535 as long as these measures are appropriate and will report periodically to the Congress on significant developments pursuant to Section 204(c) of the International Emergency Economic Power Act.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

ANNUAL REPORT OF THE NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION—MESSAGE FROM THE PRESIDENT—PM 174

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with the provisions of Public Law 91-230, as amended (20 U.S.C. 1209(d)), I herewith transmit the 1985 annual report of the National Advisory Council on Adult Education.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

ANNUAL REPORT OF THE RAILROAD RETIREMENT BOARD—MESSAGE FROM THE PRESIDENT—PM 175

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I hereby submit to the Congress the Annual Report of the Railroad Retirement Board for Fiscal Year 1985, pursuant to the provisions of Section 7(b)(6) of the Railroad Retirement Act, enacted October 16, 1974, and Section 12(1) of the Railroad Unemployment Insurance Act, enacted June 25, 1938.

The Railroad Retirement Board's chief actuary informs me he anticipates cash-flow problems in the rail industry pension fund, and states that "an upward adjustment in financing can no longer be regarded as premature." Refinancing legislation enacted in 1974, 1981, and 1983 has been required to prevent the rail pension fund from going broke three times in the last decade, and significant, constant declines in rail employment levels continue to deteriorate rail pension assets. With yet another financial crisis threatening the pension fund's ability to pay railroad retirees' benefits, the Administration agrees with the Board's chief actuary, Board Chairman Gielow, and Board Member Chamberlain that measures are needed now to forestall financing problems. I therefore concur with Mr. Chamberlain that raising rail management pension contributions 1.5% on January 1, 1987, is a prudent course to follow.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

ANNUAL REPORT OF THE COMMODITY CREDIT CORPORATION—MESSAGE FROM THE PRESIDENT—PM 176

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

To the Congress of the United States:

Pursuant to the provisions of Section 13, Public Law 806, 80th Congress (15 U.S.C. 714k), I hereby transmit the report of the Commodity Credit Corporation for the fiscal year ended September 30, 1985.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that on September 23, 1986, he had approved and signed the following enrolled bill:

S. 2462. An act to provide for the awarding of a special gold medal to Aaron Copland.

MESSAGES FROM THE HOUSE

At 4:40 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 159. Joint Resolution to designate the rose as the national floral emblem.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

At 6:42 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House passed the following bills, without amendment:

S. 1542. An act to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System; and

S. 1766. An act to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3838) to reform the internal revenue laws of the United States.

The message further announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 1917. An act to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

Mr. HAMILTON, Mr. STOKES, Mr. MCCURDY, Mr. BEILENSON, Mr. KASTENMEIER, Mr. DANIEL, Mr. ROE, Mr. BROWN of California, Mr. MCHUGH, Mr. DWYER of New Jersey, Mr. STUMP, Mr. IRELAND, Mr. HYDE, Mr. CHENEY, Mr. LIVINGSTON, and Mr. MCEWEN.

For consideration of matters within the jurisdiction of the Committee on Armed Services under clause 1(c) of House rule X: Mr. ASPIN, Mr. STRATTON, and Mr. DICKINSON.

For consideration of matters within the jurisdiction of the Committee on Post Office and Civil Service under clause 1(o) of rule X: Mr. FORD of Michigan, Mrs. SCHROEDER, Ms. OAKAR, Mr. HORTON, and Mr. YOUNG of Alaska.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4033. An act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes;

H.R. 4302. An act to establish a commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower; and

H.R. 4900. An act to provide for the proper administration of justice within the boundaries of the Salt River Pima-Maricopa Indian Community.

The message further announced that the House has agreed to the following concurrent resolution;

H. Con. Res. 395. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3838.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 4900. An act to provide for the proper administration of justice within the boundaries of the Salt River PimaMaricopa Indian Community; to the Select Committee on Indian Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LAXALT (for Mr. GARN), from the Committee on Appropriations, with amendments:

H.R. 5313: A bill making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies and offices, for the fiscal year ending September 30, 1987, and for other purposes (Rept. No. 99-487).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1374: A bill to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island (Rept. No. 99-488).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 1620: A bill to amend title XVIII of the Social Security Act to establish the National Council on Access to Health Care, and for other purposes (Rept. No. 99-489).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, without amendment:

H.R. 1426: A bill to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes.

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. 740: A bill to extend until October 1, 1995, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes.

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment and an amendment to the title:

S. 2551: A bill to create a National Center on Youth Suicide under the Office of Justice Programs in the Department of Justice.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. INOUYE:

S. 2876. A bill to amend title 37, United States Code, to provide for special pay for phychologists in the commissioned corps of the Public Health Service; to the Committee on Governmental Affairs.

By Mr. CRANSTON:

S. 2877. A bill to amend section 312(c) of the Federal Aviation Act to 1958, relating to research and development, to require the Secretary of Transportation to assure the development of a collision avoidance system for use on all civil and military aircraft of the United States in the interest of air safety; to the Committee on Commerce, Science, and Transportation.

By Mr. DOLE (for himself, Mr. BYRD, Mr. THURMOND, Mr. BIDEN, Mrs. HAWKINS, Mr. CHILES, Mr. WILSON, Mr. DECONCINI, Mr. HATCH, Mr. CRANSTON, Mr. GRAMM, Mr. MOYNIHAN, Mr. SPECTER, Mr. DODD, Mr. TRIBLE, Mr. LEAHY, Mr. DENTON, Mr. MITCHELL, Mr. ABDNOR, Mr. NUNN, Mr. ROCKEFELLER, Mr. SASSER, and Mr. Dixon):

S. 2878. A bill to strengthen the laws against illegal drugs, and for other purposes; read the first time.

By Mr. MOYNIHAN:

S. 2879. A bill to amend part A of title IV of the Social Security Act to reduce the need for emergency assistance payments to provide temporary housing for destitute families and homeless AFDC families and the expense of such payments, by authorizing grants to States for the construction or rehabilitation of permanent housing that such families can afford with their regular AFDC payments; to the Committee on Finance.

By Mr. BYRD (for Mr. INOUYE (for himself and Mr. MATSUNAGA)):

S. 2880. A bill to provide a temporary extension of the interstate transfer deadline for H-3; ordered held at the desk.

STATEMENTS OF INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE:

S. 2876. A bill to amend title 37, United States Code, to provide for special pay for psychologists in the commissioned corps of the Public Health Service; to the Committee on Governmental Affairs.

SPECIAL PAY FOR CERTAIN PSYCHOLOGISTS IN THE COMMISSIONED CORPS OF THE PUBLIC HEALTH SERVICE

● Mr. INOUYE. Mr. President, I am introducing legislation today to amend the U.S. Public Health Service Act to provide those psychologists who are in the Public Health Service Regular or Reserve Corps with the same board-certification/specialty designation pay bonus as their physician colleagues presently receive.

It is my understanding that there are approximately 24 psychologists in the U.S. Public Health Service and, further, that two of these individuals have received their board certification from the American Board of Professional Psychology.

In my judgment, it would be most appropriate for the Federal Government to encourage excellence within the ranks of those who provide care to Federal beneficiaries. Further, from a public policy frame of reference, it is important that each of the disciplines be treated in a comparable manner.

Mr. President, I request unanimous consent that a letter I recently received from Dr. Robert Windom, Assistant Secretary for Health, U.S. Department of Health and Human Services, describing the extent to which our Nation's physicians currently receive this pay bonus, be printed in the RECORD along with the text of the bill.

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

S. 2876

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 5 of title 37, United States Code, is amended by inserting after section 302b the following new section:

"§ 302c. Special pay: psychologists in the Public Health Service Corps

"(a) A member who is—

"(1) an officer in the Regular or Reserve Corps of the Public Health Service and is designated as a psychologist; and

"(2) has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology,

is entitled to special pay, as provided in subsection (b).

"(b) The rate of special pay to which an officer is entitled pursuant to subsection (a) shall be—

"(1) $2,000 per year, if the officer has less than 10 years of creditable service;

"(2) $2,500 per year, if the officer has at least 10 but less than 12 years of creditable service;

"(3) $3,000 per year, if the officer has at least 12 but less than 14 years of creditable service;

"(4) $4,000 per year, if the officer has at least 14 but less than 18 years of creditable service; or

"(5) $5,000 per year, if the officer has 18 or more years of creditable service.".

(b)(1) Section 303a of title 37, United States Code, is amended by inserting "302c," after "302b," each place it appears.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 302b the following new item:

"302c. Special pay: psychologists in the Public Health Service Corps.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or on the date of the enactment of this Act, whichever is later, and shall apply with respect to pay periods beginning on or after that effective date.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, PUBLIC HEALTH SERVICE,

Washington DC, August 12, 1986.

Hon. DANIEL K. INOUYE,
U.S. Senate,
Washington, DC.

DEAR SENATOR INOUYE: This is in response to your letter of July 22 requesting information about Board Certified Pay (BCP) paid to medical officers of the Commissioned Corps of the Public Health Service (PHS).

Pursuant to 42 U.S.C. 210(a)(2) commissioned medical and dental officers on active duty in the PHS Commissioned Corps are authorized special pay in the same amounts as, and under the same terms and conditions which apply to, special pay paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37, United States Code. Medical officers of the Armed Forces are authorized BCP pursuant to 37 U.S.C. 302(a)(5). The amount of BCP ranges from $2,000 per year to $5,000 per year, depending on the number of years of creditable service of the officer concerned.

Our records show that during Fiscal Year 1983, 1,182 out of 2,259 medical officers were

paid BCP; during Fiscal Year 1984, 1,121 out of 2,127 medical officers were paid BCP; during Fiscal Year 1985, 1,060 out of 1,961 medical officers were paid BCP; and thus far in Fiscal Year 1986, 1,078 out of 1,841 medical officers have received BCP.

Dental officers in the PHS Commissioned Corps are also eligible for BCP pursuant to 42 U.S.C. 210(a)(2) and 37 U.S.C. 302b(a)(5). The amount of BCP for dental officers ranges from $2,000 per year to $4,000 per year, depending on the amount of creditable service of the officer concerned. Currently there are 32 out of 580 active duty dental officers receiving BCP in the PHS Commissioned Corps.

No other category of officers in the PHS Commissioned Corps is eligible for BCP.

Sincerely yours,

ROBERT E. WINDOM, M.D.,
Assistant Secretary for Health.●

By Mr. CRANSTON:

S. 2877. A bill to amend section 312(c) of the Federal Aviation Act of 1958, relating to research and development, to require the Secretary of Transportation to assure the development of a collision avoidance system for use on all civil and military aircraft of the United States in the interest of air safety; to the Committee on Commerce, Science, and Transportation.

DEVELOPMENT OF COLLISION AVOIDANCE SYSTEMS FOR AIRCRAFT

Mr. CRANSTON. Mr. President, the city of Cerritos, CA has forwarded to my office a copy of a moving and eloquent indictment of the Federal Aviation Administration's prolonged avoidance of deciding to issue a rule to require altitude encoded transponder equipment on all light aircraft, particularly aircraft entering terminal control areas.

Cerritos suffered a terrible tragedy when an Aeromexico jet and a light aircraft collided over the city on September 2.

The Cerritos tragedy is the third midair collision over California in recent years. This time we must accept the lesson that heavy commercial jet traffic and light private aircraft simply do not mix safely without altitude encoded transponders or some onboard or air-to-ground collision avoidance system. If such equipment is found by experts not to be an answer then another answer must be found—at once. Among the answers we must consider promptly are:

Equipping the FAA with sufficient computer capacity to handle the traffic encountered at congested airports.

Adding increased numbers of air traffic controllers.

Rehiring controllers fired in 1981 on a selective basis if that is necessary to bring the FAA's strength up to the level required to keep our airways safe.

Imposing temporary restrictions on air traffic at crowded airports until the FAA can install equipment and personnel necessary to do its job.

The innocent traveling public, flight personnel aboard commercial planes, pilots on private planes and those who accompany them, and the residents living in areas of heavy air traffic must no long carry the risks resulting from the failures of the Federal Aviation Agency and Congress to act decisively to stop avoidable midair collisions between commercial jets and light privately operated aircraft.

I am encouraged, therefore, by reports that FAA Administrator Donald Engen may reconsider the position of the FAA against requiring altitude encoded transponders on all aircraft entering terminal control areas.

I encourage all segments of the aviation industry and the general public to participate in solving the critical need for collision avoidance systems. The starting point must be to avoid midair collisions. All parties share a common interest in achieving this objective.

The resolution adopted by the Cerritos City Council asks for support for H.R. 3805, introduced in December 1985 in the House of Representatives by Congressman BOB DORNAN. The bill requires the FAA to promulgate standards for an airborne collision avoidance system within 1 year of enactment. I send to the desk a copy of the bill and ask for its appropriate referral.

I ask unanimous consent that the text of the bill and the motion adopted by the city council of the city of Cerritos on September 18, be printed in the RECORD.

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

S. 2877

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

SEC. 2. Section 312(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1353(c)), which relates to research and development, is amended by inserting "(1)" immediately after "(c)" and by adding at the end thereof the following new paragraph:

"(2) In carrying out his functions, powers, and duties under this section pertaining to aviation safety, the Secretary of Transportation shall coordinate and take whatever steps necessary (including research and development) to promulgate standards for an airborne collision avoidance system for all United States aircraft, civil and military, to improve aviation safety. The Secretary of Transportation shall promulgate such standards within one year after the date of enactment of this Act. Such standards shall require that such collision avoidance system be designed—

"(A) to give aircraft pilots clear and unambiguous instructions concerning maneuvers to be undertaken or avoided to prevent a mid-flight collision with other aircraft;

"(B) to be totally independent of any ground-based equipment and ground stations and able to function in any remote or other area without the need for communication with ground-based equipment;

"(C) to permit modification of the performance of such system by the pilot in command of the aircraft in which such system is installed at the option of such pilot;

"(D) to prevent the functions of such system being modified in any way by signals sent from any ground-based system or equipment;

"(E) so that such system can be manufactured and sold at a cost which the Secretary of Transportation determines is sufficiently reasonable so that its use on all such aircraft would not impose an unreasonable burden on air carriers and other owners and operators of aircraft;

"(F) so that it shall not be incompatible with the air traffic control system; and

"(G) so that it shall be adequate to protect a small aircraft from a similarly equipped small private or military aircraft."

MOTION ADOPTED BY CITY OF CERRITOS CITY COUNCIL, SEPTEMBER 18, 1986

History does repeat itself. It is also true that we are doomed to repeat our mistakes if we do not learn from them.

Time and the cruelties of chance selected Cerritos to drive home those two truths. Because the aviation industry—and the public—failed to learn from the mid-air collision above the City of Whittier in 1975 and again in 1978 in San Diego, history has once again repeated itself. In each case, altimeter encoded transponders that would have made the light planes and their altitudes visible to radar were not in use. As a result, we in Cerritos are left with immeasurable loss and grief.

In 1975, and again in 1978 following the mid-air collision of a PSA airliner and a light plane, many levels of aviation interests unleashed an avalanche of responses; much of it designed to disarm the public below:

Our aviation system is too complicated to be understood by laymen, they said.

It isn't necessary for radar to detect all aircraft because TCA's (terminal control areas) established by the FAA will keep commercial and private aircraft separated from each other, the experts said.

The public was told 3-D type radar used by the military to track uncooperative aircraft would be in airport service in a few years.

We were also told that altitude encoding transponders on all aircraft would flood radar screens and prevent traffic controllers from doing their job.

Those things were said 10 years ago. They are being said again today. It is time for sleight-of-mouth assurances to stop and meaningful action to BEGIN. it is time for those altitude enconding transponders to be required on ALL planes flying in metropolitan areas. The Federal Aviation Trust Fund has amassed over $8 billion which could be used to help implement such action. The fund was created to assist aviation safety by levying an $8 charge on each airline ticket purchased.

While this City Council does not have the authority to act directly, it does have the authority of the people to demand action. We have the authority—and the responsibility—to demand and keep demanding until Congress and the Federal Aviation Administration take action.

I, therefore, move that the Cerritos City Council:

(1) Go on record in support of requiring that all general aviation aircraft flying in metropolitan areas be equipped with operable altimeter encoded transponders and, that all local control towers be empowered to deny permission for takeoffs or landings

when local traffic is so great as to overburden the existing radar's ability to manage the airspace;

(2) Inform each Member of the California Congressional delegation and our U.S. Senators of our position on this issue;

(3) Direct the City Manager and City Attorney to keep the Council apprised of all Federal actions on this and other areas of aviation safety in a timely and regular basis, which should include recommendations for further Council action as needed;

(4) Indicate support for H.R. 3905 requiring that the Secretary of Transportation develop standards for an affordable air collision avoidance system; and

(5) Indicate support for increased and upgraded air traffic controllers.

ADDITIONAL COSPONSORS

S. 1456

At the request of Mr. LAUTENBERG, the names of the Senator from Georgia [Mr. MATTINGLY], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

S. 1747

At the request of Mr. ROTH, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1747, a bill to amend the Foreign Assistance Act of 1961 to protect tropical forests in developing countries.

S. 1748

At the request of Mr. ROTH, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1748, a bill to amend the Foreign Assistance Act of 1961 to protect biological diversity in developing countries.

S. 2451

At the request of Mr. MELCHER, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2451, a bill to provide for entry into the United States of sugar only from friendly developing countries, to provide for entry of sugar from the Philippines on at least as favorable terms as sugar from any other country, and for other purposes.

S. 2588

At the request of Mr. DOMENICI, the names of the Senator from Oregon [Mr. PACKWOOD], the Senator from Connecticut [Mr. DODD], and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 2588, a bill to provide permanent authorization for White House Conferences on Small Business.

S. 2637

At the request of Mr. LONG, the name of the Senator from Alabama [Mr. DENTON] was added as a cosponsor of S. 2637, a bill relating to the application of the drawback provisions of section 313 of the Tariff Act of 1930 to certain imports of cane sugar.

S. 2781

At the request of Mr. EVANS, the names of the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

S. 2845

At the request of Mrs. KASSEBAUM, the names of the Senator from Rhode Island [Mr. CHAFEE], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 2845, a bill to designate the Santa Fe Trail as an Historic Trail under the National Trails System Act.

S. 2850

At the request of Mr. DOLE, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of S. 2850, a bill to strengthen and improve the enforcement of the laws against illegal drugs, and for other purposes.

S. 2861

At the request of Mr. GRASSLEY, the names of the Senator from Massachusetts [Mr. KERRY], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of S. 2861, a bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias.

S. 2872

At the request of Mrs. KASSEBAUM, the name of the Senator from Georgia [Mr. MATTINGLY] was added as a cosponsor of S. 2872, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes.

SENATE JOINT RESOLUTION 390

At the request of Mr. CRANSTON, the names of the Senator from Alaska [Mr. STEVENS], and the Senator from Mississippi [Mr. STENNIS] were added as cosponsors of Senate Joint Resolution 390, a joint resolution to authorize and request the President to proclaim the week of November 23, 1986, to November 30, 1986, as "American Indian Week".

SENATE JOINT RESOLUTION 396

At the request of Mr. HATCH, the names of the Senator from Texas [Mr. BENTSEN], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Joint Resolution 396, a joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week".

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the names of the Senator from Virginia [Mr. WARNER], and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day".

SENATE JOINT RESOLUTION 410

At the request of Mr. WILSON, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Ohio [Mr. METZENBAUM], were added as cosponsors of Senate Joint Resolution 410, a joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week".

SENATE JOINT RESOLUTION 417

At the request of Mr. NUNN, the names of the Senator from Georgia [Mr. MATTINGLY], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Illinois [Mr. SIMON], the Senator from Michigan [Mr. LEVIN], the Senator from Mississippi [Mr. STENNIS], the Senator from Arkansas [Mr. PRYOR], the Senator from Arizona [Mr. GOLDWATER], the Senator from Oklahoma [Mr. BOREN], the Senator from Nebaska [Mr. ZORINSKY], the Senator from Utah [Mr. GARN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Illinois [Mr. DIXON], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Alabama [Mr. DENTON] were added as cosponsors of Senate Joint Resolution 417, a joint resolution designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week".

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the names of the Senator from Wisconsin [Mr. PROXMIRE], and the Senator from Arkansas [Mr. BUMPERS], were added as cosponsors of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE CONCURRENT RESOLUTION 163

At the request of Mr. DECONCINI, the Senator from Maryland [Mr. SARBANES], the Senator from Kentucky [Mr. FORD], the Senator from Illinois [Mr. DIXON], and the Senator from Indiana [Mr. QUAYLE] were added as cosponsors of Senate Concurrent Resolution 163, a concurrent resolution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad.

71-059 O-87-35 (Pt. 18)

AMENDMENTS SUBMITTED

INDIAN GAMING REGULATORY ACT

PELL (AND CHAFFEE) AMENDMENT NO. 3029

(Ordered to lie on the table.)

Mr. PELL (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed by them to the bill (H.R. 1920) to establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes; as follows:

At the end of section 4, add the following new subsection:

Nothing in this Act may be construed to permit gaming activities, except to the extent permitted under the laws of the State of Rhode Island on lands acquired by the Narragansett Indian Tribe under the Rhode Island Indian Claims Settlement Act (P.L. 95-395), or on any lands held by or on behalf of such tribes.

● Mr. CHAFEE. Mr. President, I am introducing on behalf of myself and my colleague, the junior Senator from Rhode Island [Mr. CHAFEE] an amendment to H.R. 1920, the Indian Gaming Regulatory Act. I ask that it be printed in the RECORD and held at the desk.●

DROPOUT PREVENTION AND REENTRY DEMONSTRATION PROJECTS

QUAYLE AMENDMENT NO. 3030

(Ordered to lie on the table.)

Mr. QUAYLE submitted an amendment intended to be proposed by him to the bill (H.R. 3042) to authorize the Secretary of Education to make grants to local educational agencies for dropout prevention and reentry demonstration projects; as follows:

On page 1 after line 2, insert:

"TITLE I—DROPOUT PREVENTION AND REENTRY ACT OF 1986

SEC. 101.".

At the end of the bill, add the following:

TITLE II—BILINGUAL EDUCATION

SHORT TITLE

SEC. 201. This title may be cited as the "Bilingual Education Act Amendments of 1986".

PURPOSE

SEC. 202. Section 702(a) of the Bilingual Education Act (20 U.S.C. 3221 et seq.) (hereafter in this title referred to as the "Act") is amended—

(1) by redesignating clauses (4) through (14) as clauses (5) through (15), respectively; and

(2) by adding after clause (3) the following new clause:

"(4) that, regardless of the method of instruction, programs which serve limited English proficient students have the equally important goals of developing academic achievement and English proficiency;".

FUNDING FLEXIBILITY

SEC. 203. Section 702(b) of the Act is amended—

(1) by striking out paragraph (3);

(2) in paragraph (4), by striking out the semicolon and everything that follows through the end thereof and inserting in lieu thereof a period; and

(3) by redesignating paragraphs (4), (5), (6), and

(7) as paragraphs (3), (4), (5), and (6), respectively,

TECHNICAL AMENDMENTS

SEC. 204. (a) Section 703(a)(13) of the Act is amended by striking out "areas of high concentrations of persons" and inserting in lieu thereof "individuals".

(b) Section 721(b) of the Act is amended—

(1) by striking out the paragraph designation "(1)"; and

(2) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(c) Section 721(f)(7)(C) of the Act is amended by striking out "and with" and inserting in lieu thereof "with".

(d) Section 733 of the Act is amended by striking out the subsection designation "(a)".

EFFECTIVE DATE

SEC. 205. The amendments made by this title shall take effect on July 1, 1986.

DEFENSE PRODUCTION ACT EXTENSION

GARN AMENDMENT NO. 3031

Mr. DOLE (for Mr. GARN) proposed an amendment to the bill (H.R. 5480) to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act; as follows:

At the end of the bill, add the following:

SEC. 5. AMENDMENT TO EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985.

Section 116(d) of the Export Administration Amendments Act of 1985 is amended by striking "October 1, 1986" and inserting in lieu thereof "October 1, 1987".

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AGRICULTURAL RESEARCH, CONSERVATION, FORESTRY, AND GENERAL LEGISLATION

Mr. KASTEN. Mr. President, I ask unanimous consent that the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation, of the Committee on Agriculture, be authorized to meet during the session of the Senate on Thursday, September 25, 1986, in order to conduct a hearing to address S. 2685, and S. 2782.

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

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

Mr. KASTEN. Mr. President, I ask unanimous consent that the Subcommittee on Employment and Productivity, of the Committee on Labor, be authorized to meet during the session of the Senate on Thursday, September 25, 1986, in order to conduct a hearing on United States-Japan Auto Parts Trade Talks.

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

ADDITIONAL STATEMENTS

URGING SENATE APPROVAL OF AID TO THE PHILIPPINES

● Mr. KENNEDY. Mr. President, last Thursday, the House voted an additional $200 million in aid to the Philippines. Yesterday, President Corazon Aquino returned home to the Philippines after an extraordinary 9-day visit to the United States—without a commitment from this Senate on additional aid to her country. It is high time the Senate acted on the House resolution and approved this much-needed assistance to the world's newest democracy.

Never before in the history of this Nation have the American people demonstrated such an outpouring of support for a visiting foreign leader. Their enthusiasm was visible everywhere, in the large crowds, in the press, in the sea of yellow which broke out across this country and in the statements of our Nation's leaders.

At the conclusion of his meeting with President Aquino, President Reagan declared he was "bullish on the Philippines" and promised to "do all that we can" to make her government successful. After her moving and impressive speech before Congress, Speaker TIP O'NEILL declared, "That's the finest speech I've heard in my 34 years in Congress," and Majority Leader BOB DOLE declared President Aquino had "hit a home run." In her address to the Congress, President Aquino demonstrated that she is a tough, dedicated leader who clearly understands the complex and difficult issues facing her country. The House of Representatives has moved to support President Aquino and the Senate delay on that measure is inexcusable—and contrary to our interests.

Today, we hear much about the need to cut back our budget, and to reduce our national deficit. One of the first targets is always foreign assistance. Yet there must be something terribly wrong with this Nation's priorities if we can find $100 million for the Contras, $300 million for a Central American slush fund and $900 million for an antidrug bill but not $200 million for one of America's staunchest supporters and allies that is struggling to solidify its new-found democracy. The American people support that aid and it is time for the Senate to act on it.

The path of liberty is never easy. But the American and Philippine

people have a long history of joint dedication to the cause of justice, freedom, and democracy. Our two peoples fought side by side for our fundamental freedoms a generation ago in World War II—and we must not lose the fight for those freedoms in our own generation.

Millions—even billions—of peoples in other lands live under tyranny and repression in the world today—and they have never known the blessings of democracy. But the Philippine people have. They know what it means to vote in free elections, to live in freedom, to have a freely chosen government, to have a President who shares their cause.

We in America watched in awe as Cory Aquino took up the cause of freedom for which her husband Ninoy died and rallied her people against the tyranny and oppression of the Marcos regime. We watched with astonishment as those ripples of freedom in the Philippines spread from brother to brother, sister to sister, friend to friend, island to island. And we watched in admiration as the tide of people power swept Marcos from office and Cory to the Presidency.

But the time has come for the United States to act. The Philippines must now begin the long and difficult task of rebuilding a country ravaged for two decades by Marcos, Imelda, and their cronies. The Philippine economy is in shambles and still contracting. The heavy debt burden of $26 billion absorbs $2 billion a year in debt service alone—one half of the country's export revenues. The infighting within the Government continues and a Moslem leader has declared a provisional government. The Communist insurgency has rejected the President's offer of a cease-fire and remains a substantial threat to the security and stability of not only the Philippines but also the important United States bases in that country.

The United States is committed to preserving and promoting democracy throughout the world; President Aquino and the Philippine people have achieved an unprecedented, extraordinary democratic victory. They deserve our support, they need our support, and it is in our interests to provide them support.

We have delayed action on this assistance for far too long. I remind Members of this body that it is not simply the forces of peace and democracy that are watching our lack of action on this measure—you can be sure the forces of instability and tyranny are following it as well.

The American people gave President Aquino the warmest welcome ever provided a visiting head of State. I urge my colleagues to reflect their wishes and take action quickly to approve the aid package to the people of the Philippines.●

ABORTION AND INFORMED CONSENT: HAWAII

● Mr. HUMPHREY. Mr. President, I want to echo the remarks of Lora in this letter from Hawaii: "Why is there so much opposition to informed consent on abortion? What are we trying to hide?" Indeed, what is being hidden are the facts about "fetal development, abortion procedures, physical, and * * * emotional after effects."

Mr. President, Lora wishes to reveal the truth about the effects of abortion. Abortion, though legal, is not safe, and women need to be informed so that their consent is truly given after adequate counseling.

I urge my colleagues to join me in asking that informed consent be given to women before an abortion is performed on her. I particularly urge my colleagues from Hawaii to listen to their constituent, and to consider the thousands of constituents she represents who suffer in silence.

Mr. President, I submit Lora's letter for the RECORD.

The letter follows:

MAY 27, 1986.

DEAR SENATOR HUMPHREY: I understand that you are presenting a bill on informed consent for abortion. I support your effort. In fact, I wish there were such a law in Hawaii. You see, at the age of 17 I went through an abortion, totally ignorant of the facts of fetal development, abortion procedures, physical and most of all emotional aftereffects.

Of course, had I looked hard enough, I could have discovered the facts for myself. If informed consent had been the law, and therefore standard procedure, it might have been just the thing to keep me from making the worst decision of my life.

I regretted the abortion immediately, and was surprised that I felt so much guilt, depression and remorse. I cried, even mourned something I didn't understand.

It wasn't until I read a pro-life pamphlet that the awful truth finally dawned. The "fetus" that I had "aborted" had a heartbeat, brain waves, even fingerprints on its fingers.

I had murdered my own baby.

Why is there so much opposition to informed consent on abortion? What are we trying to hide? Are we helping a woman when we censor the facts that will help her make an intelligent decision about something so irreversible and eternal?

When I found out the manner by which my baby died (suction), my guilt was unbearable. The mental block couldn't cover the pain, nor could drugs or other methods I was using to cope.

Thank you for allowing me to express myself in this letter. I hope that someone else may benefit from what I went through.

Sincerely,

MRS. LORA L. HOOBLER,
Hawaii.●

RESERVATIONS TO INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

● Mr. LUGAR. Mr. President, late last week the Committee on Foreign Relations reported the Inter-American Convention on Letters Rogatory, Treaty Document 98-7. The Convention is now on the Executive Calendar. I anticipate favorable Senate action shortly.

Due to an oversight, the committee's proposed resolution of ratification did not include two technical reservations recommended by the Department of State. At the time the Convention is brought up for a vote, I intend to add the two reservations as amendments to the resolution of ratification.

Mr. President, I ask that these two reservations be printed in the RECORD.

The reservations follow:

INTER-AMERICAN CONVENTION ON LETTERS ROGATORY TREATY DOCUMENT 98-7

Reservations intended to be proposed by Mr. Lugar:

Before the period at the end of the resolution of ratification, insert a comma and add the following:

"Subject to the following reservations:

"1. Pursuant to Article 2(b) of the Inter-American Convention on Letters Rogatory, letters rogatory that have as their purpose the taking of evidence shall be excluded from the rights, obligations and operation of this Convention between the United States and another State Party.

"2. In ratifying the Inter-American Convention on Letters Rogatory, the United States accepts entry into force and undertakes treaty relations only with respect to States which have ratifed or acceded to the Additional Protocol as well as the Inter-American Convention, and not with respect to States which have ratified or acceded to the Intern-American Convention alone.●

NATIONAL JOB SKILLS WEEK

● Mr. GORE. Mr. President. I am extremely pleased that the resolution to designate the week of October 12-18, 1986, as "National Job Skills Week" passed the Senate last night. I want to thank the many colleagues who joined Senator QUAYLE and me as cosponsors and supporters in the effort to get this measure passed. Also, I want to thank Congressman MATTHEW MARTINEZ, chairman of the House Subcommittee on Employment Opportunities, for sponsoring and guiding the resolution through the House of Representatives.

The principal aim of National Job Skills Week is to focus attention on our work force needs. Each of us is aware that work in our Nation today is in a constant state of change. We know that the American workplace is undergoing a dramatic transformation due to advances in technology and to international competition. This week will seek to highlight the changes that are taking place in our economy and the new skills that are being required because of these changes. It will bring us face to face with the challenge of accomplishing the work that will enable us to remain a competitive country with a high standard of living.

During National Job Skills Week, we will need to assess our private and public job training programs. America historically has invested less in the

training and retraining of workers than other industrialized nations. This appears to be continuing today, and we may not be developing trained and versatile workers who can adapt to a rapidly changing workplace.

Over the past few years, study after study has pointed out that the future belongs to the well skilled and the well trained. According to a recent report of the Carnegie Forum on Education and the Economy:

> In the future, high-wage-level societies will be those whose economies are based on the use of a wide scale of very highly skilled workers, backed up by the most advanced technologies available.

The report also stated that:

> If America wants to compete on the same terms as it did in the past—making the most of the workers with low skill levels—then it must accept prevailing world wage levels for low-skilled and semi-skilled labor. That is, we must be prepared for a massive decline in our standard of living.

We envision a bright future for America, a future with Americans who can get the job done. We need to evaluate our training programs so that we can take steps to ensure that workers with outmoded skills get modernized and those with no marketable skills get access to training. The future is coming, we must all be ready.●

THE LOSS OF ED BISHOP

● Mr. HART. Mr. President, the trade union movement has lost a vigorous representative. The people of Colorado have lost a spirit of the community. And I have lost a friend. It is with regret that I announce to the Senate the passing of Edmond Bishop.

During the course of our public lives, we are aided by thousands of good people. But some stand out; they give both their time and something of themselves without expecting anything in return. That kind of selflessness was the hallmark of Ed Bishop.

Ed played a key role in my two campaigns for election to the Senate. For more than a decade, I valued his advice and his hard work. Most of all, I valued his friendship.

Ed died recently from cancer. To his family and friends, to his fellow workers in the Communications Workers of America and the AFL-CIO, I offer my sincere condolences. All of us will miss him greatly.

I ask that an article that announced his passing, which appeared in the CWA newsletter, appear at this point in the RECORD.

The article follows:

EDMOND BISHOP SUCCUMBS AT AGE 53

Edmond F. Bishop, a former member of the CWA Executive Board and a CWA staff person since 1961, died Aug. 8, following a valiant struggle with cancer. He was 53 years old.

He died in St. Catherine's Hospital, near his home in Half Moon Bay, Cal., where he had returned two days earlier after months of treatment at the National Institutes of Health in the Washington, D.C., area.

At the time of his death, he was administrative assistant to CWA Vice President Harry Ibsen of District 9, a position he had held with CWA since August of 1977.

Mr. Bishop became the CWA vice president in the old District 8, headquartered in Denver, Colo., and which covered the operating territory of Mountain Bell Telephone Co., on Apr. 27, 1972. He was appointed as vice president to succeed John C. Carroll, who became assistant to the late Joseph A. Beirne, CWA President Emeritus, and he was re-elected the vice president in 1973 and 1975.

Starting with CWA as a staff trainee in 1961, Mr. Bishop worked as a CWA representative in the union's Syracuse, N.Y., office between 1962 and 1965 when he transferred to CWA's Albuquerque, N.M., office. Carroll named him his assistant in August of 1965.

Prior to his appointment to staff, Mr. Bishop served as president of CWA Local 9573 in San Bernadino, Calif., and was employed as a switchman by General Telephone.

Survivors include his wife, Bertha of Yucca Valley, Cal.; three sons, Thomas of Redwood City, Cal., and Gerald and Patrick, both of Birmingham, Ala.; his mother, Margaret of Duarte, Cal., and a brother, Thomas of Phoenix, Ariz.

One of Mr. Bishop's last wishes was that his remains be cremated and that the ashes be placed in the Pacific Ocean. Thomas Bishop, one of the sons, pledged to either dive with the remains or sprinkle the ashes as per his father's wish, following a memorial service at Forest Lawn Cemetery in Covina, Cal., on Sunday, Aug. 17, according to a family friend.●

S. 1696—A WISE SOLUTION TO A DIFFICULT PROBLEM

● Mr. JOHNSTON. Mr. President, this bill is made necessary by a curious set of circumstances. Following the construction of Glen Canyon Dam in 1963, releases into the lower Colorado River were limited for the following 17 years as Lake Powell began to fill. Despite warnings from the Bureau of Reclamation and the Corps of Engineers that greater flood control releases would eventually be necessary, local residents and businesses began building on the floodplain of the river. This development continues today and threatens the Bureau's ability to operate the upstream reservoir system. Part of the problem is that numerous Federal grants, subsidies, and programs that encourage development are available within the floodway.

The principal purpose of S. 1696 is to withdraw Federal assistance for development within the floodway. At the same time, currently existing development would be grandfathered. The bill has other provisions, but this is the crux of it.

Because of the Bureau of Reclamation's involvement in managing the Colorado River and because of the responsibilities of the Committee on Energy and Natural Resources in overseeing the Bureau's programs, the committee was given sequential referral of S. 1696 following its consideration by the Committee on Environment and Public Works. The Committee on Energy and Natural Resources supports S. 1696, as reported by the Committee on Environment and Public Works, and for this reason elected not to mark up the bill separately.

Mr. President, I believe this bill represents a wise solution to a difficult problem, and I urge its immediate passage.●

ATOMIC VETERANS

● Mr. RIEGLE. Mr. President, I rise today as a cosponsor of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act of 1985. This bill, relating to the liability of government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, would restore the right of those exposed to ionizing radiation to file suits against the contractors who conducted the weapons tests.

Between 1946 and 1962, the U.S. Government conducted a series of atmospheric tests of nuclear weapons. During this period, approximately 200,000 military personnel, including civilian Defense Department employees, participated in the nuclear testing program.

While there are no definitive statistics available for all the test participants, many health experts now suspect that these "atomic veterans," as they have come to be known, may be suffering from an increased incidence of cancer. One study, conducted by the Center for Disease Control, noted an increase in frequency of occurrence of leukemia and death from leukemia among participants in the 1957 nuclear test, code-named, "Smokey." Other studies have raised the possibility of similar long-term effects among participants in other nuclear tests.

Understandably, many atomic veterans have sought redress in court for acts or omissions of atomic weapons contractors in carrying out the atomic weapons testing program. Until 1984, such suits could be brought against contractors who participated in the testing program. Contractors were then indemnified by the Government for the costs of litigation, judgments, or settlements.

This system of redress was abruptly halted with the passage of an amendment to the 1985 Defense Authorization Act, known as the "Warner amendment." The amendment stipulated that the United States would replace the contractors as the defendant in suits filed by atomic veterans. Since the United States is immune from suits filed by veterans and civilians in these cases, the Warner amendment

effectively precluded any judicial remedy for injuries or death due to exposure to radiation in the course of the atomic weapons testing program. While veterans may apply for compensation through the Veterans' Administration, this has not proven to be an adequate means of redress. Of all such claims submitted, less than 3 percent have been granted benefits by the Veterans' Administration.

Mr. President, S. 2454 will restore to participants in the weapons testing program the right to judicial review of their claims. I believe we owe people exposed to ionizing radiation their day in court, where their cases can be decided on the merits. I urge my colleagues to support this bill, and to act expeditiously in approving it.●

RECOGNIZING MICHIGAN'S EXEMPLARY SCHOOLS

● Mr. RIEGLE. Mr. President, I would like to recognize the accomplishments of 12 Michigan shcools which have been selected by the U.S. Department of Education as Exemplary Schools of Excellence. These schools demonstrate an uncommon commitment to a special mission: helping our children obtain the skills and knowledge they will need to participate in our increasingly complex and sophisticated world.

The public schools named by the Department of Education are: Kellog Elementary School in Battle Creek, Doherty Elementary in West Bloomfield, Longstreet Elementary School in Saginaw, Orchard Hills Elementary School in Novi, Parkwood Upjohn Elementary School in Kalamazoo, Quarton Elementary School in Birmingham, Shay Elementary School in Harbor Springs, and Sylvester Elementary School in Berrien Springs. The private schools that have been recognized for their excellence are: Dickenson Area Catholic Elementary School in Iron Mountain, Holland Christian Middle School in Holland, St. John Lutheran in Rochester, St. Lorenz Elementary School in Frankenmuth, and St. Mary's Cathedral in Gaylord.

These schools are leading the way in preparing today's young people for the world of the future. They are providing their students with the skills and knowledge they need to take advantage of the opportunities available in America, and, in turn, to keep our Nation strong and free.

I would like to congratulate the students, parents, and staff and other members of the commumity who contributed to the attainment of this high level of achievement. Their cooperation and hard work will have an immeasurable pay-off for their communities and for our Nation. The strong educational foundation they are building will help us as a society tackle current and future challenges head-on, contributing to a better future for everyone.

Michigan is proud of these and all of its schools. We recognize that as long as Americans strive to provide a quality education for our children, we will remain a Nation of opportunity and promise.●

SUBSIDIZED SALE OF BARLEY TO ROMANIA

● Mr. MOYNIHAN. Mr. President, will this never end? First, it was wheat to the Soviets, then sugar for the Communist Chinese, and now we have volunteered to subsidize sales of barley to Romania.

Yesterday, Under Secretary of Agriculture Daniel Amstutz announced that United States exporters would be able to sell up to 200,000 metric tons of barley to Romania under the Export Enhancement Program. The export sales will be subsidized with commodities from the inventory of the Commodity Credit Corporation. Unlike the sale of subsidized wheat to the U.S.S.R., the level of subsidy is not calculated before the actual sale.

The bonus level for the sales has yet to be determined. But we can get a good idea of the subsidy from the bonuses awarded in recent barley sales under the EEP. Today, the Department of Agriculture announced that 45,000 metric tons of barley were sold to Saudi Arabia with a bonus of $32.89. On September 15, 25,000 metric tons of barley were sold to Cyprus with a bonus of $30.20 and 31,000 metric tons to Israel with a bonus of $27.81 per ton.

As best as I can estimate, then, we are talking about a subsidy level of $28 to $33 per metric ton. If we sell all 20,000 tons, the cost of subsidizing that sale will be between $5.6 and $6.6 million.

Why are American taxpayers paying $6 million to prop up faltering Communist economies? Why is this, the most rhetorically anti-Communist government of a generation so committed to subsidizing Marxist-Lenist governments?

In so doing, we are giving credence to the Communist prophecy that we capitalists "will sell them the rope with which to hang us." Over the last decade, I have risen repeatedly to warn to the danger of confirming one of the last remaining prophecies that sustains Marxist-Leninist ideology.

It was Marx who originally suggested that the capitalist system will collapse in a crisis of overproduction. Lenin, in "Imperialism: The Highest Stage of Capitalism," altered that prophesy by claiming that for a period, we would survive by dumping our surplus locomotives, wheat, barley, whatever, on the Communists.

What an irony that the United States spends $295 billion a year on defense in peacetime, and yet we cannot seem to find the resources to maintain our own economy and producers—without subsidizing Communist regimes.

It ought to be known that there is a limit to what we will do to sustain tyranny. I hope that my colleagues might heed my warnings on our continuing penchant for proving Lenin's dictum, and understand what is at stake in continuing to subsidize sales of our commodities to Communist countries.●

NAUM AND INNA MEIMAN: EQUALITY DENIED

● Mr. SIMON. Mr. President, the Soviet's Communist government claims it is based on the theory of unified equality for all. Unfortunately, for Inna and Naum Meiman of Moscow, equality is denied. The Meiman's home has been ransacked, they have been followed.

For 10 years, the Meimans have been trying to emigrate to Israel. Inna is deathly ill with cancer. After the removal of four malignant tumors on Inna's neck, Soviet doctors have said that there is nothing more they can do for the fifth tumor. Now, it is crucial that Inna and Naum be allowed to come to the West for Inna to obtain experimental medical treatment.

I strongly urge the Soviets to allow Naum and Inna Meiman to emigrate to Israel.●

KACHAJIAN'S REBELLION: NEW JERSEY BUSINESSMAN FIGHTS TO SAVE COMPANY

● Mr. LAUTENBERG. Mr. President, I would like to draw my colleagues' attention to an article about one of my constituents which appears in the October issue of Inc. magazine.

George Kachajian is the head of Silicon Technology Corp., a company headquartered in Oakland, NJ. STC manufactures internal diameter wafering saws, which are used to slice silicon ingot in thin wafers, one of the first steps in creating semiconductors.

Several months ago, Mr. Kachajian contacted my office about a serious problem he had encountered in obtaining an export license for his saws—a product which he had been successfully selling in domestic and international markets since the early 1970's. In 1980, the U.S. Department of Commerce denied an export license application from STC. When pressed for an explanation, Commerce cited "national security reasons."

When my staff investigated Mr. Kachajian's problem, I was appalled to learn of the incredible obstacles which had been thrown in his path by our Government. While I am pleased that Mr. Kachajian's problem has been re-

solved, I am disturbed at the cost—in lost business, lost jobs, and personal frustration—which Mr. Kachajian has had to bear.

The October issue of Inc. magazine details the strength and courage of one small manufacturer who spent 6 years fighting his way through the bureaucratic maze to save his company. During that time, he saw his major competitor, a Swiss Firm, chop away at STC's customers. Unrestrained by competition from STC, the firm was selling the same product in Eastern bloc countries for prices triple those that had prevailed before export controls. The firm then used the excess profits to undercut STC's prices in the United States.

Mr. President, I want to commend George Kachajian on his determination and fortitude. In no way do I minimize the importance of safeguarding the national security when considering export licenses. I am well aware that Eastern bloc countries commit significant resources to acquire technology which could harm our national security. However, the Kachajian case does not fall within that purview. And it points to the importance of carefully differentiating between legitimate security concerns and impediments to business. It is an unhappy occasion when a businessman finds his own government tying his hands as he attempts to provide quality American products in the domestic and international markets.

Mr. President, I ask that the Inc. article on George Kachajian be printed in the RECORD.

The article follows:

KACHAJIAN'S REBELLION

(By Lucien Rhodes)

Welcome to George Kachajian's Theater of the Absurd.

You will know you have arrived when you see the marquee, there above the front door of his corporate headquarters at the end of Spruce Street in Oakland, N.J. No, it wasn't planned that way, but it does capture the spirit and essence of the whole long, involved, and contentious drama that's been six years in the making and not finished yet.

Once, those large blue letters announced the company he started 16 years ago as Silicon Technology Corp. (STC). But some months ago, this sign broke in the middle, as if unable to stand the weight of the company's aching frustration any longer: the letters spelling "TECH" fell and shattered on the parking lot below. Now each morning when Kachajian sees this symbol of his plight, he cannot help but mentally review the script as he's lived it thus far. In a rising spiral of incredulity, he will recall how an abrupt shift in American foreign policy suddenly denied him access to foreign markets, and how a foreign competitor used the opportunity both to fill the vacuum overseas and to raid his market in the United States. And he will remember with bitterness the layoffs of workers in Oakland, and the mounting financial losses, and his long hegira through the federal bureaucracy in search of relief.

So it is that George Kachajian comes to work, his $10-million company still dangerously close to collapse. Looking at the marquee, he asks himself, "Who took the 'tech' from my technology?" to which he answers, amazed at the improbability of his own response: "My own government, that's who."

But please come inside: the featured attraction has a lot more to offer—senators, congressional subcommittees, the Western Alliance; also the Soviet Union and the Warsaw Pact. You will see that the story of George Kachajian's quest for an export license is really only a small vignette played out against a vast backdrop of international trade deficits, East-West competition, and political feuding within the Reagan Administration. Still, it is a vignette that raises disturbing questions: Do the complex controls regulating U.S. exports sacrifice the international competitiveness of American companies, particularly high-tech companies? If our export-control system causes our companies to lose markets, and worse yet, industries, to foreign competitors, then, in the long run are they really protecting our national security? With a trade deficit of $170 billion, can the United States afford to forgo exports that surely run into the billions of dollars that are lost each year to export controls?

The controversy has by no means spent its force, although George Kachajian has now won a victory of sorts against the deadening hand of the Export Administration Act—the first of its kind in history. And as the news of this victory spreads through the high-tech community, he is being praised as the underdog who beat city hall. But Kachajian never wanted to star in his own melodrama. He wanted to be a businessman.

For 18 years, George S. Kachajian had worked for Dow Corning Corp. in various sales and marketing jobs, first selling silicones for oils, greases, and paint resins, and then silicon, the pure crystalline element used exclusively in the manufacture of semiconductors. His contacts within this new, rapidly growing industry were broad, he was well paid, and his prospects were very promising. But in 1969, he decided to quit. That fall, at a company plant in Hemlock, Mich., Kachajian watched an employee at work on an internal diameter wafering saw, which cuts silicon ingot into thin wafers, one of the first steps in creating semiconductors. For a second, the operator looked away from his work and the saw's diamond blade sliced through the back of his hand and cut off his fingers. Horrified and splattered with blood, Kachajian pulled the man away from the machine and applied a tourniquet. Then and there he decided that "there had to be a better way."

With almost $20,000 in personal savings, Kachajian turned to a machine-tool company in Massachusetts and financed the development of a prototype for a new saw that changed the orientation of the cutting blade, added a protective shield, and rearranged the work flow. In the fall of 1970, funded by $220,000 from friends and relatives and the refinancing of his house, he began to manufacture and sell his new machine. And it was not long before Kachajian realized that he would have to comply with U.S. export regulations, the vagaries of which could hardly be factored into any rational business plan or production schedule.

These days, business on the international level is rarely "strictly business," especially when it involves high tech. During World War II, Export Controls were used to ensure an adequate supply of various goods and commodities needed to sustain the war effort. But contrary to the original expectations, those controls were left in place long after peace had been declared—a weapon of the Cold War. The Export Control Act of 1949 finally made official what had been administrative practice, banning the export to communist countries of not only bona fide military equipment, but also dual-use commodities that might have military as well as commercial value. Beginning in 1969, Congresses and Presidents began relaxing those export restrictions, turning a more congenial and expansive face to trade with the Soviet Union and its allies. But this period of détente came to an abrupt halt with the Soviet invasion of Afghanistan in 1980. Caught up in the ebb and flow of the tensions between the superpowers was a small machine-tool company at the end of Spruce Street in Oakland, N.J.

During the 1970s, STC had prospered, controlling 80% of the domestic market in wafering saws. At the same time, Kachajian, encouraged by the prevailing attitude toward open East-West trade, had turned his attention to the demand coming from foreign markets, particularly from the Eastern Bloc, to which he traveled more than 20 times from 1974 to 1980. Because his saw is an integral part of the semiconductor manufacturing line whose end products are, in turn, essential to sophisticated weapons systems, the saws were classified as dual-use commodities requiring a validated export license. In those days, however, the only problems Kachajian encountered in the licensing procedure were delays—after a wait of up to nine months, his applications were all approved. As a result, he sold 53 wafering saws to the Soviet Union and 4 to Poland, machines that today go for $100,000 apiece.

Then suddenly, in August 1980, the U.S. Department of Commerce, for the first time, denied an export license application from STC. "One minute I was selling," Kajachian recalls, "and the next minute I was screwed. And there you are. You don't want to break the law, so you have to live with it." During the next year and a half, he made one futile call after another to the Commerce Department, only to be told cryptically that his licenses were being denied for national security reasons. Kachajian allowed himself brief interludes of optimism in which he fantasized making up his lost sales with redoubled efforts in the U.S. market. But these, it turned out, were tranquil delusions, only possible because he had not yet heard all the bad news.

By mid-1981, Kachajian discovered that STC was losing not just overseas business, but domestic customers as well. His major competitor, Meyer & Burger A.G., in Switzerland, had suddenly appeared in the United States offering comparable wafering saws for less than STC's cost of production. At first, Kachajian could not understand how the Swiss firm could sustain such suicidal dumping, but he soon learned lacking any competitive restraint, the Swiss company was selling saws in the Eastern Bloc for prices as much as triple those that had prevailed before the export controls went into effect. "They were using those excess profits to buy market share here and drive me out of business—and I couldn't fight back," Kachajian says. "It was absurd. It was outrageous. My hands were being tied by my own government."

What's more, Kachajian could not see how the country's national-security interests were served by denying him export li-

censes on a product that the Soviets could get in comparable quality and quantity from the Swiss. Instead, he felt he was the victim of capricious regulations, which, in effect, doomed him to extinction. Determined to correct the obvious illogic of his situation Kachajian screwed up his courage and marched directly into the maw of the netherworld of export licensing.

What he found was a forbidding tangle of categories and classifications, of processes and procedures, of laws, regulations, and inscrutable interpretations. At its center was the Commodity Control List (CCL), which presents those commodities, goods, and technologies requiring export licenses for any of five criteria: national security, foreign policy, short supply, human rights, and nuclear nonproliferation. In many instances, the CCL is constructed not of products, per se, but of entries calculated according to general technical or performance standards. As a result, no one really knows how many specific products are, in fact, controlled, although estimates range to the hundreds of thousands. While nobody would argue that critical high technology should be sold to the Soviet Bloc, critics from industry, academia, and Congress have charged that the list is far too broad and that it includes items long since rendered technologically obsolete.

The complexity and ungainly sprawl of the CCL is replicated in the bureaucracy that has grown up around it. Today, an application to export a product that might be covered by the CCL is scrutinized not only by several divisions within the Department of Commerce, but frequently by several intelligence agencies and the Departments of State, Defense, and Energy. Nor is that the end of it. Even after applications for certain items have been reviewed by the appropriate roster of U.S. authorities, licenses still cannot be granted unless they are also approved by the 15 allies of the Coordinating Committee for Multilateral Export Controls (COCOM), a regulatory body headquartered in Paris. The intent of COCOM is to coordinate export controls with our allies, which is certainly understandable. But exporters complain that it adds yet another layer of uncertainty to the licensing system, causing delays that drive customers to the arms of competitors, either in non-COCOM countries or even worse, in COCOM countries that interpret its restrictions more liberally than the United States. In fact, some American business people charge that our allies have, on occasion, used the licensing apparatus to give a competitive advantage to their own manufacturers.

Admittedly, it is unclear how any government bureaucracy can effectively administer such a convoluted system. The General Accounting Office, the investigative arm of the Congress, once described the export controls as a "licensing system characterized more as a paper exercise than as an instrument of control." But should you get caught shipping items on the CCL without a valid license, the penalties for violating the export regulations are very real indeed: up to five years in jail, a minimum fine of $50,000, and the loss of all export privileges.

It was this phantasmagoria of licensing that nearly overwhelmed Kachajian's sensibilities. But the more he learned about it, the more he knew he was fighting for a cause that was not only empirically just, but one that was defensible under the law as well. Provisions of the Export Administration Act of 1979 had instructed the Commerce Department to establish a division of foreign availability. If this division were to determine that a product manufactured by a U.S. company was also available to proscribed countries in comparable quality and quantity, it could decontrol that product, and the exporter could ship without a license. If there ever were a case of foreign availability, Kachajian figured, his was it. What he did not figure was that it would take him nearly four more years to get the government to admit it.

Looking back, George Kachajian's plan of attack now seems fairly obvious: compiling the information needed to prove the matter of foreign availability; seeking the testimony of industry colleagues who found themselves in similar straits; enlisting the political support of the New Jersey congressional delegation. But at the time, the process was confusing, unpredictable, and enormously frustrating. When he has the need, Kachajian will arrange on the top of his office conference table, in eight indexed stacks, seemingly every piece of correspondence he has ever sent or received to or from anybody regarding some aspect of his case. If this collection were put under one cover, its more than 1,000 pages would tell a story roughly comparable, in its own way, to the voyage of Ulysses. In Kachajian's Bureaucrats' Baedeker, there are letters addressed to the chief of the policy division of the munitions control directorate, the deputy assistant secretary of commerce for export administration, the deputy to the deputy assistant secretary for export administration, the licensing officer of the electronic instrumentation branch of the office for export administration, the special assistant to the President for public liaison, the U.S. special trade representative, the special assistant to the President for intergovernmental affairs, the director of the office of International Economic Affairs, the director of the office of Investigations of the U.S. International Trade Commission, and the undersecretary of state for political affairs—to name just a few. Then, of course, there were all those phone calls beyond counting and some 30 trips to Washington, which cost him nearly $20,000 in hotel and travel expenses. And throw in maybe $60,000 in legal fees.

But Kachajian's odyssey was much more than inconvenient and expensive. It was also desperate. While the whole involved process—the dead-end leads, the false promises, the interminable discussions—dragged on and on, Kachajian's company was slowly bleeding to death, the victim of Meyer & Burger's persistent dumping. After a decade of growth in sales and profits, STC began to lose money—nearly a million dollars to date. In 1983, Kachajian was forced to lay off almost half his employees, and even as late as July 1986, he had to sell an acre and a quarter of land the company owned across the street just to bolster cash flow. "For six years," he says, "the upside of my business has been survival and the downside was bankruptcy. I never even thought about growth."

What he was thinking about most often was the Pentagon, which had persistently raised the national-security issue in connection with the export of his wafering saws. Between 1982 and 1984, Kachajian had half a dozen meetings with various Defense Department officials, including Stephen D. Bryen, the deputy undersecretary for trade security policy. At each meeting, Kachajian would lay out his case, a Swiss competitor driving him out of business with the help of Eastern Bloc profits and counterproductive U.S. government restrictions. And at each meeting, Defense officials would tell him that an export license would jeopardize "national security." Kachajian was prepared to meet their argument head-on. He would first point out that his saws were really "glorified salami slicers" whose technology was so well known tht they could hardly be considered a threat to national security. And furthermore that the Eastern Bloc could already get as many saws as it wanted from the Swiss. Then he would go on to say that the United States was in danger of losing its semiconductor manufacturing capability to foreign companies—where there were once five companies manufacturing saws in the States, now only two remained. That, he concluded, was the real threat to national security.

The Pentagon was not impressed, however, and Kachajian finally gave up in disgust. Says Wesley E. Charles, STC's president, who attended one such meeting: "They don't care about anything else, just don't give the Soviet Union anything. They wouldn't sell them a handful of sand. And if they could control that, they would."

Fortunately, as one door closed, another one opened. In the fall of 1984, Kachajian got a call from an investigator in the division of foreign availability, which only then had finally been staffed and funded as Congress had ordered back in 1979. Kachajian, hearing for the first time that a study was being done on internal diameter saws, was ecstatic. "Man, that was exciting," he says. "I had someone who was interested. I mean the guy asked questions for two hours." During the six months that it took the investigator to complete the study, Kachajian peppered the Commerce Department with information and stumped around Washington. "Because of George's involvement," says Toli Welihozkiy of the Office of Foreign Availability (OFA), "everybody became aware that this was an agenda item that needed to be moved quickly." But "quickly" has a special meaning in Washington. It was the spring of 1985, more than five years after the rejection of his first license, that the OFA determined that there was, in fact, foreign availability of wafering saws and that the item should be decontrolled.

With the OFA determinations, Kachajian had established a beachhead within the bureaucracy, but the battle had only just begun. Under the procedures of the Export Administration Act of 1985, OFA sent a draft of its report detailing its findings to the Department of Defense for review and comment, and, not surprisingly, Defense disagreed strongly with the specific findings, with their interpretation, and particularly with the impulse to decontrol the saws. The reaction touched off a fierce interagency squabble within an Administration equally committed to fighting back the Russians and fighting back government restrictions on business.

"Our view," explained deputy undersecretary Bryen, "is that we have very good intelligence, incontrovertible intelligence, that the items . . . will be put to use by the Soviets directly in military. You know, in the '70s we had this great experiment: we were going to trade with the Russians and try to improve relations. But the basic bottom line is that the bulk of this stuff went right to the Soviet military, and it was used by them to modernize their military forces."

Replied Paul Freedenberg, assistant secretary of Commerce for trade administration: "The Commerce Department sees to it that you have to make a balance in these types of cases. You have to decide to balance off

immediate national security against the long-term loss of the defense-industrial base, which, in itself, has a national-security implication. If you lose, for example, your semiconductor manufacturing capability, ultimately you're undermined, because you no longer have that defense base to build semiconductors. Now we're just talking in this case about one specific company, but it's a microcosm of a danger—not something that's immediate, but certainly something that, long range, could be very deleterious."

Confronted with implacable opposition from Defense once again, Kachajian's spirits wilted, but only for a moment. In September 1985, his forces were joined by fresh troops. Stanley T. Myers, president and chief executive officer of California-based Siltec Corp. and a member of the Semiconductor Technical Advisory Committee (TAC), one of nine such committees advising the Commerce Department in various high-tech areas, wrote a letter about STC's predicament to his fellow members. Myers, whose company uses wafering saws, knew firsthand about Meyer & Burger's tactics. And in his letter, he carefully outlined STC's plight and urged the committee to action on STC's and all U.S. manufacturers' behalf, ending with: "Unless we act quickly and decisively, we will face the ironic circumstance of having controlled an American technology into extinction."

The Advisory Committee did act quickly, using its powers under the Export Administration Act to force a decision on Kachajian's case, supposedly within 90 days. Kachajian responded by redoubling his lobbying efforts, enlisting New Jersey's two senators, Bill Bradley and Frank R. Lautenberg, and Representative Marge Roukema to put pressure on Commerce secretary Malcolm Baldrige and his aides. "I was in the wilderness for four years," Kachajian recalls, "and now I had big names."

Commerce was leaning toward a favorable decision, both because of the merits of Kachajian's case and because a positive decision was important to the credibility of the Office of Foreign Availability. Up to that point, the OFA had not produced one single case leading to the decontrol of any item or technology listed on the CCL. The business community was becoming openly critical. So was Congress, which had ordered the establishment of the office six years earlier. But there was still the problem of the Pentagon's unrelenting opposition. Finally, the standoff between an immovable object and an irresistible force had reached an impasse, and the case of George Kachajian and his little company at the end of Spruce Street in Oakland, NJ., was taken all the way to the White House.

On May 15 at 10:30 a.m., Kachajian was attending a meeting of the Semiconductor Technical Advisory Committee in the huge Commerce building on Pennsylvania Avenue. As Kachajian remembers it, the 20 members of TAC were in their places around a large conference table while assorted guests and observers chatted from their seats around the edges of the room. Suddenly, assistant secretary Freedenberg came in and everyone fell silent as he announced that, earlier that morning, he had recommended to the National Security Council at the White House that wafering saws be decontrolled for reasons of foreign availability. "Everybody turned to look at me," Kachajian says. "Then they got up and started to congratulate me. I just sat there like the cat who swallowed a canary, but I was afraid to smile. I still couldn't believe it. . . . This happened after six years of busting my chops. When I left that place, I thought I was walking on air."

For the next month, Kachajian kept up his pressure with telephone calls, visits, and a letter campaign that involved all 45 employees of his company. Then, in late June, he got a call from a staff person in Representative Roukema's office. The congresswoman had just received a letter, the caller said, from John M. Poindexter, the assistant to the President for national-security affairs, which stated that the council had agreed with the Commerce Department's position that the internal diameter saws should be immediately decontrolled.

Kachajian's first reaction was to shout for joy, but he knew better. Long experience with the government had taught him that seldom were problems that easily dispatched. And he was right. The saws, the letter continued, would, in fact, be decontrolled immediately for sale only to noncommunist countries such as Sweden and South Korea. The letter went on to say that, "Subsequently, we will begin working with our allies to arrive at a mutually agreed upon and orderly removal of COCOM controls on these saws to controlled countries."

In short, Kachajian, who views the reopening of Eastern Bloc markets as the key to the survival of his company, still could not sell his saws to the one market he wanted in the first place. And, at this moment, that is still where he is: one hand clutching the collar of his company to keep it from going under, the other with all its fingers crossed while he waits for COCOM to consider the issue sometime this year.

Yet as painful as it is for him, Kachajian's current limbo is entirely expressive of the lack of consensus that the current Administration brings to the issue of export controls. And it is particularly expressive of a regulatory environment in which the word "resolution" seems oddly to imply a more or less permanent state of contentiousness.

At the Commerce Department, for example, James K. Pont, the director of the OFA, speaks for many of his colleagues when he says that the Kachajian case establishes an important precedent. Claiming that the OFA has finally "found a path through the bureaucratic jungle," he predicts that over the next three to six months there may be several more positive findings.

But at the Defense Department, the feeling is that if there is any kind of precedent involved, it is only of the worst possible kind. Pointing out that the Kachajian case involves "the most sensitive technology that the Bloc can acquire," deputy undersecretary Bryen sees the handling of the issue as an example of "poor leadership" that ignored "the national interest." In his opinion, Commerce should have negotiated aggressively with the Swiss to get them to stop sales in the Eastern Bloc rather than decontrolling U.S. shipments. "There are plenty of things the Swiss want from us," he argues, "and it's outrageous that what we have is the Commerce Department laying back and saying, 'Well, we informally asked them and they said no.' I mean, that's nonsense. They [the Swiss] don't informally ask when they want something."

Bryen also makes it quite clear that George Kachajian's long ordeal is far from over, at least as far as the Pentagon is concerned. "Some of them [the saws] he will be allowed to sell," he says, "but there will be restrictions, at least if we have anything to say about it, on what types of saws he will be able to sell, and for what size ingot, and so on. It won't be any open door."

Thus, while George Kachajian's victory has drawn the attention of the export community, it has not engendered much hope for a significantly more balanced export-control policy. If anything, many of Kachajian's fellow exporters look at his six-year ordeal and wonder if it only confirms their worst fears about controls and the future competitiveness of American manufacturers abroad. Larry L. Hansen, executive vice-president of Varian Associates Inc., manufacturers of such items as ion implanters and chemical vapor deposition reactors, responds to the Kachajian case with a mixture of admiration and horror: "George put in an enormous amount of effort to get that, and that's a very mundane piece of equipment. I mean who in the hell can't make a crystal slicer? For him to have had to put in that much effort, and get that many people involved to get the relief that he got is an incredible thing, absolutely incredible."

"Sometimes there's a little voice inside me," says Kachajian, "that asks: 'What are you so happy about? All this means is that you can do what you should've been able to do along.'" Maybe.●

YSLETA DEL SUR PUEBLO AND ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS RESTORATION ACT

Mr. DOLE. Mr. President, I ask unanimous consent that all action be vitiated on H.R. 1344 and that it be placed back on the calendar.

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

DEFENSE PRODUCTION ACT AUTHORIZATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar 991, H.R. 5480, the Defense Production Act authorization.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5480) to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act.

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

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

AMENDMENT NO. 3031

(Purpose: to delay for 1 year the effective date of section 116 of the Export Administration Amendments Act of 1985.)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator GARN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GARN, proposes an amendment numbered 3031.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. 5. AMENDMENT TO EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985.

Section 116(d) of the Export Administration Amendments Act of 1985 is amended by striking "October 1, 1986" and inserting in lieu thereof "October 1, 1987".

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

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3031) was agreed to.

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

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

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5480), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

S. 2880—TO PROVIDE A TEMPORARY EXTENSION OF THE INTERSTATE TRANSFER DEADLINE FOR H-3

Mr. BYRD. Mr. President, I send to the desk a bill I introduced on behalf of Mr. INOUYE for himself and Mr. MATSUNAGA. I ask unanimous consent that the bill be held at the desk until the close of business on tomorrow.

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

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I ask if the minority leader is prepared to consider the following items on the executive calendar: Calendar No. 1026, Calendar No. 1042, Calendar No. 1043, Calendar No. 1044, Calendar No. 1045, Calendar No. 1046, and Calendar No. 1048.

Mr. BYRD. Mr. President, these nominees that have been identified by the majority leader have been cleared by all Members on this side. We are ready to proceed with the confirmation thereof.

Mr. DOLE. Mr. President, I thank the distinguished minority leader.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations just identified.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

Mr. DOLE. I ask unanimous consent that the nominations be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nominations were considered and confirmed en bloc.

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

The motion to lay on the table was agreed to.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

Richard P. Godwin, of California, to be Under Secretary of Defense for Acquisition.

DEPARTMENT OF COMMERCE

Louis F. Laun, of New York, to be an Assistant Secretary of Commerce, vice Joseph F. Dennin, resigned.

THE JUDICIARY

Diarmuid F. O'Scannlain, of Oregon, to be U.S. Circuit Judge for the Ninth Circuit.

Frederic N. Smalkin, of Maryland, to be U.S. District Judge for the District of Maryland.

James L. Graham, of Ohio, to be U.S. District Judge for the Southern District of Ohio.

DEPARTMENT OF JUSTICE

George Landon Phillips, of Mississippi, to be U.S. Attorney for the Southern District of Mississippi for the term of 4 years.

THE JUDICIARY

Thomas B. Wells, of Georgia, to be a Judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

Mr. DOLE. I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

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

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Friday, September 26, 1986.

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

ROUTINE MORNING BUSINESS

Mr. DOLE. Following the recognition of the two leaders under the standing order, I ask unanimous consent there be a period for the transaction of routine morning business not to extend beyond 10 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

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

PROGRAM

Mr. DOLE. At 10 a.m. we will begin consideration of the Drug Enforcement Act. At that time the distinguished Senator from Connecticut will be recognized to make his point of order. I hope we can work out a schedule to accommodate all Senators. I know it is a very busy time, with a lot of conferences; there are a lot of conflicts, but I would hope that we could make some headway on the drug bill tomorrow, then start on the tax reform conference report. I am advised that the House just passed the continuing resolution by one vote, so that will be coming over here and we hope to be on that Monday and Tuesday. There will be a late session tomorrow evening and there will be a session on Saturday of this week.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. DOLE. There being no further business to come before the Senate, I move we stand in recess until 9:30 a.m. Friday, September 26, 1986.

The motion was agreed to; and, at 8:39 p.m., the Senate recessed until Friday, September 26, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 25, 1986:

IN THE ARMY

The following-named officers for appointment to the grade indicated, under the provisions of title 10, United States Code, section 601(a), in conjunction with their assignment to positions of importance and responsibility, designated as such by the President under title 10, United States Code, section 601(a):

To be general

Lt Gen. James J. Lindsay [redacted], U.S. Army.

To be lieutenant general

Maj. Gen. John W. Foss, [redacted], U.S. Army.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Judith Y. Brachman, of Ohio, to be an Assistant Secretary of Housing and Urban Development, vice Antonio Monroig, resigned.

NATIONAL INSTITUTE OF BUILDING SCIENCES

Fred E. Hummel, of California, to be a member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1989, reappointment.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 25, 1986:

DEPARTMENT OF DEFENSE

Richard P. Godwin, of California, to be Under Secretary of Defense for Acquisition.

DEPARTMENT OF COMMERCE

Louis F. Laun, of New York, to be an Assistant Secretary of Commerce.

THE JUDICIARY

Thomas B. Wells, of Georgia, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

Diarmuid F. O'Scannlain, of Oregon, to be U.S. circuit judge for the Ninth Circuit.

Frederic N. Smalkin, of Maryland, to be U.S. district judge for the district of Maryland.

James L. Graham, of Ohio, to be U.S. district judge for the southern district of Ohio.

DEPARTMENT OF JUSTICE

George Landon Phillips, of Mississippi, to be U.S. attorney for the southern district of Mississippi for the term of 4 years.