EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO John Cooney	Take necessary action	☐
Peter Wallison ✓	Approval or signature	☐
	Comment	☐
	Prepare reply	☐
	Discuss with me	☐
	For your information	☐
	See remarks below	☐
FROM Debbie Steelman D.S.	**DATE** Sep 13	

REMARKS

Q&A's re Anti-Drug Legislative Package

Justice has prepared the subject Q&A's to accompany release of the anti-drug legislation.

Please let Steve Tupper have your comments as soon as possible.

N. Sweeney
J. Murr

OMB FORM 4
Rev Aug 70

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THE DRUG-FREE FEDERAL WORKPLACE ACT OF 1986

QUESTIONS AND ANSWERS

Q: What is the purpose of Section 103?

-Individuals who use drugs are not to be considered handicapped for purposes of the Rehabilitation Act, although the use of drugs does not disqualify an individual who would otherwise be protected under the Act. Employee misconduct based upon illegal drug use should receive no greater protection than other forms of serious misconduct.

-Rehabilitation will be offered federal employees under the Executive Order; the difference here is to ensure that rehabilitation does not insulate an employee from discipline if rehabilitation is not successful.

Q: How would this provison affect the private sector?

-Currently, Section 504 of the Rehabilitation Act requires that no handicapped individual be excluded from participation in any program or activity receiving federal financial assistance. Section 503 of the Act requires employers with government contracts in excess of $2,500 to establish affirmative action programs for the handicapped. Because drug addicts have been considered handicapped persons, private employers have been expected to employ addicts or drug users unless the employee's current use impairs his performance or the use renders the employee a threat to property or safety.

-We are now making clear that, under federal law, employers may discipline or remove employees who illegally use drugs. The law has acted as a safe harbor for drug abusers, requiring employers to keep them on the roles unless an employer can affirmatively show that an illegal drug user has improperly performed his job. With this amendment, the employer will retain his traditional discretion in selecting members of his workforce.

Q: Can you cite examples of problems stemming from improper reading of the Rehabilitation Act?

-One problem has been that some courts have been improperly reading the Act to require repeated offers of rehabilitation. Employers not only must provide leave to an employee for rehabilitation once, but if the employee is successful, comes back to work, and then falls off the wagon and starts using

drugs, rehabilitation at the employer's expense may be required again. This makes no sense.

Q: Why amend the Civil Service Reform Act (section 104)?

-While the Civil Service Reform Act generally prohibits any adverse action to be taken against a federal employee on the basis of conduct unrelated to the performance of his or her duties, the President has determined that illegal drug use, whether on or off the job, has a substantial adverse impact on employee performance and productivity.

-In view of the nexus between employees' use of illegal drugs and the adverse impact on performance and productivity, this section conclusively establishes that discipline taken against an employee for the illegal use of drugs would not be a prohibited personnel practice under the Act.

-The Civil Service Reform Act certainly did not intend to provide a safe harbor for federal employees to engage in the use of illegal drugs.

Q: Why do you want or need both an Executive Order and legislation?

-The legislation is intended to dispell any uncertainty over issues that will likely be raised before the courts. With the amendments, there will be no open questions, no room for mistakes and the statutes will be just as explicit as the Executive Order in confirming that illegal drug use will not be tolerated. Also, the Executive Order does not, by its terms, reach non-federal employees.

QUESTIONS AND ANSWERS FOR JUSTICE ON "DRUG-FREE SCHOOLS ACT OF 1986"

1. Q: How will your bill work?

   A: Key features of our bill are:

   1. A State set-aside for drug prevention activities at the state level. Set-aside funds would support teacher training, technical assistance to local school districts, and development of state-wide programs with law enforcement agencies. The set-aside would be limited to no more than 10 percent of the State's total grant.

   2. State discretionary grants to local school districts, which would account for at least 90 percent of State funds. These grants would require each applicant district to submit to the State agency a plan to achieve "Drug-Free Schools." These grants would be for three years, but funding for each year would depend on a district's demonstration of specific progress in reducing drug use.

      School district applications for the competitive grants must cover a three year period and specify:

      - The roles of parents, the police, and the community in developing and implementing the goals and priorities of their programs.
      - A discipline code which spells out consequences for drug use.
      - The drug and alcohol prevention curricula, counseling programs, and teaching materials that the school districts will adopt.
      - Evaluation procedures to assess the ongoing effectiveness of their programs and make adjustments accordingly.

      Funds can be used for improving school security, as well as educational activities, such as the purchase of curricular materials. Moreover, States and localities will be committed to the success and continuation of the program because at least one-third of all funds must be from non-Federal sources.

   3. Federal discretionary ~~grants~~ funds for activities such as: development and dissemination of program models and materials on alcohol and drug prevention in the schools; workshops and seminars to encourage greater cooperation between schools and community agencies, including law enforcement, the courts, and social services; research into the effects of drug use in the schools, and into the effectiveness of possible solutions to the problem.

2. Q. Your bill seems to put too much emphasis on the school. Aren't you asking the schools to 'go it alone?'

   A. The schools are the focal point of our bill because they are our primary contact point with children. Yet, schools are only the coordinating point for an integrated local effort involving parents, local service agencies, and the police.

   The bill involves State governments as well; they are responsible for the success of the plan, and should therefore provide ancillary support. The Federal government will do its share as well: our bill provides for a Federally sponsored research, dissemination, and demonstration effort so that we obtain and share the most effective solutions to the problem.

3. Q: How much money will the bill provide? Is it sufficient?

   A: The bill will provide $100 million, We do not propose that our bill covers the full costs of the program. Funds are provided on a matching basis, and so States and localities will boost Federal funds by at least one third. Such a provision is additionally important because States and localities will assume total funding after the third year.

   In addition, much of what we propose is not costly. For example, the economic costs are negligible in establishing a discipline policy. What we are asking for is a expenditure of effort and a commitment to work together.

   Also, this bill is not the only Federal source of funds. Other Federal money is available through Chapter 2 as well as the HHS block grant.

4. Q: What are the advantages of your bill compared to the House bill?

   A: Unlike the House bill, our bill contains more specifics about what constitutes a well conceived program. Our bill ensures that school districts will:

   - o specify a no-drug policy, including the student conduct codes and procedures they will employ to eliminate the sale or use of drugs on school premises;
   - o provide funds to develop and implement only curriculum materials and counseling programs that present a clear and consistent message that drugs are wrong and harmful;
   - o use funds to involve parents in drug prevention activities, as well as in drug education programs;
   - o use funds to support enhanced security measures in schools; and,
   - o demonstrate progress in achieving and maintaining a drug-free school.

Our bill ensures that local school districts ~~States~~ will:

- o describe in their initial application for funds their plan for assessing the extent and nature of their school's drug problem and for monitoring their progress on an annual basis.

- o match from local funds one-third of total program costs ~~in the second and third year~~ and plan for maintaining the program after expiration of the three-year Federal grant.

Furthermore, our bill recognizes that the critical need is for education and prevention efforts among younger students. Unlike the House bill, our bill focuses on elementary and secondary schools.

Another important factor for success is the presence of a strong local commitment. Our bill ensures this through making the States primarily responsible for administering the program, and through an emphasis on parent and community involvement.

5. Q. What are the provisions of the bill regarding enforcement?

A. Unlike the House proposal, our bill permits local education agencies to use funds to support increased school security and surveillance activities. At the outset, it requires grantees to submit their drug policy and enforcement procedures in their initial plan and to evaluate their enforcement measures in subsequent annual reports.

Moreover, local education agencies are not precluded from using funds to help pay salaries for security guards and police officers and to take other actions to more closely monitor school grounds and surrounding areas. Other activities that school districts could undertake with support from this bill include setting up computerized attendance systems to monitor student whereabouts and identification systems to restrict outsider entry.

The intent of this bill is to reinforce a clear no-drug message with strong enforcement. The New York City SPECDA program has shown great success by effectively combining education with enforcement; this bill intends to multiply such efforts across the country.

6. Q. What are the provisions of the bill regarding the testing of students for illegal drug use.

A. Our bill provides that it shall not be unlawful under Federal ~~law~~ statute or regulation for any educational institution:

- o to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs.

- o to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs.

- o to refuse enrollment to applicants for admission who use illegal drugs; or

- o to take disciplinary action against students, including suspension or expulsion, who use illegal drugs whether or not the use occured at the educational institution.

7. Q. Does this in any way imply that drug testing will be mandated by the Federal government?

A. No. Our bill simply provides that Federal laws will not prohibit educational institutions from conducting drug testing programs, should they so desire. Of course, these institutions must comply with applicable State laws in this area.

QUESTIONS AND ANSWERS

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Q. Is the legislative proposal to increase State flexibility under the existing Alcohol and Drug Abuse and Mental Health Services Block Grant all there is for demand reduction in the President's program?

A. Absolutely not. What the legislative proposals don't tell you is that we will be submitting an amended Fiscal Year 1987 budget request which will provide for an additional ~~$230~~ million targetted directly on drug abuse prevention, treatment, and intervention programs which will be run from the Department of Health and Human Services. Because this is a budget amendment it does not show in the legislative proposal package.

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Q. What types of activities will you be supporting with this ~~$230~~ million?

A. There will be several types of activities supported.

First, we will provide $70 million in short-term matching assistance directly to communities to help them build a permanent anti-drug infrastructure which can be maintained as the Federal share phases down.

Second, we will establish a National Center for Prevention, Education, and Early Intervention to develop, coordinate, and disseminate essential prevention messages to both the public and private sector. It will also provide rapid response technical assistance to communities which need direct advice on effective prevention strategies. This will initially be a $15 million effort.

Third, we are proposing the expend an additional $100 million on drug abuse treatment programs to help States meet excessive demands for services.

Additionally, we will be increasing our research budget for preventing, detecting, diagnosing and treating drug use. We will also be increasing our ability to track the incidence and prevalence of drug use among Americans.

Q. How will the DHHS efforts relate to those of other Federal agencies?

A. The Department will utilize its existing expertise in drug abuse prevention, treatment, and education to complement and enhance that of other Departments and agencies. For example, DHHS will work with the Department of Education to develop school-based curricula to make students, faculties, and teachers better able to develop the ability in students to resist messages of the drug culture. DHHS will develop a comprehensive program of school health (including instruction in the dangers of alcohol, tobacco, and drug use) and which encourage healthy alternatives and coping mechanisms. DHHS will also design specific intervention programs designed for those students who already present a profile of risk factors for drug abuse or who may already be early experimenters with drugs. DHHS is programming $4 million just for cooperative efforts with the Department of Education.

DHHS will also provide technical assistance, consultation and support for the Department of Labor and the Office of Personnel Management in their efforts to continue to expand the role of Employee Assistance Programs in drug abuse treatment and prevention. These agencies will be working to develop Employee Assistance Programs in both the private and public sector workplace. DHHS has budgeted $5 million for this collaborative effort.

Q. What about the Alcohol and Drug Abuse and Mental Health Services Block Grant? Why do you propose to remove earmarks and why don't you provide more funding?

A. Removing the earmarks in that block grant will give the States more flexibility to use their Federal treatment and prevention funds where and how they see best. With drug abuse, epidemic use varies from State to State and community to community, based on the type of drug and the amount of supply available. We want the States to have as much flexibility as possible in putting resources where the problem is.

We have additionally chosen to target additional Federal resources to drug abuse through the community assistance grant and treatment funding programs I described earlier. This will be more efficient in dealing with the hardest hit communities since some of any appropriation for the block grant goes for other purposes and the Federal dollars involved are limited.

TITLE IV, PART A

THE INTERNATIONAL FORFEITURE ENABLING ACT OF 1986

QUESTION: How does the international forfeiture enabling legislation enhance the ability of our government to prevent the importation of narcotics into the United States?

ANSWER: As you know, a great deal of the debilitating drugs within the United States, such as heroin, cocaine and marijuana, are imported from other countries. The greatest law enforcement tool available to any country is to take the profit out of drug trafficking by forfeiting the assets obtained from, or used to commit, narcotics trafficking. We recognized this in the United States when we improved our drug forfeiture laws in enacting the Comprehensive Crime Control Act in 1984.

The international forfeiture enabling legislation authorizes the United States to forfeit through our civil laws property located within our borders that was either derived from the violation of a foreign country's drug laws or was used or intended to be used in their violation. This property would only be subject to forfeiture if the offense would have been a felony violation under United States law had the offense occurred in our country. Just as in certain existing forfeiture laws, innocent owners would be protected under the new law.

The new law would also permit the Attorney General to equitably transfer property forfeited under it to any foreign country which participated directly or indirectly in any acts which led to the seizure or forfeiture of the property, or pursuant to an international agreement for the transfer of such property. Similar equitable sharing provisions for state and local law enforcement agencies are currently found in other forfeiture statutes, most notably Title 21, United States Code, Section 881, and have been very successful in promoting joint cooperation in drug investigations. Switzerland and Canada have similar statutes and have used them very effectively to seize drug assets.

Thus, this new law would provide an incentive for international cooperation in wiping out drug trafficking within our borders and overseas.

Part B - Mansfield Amendment Repeal Act

Question: Why is the Administration seeking the repeal of the "Mansfield Amendment"?

Answer: The "Mansfield Amendment" prohibits officers and employees of the United States from participating in narcotics arrests in foreign countries, or from being present at the interrogation of a United States person arrested in a foreign country with respect to narcotics control without the written consent of the person being interrogated. A 1985 amendment to the "Mansfield Amendment" provides that it shall not prohibit federal officers from being present during direct police arrest actions with respect to narcotics control in a foreign country to the extent that the Secretary of State and the government of the foreign country agree to the exemption and the Secretary of State notifies Congress of the agreement prior to the police action.

The Administration seeks the repeal of the "Mansfield Amendment" because even as amended it places unreasonable restrictions on the participation of United States law enforcement officers in joint operations with foreign countries designed to attack drug trafficking involving both the United States and another country. It prevents the United States from providing technical assistance and law enforcement assistance to foreign countries which are struggling to stop drug trafficking. In addition, the amendment hampers the

efforts of the Coast Guard to providing both assistance and training to foreign countries at their request to prevent the use of their waters by drug traffickers. The amendment prevents the Coast Guard from participating in joint enforcement operations with other countries. Repeal of the "Mansfield Amendment" would allow increased international cooperation against drug trafficking under the supervision of the Secretary of State and with the consent of the foreign country involved.

PART C - Narcotics Traffickers Deportation Act

Question: Why is this amendment necessary?

Answer: This amendment removes the unnecessary dichotomy that presently exists between offenses involving narcotic drugs, cocaine, or marihuana and other controlled substance offenses in Title 21, United States Code, for purposes of deportation under the immigration statutes (viz., 8 U.S.C. 1251(a)(4)). As presently in effect, 8 U.S.C. 1251(b) gives authority to the sentencing judge to make a binding recommendation to the Attorney General that aliens convicted of a variety of federal offenses not be deported. One exception to this authority involves aliens who have been convicted of drug offenses explicitly listed in subsection (a)(11).

The revised language would expand the exception contained in 1251(b) to allow deportation, without overriding judicial involvement, in all matters involving controlled substance offenses. The above changes incorporate language similar to that contained in the Controlled Substances Act and the Controlled Substances Import and Export Act and delete from Section 1251(a)(11) outmoded concepts utilized in pre-CSA-related tax laws, etc. The amendment would also incorporate drug violations of state and foreign law, as well as related federal offenses not contained in Title 21, for purposes of this exception, thereby making the exception similar in coverage to recent amendments to the recidivist provisions of the Controlled Substances Act and the Controlled Substances Import and Export Act.

Part D - Customs Enforcement Act

Question: What are the most significant aspects of the Customs Enforcement Act of 1986?

Answer: The most important feature of this Act is its modernization of Customs enforcement statutes. The bill would: (1) require all vessels arriving in the United States to report immediately to Customs; (2) require persons entering the United States and its land borders to enter only at authorized border-crossing points and require passengers to report for Customs inspection and remain in the Customs area until cleared by a Customs officer; (3) increase penalties for noncompliance with Customs reporting requirements; (4) grant increased authority to gather evidence of violations of laws and regulations enforced by the Customs Service; (5) tighten exemptions from seizure and forfeiture for common carriers; (6) clarify forfeiture provisions for prohibited or restricted merchandise; and (7) clarify the Secretary of the Treasury's authority to exchange information with foreign law enforcement authorities.

Through these amendments, Customs enforcement officers will no longer be handcuffed by the many outdated provisions of the Tariff Act of 1930. As the degree of

sophistication enjoyed by smugglers grows, so must the enforcement tools available to Customs officers. This bill is necessary for Customs to effectively fulfill its law enforcement mandate.

MARITIME DRUG LAW ENFORCEMENT
PROSECUTION IMPROVEMENTS ACT OF 1986

Question: In what manner would this bill expand the law enforcement authority of the Coast Guard and improve the prosecution of cases involving the maritime smuggling of illegal drugs?

Answer: Under existing law, the United States Coast Guard has the authority to stop and board certain vessels at sea and make arrests and seizures for violation of U.S. drug laws. Vessels subject to boarding include (i) vessels of the United States (i.e., vessels under U.S. registry or owned by U.S. citizens); (ii) foreign vessels within the so-called "customs waters" of the United States; and (iii) vessels on the high seas which are subject to the jurisdiction of the United States under international law either because they are determined to be "stateless vessels" (e.g., where the vessel master makes a claim of registry which is denied by the flag country) or because the country of registry has consented or warned waived objection to the boarding. This authority is the keystone of the federal effort to interdict the maritime of drugs before the drugs reach U.S. shores.

This bill would expand the authority of the Coast Guard to make such boardings, arrests and seizure. First, it would permit the Coast Guard to make boardings in the

territorial waters of a foreign nation if that nation consents to the boardings and to the enforcement of United States law by the United States in that nation's territorial waters. Second, it would expand the definition of "stateless vessels" to include vessels on which the master fails to respond to Coast Guard inquiries concerning the vessel's nationality.

The bill would also eliminate two problems which occasionally arise in criminal prosecutions resulting from such boardings. One problem is that individual criminal defendants frequently assert that the boarding giving rise to their arrests was not made in compliance with international law, as a defense at trial. It is a well established principle of international law, however, that individual citizens do not have standing to assert legal claims or defenses based on alleged non-compliance of international law and that such matters are to be resolved by the governments of the concerned nations through normal diplomatic channels. Consistent with this principle, the bill would provide that claims that a boarding was not in compliance with international law may only be made by the affected foreign nation, not by an individual criminal defendant and not in a federal criminal trial.

Another problem which has occasionally arisen is that

some federal courts have required federal prosecutors to prove a vessel's status (e.g. domestic, foreign, or stateless), the consent of a foreign government to a boarding, or the denial by a foreign state of a claim of registry as an element of the offense at trial. Prosecutors have experienced numerous problems attempting to obtain the documentation necessary to prove such matters from the concerned foreign government in a timely manner and in a format which renders the documentation admissible as evidence at trial. Several prosecutions have been jeopardized as a result. The proposed bill would eliminate this problem by providing that such matters may be proved at trial by a certification obtained from the Secretary of State or his designee.

TITLE V - Questions and Answers

PART A - The "Drug Penalties Enhancement Act of 1986"

Question: How would the provisions of the "Drug Penalties Enhancement Act of 1986" change the existing penalty structure of the Controlled Substances Act?

Answer: The "Drug Penalties Enhancement Act of 1986" has been drafted to provide adequate punishment for persons convicted of domestic drug trafficking by increasing the "sliding scale" of maximum penalties which may be imposed based upon the quantity of the controlled substance involved. This scale, which was initially included in the Comprehensive Crime Control Act of 1984 as 21 U.S.C. 841(b)(1)(A), has been modified to provide the greatest penalties, i.e., a maximum term of imprisonment of 40 years and a mandatory minimum term of imprisonment of at least five years (plus maximum fines as provided in Title 18 of the U.S. Code or $2 million for an individual or $5 million for a defendant other than an individual), for offenses involving specified quantities of controlled substances, such as heroin, cocaine, "crack," and PCP. These penalties are doubled for second or subsequent offenses and increased to a mandatory term of life imprisonment where death results from the use of such substances.

Modifications to 21 U.S.C. 841(b)(1)(B) would raise the maximum penalty for all other violations of the CSA involving unspecified quantities of Schedule I or II controlled substances, and would include a maximum term of imprisonment of 20 years, except where death resulted from the use of such substance, where the term of imprisonment would be a mandatory 20 years to life. Second or subsequent offenses would receive double punishment, except where death resulted, where the

punishment would be a mandatory term of life imprisonment.

Other provisions would bring fines provisions of the Controlled Substances Act into line with the terms of the Criminal Fine Enforcement Act of 1984 and modify the provisions of the Comprehensive Crime Control Act which would have deleted the special parole provisions from the CSA. Instead, the special parole provisions have been redesignated as terms of "supervised release."

PART B - The "Drug Possession Penalty Act of 1986"

Question: How are the provisions of the "Drug Possession Penalty Act of 1986" expected to reduce drug consumption in the United States?

Answer: While the drug user is the sine qua non of the illicit drug industry - without such demand the "demand side" of this deadly equation would soon disband - present penalties are inadequate to deter the massive consumption of drugs in this country because such non-mandatory penalties have no teeth. Drug users do not face actual civil or criminal penalties for their part in the drug-importation/distribution process, especially where they can be "diverted" from the criminal process for a first offense.

To correct this situation, the "Drug Possession Penalty Act of 1986" would rewrite 21 U.S.C. 844 - the federal statute relating to "simple" possession of a controlled substance, i.e., possession without an intent to distribute the substance - to delete the pretrial diversion provision and to provide a mandatory fine of between $1,000 and $5,000 for a first offense and between $2,500 and $10,000 for a second offense (viz., following a prior state or federal narcotics offense). Any person who commits such an offense after two or more prior offenses would receive a mandatory term or imprisonment of from ninety days to three years and a fine of between $5,000 and $25,000. Further, persons convicted of a violation of 21 U.S.C. 844 would be taxed the reasonable costs of the investigation and prosecution of their offense.

This change to the federal drug possession statute should clearly demonstrate the Federal Government's view that so-called "social" or "recreational" use of illicit drugs is not acceptable behavior.

Part C - Continuing Drug Enterprise Death Penalty Act of 1986

Question: Under what circumstances will this bill permit the death penalty as punishment for drug offenders?

Answer: The proposal is a narrow one directed at international homicide occurring in connection with operations of the most pernicious forms of drug trafficking syndicates, the so-called "Continuing Criminal Enterprises" defined by section 848 of title 21, United States Code. As is well known, we would prefer a comprehensive capital punishment proposal such as that proposed by the President in his Comprehensive Crime Control Act of 1984 to cover murder, espionage and treason. The Senate approved the President's comprehensive capital punishment bill on February 22, 1984, by an almost two-thirds vote of 63-32. The House took no action on the Senate-passed bill, however, and it lapsed when the 98th Congress adjourned in late 1984.

Despite a preference for comprehensive death penalty legislation, we believe that this narrow bill would be a highly important addition to our arsenal in the struggle against drug trafficking. The House approved a virtually identical measure last Thursday, September, 11, by a vote of 296-112 and we thus do not believe that the proposal is as controversial as some opponents of capital punishment would have the public believe.

The Department of Justice on behalf of the Administration, strongly endorse the House capital punishment proposal and its remarks are fully applicable to the provision in the President's proposal. (Department of Justice Letter attached)

JRB:TMB:CHC:lss

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U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 10, 1986

The Speaker
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

On behalf of the President and the federal law enforcement community, I would like to communicate our unqualified support for the amendment to be offered by Congressman George Gekas authorizing the imposition of the death penalty for certain drug-related homicides.

Murder has historically been viewed as one of the most heinous crimes which a person can commit, a crime which demands punishment truly proportionate to the offense. Where murders are committed by persons in furtherance of pernicious drug distribution schemes, the concept of proportionate punishment mandates that the death penalty be available. Only through bold and dramatic action such as that proposed by Mr. Gekas can we bring home to drug traffickers that their violent acts will not be tolerated by the American public.

As you know, the Administration endorses the death penalty as an appropriate sanction for the most heinous federal crimes, and has supported comprehensive death penalty legislation, S. 239, which has already been reported favorably by the Senate Judiciary Committee. In the House, Congressman Gekas' comparable bill, H.R. 343, has been pending for more than a year. The Department has also supported individual death penalty proposals such as that added to anti-terrorism legislation earlier this year in the House Subcommittee on Crime but never acted on by the full Committee or on the House floor.

We likewise strongly support the Gekas Amendment. We feel that House action on this measure will represent the clearest test of the determination of Members to give federal law enforcement authorities the weapons we must have in order to deal effectively with narcoterrorists and renegade drug traffickers whose contempt for human life defies understanding. For far too long, federal

law enforcement officials have struggled against the forces of lawlessness without access to the ultimate judicial sanction. The amendment offered by Mr. Gekas presents a long awaited opportunity to remedy this imbalance and, if approved, would represent one of the most important features of the historic legislative endeavor upon which you have embarked.

Sincerely,

John R. Bolton
Assistant Attorney General

cc: Honorable Robert H. Michel
Honorable Jim Wright
Honorable Trent Lott
Honorable Peter W. Rodino, Jr.
Honorable Hamilton Fish, Jr.
Honorable George Gekas

Part D - United States Marshals Service

Question: Since the United States Marshals Service has been operating since time immemorial, why do we need a United States Marshals Service Act in 1986?

Answer: The United States Marshals have been around for almost 200 years since their creation by law. However, the Marshals Service as such was created by Executive Order of the Attorney General. The Marshals Service is responsible for assuring that dangerous prisoners are produced for trial, courts operate safely and securely, witnesses are protected from threat, fugitives are tracked down and apprehended, and drug assets are seized and managed until they can be disposed of with the proceeds ultimately returned to the U.S. Treasury.

The United States Marshals Service Act of 1986 is designed to modernize and clarify the statutory basis for the activities of the Marshals Service so that it can more effectively carry out its law enforcement responsibilities.

The proposed legislation establishes the United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. The Act also restates the historic authority of United States Marshals, in executing the laws of the United States, to exercise the same powers as a sheriff of a State.

It also specifies the duties of the Service with respect to the protection of the Federal courts, an increasingly important and sensitive function because of the magnitude of threat posed by well-financed and determined drug cartels, and the execution of writs and process. It also explicitly continues the authority currently provided by statute or delegation from the Attorney General to conduct investigations relating to the apprehension of fugitives (a major portion of whom have been charged or convicted of drug offenses), to carry firearms, and to make arrests.

One important function presently carried out by the Marshals Service is the Witness Security Program. The new Act not only clearly assigns this function to the Service but also authorizes the expenditure of funds from appropriations available to the Marshals Service for facilities required in the protection of witnesses. The witness protection program has increasingly become a vital instrument in the prosecution of major drug traffickers.

A salient feature of the statute is that it amends Section 1921 of Title 28, United States Code, to allow the Attorney General to set fees collected from non-Federal entities by United States Marshals in civil and criminal matters at levels reflecting the actual

cost of the service provided. Under current law such fees are set at an artificially low level, well below the actual cost to the government, thus subsidizing, at taxpayer's expense, the service of non-federal government process.

While the improvements in the U.S. Marshals Service Act would benefit the federal criminal justice system generally, they are particulary important in the drug enforcement area. In this regard, the Marshals Service Act has extensive responsibilities with respect to asset forfeiture, fugitive apprehension and court security. As most forfeitures are drug related, as a large proportion of fugitives are being sought for drug related crimes, and as violence-prone drug trafficking syndicate represent one of the gravest threats to the security of federal courts, the improvements this measure would make in these areas are essential to an effective national drug enforcement program.

PART E - The "Controlled Substances Import and Export Penalties Enhancement Act of 1986"

Question: How would the provisions of the "Controlled Substances Import and Export Penalties Enhancement Act of 1986" change the existing penalty structure of the Controlled Substances Import and Export Act?

Answer: The "Controlled Substances Import and Export Penalties Enhancement Act of 1986" has been drafted to provide adequate punishment for persons convicted of drug smuggling by increasing the "sliding scale" of maximum penalties which may be imposed based upon the quantity of the controlled substance involved. This scale, which was initially included in the Comprehensive Crime Control Act of 1984 as 21 U.S.C. 960(b)(1), has been modified to provide the greatest penalties, i.e., a maximum term of imprisonment of 40 years and a mandatory minimum term of imprisonment of at least five years (plus maximum fines as provided in Title 18 of the U.S. Code or $2 million for an individual or $5 million for a defendant other than an individual), for offenses involving specified quantities of controlled substances, such as heroin, cocaine, "crack", and PCP.

These penalties are doubled for second or subsequent offenses and increased to a mandatory term of life where death results from the use of such substances.

Modifications to 21 U.S.C. 960(b)(2) would raise the maximum penalty for all other violations of the Act involving Schedule I or II controlled substances, and would include a maximum term of imprisonment of 20 years, except where death resulted from the use of

such substance, where the term of imprisonment would be a mandatory 20 years to life. Second or subsequent offenses would receive double punishment, except where death resulted, where the punishment would be a mandatory term of life imprisonment.

These provisions are parallel to the modifications to the Controlled Substances Act contained in Part A, the "Drug Penalties Enhancement Act of 1986".

PART F - Juvenile Drug Trafficking Act

Question: How is this amendment expected to deter the use of juveniles in drug trafficking?

Answer: A major provision of this amendment provides for additional penalties for persons who make use of juveniles in drug trafficking. Section 542 provides that anyone over 21 who acts in concert with a person under 21 in violating 21 U.S.C. 841(a) is subject to an enhanced fine and jail term. Such a person would be subject to double the fine and period of imprisonment authorized in 21 U.S.C. 841(b) for a first offense in which he acted in concert with a juvenile, and to triple the fine and period of imprisonment for a second or subsequent conviction. The phrase "acting in concert" was deliberately chosen to include not just the situation where the adult offender and the juvenile are in an employer-employee relationship, respectively. While it would certainly cover the situation where minors are used to distribute drugs, act as lookouts, couriers, or cashiers, or perform other duties related to drug trafficking, it would also cover relationships not so formal, as where the juvenile is more of an "independent contractor" distributing drugs on consignment. It would also cover the situation where a drug seller sold drugs to a person under 21 knowing, or having reason to know from the quantity or other circumstances, that the minor intended to resell them. The enhanced penalties would, therefore, be applicable to the large-scale street distribution of narcotics to juveniles prevalent in so many of our major cities.

The amendment would also strengthen the section of the Controlled Substance Act which prohibits the distribution of controlled substances with 1000 feet of a public or private elementary school. Persons

violating this section are subject for a first offense, to a prison term and a fine twice that otherwise applicable, and for a subsequent offense, to life imprisonment. The amendment would expand the prohibited activity to include manufacturing as well as distributing a controlled substance, thereby reaching such conduct as operating a "crack" house or PCP laboratory within the prohibited distance. The amendment would also expand the category of protected educational institutions to include vocational schools, colleges and universities.

PART G - The "Chemical Diversion and Trafficking Act of 1986"

Question: How will the "Chemical Diversion and Trafficking Act of 1986" assist in the federal effort to control the manufacture and distribution of controlled substances?

Answer: Without doubt, some of the most dangerous controlled substances are those which are manufactured clandestinely. These include phencyclidine ("PCP"), lysergic acid diethylamide ("LSD"), and a variety of recently controlled fentanyl analogs, such as 3,4-methylenedioxymethamphetamine ("MDMA"). While the finished product may be controlled, many of these dangerous substances can be easily manufactured utilizing chemicals that are widely available in commercial channels. The manufacture or processing of other controlled substances, such as cocaine and heroin, may also be facilitated by these substances. Since virtually all of the chemicals utilized in such fashion have, at some point, been diverted from their intended legitimate uses by drug traffickers, law enforcement officials believe that information as to such diversion may assist in the investigation and prosecution of controlled substances violations.

To follow these chemicals - which are classified as either "precursor chemicals" or "essential chemicals" - the "Chemical Diversion and Trafficking Act of 1986" would establish an entirely new system of controls over certain sales of selected precursor and essential chemicals. The bill would create a new framework of recordkeeping, reporting, and proper identification designed to keep the key precursors and essential chemicals out of the hands of drug traffickers or to identify suspicious purchasers of these chemicals.

Under the provisions of this bill, any person who manufactures, distributes, sells, imports, and exports any of the chemicals listed, or later added to this through the provisions of the bill, would be required to create and maintain records concerning what chemicals were sold, to whom they were sold, etc. The records required would use the basic business records used by the chemical industry. Because the extensive international traffic in precursor and essential chemicals adversely affects the availability of clandestinely manufactured drugs in the United States, the bill would establish a system whereby listed precursor chemicals could only be imported and exported pursuant to a permit issued in advance by the Attorney General; listed essential chemicals could only be imported and exported pursuant to an advance declaration.

The provisions of the "Chemical Diversion and Trafficking Act of 1986" would also establish criminal penalties for trafficking in listed precursor and essential chemicals, as well as the knowing and intentional trafficking in drug manufacturing equipment and. Civil penalties would be provided for violation of the recordkeeping and reporting requirements.

Part H - Money Laundering Crimes Act

Question: In what way is this new Money Laundering Crimes Act of 1986 different from existing anti-money laundering legislation?

Answer: The present so-called anti-money laundering legislation contained in the Bank Secrecy Act, the Right to Financial Privacy Act and similar legislation imposes reporting obligations on financial institutions for transactions involving monetary instruments in excess of $10,000 and imposes penalties for failure to report such transactions. This is how the present legislation attempts to penalize money laundering.

The new legislation, on the other hand, is directed to punish the actual money laundering activity as an offense. It imposes very heavy penalties, up to 20 years imprisonment, for such a crime and includes criminal civil forfeiture of properties involved in the commission of the crime as additional penalties.

To facilitate the investigation and prosecution of these type of offense, it would be added as a predicate offense for RICO and ITAR (Interstate Travel in Aid of Racketeering) and would also be an offense subject to investigation through electronic surveillance. The new legislation will also encourage financial institutions to cooperate with government agencies in money laundering investigations by setting forth standards to

guide financial institutions as to how much material in their records they may divulge without incurring civil or criminal liability under the Right to Financial Privacy Act. Under the new law, banks are no longer "obligated," as some of them presently claim, to notify their customers when the bank receives a Grand Jury subpoena to produce records of that customer. In a further effort to facilitate investigative efforts, the new legislation grants the Treasury Department administrative summons authority which will not only allow the summoning of records from financial institutions but also from individuals.

The new legislation has extraterritorial application and provides for the sharing of seized and forfeited property with foreign countries that assist the U.S. in an investigation that leads to such forfeiture.

In sum, this legislation provides new and much needed weapons to the federal arsenal to assist in the war on drugs.

PART I - The "Controlled Substances Technical Amendments Act of 1986"

Question: What effect will the "Controlled Substances Technical Amendments Act of 1986" have on the federal drug law enforcement effort?

Answer: Although most of the provisions of the "Controlled Substances Technical Amendments Act of 1986" clarify or correct provisions of the Comprehensive Crime Control Act of 1984 (e.g., adds the word "parole" inadvertently dropped from the special parole provisions contained in 21 U.S.C. 845A(b); clarifies in the definition of "isomer" that any optical or geometric isomer is included for cocaine isomers), the bill would also include amendments to the Controlled Substances Act which were included in the Comprehensive Crime Control Act, but which were inadvertently omitted by the House enrolling clerk's office from the version of the CCCA which was eventually signed by the President on October 12, 1984. These provisions would amend the Controlled Substances Act to authorize the Attorney General to enter into contractual agreements with state and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under the CSA, as well as authorizing state and local law enforcement officers to perform certain law enforcement functions provided for in 21 U.S.C. 878, although clarifying that such officers would not be deemed federal employees by virtue of such authority.

PART J - The "Controlled Substance Analog Enforcement Act of 1986"

Question: How will the provisions of the "Controlled Substance Analog Enforcement Act of 1986" affect the production of so-called "designer drugs"?

Answer: The "Controlled Substance Analog Enforcement Act of 1986" has been drafted to combat the problem of controlled substance analogs, otherwise known as "designer drugs." Under present law, the manufacture, distribution, or possession of a drug or other substance for ingestion by humans which has an abuse potential and a varying degree of medical use, if any, is only proscribed where the drug or other substance has been "controlled" under the provisions of the Controlled Substances Act, which requires a precise legal description of the substance to be controlled. In the past several years, certain persons with a limited amount of chemical knowledge realized that they could manufacture substances which have the same or similar effects as substances like heroin (or even much greater harmful effects), but which, due to slight differences in their molecular structure from controlled substances, are legal to produce. As part of the Comprehensive Crime Control Act, Congress placed an "emergency scheduling" provision in the CSA. Still, due to the notice requirements of that law, several months must pass between discovery of the new analog and its emergency scheduling.

To obviate the inherent delay in emergency scheduling actions - which only allows more time for these substances to be manufactured and sold - the "Controlled Substance Analog Enforcement Act of 1986" would make it a violation of federal law, without further control action being necessary, to manufacture with the intent to distribute, to distribute, or to possess a "controlled substance analog" (viz., a

substance other than a presently scheduled controlled substance which has a chemical structure substantially similar to that of a controlled substance in schedules I or II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in schedules I or II) intended for human consumption unless such action is in conformance with provisions of the Federal Food, Drug, and Cosmetic Act regarding new drug approval. The first two offenses would carry a maximum penalty of 15 years' imprisonment and a fine of $250,000; the possession offense would carry a maximum penalty of one year's imprisonment and a fine of $25,000.

Particular care has been taken in the drafting of this provision to ensure that legitimate chemical production would not be adversely affected. To that effect, this provision would not affect a chemist's early research work involving controlled substance analogs, even where the chemist had the intent eventually to produce a drug for human consumption, where any part of the particular batch involved was not intended for human consumption. Once human consumption of a particular batch is intended, the exemption provided under the Federal Food, Drug, and Cosmetic Act would become applicable.

Other provisions of this bill would make technical amendments of other provisions of the United States Code which relate, in whole or part, to controlled substances in order to make them equally applicable to controlled substance analogs.

PART K - The Asset Forfeiture Amendments Act of 1986

Question: What is accomplished by the Asset Forfeiture Amendments Act of 1986?

Answer: First, it extends the availability of the Department of Justice Assets Forfeiture Fund to pay forfeiture-related expenses through fiscal year 1991. And it expands the uses of the Fund to include forfeiture program related expenses, as distinguished from only specific case related expenses. It also expands the uses of the Fund to include expenses to equip forfeited vessels, vehicles, and aircraft for law enforcement use by the Federal Bureau of Investigation and the U.S. Marshals Service in addition to the Drug Enforcement Administration and the Immigration and Naturalization Service.

Second, it closes a larger loophole in current forfeiture law by permitting the forfeiture of so-called "substitute assets" of a defendant whose property subject to forfeiture upon conviction cannot be forfeited because of an act or omission of the defendant. This amendment will make the evasion of criminal forfeiture substantially more difficult for convicted drug traffickers and racketeers. They will no longer be able to avoid forfeiture simply by transferring particular assets to another, placing them outside the jurisdiction of the United States, or taking other action to render their forfeitable property unavailable at the time of conviction.

Part L - Exclusionary Rule Amendments

Question: How do these sections affect the present state of the law regarding the use of evidence seized in violation of the Fourth Amendment to the Constitution?

Answer: Section 594 of the bill codifies the rule announced in United States v. Leon, (Supreme Court 1984). In Leon, the Supreme Court held that the Fourth Amendment did not require the suppression of evidence gained pursuant to a search warrant that was sought in objective good faith but later is declared by a reviewing judge to violate the Fourth Amendment. Section 594 also extends the Leon decision to warrantless seizures.

The bill also codifies the rule announced in United States v. Caceres, 440 U.S. 741 (1979). In Caceres, the court declined to adopt the exclusionary rule in cases where evidence was seized in violation of agency guidelines or policy. Section 594 extends the holding of Caceres to violations of any statute, regulation, rule or procedure, except as specifically exempted by statute or procedural rule.

PUBLIC EDUCATION AND PRIVATE SECTOR INITIATIVES

Questions & Answers

1. Q: What is the purpose of the "Public Education and Private Sector Initiatives Act of 1986?"

   A: To remove statutory impediments to our ongoing efforts to recruit private sector groups for volunteer programs which educate the public about the dangers of drug use.

2. Q: Why must Federal statutes be amended in order to recruit private sector groups for programs that are strictly voluntary?

   A: The Competition in Contracting Act and other statutes requires that wherever possible, competitive procedures be used in all Federal procurement. Often, many programs providing the voluntary services of private sector groups require some outlay of expenditures by the Federal government. Even a modest sum will subject such transactions to the Federal procurement statutes, and we have found that the attendant delay and red tape effectively frustrates our efforts.

3. Q: Why does the recruitment of private sector groups in accordance with Federal procurement statutes present a problem?

   A: The Competition in Contracting Act and other similar statutes in some instances have had the effect of making it more difficult to obtain volunteer services, particularly in producing public service announcements on the dangers of illegal drug use for television and radio.

   For example, there have been cases where noted producers and directors have offered to prepare such public service announcements if the government will agree to pay their out of pocket expenses. Unfortunately, the Federal procurement statutes incur substantial red tape, including the requirement that the proposal be published in the Commerce Business Daily to solicit other proposals. Frequently, such publication means that the director or producer who developed the concept for the television or radio spot finds that other less talented individuals can take advantage of his original idea, and offer to produce it with lower out of pocket expenses (albeit at an equivalent decline in quality). Thus an Oscar-winning film producer may not be the "low bidder" on the contract, even though the government would get appreciably more for its money were he selected.

4. Q: Which Federal statutes does the Administration's bill seek to amend in order to achieve the desired exemptions?

A: The Competition in Contracting Act (§ 2711 of the Deficit Reduction Act of 1984) is the primary statute affected, but certain other federal statutes mandating competition in procurement would also be affected.

5. Q: What role does United States Information Agency, (USIA) play in educating the public about illegal drug use?

A: In the course of its ordinary public education efforts, USIA has developed many fine films and other materials on the dangers of drug use. Unfortunately, the USIA is statutorily barred from releasing any film, radio spot, or book to domestic audiences if it was prepared for a foreign audience. While such a prohibition on the domestic display of "political propaganda" might make sense as a general matter, there have been several occasions in which outstanding USIA films on the dangers of drug use could not be shown to domestic audiences for this reason. This is a particularly acute problem where there is a need for a film in a language other than english, since the USIA product may be the only one available.

6. Q: What is the duration of these exemptions and amendments sought in the Administration's bill?

A: The bill provides for a two year exemption from the Federal statutes mandating competition in procurement for services donated to the government to aid in the campaign against drug use -- but only where at least 50% of the actual reasonable costs of providing the property and services have been donated. This exemption is limited in scope and duration because we do not want to imply that we are seeking to dispense with the salutatory principle of competition in government procurement in all cases. Instead, this limited exemption could be reviewed and extended by the Congress in the near future if it proves to be effective. The amendment to the USIA authorization statute has no "sunset" provisions.

7. Q: Why should these Federal laws be amended for programs to fight drug abuse and not for other programs?

A: Any amendments to Federal procurement statutes should be carefully scrutinized and considered on a case-by-case basis so as not to abrogate the salutatory principles

of competition in government procurement. However,the war on drugs is especially critical at this time, and it is in the best interests of the Nation that we use every means possible to resolve this national tragedy. By limiting our proposed amendments to drug abuse-connected programs only at this time, legislative enactment can be facilitated more easily. However, the exemption is limited in time to permit Congress to review the results of this change at a future date.