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THE WHITE HOUSE

WASHINGTON

July 10, 1985

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Letter Regarding Views on S. 625,  
Sexual Exploitation of Children

Counsel's Office has reviewed the above-referenced letter,  
and finds no objection to it from a legal perspective.

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD)   1   /   1   /   

Name of Correspondent:   Dreg Jones  

MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject:   DOJ memo 5625 - sexual exploitation of children  

**ROUTE TO:**

**ACTION**

**DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>  CUMHOLL  </u>	ORIGINATOR	<u>  85,07,08  </u>			<u>  1  </u> / <u>  1  </u> / <u>  </u>
	Referral Note:				
<u>  CUAT 18  </u>	<u>  R  </u>	<u>  85,07,08  </u>		<u>  S  </u>	<u>  85,07,15  </u>
	Referral Note:				
		<u>  1  </u> / <u>  1  </u> / <u>  </u>			<u>  1  </u> / <u>  1  </u> / <u>  </u>
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	Referral Note:				

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Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice concerning S. 625, a bill to include offenses relating to sexual exploitation of children as predicate offenses under the provisions of the RICO statute, 18 U.S.C. §§ 1961-1968, and to authorize civil RICO suits on behalf of victims of such offenses. We fully support the principles supporting this legislation, and we support the proposed amendment to the criminal RICO provisions. However, we have reservations about the need for an amendment to the civil RICO provisions.

The bill's proposed amendment to the criminal RICO provisions would add two new offenses to the list of federal crimes constituting "racketeering activity" in 18 U.S.C. § 1961(1)(B). The two offenses proposed to be added are 18 U.S.C. § 2251, relating to the sexual exploitation of children, and 18 U.S.C. § 2252, relating to the interstate distribution of visual depictions arising from such exploitation. Under the proposed amendment, either of these offenses could serve as part of a "pattern of racketeering activity," an essential element of a criminal RICO prosecution. Upon conviction of a RICO violation, a defendant can be fined \$25,000 or twice the proceeds of the offense, can be imprisoned for up to twenty years, and can be ordered to forfeit to the United States any proceeds of the violation and any interest in an enterprise used by him in committing the offense.

In our view, the proposed amendment to criminal RICO is a salutary one. Sexual exploitation of children is a particularly repugnant offense, and one that always calls for severe punishment. When such conduct is engaged in repeatedly or by organized groups, it becomes even more dangerous and odious. In such instances of aggravated conduct, the use of RICO's unique and powerful criminal provisions is particularly appropriate. For example, when individuals use an otherwise legitimate business to carry on activities of this nature, forfeiture of the defendants' interest in the enterprise is an effective way to shut down the operation and prevent its reopening. It should also be noted that elements of organized crime traditionally have profited from this sort of activity through their ability to ship pornographic materials throughout the nation. Thus, the offenses in question plainly deserve to be included within the definition of "racketeering activity," which includes the crimes most often engaged in by organized criminal groups. In this connection, we note that, in October 1984, Congress saw fit to include other federal and state offenses involving obscene matter within the RICO definition. \*/ The proposed amendment is consistent with the intent of that measure.

The bill's second proposed amendment would expand the scope of the treble-damages right of action in 18 U.S.C. §1964(c) for persons injured by a RICO violation. At present, a treble-damages suit is available to any person who is injured "in his business or property" by any RICO violation. The amendment would permit recovery by a person who is injured "personally" by a RICO violation, if the injury results from an act indictable under the child pornography statutes. In our view, this provision is unnecessary and could lead to confusion in judicial interpretations. There has been considerable controversy surrounding the recent profusion of RICO damages actions. In attempting to limit the scope of such actions, some courts have begun to construe various provisions of the RICO statute in restrictive ways. One particular source of controversy has been the concept of "racketeering enterprise injury," which some courts have held to require proof of a particular sort of injury apart from the predicate acts of racketeering activity. The proposed amendment would add a new aspect to this controversy, in that it would permit

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\*/ Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, tit. II, § 1020, 98 Stat. 2143 (1984).

recovery for a personal injury, as well as for an injury to the plaintiff's business or property. In addition, the requirement that the personal injury "result from" a sexual exploitation violation could lead to confusion in view of the holdings of some courts that the injury must result from the RICO violation, and not from the underlying predicate crimes. We believe that victims of these sexual exploitation offenses can receive financial compensation, in cases where bodily injury has occurred, through the restitution provisions of the Victim and Witness Protection Act, 18 U.S.C. §3663, or, in other cases, through state lawsuits, and that violators can best be punished by criminal prosecution. The need for an additional ground for civil recovery is not sufficient to outweigh the need for uniform development and application of legal principles under RICO. The proposed amendment could upset an already delicate balance. Thus, although we fully support the proposed amendment to criminal RICO, we have strong reservations about the wisdom of the proposed civil amendment.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Philip D. Brady  
Acting Assistant Attorney General  
Office of Legislative and  
Intergovernmental Affairs

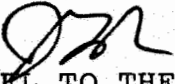


THE WHITE HOUSE

WASHINGTON

July 15, 1985

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Views on S. 894 -- Sentencing  
Reform Act of 1984

Counsel's Office has reviewed the above-referenced views,  
and finds no objection to them from a legal perspective.



## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

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Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Dreg Jones

MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: DOJ memo 5894 - Sentencing Reform Act of 1984

**ROUTE TO:**

**ACTION**

**DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CUHOLL</u>	<u>ORIGINATOR</u>	<u>85,07,08</u>		<u>1 1</u>
<u>CUAT 18</u>	<u>R</u>	<u>85,07,08</u>	<u>S</u>	<u>85,07,15</u>
	Referral Note:			
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	Referral Note:			

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OFFICE OF MANAGEMENT AND BUDGET  
ROUTE SLIP

✓  
TO Fred Fielding  
Adrian Curtis  
Karen Wilson  
  
*Greg*

- Take necessary action
- Approval or signature
- Comment
- Prepare reply
- Discuss with me
- For your information
- See remarks below

FROM Greg Jones 7/5/85

DATE \_\_\_\_\_

REMARKS

Please give me your comments on the attached by July 15.

Thanks.

cc: Jim Murr



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Strom Thurmond  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 894, a bill "[t]o abolish parole as of the effective date of the Sentencing Reform Act of 1984."

Recommendation

S. 894 seeks to abolish parole on the effective date of the sentencing guidelines promulgated pursuant to the Sentencing Reform Act of 1984 by repealing laws relating to parole and ending the operations of the United States Parole Commission on that date. While the Department of Justice agrees with the ultimate goal of this bill -- to abolish parole -- the Department recommends against the enactment of S. 894 since it would raise constitutional problems and would be administratively unworkable. In fact, because the Sentencing Reform Act of 1984 itself raised some of the same problems, the Administration developed a bill, recently introduced as S. 1236, to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, Pub L. No. 98-473, of which the Sentencing Reform Act of 1984 is a part. S. 894 unfortunately compounds the problems created by the original legislation.

Discussion

The goal of S. 894 is to establish a strict termination of the parole system by the effective date of the sentencing guidelines, regardless of the fact that a person may have committed an offense prior to the effective date, or even prior to the enactment of the Comprehensive Act. However, the bill seems to be based on a fundamentally incorrect premise set forth in section 2(4) that under the Comprehensive Act "elimination of parole will not take effect before 5 years." While section 235(b)(1) retains the Parole Commission for five years following the effective date of the Sentencing Reform Act "as to an individual

convicted of an offense or adjudicated to be a juvenile delinquent before the effective date and as to a term of imprisonment during the period described in subsection (a)(1)(B) [of section 235]," the Act otherwise repeals the parole laws on its effective date. Thus, elimination of parole for persons convicted after the effective date is immediate upon the effective date. The parole laws are retained only for "old law" cases, as indeed they must be in order to avoid violation of the ex post facto clause of the Constitution. See Weaver v. Graham, 450 U.S. 24 (1981).

Because it is now the Department's view that section 235(b) of the Comprehensive Act does not properly define "old law" cases in order to avoid ex post facto problems, the Administration's technical amendments bill, S. 1236, extends the applicability of parole law to those whose offenses were committed before the effective dates set forth in section 235(a) of the Comprehensive Act. (This is accomplished in section 37 of S. 1236, which provides that the amendments made by the Sentencing Reform Act of 1984 shall not apply to an offense committed before the effective dates of the Act except as specifically provided in section 37(a). Among the amendments made by the Sentencing Reform Act of 1984 is the repeal of parole laws in section 218.) By making the date the offense is committed, rather than the date the defendant is convicted, the operative event in determining whether old or new sentencing law applies, the technical amendments bill eliminates problems under the ex post facto clause with respect, for example, to a person whose offense was committed before the enactment of the Sentencing Reform Act but whose conviction does not occur until after the Act's effective date. In view of the fact that because of constitutional considerations S. 1236 extends the applicability of the parole laws to a wider category of defendants than does the Sentencing Reform Act, the Department is opposed to S. 894's narrowing of this category. Moreover, if S. 894 were enacted, the courts would fashion their own application of it to accord with ex post fact considerations, and the amendments made by this bill would leave significant gaps in the implementation of parole law with respect to "old law" cases.

In addition to the constitutional problem discussed above, S. 894 would create considerable administrative difficulties. For example, section 3(b)(2) provides that the Parole Commission shall set a release date for an individual who will be in its jurisdiction the day before the sentencing guidelines' effective date and that the release date shall be set early enough to permit consideration of an appeal in accordance with the Commission's procedures before this effective date. However, the bill does not explain how the Commission is to deal with a person who initially comes within its jurisdiction the day before it goes out of business. This problem is addressed by section 37 of S. 1236, which provides that the Commission shall have no jurisdiction over an offender who is sentenced within the last six

months of its operation so that it can use this period to complete its administrative work regarding those sentenced prior thereto. Under S. 1236 the sentencing court would set a presumptive release date for persons sentenced during these last six months of the Parole Commission's existence. In addition, section 3(2) of the bill provides that the release date set by the Commission must be "within the range that applies to the prisoner under the applicable parole guideline." However, this language, which also appears in section 235(b)(3) of the Comprehensive Act, is problematic in that it means that the Commission would not be authorized to continue the practice of setting a release date that is outside the guideline range in certain cases. As a result, the most dangerous offenders would receive a windfall of a release date set within the guideline range merely because their release date is set during the final period of the Parole Commission's existence. S. 1236 eliminates this problem as well. Finally, S. 894 makes no provision for the revocation of parole in the case of a person to be released on parole after the Commission is abolished (pursuant to a release date set by the Commission before its abolition) if such person violates a condition of release. Section 235(b)(4), which S. 894 deletes, assigns this function to the district courts, as does section 37 of S. 1236. These and other administrative problems arise because S. 894 seeks to establish a firm cut-off date for the parole system without providing for the necessary continuation of the parole laws with respect to "old-law" cases.

There are also technical problems with the drafting of S. 894. For example, it merely lifts from section 235(b)(1) of the Comprehensive Act the list of statutes that would remain in effect for five years for "old-law" cases and specifically repeals them on the effective date of the sentencing guidelines. However, most of the statutes listed are repealed, as of the effective date of the Sentencing Reform Act, by section 218 of the Comprehensive Act. In one case -- specifically, 18 U.S.C. §§5017-5020 -- the repeal became effective on the date of enactment of the Comprehensive Act, October 12, 1984. In addition, S. 894 specifically repeals "[a]ny other law relating to a violation of a condition of release or to arrest authority with regard to a person who violates a condition of release." It is difficult to understand the usefulness of this amendment, given that S. 894 recognizes that some persons will be released from prison and on parole following the effective date of the sentencing guidelines.

We believe that the abolition of parole would be much better accomplished through the amendments made by section 37 of S. 1236. These amendments effectively abolish the parole system while recognizing both ex post facto considerations and the reality that "old law" cases will require continued attention under the parole laws for some time in the future.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady  
Acting Assistant Attorney General




THE WHITE HOUSE

WASHINGTON

August 13, 1985

MEMORANDUM FOR DAVID L. CHEW  
STAFF SECRETARY

FROM: JOHN G. ROBERTS, JR.   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 1147 - Orphan  
Drug Amendments of 1985

Counsel's office has reviewed the above-referenced enrolled bill,  
and finds no objection to it from a legal perspective.



**WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: D. Chew

MI Mail Report User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Enrolled Bill S. 1147 - Orphan Drug Amendments of 1985

ROUTE TO:		ACTION		DISPOSITION	
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CU Hall</u>		ORIGINATOR	<u>85,08,12</u>		<u>1 1</u>
		Referral Note:			
<u>CUat 18</u>		<u>R</u>	<u>85,08,12</u>	<u>S</u>	<u>85,09,13</u>
		Referral Note:			<u>12N</u>
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**WHITE HOUSE STAFFING MEMORANDUM**

DATE: 8/12/85 ACTION/CONCURRENCE/COMMENT DUE BY: NOON 8/13/85

SUBJECT: ENROLLED BILL S. 1147 - Orphan Drug Amendments of 1985

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>
WRIGHT	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRIEDERSDORF	<input checked="" type="checkbox"/>	<input type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS:**

Please submit your comments and recommendations by NOON tomorrow, Tuesday, August 13, to my office. Thank you.

**RESPONSE:**

David L. Chew  
Staff Secretary  
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

AUG 12 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1147 - Orphan Drug Amendments of 1985  
Sponsor - Sen. Hatch (R) Utah and 23 others

Last Day for Action

August 19, 1985 - Monday

Purpose

(1) Extends the authority of the Department of Health and Human Services (HHS) to make grants and contracts for research and development of orphan drugs; (2) expands the marketing protection available to sponsors of approved orphan drugs; (3) establishes a National Commission on Orphan Diseases; and (4) makes some technical amendments in the Orphan Drug Act and unrelated statutes.

Agency Recommendations

Office of Management and Budget

Approval

Department of Health and Human Services  
Department of Commerce

Approval  
No objection to  
section 2

Department of Education

No objection to  
section 6(a)  
(Informally)

Discussion

S. 1147 is the first reauthorization of the Orphan Drug Act (P.L. 97-414), which was enacted in January 1983 to provide incentives to drug manufacturers to develop and market drugs -- otherwise unprofitable because of the limited market -- for people suffering from orphan diseases. An orphan disease is one which afflicts fewer than 200,000 people in the United States.

HHS, in its views letter, notes that it has strongly supported the effort to complete research and development of drugs for rare diseases and conditions and to make these drugs available to those who need them, wherever possible through having them "adopted" by the private sector. The Department states that the Orphan Drug Act, and the climate of concern it created, have helped this effort by encouraging the participation of the pharmaceutical industry.

According to the House Energy and Commerce Committee, only 34 orphan drugs were on the market before enactment of the Orphan Drug Act. Since then, 54 drugs have been designated as orphan drugs and are now either under development or already approved.

#### Orphan Drug Provisions of S. 1147

The enrolled bill would:

- extend, for 3 years, fiscal years 1986-1988, at \$4 million per year (the level in current law), the authority for HHS to make grants and contracts for research and development of orphan drugs. The 1986 Budget included approximately \$3 million annually for this purpose over the same three years.
- expand the grant and contract authority to include preclinical testing of orphan drugs; current law permits such Federal funding only for human clinical testing.
- provide that the current 7-year exclusive marketing rights for an orphan drug be available whether the drug is patentable or not; current law allows an exclusive license to be issued only for drugs which cannot be patented. This provision, to which the Commerce Department does not object, is intended to eliminate disincentives to orphan drug development under the current restriction.
- extend coverage of the Orphan Drug Act to antibiotic drugs, as recommended by HHS, to remedy an unintended omission in the original Act.
- establish a National Commission on Orphan Diseases, consisting of 20 members appointed by the Secretary of HHS -- 15 voting nongovernment members and 5 nonvoting HHS health officials -- to assess research and dissemination activities on orphan diseases by the National Institutes of Health (NIH); the Alcohol, Drug Abuse, and Mental Health Administration; the Food and Drug Administration; and other public agencies and private entities. The Commission would be required to report to the Secretary and the Congress by September 30, 1987, with its recommendations for a long-range plan to improve these activities, including legislative or administrative actions. NIH would be required to make available \$1 million to the Commission from its fiscal year 1986 appropriations.

#### Amendments to other statutes in S. 1147

Three unrelated provisions of the enrolled bill would:

- correct a drafting error in the fiscal year 1985 Department of Education Appropriations Act (P.L. 98-619). That Act provided \$61 million for personnel training through Part D

of the Education of the Handicapped Act, but inadvertently did not allow the obligation of these funds prior to July 1, 1985, instead of the normal October 1, 1984, start of availability;

- amend the Developmental Disabilities Assistance and Bill of Rights Act (P.L. 98-527) to allow States which were utilizing authority under the Act to waive certain State plan requirements prior to P.L. 98-527 to continue to do so for a specified period of time; and
- permit Area Health Education Centers (AHEC) satellites no longer receiving Federal assistance to be eligible for special projects funding even if the satellite's primary AHEC is receiving Federal assistance.

\* \* \* \* \*

The Administration had no objection to passage of S. 1147 or H.R. 2290, the House companion bill, when these bills were considered by the respective Houses. H.R. 2290 was originally passed by a vote of 413-0; final passage of S. 1147 was by voice vote in both Houses.

(Signed) James M. Frey

Assistant Director for  
Legislative Reference

Enclosures

# Ninety-ninth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday, the third day of January,  
one thousand nine hundred and eighty-five*

## An Act

To amend the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act and related laws.

*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 "Orphan Drug Amendments of 1985".

### SEC. 2. MARKET PROTECTION.

Section 527 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360cc) is amended—

- (1) by striking out "and for which a United States Letter of Patent may not be issued" in subsection (a);
- (2) by striking out "and if a United States Letter of Patent may not be issued for the drug" in subsection (b); and
- (3) by striking out "UNPATENTED" in the title of the section.

### SEC. 3. ANTIBIOTIC DRUGS.

#### (a) DESIGNATION.—

(1) Section 525(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aa(a)) is amended—

(A) by striking out "or" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

"(2) if the drug is an antibiotic, it may be certified for such disease or condition under section 507, or";

(B) by striking out "before" in paragraph (3) (as so redesignated);

(C) by inserting after "505" in the last sentence a comma and the following: "certification of such drug for such disease or condition under section 507,"; and

(D) by striking out "licensing under section 351 of the Public Health Service Act for such disease or condition" and inserting in lieu thereof "licensing of such drug for such disease or condition under section 351 of the Public Health Service Act".

(2) Section 526(a)(1) of such Act (21 U.S.C. 360bb(a)(1)) is amended—

(A) by striking out "or" at the end of subparagraph (A) and by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) if a certification for such drug is issued under section 507,  
or

"(C) if a license for such drug is issued under section 351 of the Public Health Service Act,"; and

(B) by striking out "the approval or license" and inserting in lieu thereof "the approval, certification, or license".



## S. 1147-2

(3) Section 527 of such Act (21 U.S.C. 360cc) is amended—

(A) by striking out “or” at the end of paragraph (1) in subsection (a), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

“(2) issues a certification under section 507, or”;

(B) by inserting after “505” in the first sentence of subsection (a) a comma and the following: “issue another certification under section 507,”;

(C) by inserting after “holder of such approved application” in subsection (a) a comma and the following: “of such certification,”;

(D) by inserting after “approval of the approved application” in subsection (a) a comma and the following: “the issuance of the certification,”;

(E) by striking out “or a license” in subsection (b) and inserting in lieu thereof a comma and the following: “if a certification is issued under section 507 for such a drug, or if a license”;

(F) by inserting after “application approval” in subsection (b) a comma and the following: “of the issuance of the certification under section 507,”;

(G) by striking out “, if the drug is a biological product,” in subsection (b);

(H) by inserting after “under section 505” in subsection (b) a comma and the following: “issue another certification under section 507,”;

(I) by inserting after “holder of such approved application” in subsection (b) a comma and the following: “of such certification,”;

(J) by inserting after “application” in subsection (b)(1) a comma and the following: “of the certification,”; and

(K) by inserting after “other applications” in subsection (b)(2) a comma and the following: “issuance of other certifications,”.

#### SEC. 4. NATIONAL COMMISSION ON ORPHAN DISEASES.

(a) ESTABLISHMENT.—There is established the National Commission on Orphan Diseases (hereinafter referred to as the “Commission”).

(b) DUTY.—The Commission shall assess the activities of the National Institutes of Health, the Alcohol, Drug Abuse, and Mental Health Administration, the Food and Drug Administration, other public agencies, and private entities in connection with—

(1) basic research conducted on rare diseases;

(2) the use in research on rare diseases of knowledge developed in other research;

(3) applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

(4) the dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the prevention, diagnosis, and treatment of rare diseases.

(c) REVIEW REQUIREMENTS.—In assessing the activities of the National Institutes of Health, the Alcohol, Drug Abuse, and Mental Health Administration, and the Food and Drug Administration in connection with research on rare diseases, the Commission shall review—

(1) the appropriateness of the priorities currently placed on research on rare diseases;

(2) the relative effectiveness of grants and contracts when used to fund research on rare diseases;



(3) the appropriateness of specific requirements applicable to applications for funds for research on rare diseases taking into consideration the reasonable capacity of applicants to meet such requirements;

(4) the adequacy of the scientific basis for such research, including the adequacy of the research facilities and research resources used in such research and the appropriateness of the scientific training of the personnel engaged in such research;

(5) the effectiveness of activities undertaken to encourage such research;

(6) the organization of the peer review process applicable to applications for funds for such research to determine if the organization of the peer review process could be revised to improve the effectiveness of the review provided to proposals for research on rare diseases;

(7) the effectiveness of the coordination between the national research institutes of the National Institutes of Health, the institutes of the Alcohol, Drug Abuse, and Mental Health Administration, the Food and Drug Administration, and private entities in supporting such research; and

(8) the effectiveness of activities undertaken to assure that knowledge developed in research on nonrare diseases is, when appropriate, used in research on rare diseases.

(d) COMPOSITION.—The Commission shall be composed of twenty members appointed by the Secretary of Health and Human Services as follows:

(1) Ten members shall be appointed from individuals who are not officers or employees of the Government and who by virtue of their training or experience in research on rare diseases or in the treatment of rare diseases are qualified to serve on the Commission.

(2) Five members shall be appointed from individuals who are not officers or employees of the Government and who have a rare disease or are employed to represent or are members of an organization concerned about rare disease.

(3) Four nonvoting members shall be appointed from—

(A) the directors of the national research institutes of the National Institutes of Health; or

(B) the directors of the institutes of the Alcohol, Drug Abuse, and Mental Health Administration, which the Secretary determines are involved with rare diseases.

(4) One nonvoting member shall be appointed from officers or employees of the Food and Drug Administration who the Secretary determines are involved with rare diseases.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. If any member of the Commission who was appointed to the Commission as a director of a national research institute or an institute of the Alcohol, Drug Abuse, and Mental Health Administration or as an officer or employee of the Food and Drug Administration leaves that office or position, or if any member of the Commission who was appointed from persons who are not officers or employees of the Government becomes an officer or employee of the Government, such member may continue as a member of the Commission for not longer than the ninety-day period beginning on the date such member leaves that office or position or becomes such an officer or employee, as the case may be.

(e) **TERM.**—Members shall be appointed for the life of the Commission.

(f) **COMPENSATION.**—

(1) Except as provided in paragraph (2), members of the Commission shall each be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Commission.

(2) Members of the Commission who are full-time officers or employees of the Government shall receive no additional pay by reason of their service on the Commission.

(g) **CHAIRMAN.**—The Chairman of the Commission shall be designated by the members of the Commission.

(h) **STAFF.**—Subject to such rules as may be prescribed by the Commission, the Commission may appoint and fix the pay of such personnel as it determines are necessary to enable the Commission to carry out its functions. Personnel shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(i) **EXPERTS AND CONSULTANTS.**—Subject to such rules as may be prescribed by the Commission, the Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the basic pay payable for grade GS-15 of the General Schedule.

(j) **DETAIL OF PERSONNEL.**—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its functions.

(k) **ADMINISTRATIVE SUPPORT SERVICES.**—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(l) **GENERAL AUTHORITY.**—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(m) **INFORMATION.**—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(n) **REPORT.**—The Commission shall transmit to the Secretary and to each House of the Congress a report not later than September 30, 1987, on the activities of the Commission. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for—

(1) a long range plan for the use of public and private resources to improve research into rare diseases and to assist in the prevention, diagnosis, and treatment of rare diseases; and

(2) such legislation or administrative actions as it considers appropriate.

the State plan of such State for service activities in the priority services, to be expended in fiscal years 1985, 1986, and 1987 for the additional services for which expenditure was permitted under section 133(b)(4)(C) (as so in effect) if the Secretary determines that—

“(i) such additional services are not priority services;

“(ii) such additional services are not services for which funds are otherwise available under part C, D, or E; and

“(iii) the expenditures of such State on service activities in the priority services has reasonably met the need for those services in such State in comparison to the extent to which the need for such additional services has been met in such State.”.

**SEC. 7. AREA HEALTH EDUCATION CENTERS.**

Section 781(a)(2) of the Public Health Service Act (42 U.S.C. 295g-7(a)(2)) is amended by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and by striking out all that precedes clause (i) (as so redesignated) and inserting in lieu thereof the following:

“(2)(A) The Secretary shall enter into contracts with schools of medicine and osteopathy—

“(i) which have previously received Federal financial assistance for an area health education center program under section 802 of the Health Professionals Educational Assistance Act of 1976 in fiscal year 1979 or under paragraph (1), or

“(ii) which are receiving assistance under paragraph (1), to carry out projects described in subparagraph (B) through area health education centers for which Federal financial assistance was provided under paragraph (1) and which are no longer eligible to receive such assistance.

“(B) Projects for which assistance may be provided under subparagraph (A) are—”.

**SEC. 8. EFFECTIVE DATE.**

(a) **GENERAL RULE.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect October 1, 1985.

(b) **EXCEPTION.**—The amendments made by sections 2, 3, and 6(a) shall take effect on the date of the enactment of this Act. The amendment made by section 6(b) shall take effect October 19, 1984. The amendments made by section 7 shall take effect October 1, 1984 and shall cease to be in effect after September 30, 1985.

*Speaker of the House of Representatives.*

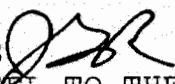
*Vice President of the United States and  
President of the Senate.*

THE WHITE HOUSE

WASHINGTON

August 15, 1985

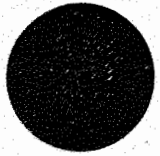
MEMORANDUM FOR DAVID L. CHEW  
STAFF SECRETARY

FROM: JOHN G. ROBERTS   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2068 - Foreign Relations  
Authorization Act, Fiscal Years 1986 and 1987,  
and Signing Statement

Counsel's Office has reviewed the above-referenced enrolled bill, and the accompanying proposed signing statement. While we share many of the concerns expressed by the affected agencies, we have no objection to the President signing this bill and issuing the proposed statement.

## WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET



- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: D. Chew

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Enrolled Bill H.R. 2068 - Foreign Relations  
Authorization Act, Fiscal Year 1986 and 1987  
and signing statement

ROUTE TO:	ACTION	DISPOSITION		
Office/Agency      (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code      Completion Date YY/MM/DD
<u>UNM</u>	ORIGINATOR	<u>85,08,14</u>		<u>1 1</u>
<u>Unit 18</u>	Referral Note: <u>R</u>	<u>85,08,14</u>		<u>S 85,08,15</u> <u>3 PM</u>
	Referral Note:	<u>1 1</u>		<u>1 1</u>
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	Referral Note:	<u>1 1</u>		<u>1 1</u>
	Referral Note:	<u>1 1</u>		<u>1 1</u>

**ACTION CODES:**

- A - Appropriate Action
  - I - Info Copy Only/No Action Necessary
  - C - Comment/Recommendation
  - R - Direct Reply w/Copy
  - D - Draft Response
  - S - For Signature
  - F - Furnish Fact Sheet
  - X - Interim Reply
- to be used as Enclosure

**DISPOSITION CODES:**

- A - Answered
- C - Completed
- B - Non-Special Referral
- S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
 Send all routing updates to Central Reference (Room 75, OEOB).  
 Always return completed correspondence record to Central Files.  
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 8/13/85 ACTION/CONCURRENCE/COMMENT DUE BY: 3:00 pm, Thurs., 8/15/85

SUBJECT: ENROLLED BILL H.R. 2068 - FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1986 AND 1986 AND SIGNING STATEMENT

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McFARLANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WRIGHT	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHAVEZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/> <del>SS</del>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRIEDERSDORF	<input checked="" type="checkbox"/>	<input type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:  
 Please submit your comments and recommendations on the bill as well as the signing statement to my office by 3:00 p.m. Thursday, August 15. Thank you.

RESPONSE:

David L. Chew  
 Staff Secretary  
 Ext. 2702





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

AUG 13 1985

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 2068 - Foreign Relations  
Authorization Act, Fiscal Years 1986 and 1987  
Sponsors - Rep. Mica (D) Florida and 9 others

Last Day for Action

August 20, 1985 - Tuesday

Purpose

Authorizes appropriations for fiscal years 1986 and 1987 for the Department of State, the United States Information Agency, the Board for International Broadcasting, the Asia Foundation, and the Arms Control and Disarmament Agency, and makes a number of other policy, programmatic and technical changes.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of State	Approval (Signing statement attached)
United States Information Agency	Approval
Arms Control and Disarmament Agency	Approval
National Security Council	Approval
Board for International Broadcasting	Approval (informally)
General Services Administration	No objection
Department of Justice	No objection
Office of Personnel Management	No objection
Agency for International Development	No objection
Department of Defense	No objection
Federal Communications Commission	No objection (informally)
Central Intelligence Agency	No objection (informally)
Department of Commerce	No objection (informally)
Department of the Treasury	No objection (informally)
Department of Labor	No objection (informally)
Department of the Interior	Defers to State (informally)
National Aeronautics and Space Administration	Defers to State
Department of Education	Defers to State (informally)
Civil Rights Commission	No comment (informally)



## Discussion

### Appropriation Authorization

H.R. 2068 authorizes fiscal years 1986 and 1987 appropriations of \$3,791,735,000 and \$3,834,757,000, respectively, for the Department of State, the United States Information Agency (USIA), the Board for International Broadcasting (BIB), and the Arms Control and Disarmament Agency (ACDA). These authorization levels are below the Administration's requests by a total of \$130 million for 1986 and \$352 million for 1987. The bulk of these reductions are in the USIA and BIB authorizations which are below the Administration's 1986 and 1987 requests of \$1,116 million and \$1,294 million by \$103 million and \$281 million, respectively. As a result of these cuts, additional authorizations may be necessary for USIA's 1987 programs. The NSC notes that the funds authorized under BIB for Radio Free Europe/Radio Liberty (RFE/RL) are inadequate to promote the buildup of the RFE/RL broadcasting facility to a level that will make its signal effectively heard throughout the target area.

H.R. 2068 also authorizes fiscal year 1985 supplemental appropriations of \$23,789,000 for ACDA.

Despite Administration opposition, the enrolled bill includes a number of mandatory levels. These earmarkings, particularly those for State Department refugee assistance and security programs, the USIA exchange of persons program, and the Voice of America, restrict the flexibility of the Executive branch in managing its foreign operations and have the effect of reducing the availability of funds for other important program needs.

The more significant provisions of the enrolled bill are discussed below, while other less important provisions of H.R. 2068 are summarized in Attachment 2.

### International Organizations

H.R. 2068 contains a number of very troublesome provisions related to international organizations. In particular, Section 143 limits U.S. payments of its assessed contributions (now generally 25 percent) to 20 percent of the budgets of the UN and its specialized agencies beginning in fiscal year 1987, unless a system of voting is adopted that grants voting rights to each member nation on matters of budgetary consequence that are proportionate to each nation's contribution to the budget of the UN and its specialized agencies. Adoption of such a voting system is highly unlikely, especially by 1987. By treaty, the United States must pay its assessments which are determined by UN regulations. Payment of less than the full assessment would put the United States into arrears. The accumulation of large arrearages would eventually lead to loss of the United States vote. The State Department, which is concerned about this provision and those discussed below, indicates in its attached

views letter that it will begin discussions with the UN on this matter and will determine later whether legislative amendments may be needed. In its enrolled bill letter NSC expresses concerns similar to those discussed above and notes that this provision would handicap United States efforts to bring about greater UN fiscal responsibility.

Section 151 raises the same arrearage problem by requiring a reduction in U.S. payments of its assessed contributions after June 1, 1986, if the Secretary of State determines that substantial progress has not been made in correcting the practice of certain UN employees being required to return some or all of their salaries to their governments.

Section 144 prohibits the use of U.S. contributions to the UN for the PLO, Southwest Africa Peoples Organization, Palestinian-oriented units in the Secretariat, the Committee on Elimination of Racial Discrimination, and the construction of a \$73,500,000 conference center in Addis Ababa, Ethiopia, approved by the General Assembly. This section also would put the United States in arrearage.

Section 113 prohibits the making available of any funds to the UN High Commissioner for Refugees (UNHCR) unless by June 1, 1986, the High Commissioner provides for annual independent program audits and those audits are made available to the Comptroller General of the United States for review and report to Congress. Unless this matter can be satisfactorily resolved with the High Commissioner, U.S. contributions for UNHCR refugee relief in Africa, Southeast Asia, and other areas where there are life-threatening refugee emergencies could be precluded. Legislative relief may also be sought on this matter.

#### Conduct of Foreign Relations

In its enrolled bill views letter, the Department of State notes its concern about five sections of the enrolled bill that are not objectionable but direct certain actions in the conduct of foreign relations traditionally and constitutionally vested in the Executive branch. ✓

Section 141 requires the Secretary of State to apply the same travel and other restrictions to UN Secretariat employees who are nationals of a foreign country as are imposed on members of that country's mission or of any other mission to the UN. This requirement may be waived when required for reasons of national security and foreign policy. In its enrolled bill views letter, Justice notes its concern that this section is contrary to the UN Charter because it discriminates among UN Secretariat employees based on nationality. Justice defers to the Department of State however, on the overall issue. This provision will assist in limiting the intelligence activities of unfriendly nations and was supported by the Administration.

Section 813 states that it is the "policy of the Congress" that the number of Soviet nationals admitted to the United States to serve as diplomatic or consular personnel shall be substantially equivalent (the Conference Report states that this means plus or minus five percent) to the number of U.S. nationals admitted to the Soviet Union for the same purposes, unless the President determines that the admission of additional Soviets would be in the best interest of the United States. In addition, this provision requires the Secretary of State and the Attorney General to prepare within six months a plan to ensure substantial equivalence. While something closer to equivalency between the size of the Soviet diplomatic presence in the United States and the U.S. presence in the Soviet Union may also help curtail spying, the President already has constitutional authority to accomplish this objective and should be free to exercise it.

Section 136 states that, to the maximum extent practicable, Soviet citizens shall not be employed at the United States diplomatic or consular missions in the Soviet Union after September 30, 1986, and requests the President to submit a report to the Congress describing the number and type of Soviet foreign national employees he wishes to retain should he determine that implementation of this section poses undue practical or administrative difficulties.

Section 154 requires that the Secretary of State (1) begin international arbitration within 30 days of enactment of H.R. 2068 to resolve U.S. claims against the Soviet Union for damages arising from delays in the construction of the U.S. Embassy in Moscow and (2) not permit the Soviet Union to occupy its new embassy in Washington until the United States is fully reimbursed. The Secretary may suspend the restriction in the interest of national security if he certifies to the Congress that a substantial number of the claims are settled and that resolution of any remaining claims is proceeding satisfactorily.

Section 708 expresses the sense of the Congress that the President propose a joint study by the United States and the Soviet Union of the consequences of nuclear winter during any arms control negotiations held with the Soviet Union. In addition to State's concern regarding congressional intrusion into the Executive branch conduct of foreign affairs, Defense is concerned that this provision is technically flawed, duplicative of another ongoing cooperative effort with the Soviet Union, and likely to strengthen Soviet arguments for obtaining access to sensitive U.S. computer technology which is required for effective global circulation modeling.

#### U.S. Scholarship Program for Developing Countries

Title VI, the United States Scholarship Program for Developing Countries, requires the President, working through USIA, to provide scholarships to students of limited financial means from developing countries for undergraduate study at American colleges and universities. The scholarships are to be in the form of

loans, the repayment of which would be forgiven when a student returns to his country and stays for one year longer than his total stay in the United States. In addition, the Central America Scholarship Program, proposed pursuant to the 1984 Kissinger Commission Report and just beginning to be implemented, must adopt the same operational guidelines as are stipulated for this program. Similarly, the Agency for International Development is urged to increase its use of funds for the same purpose. The Administration opposed this new worldwide program as (1) unnecessary new authority, (2) potentially costly, and (3) administratively difficult to implement due to the new procedures specified in the bill. USIA informally advises, however, that the Central America Scholarship Program can serve as a "pilot program" under this title without establishing a costly new worldwide program at this time. Nevertheless, the existence of Title VI may raise unrealistic expectations among potential beneficiaries in developing countries and American institutions of higher learning.

#### Travel Advisory on Jalisco, Mexico

In section 134, Congress deplors the murder of DEA agent Enrique Camarena Salazar and other incidents of violence against Americans, and recommends that the Secretary of State issue a travel advisory discouraging American travel to the State of Jalisco, Mexico, which advisory would remain in effect until the murderers have been brought to trial and a verdict has been obtained. State advises in its enrolled bill letter that this measure will politicize U.S. travel advisories, which should be nonpolitical for the sake of the safety of American travelers.

#### The Future of Taiwan

Despite Administration opposition, H.R. 2068 includes section 806 stating the sense of the Congress that the United States should encourage authorities on Taiwan to ensure that all Taiwanese participate in the political process in order to promote a peaceful future for that country. State has prepared a paragraph on this issue in its draft signing statement which notes that signature of H.R. 2068 does not reflect any change in the position of four successive Presidents that the United States recognizes the Peoples Republic of China as the sole legal government of China. The NSC advises us informally that it believes it is neither necessary nor advisable for this issue to be addressed in a signing statement.

#### INTELSAT

Section 146 includes a policy statement, procedural requirements and specific interagency consultation requirements which are intended to impede creation of international telecommunications satellite systems separate from INTELSAT. Section 146, among other things, declares it to be U.S. policy that separate systems must be technically compatible with all present and planned

INTELSAT satellites, requires that one or more foreign countries must authorize use of a proposed separate satellite before the United States can even consult with INTELSAT about it, and requires that the United States support a modification of the INTELSAT Agreement regarding cost-based pricing of INTELSAT rates for individual traffic routes. The Administration opposed section 146 as unnecessary because (1) the President has already determined that satellite systems separate from INTELSAT are in the national interest, (2) an interagency consultation process was already used in reaching that determination, and (3) the FCC has recently approved new satellite systems separate from INTELSAT. State believes the language on cost-based rates could be interpreted as requiring U.S. support for such modifications in the INTELSAT Agreement. Neither Commerce nor the FCC has raised this concern, however. While State believes a paragraph in the signing statement might "clarify" this situation, this Office believes, and FCC informally agrees, that this issue should not be raised in a signing statement.

#### Inspectors General

As State notes in its enrolled bill views letter, despite Administration opposition, Section 150 creates a new Inspector General for the Department of State under the Inspector General Act of 1978. The section also redesignates the existing Inspector General of the Department of State and the Foreign Service, established under the Foreign Service Act of 1980, as the Program Inspector General. The Program Inspector General's authority is limited to reviewing the consistency of activities of the diplomatic missions with the foreign policy of the United States and the responsibilities of the Secretary of State and the Chief of Missions. OPM points out in its enrolled bill views letter that absent further legislation, for the position to be paid at executive level IV, it would be necessary for the President to use one of his "pool" spaces.

#### Minorities and Women in the Foreign Service

Section 152 directs the head of each agency using the Foreign Service personnel system to establish a plan to increase significantly the number of minority groups and women in the Foreign Service, with particular emphasis on the middle grades. It also requires an annual report to the Congress on the plan and its implementation. This section was substantially modified in conference to delete highly objectionable provisions which would have directed each agency head to develop an affirmative action program with the goal of raising the representation of women and minority groups in the middle and senior levels of the Foreign Service to levels at least equivalent to those groups' respective proportions in the U.S. labor force.



## Reports on Arms Control Agreements

Section 703 requires the President to submit an annual report to Congress on the adherence of the United States to obligations undertaken in arms control agreements with other nations and on any problems related to compliance by other nations with arms control agreements with the United States. The Department of Defense notes in the attachment to its enrolled bill views letter that this requirement is duplicative of existing statutory requirements and could be misinterpreted as an implication that the United States may be in violation of existing arms control obligations.

## Agency Views

The Department of State, while recommending approval of the enrolled bill, points out that there are some serious problems with it. The major problems cited involve provisions on (1) our relations with the UN and its specialized agencies, (2) the issuance of a travel advisory on a state in Mexico, and (3) the future of Taiwan. In addition, the Department of State points out that a number of other provisions in the enrolled bill, while not objectionable, concern matters involving the day-to-day conduct of foreign affairs which are traditionally and constitutionally vested in the Executive branch. State's draft signing statement elaborates on these provisions and presents its views on how the Administration should interpret them. This Office shares the Department of State's concerns but believes that a number of them are inappropriate for inclusion in a signing statement. We have, therefore, drafted an alternative signing statement for your consideration that addresses only the major issues in H.R. 2068 that we believe warrant Presidential comment. These include (1) three of the provisions in the bill affecting the United Nations and its specialized agencies, indicating that some legislative modification may be necessary and (2) the numerous funding earmarks.

## Conclusion

Although H.R. 2068 contains a number of undesirable provisions as set forth above, it also contains essential appropriation authorizations and other features supported by the Administration. On balance, the positive features of H.R. 2068 clearly outweigh the negative.

The enrolled bill passed the House by voice vote and the Senate by a vote of 80 to 17. The conference report was agreed to in the House by a vote of 350 to 74 and in the Senate by voice vote.

Joseph R. Wright, Jr.

Joseph R. Wright, Jr.  
Acting Director

Enclosures

## Attachment 1

H.R. 2068 Authorizations  
(in thousands of dollars)

	<u>Administration Request FY 1986</u>	<u>H.R. 2068</u>
Department of State		
Administration of foreign affairs	1,844,202	1,828,088
International organizations and conferences	553,574 <u>1/</u>	534,074
International commissions	26,278	28,704
Migration and refugee assistance and other	346,680	351,530
Asia Foundation	9,785	10,500
Subtotal, State Department	<u>2,780,519</u>	<u>2,752,896</u>
U.S. Information Agency	973,639	887,900
Board for International Broadcasting	142,125	125,000
Arms Control and Disarmament Agency	25,614	25,614
U.S. International Narcotics Control Commission	---	325
Total	<u>3,921,897</u>	<u>3,791,735</u>

	<u>Administration Request FY 1987</u>	<u>H.R. 2068</u>
Department of State		
Administration of foreign affairs	1,902,478	1,873,790
International organizations and conferences	582,519 <u>1/</u>	534,074
International commission	25,824	25,824
Migration and refugee assistance and other	348,582	351,730
Asia Foundation	10,000	10,500
Subtotal, State Department	<u>2,869,403</u>	<u>2,795,918</u>
U.S. Information Agency	1,154,117	887,900
Board for International Broadcasting	139,977	125,000
Arms Control and Disarmament Agency	23,507 <u>2/</u>	25,614
U.S. International Narcotics Control Commission	---	325
Total	<u>4,187,004</u>	<u>3,834,757</u>



1/ \$51 million in 1986 and \$55.4 million in 1987 were not requested due to permanent authorizations; however, these amounts are included here for comparability to levels authorized in H.R. 2068.

2/ "Such sums as may be necessary" were requested for ACDA; this budget projection is included for comparability.

Attachment 2

Other Significant Features of H.R. 2068

- Sec. 106. Authorizes the Secretary of State to make a grant in each of fiscal years 1986 and 1987 to the American-Australian Bicentennial Foundation in support of its programs and operations to prepare for United States participation in the Australian Bicentennial celebration.
- Sec. 107. Earmarks \$750,000 for each of the fiscal years 1986 and 1987 for the World Commission on Environment and Development.
- Sec. 109. Stipulates that it is the policy of the United States to contribute an amount not less than twenty percent of the regular budget of the International Committee of the Red Cross and earmarks not less than \$4,500,000 annually for fiscal years 1986 and 1987 for this purpose.
- Sec. 110. Places a \$2 million cap on amounts that can be spent by the Department of State on enhanced reception and placement services for new refugee arrivals in the United States.
- Sec. 112 and 118. Authorizes the Bureau of Refugee Affairs to contract for personal services abroad and provides that certain individuals employed under contracts with the Department of State may be provided workmen's compensation and have their claims against the United States considered under the Secretary's authority to settle claims abroad administratively.
- Sec. 115. Increases the number of Assistant Secretaries at the Department of State from thirteen to fourteen.
- Sec. 116. Redesignates the current Under Secretary of State for Economic Affairs as the Under Secretary of State for Economic and Agricultural Affairs.
- Sec. 117. Amends current law, which allows the Secretary of State to detail individuals to other agencies for up to one year on a nonreimbursable basis, to allow up to fifteen nonreimbursable details for periods from one to two years.
- Sec. 119. Allows the Secretary of Commerce to appoint noncareer individuals to specific positions abroad in the Senior Foreign Service where no career member is qualified or available and the individual has unique qualifications for the position.

- Sec. 120. Authorizes the Secretary of State to establish a pilot project designed to increase the employment of spouses of United States personnel at United States missions, and requires the Secretary to report to Congress on such project by January 1, 1986. In its enrolled bill letter OPM notes its concerns that the foreign affairs agencies not create a make work program and treat this authority with a high degree of fiscal responsibility.
- Sec. 121. Directs the Secretary of State to study and report to Congress regarding the feasibility and desirability of creating a program of lateral entry into the Foreign Service for American businessmen, farmers, and other occupations.
- Sec. 122. Makes the Department of State the primary health insurer of Foreign Service personnel abroad and the Foreign Service Benefit Plan the secondary insurer.
- Sec. 123. Authorizes GSA to construct a training facility for the Foreign Service Institute with State Department appropriated funds and stipulates that GSA delegate responsibility for operation and maintenance to the Department of State. GSA advises in its enrolled bill views letter that the mandatory delegation to the Secretary of State is unnecessary and inappropriate and could have been accomplished under existing law.
- Sec. 124. Authorizes State, in consultation with GSA to provide a security and maintenance facility within the International Center and requires the Secretary to report periodically to the appropriate congressional committees on the construction of these facilities.
- Sec. 125. Clarifies the authority of Department of State security agents and allows them to carry firearms and make arrests in the course of discharging their duties.
- Sec. 126. Makes permanent the Secretary of State's authority for extraordinary protection of foreign missions.
- Sec. 127. Amends current law to broaden the definition of foreign missions and expand the authority of the Secretary to regulate them.
- Sec. 128. Makes permanent the Secretary of State's authority to pay expenses of United States participation in arbitrations and the peaceful resolution of disputes under treaties or other international agreements.
- Sec. 129. Provides authority for the Department of State to transfer excess property to countries or international organizations for environmental purposes. GSA and AID note in their enrolled view letters that this provision is objectionable because it would allow Federal property to be transferred outside the normal channels established by the Property Act.

- Sec. 130. Requires the Secretary of State to study the cost to the United States of accepting as a gift any residence to be used as an official residence for the Secretary of State and to report the results to the Congress.
- Sec. 131. Requires the Secretary of State to report to Congress on the status of proposals implemented or under consideration to improve the staffing and personnel management in the Bureau of International Narcotics Matters.
- Sec. 132. Requires the Department of State to cooperate with United States law enforcement agencies in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States that can be used by United States embassies to deny issuance of visas to foreign narcotics traffickers; directs the National Drug Enforcement Policy Board (NDEPB) to agree on uniform guidelines to permit the sharing of information on foreign drug traffickers; requires the NDEPB chairman to report to Congress on the implementation of this section.
- Sec. 133. Directs the Secretary of State to increase United States efforts to negotiate updated extradition treaties relating to narcotics offenses with each major drug-producing country.
- Sec. 135. Commends Ambassador John Gavin for insuring the investigation and prosecution of the murderers of Enrique Camerena and for his continuing advocacy of a strong drug enforcement program.
- Sec. 137. Expresses the sense of Congress that each United States mission to a foreign country provide such support as may be necessary to United States citizens seeking to do business in that country.
- Sec. 138. Requires the United States chief of mission to a foreign country in which there is not respect for freedom of the press to actively promote respect for freedom of the press in that country.
- Sec. 139. Expresses the sense of Congress that all United States consular offices be equipped with twenty-four hour emergency telephone service through which United States citizens can contact a member of the staff of any such office; the Secretary is required to report to Congress on the steps taken regarding this section.

- Sec. 140. Expresses the sense of Congress (1) that United States representatives to international organizations should oppose regulations or restrictions which unnecessarily impede the export of United States goods and services and (2) that the Secretary of State, to the extent practicable, should afford interested persons an opportunity to comment on such regulations and restrictions.
- Sec. 142. Requires the United States to reduce its annual assessed contribution to the UN or its specialized agencies by 8.34 percent for each month in which the United States suspends its participation because Israel has been illegally expelled, suspended, or denied its credentials in the General Assembly or any United Nations specialized agency.
- Sec. 145. Authorizes the President to maintain membership of the United States in the International Jute Organization.
- Sec. 147. Directs the Secretary of State to submit an unclassified report to the Congress on Soviet and Communist disinformation and press manipulation, and to include a Presidential recommendation on the advisability of establishing a permanent office in the State Department to deal with this issue.
- Sec. 148. Expresses the sense of Congress that the United States should declare persona non grata one or more senior defense attaches of the Soviet Union's mission to the United States unless the President certifies to the Congress that the Soviet Union has made a formal apology for the murder of Major Arthur Nicholson and that the Soviet Union has provided assurances that it will adhere to agreements concerning the status and safety of military and civilian missions of western nations in the German Democratic Republic.
- Sec. 149. Requires the Secretary of State to conduct an in-depth study and report to Congress on the feasibility and the economic and political benefits of the establishment of a major initiative in Inter-American Cooperation in Space, Science, and Technology.
- Sec. 153. Changes current designation of the chairman of the Board of the Foreign Service by the Secretary of State to an individual appointed by the President.
- Sec. 155. Requires the Secretary to report to Congress on the advisability of establishing a permanent office in the Department of State to study Soviet and international Communist behavior that violates the concepts of national sovereignty and peace between nations.

- Sec. 208. Prohibits the United States Information Agency (USIA) from engaging in activities to influence public opinion in the United States and from distributing USIA prepared materials within the United States.
- Sec. 209. Provides that no grant may be made to any organization through USIA's private sector program unless such organization has non-U.S. Government source funding for at least 15 and 25 percent in fiscal years 1986 and 1987, respectively, of the grant amount and prohibits USIA or other Government funding for grants for 1985 International Youth Year Activities.
- Sec. 210. Amends the National Endowment for Democracy (NED) Act to (1) prohibit use of NED funds for partisan political purposes, (2) require the NED to comply with the Freedom of Information Act, and (3) earmark not less than \$18,400,000 annually for fiscal years 1986 and 1987 for the NED.
- Sec. 211. Expresses the sense of Congress that USIA should make a grant of up to \$500,000 for each of fiscal years 1986 and 1987 to the National Endowment for Democracy for programs that are designed to promote democracy and that seek to end the apartheid policies in South Africa.
- Sec. 212. Authorizes distribution within the United States of the USIA film entitled "Hal David: Expressing a Feeling."
- Sec. 213. Authorizes distribution within the United States of three USIA films relating to Afghanistan.
- Sec. 303. Authorizes RFE/RL broadcasting to Afghanistan as long as it is under Soviet occupation.
- Sec. 304. Expresses the sense of Congress that (1) RFE/RL should strengthen its broadcast control procedures and program analysis, (2) BIB should update RFE/RL's Program Policy Guidelines, and (3) distinctions between the statutory roles of BIB and RFE/RL should remain clear.
- Sec. 305. Requires that (1) an observer representing the Secretary of State be present at each BIB and RFE/RL Board meeting and (2) the Secretary of State report regularly to the Board on the impact of RFE/RL broadcasts on target audiences.
- Sec. 306. Requires the Board to establish a task force to study the advisability and feasibility of increasing broadcasts to the Jewish population of the Soviet Union, and report to Congress within six months of the bill's enactment.



- Title V. Based on an Administration proposal, provides for the adjudication of certain claims by United States nationals against Iran and authorizes the recovery of costs incurred by the United States in the arbitration of those claims.
- Sec. 704. Upgrades the executive levels for five senior ACDA positions: (1) the Deputy Director position is raised from level IV to level III; and (2) four Assistant Director positions are raised from level V to level IV.
- Sec. 705. Expresses the sense of Congress that the Secretary of State report to Congress as soon as possible on the feasibility, cost, location, and requirements of a structure to house the United States arms control negotiating teams in Geneva.
- Sec. 706. Directs the Secretary of State and the Director of ACDA to conduct a study of crisis stability and control measures that would both enhance U.S. security and reduce the likelihood of nuclear weapons use.
- Sec. 707. Expresses the sense of Congress that the President should continue his commendable efforts to negotiate a comprehensive and verifiable ban on chemical weapons.
- Sec. 801. Requires that congressional action to terminate certain national emergencies be by enactment into law of a joint resolution (this replaces an unconstitutional procedure whereby such emergencies were to be terminated by concurrent resolution).
- Sec. 802. Expresses the sense of the Congress that nominations to the Board of Directors for the United States Institute of Peace should be submitted to the Senate on a timely basis.
- Sec. 803. Amends the Trading with the Enemy Act to make an ex gratia payment to the Government of Switzerland under the terms of an existing U.S.-Swiss agreement.
- Sec. 804. Repudiates any attempts to legitimate the domination of East European nations by the Soviet Union through the Yalta executive agreement and proclaims the United States hope that the people of Eastern Europe shall again enjoy the right to self-determination.

- Sec. 805. Expresses the sense of the Congress that, based on the Soviet denial of entrance to the U.S. embassy in Moscow of several Soviet Pentacostals, the Secretary of State should undertake a study of U.S. policy on granting asylum in U.S. embassies abroad and make recommendations to specified congressional committees on adjustments in current policy.
- Sec. 807. Expresses the sense of Congress that the Secretaries of State and Commerce should take appropriate steps to increase United States-China trade.
- Sec. 808. Allows use of certain U.S.-owned Indian rupee interest earnings to continue scientific and cultural activities in India without appropriation action.
- Sec. 809. Commends the Government of Thailand for its response to refugees fleeing Vietnam and expresses the sense of Congress that (1) those seeking refuge in Thailand should not be repatriated and (2) increased security should be provided for refugees in Thai camps; directs the Secretary of State to take a number of actions on behalf of certain Cambodian refugees.
- Sec. 810. Expresses the sense of the Congress that the Secretary of the Treasury and the Chairman of the Federal Reserve Board take the necessary steps to gradually lower the value of the dollar and work to ensure that domestic macroeconomic policies of the United States and its allies reinforce each other.
- Sec. 811. Commends Mayor Kollek for his efforts over the years to promote harmony among all the people of Jerusalem.
- Sec. 812. Expresses the sense of the Congress that Japan take certain steps to fulfill its self-defense responsibilities and requires the President to provide information to Congress on an annual basis regarding Japanese progress toward fulfilling its common defense commitments.
- Sec. 814. Establishes the United States International Narcotics Control Commission composed of twelve members: seven Senators appointed by the President of the Senate and five members of the public appointed by the President after consultation with the members of the appropriate congressional committees. Deemed to be a standing committee of the Senate, the Commission is authorized and directed to monitor and promote international compliance with narcotics control treaties, and to encourage the United States Government and private programs seeking to expand international cooperation against drug abuse and narcotics trafficking. Annual appropriations of \$325,000 are authorized for the Commission, which will cease to exist on September 30, 1987.

## STATEMENT BY THE PRESIDENT

I have today signed H.R. 2068, the "Foreign Relations Authorization Act, Fiscal Years 1986 and 1987."

H.R. 2068 authorizes appropriations for the conduct of our foreign affairs during fiscal years 1986 and 1987. These appropriation authorizations and several new authorities in this legislation are vital to the national security of the United States. Appropriations authorized by this Act will enable the State Department to manage our diplomatic and consular establishment abroad, participate in and provide contributions to important international organizations, and extend humanitarian refugee assistance. The Act also continues our important information, exchange of persons, and radio broadcasting efforts through the United States Information Agency and the Board for International Broadcasting. It provides continued authority for the Arms Control and Disarmament Agency, as we proceed with arms control negotiations.

A few serious problems are raised, however, by several other provisions of the Act, the foremost of which pertain to our relations with the United Nations and its specialized agencies. These provisions establish conditions which may be impossible to meet within the period of time indicated, thereby requiring reductions in U.S. payments of assessed and voluntary contributions. Activities of these organizations of importance to the United States could be deleteriously affected as a result.

I note in particular that section 143 places contingent limitations on our payments unless the United Nations adopts weighted voting on budgetary matters by fiscal year 1987. I am asking Secretary Shultz to begin discussions toward that end. He will stay in close contact with Congress as he proceeds. Depending on the outcome of those discussions, it may be necessary to seek legislative changes.

Section 113 prohibits contributions by the United States to the UN High Commissioner for Refugees (UNHCR) after June 1986 unless the High Commissioner provides for annual audits by an independent consultant. The State Department will begin to work immediately with the High Commissioner to see if this requirement can be satisfied, since the limitation could put the United States in a position of being unable to respond adequately through the UNHCR to life threatening emergencies such as those found in Africa and Southeast Asia. If it cannot, legislative relief may also have to be sought.

Similar difficulties may also result from section 151, which assumes that the United Nations can determine whether and the extent to which some UN employees are required to pay part or all of their salaries to their respective governments. This provision also assumes that the United Nations can correct such a practice and requires a reduction in U.S. payments of its assessed contributions to the United Nations to the extent that the practice continues. The difficulties in administering section 151 may require some modification of it at a later date.

I am also concerned about the numerous earmarkings of appropriation authorizations for particular activities included in this bill. I understand the intent of the Congress in setting out these amounts. Nevertheless, they may severely limit our ability to meet other important program needs within the limited appropriation amounts that are likely to be enacted by the Congress. In this regard, I am particularly concerned about earmarkings enacted for refugee assistance and for the United States Information Agency. Because of the lack of clarity in the earmarkings of the exchange of persons program of USIA, I am asking the Director of that agency to plan on program levels of \$148 and \$159 million in 1986 and 1987, respectively. Because of the large number of earmarkings found in the bill, the Secretary of State and the Director of USIA will have to work closely with both authorization and appropriations committees as fiscal years 1986 and 1987 progress so that interests of the Congress and priority foreign affairs needs can best be accommodated.