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THE WHITE HOUSE

WASHINGTON

November 15, 1988

MEMORANDUM FOR RHETT B. DAWSON
ASSISTANT TO THE PRESIDENT
FOR OPERATIONS

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

PDB for
Original Signed by ABC

SUBJECT: Enrolled Bill H.R. 5210 -- Anti-Drug Abuse
Act of 1988 and Proposed Signing Statement

At your request, we have reviewed the attached OMB enrolled bill memorandum and proposed signing statement on H.R. 5210 -- the Anti-Drug Abuse Act of 1988. We understand that the decision to sign this bill has already been made and that a public signing ceremony is planned for Friday, at which time the President is expected to deliver essentially laudatory remarks about the bill. Accordingly, we have reviewed these materials with two basic questions in mind: (1) whether there are legal issues which need to be addressed in a signing statement and (2) assuming such problems exist, whether it is possible to include those comments in the President's spoken remarks at Friday's ceremony or whether a separate written statement is appropriate.

While we have identified a number of legal issues which might be worthy of comments in other circumstances, we believe that for various reasons only the constitutional concern raised by provisions purporting to require international negotiations need be noted in a signing statement. Because this concern can be articulated in a relatively brief fashion, and in order to avoid the pressure to catalogue additional problems that would result if a separate written statement were issued, we recommend that suitable language, along the following lines, be included in the President's spoken remarks:

I note that several provisions of H.R. 5210, such as those concerning the formation of a multinational force in the Western Hemisphere and the adoption of currency reporting requirements abroad, instruct the President, or his subordinates, to undertake particular international negotiations. In light of the President's Article II plenary authority to conduct such negotiations, these provisions shall be construed and applied consistent with those constitutional authorities.

We note that the proposed OMB signing statement describes a number of grievances against the bill which -- although not strictly legal in nature -- should be considered in drafting the

President's spoken remarks. In particular, the OMB statement laments the deletion from the bill of exclusionary rule reform and requested DOJ funding and complains about the enactment of the "drug czar" apparatus. We recommend that at least the references to Congress' failure to amend the exclusionary rule and to enact meaningful habeas corpus reform be included in the President's spoken remarks. It may be possible to note all of these concerns in a single sentence or paragraph, e.g., "I am deeply disappointed that Congress missed this opportunity to enact meaningful habeas corpus and exclusionary rule reform and also failed to provide necessary resources to key components of the Justice Department." In this regard, we recommend that a draft of the remarks be provided to the Attorney General's office for comment.

Attachment

cc: Danny Crippen
Alan M. Kranowitz

MEMORANDUM FOR DAN CRIPPEN

From Catherine Woods
Re Anti-drug bill signing ceremony

We received a call from John Dannerback, of speechwriting, regarding the President's remarks for the anti-drug bill signing ceremony. Mr. Dannerback requested a draft insert on the Administration's position on drug testing. According to Mr. Dannerback, Mari Maseng would like an insert to replace DOT's proposed statement on drug testing (attached). Mari's staff was able to confirm that the DOT insert is being held, but not that a replacement is requested. Franmarie's staff has prepared a brief insert for your consideration, should you decide that inclusion of a statement on drug testing is warranted.

I spoke with Ms. Ray Nelson, of Dr. MacDonald's staff. (The White House Staffing Memorandum on the signing ceremony was staffed separately to Dr. MacDonald's office.) Ms. Nelson indicated that they were not planning to suggest any statement on drug testing, but that if something were to be included, it should probably be nothing more than a general statement on efforts toward or the importance of a drugfree workplace (in line with the President's past comments).

How do you wish to respond?

attachments

2/7/4
*Even though the copy is
I did not include words
policy, the DOT
has your sample in
safety-related areas*

Department of Transportation
Suggested Comments for President's Drug Bill
Signing Ceremony

Another example of an important provision dropped during the House-Senate negotiations is the requirement for drug testing of transportation employees holding safety or security sensitive positions. Fortunately, the Department of Transportation was able to administratively accomplish what Congress did not have the will to do.

I am also very concerned that the Congressionally mandated changes in our zero tolerance policy at and around our nation's borders will greatly hamper our drug interdiction efforts.

~~XXXXXXXXXX~~

164. [unclear]
[unclear]

Arrests, convictions, and prison sentences of sellers and abusers are rising to record levels.

Several months ago here at the White House we honored those heroes who gave their lives in this battle. Heroes like D.E.A. Special Agent Enrique Camarena Salazar and a young rookie cop from New York named Eddie Byrne. Here today is Matthew Byrne who joins us as we give his son's comrades the valuable tools they need to carry forth the fight that young Eddie so valiantly gave his life for. We salute Eddie Byrne, we salute his family for their determination that his death will not be in vain. We salute all brave law officers.

INSERT

INSERT

This bill is the product of a bipartisan effort. Important language was dropped from the final version, most notably the easing of the exclusionary rule and random drug testing. While this language would have provided effective methods to enhance drug enforcement, the final product strikes a balance between tough law enforcement and protection of victims rights with the Constitutional guarantees of the rights of criminals. The provision providing the death penalty for narcotics kingpins and drug related murders, along with tough new provisions dealing with everything from money laundering and international banking regulations to international interdiction and state and local drug enforcement are just the weapons Eddie and Enrique's comrades in arms need to fight an effective war.

Fortunately by the Department of Transportation

This bill also addresses the demand side of drug abuse, providing \$1.5 billion in increased drug treatment and prevention

WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/10/88 ACTION/CONCURRENCE/COMMENT DUE BY: COB 11/14/88

SUBJECT: H.R. 5210 - ANTI-DRUG ABUSE ACT OF 1988
SIGNING STATEMENT ATTACHED

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	KRANOWITZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MASENG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
POWELL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RANGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WRIGHT - OMB	<input type="checkbox"/>	<input type="checkbox"/>	RISQUE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
OGLESBY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CRIPPEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
CULVAHOUSE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUCK	<input type="checkbox"/>	<input type="checkbox"/>
DAWSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
DONATELLI	<input type="checkbox"/>	<input type="checkbox"/>	CLERK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>MacDona</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HOBBS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HOOLEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please provide your comments/recommendations directly to my office by close of business Monday, November 14. Thank you.

RESPONSE: (DHC) Concur in approval - recommend no formal signing statement unless required by Counsel



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

1988 NOV -9 PM 8:09

NOV 9 1988

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5210 - Anti-Drug Abuse Act of 1988
Sponsors - Reps. Foley (D) Washington and
Michel (R) Illinois

Last Day for Action

November 18, 1988 - Friday

Purpose

(1) Strengthens the Nation's anti-drug abuse laws in the following principal areas: criminal justice and law enforcement; interdiction of the entry of illegal drugs into the country; transportation; international cooperation; education; rehabilitation and treatment; drug-free workplaces; drug-free housing; and user accountability; (2) strengthens the laws against child pornography; (3) permits the prosecution of certain corrupt officials under the Federal mail fraud statutes; and (4) makes miscellaneous amendments to criminal and other laws.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of Justice	Approval (Signing statement attached)
Department of State	Approval (Signing statement attached)
Department of the Treasury	Approval (Signing statement attached)
Department of Agriculture	Approval (Informally)
Department of Education	Approval
Department of Housing and Urban Development	Approval
Department of the Interior	Approval (Informally)
Department of Labor	Approval (Informally)
Department of Transportation	Approval
Central Intelligence Agency	Approval (Informally)
National Security Council	Approval
Department of Defense	No objection (Informally)

General Services Administration	No objection (Informally)
Veterans Administration	No objection
Office of Personnel Management	No comment (Informally)
Department of Health and Human Services	Defers

Discussion

On October 27, 1986, you approved the Anti-Drug Abuse Act of 1986 (Public Law 99-570). That landmark legislation was based, in large measure, on legislative proposals that you forwarded to Congress in September 1986. Key provisions of the Anti-Drug Abuse Act of 1986: (1) promoted a drug-free environment in the Nation's schools; (2) made improvements in substance abuse programs; (3) strengthened drug interdiction efforts; and (4) enhanced law enforcement capabilities in the fight against illegal drugs.

H.R. 5210, which passed the House by 346-11 and the Senate by voice vote, builds upon the 1986 Act. Its major provisions are described below. A more detailed description of these and other provisions is contained in Attachment "A."

A description of the budget impact of the enrolled bill also follows. Attachment "B" is a summary of the enrolled bill's authorization and appropriations provisions.

Anti-Drug Abuse Amendments

-- Criminal Justice and Law Enforcement

Death Penalty. The enrolled bill would permit the imposition of the death penalty in certain serious drug-related cases in which death results, subject to certain limitations and restrictions (e.g., concerning appeals by financially indigent defendants). The death penalty provisions contain various procedural safeguards designed to ensure that they will withstand judicial review. In particular, the enrolled bill permits the death penalty to be imposed against any person engaged in a "continuing criminal enterprise" or who commits other specified drug crimes and who "intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results." The death penalty could also be imposed for the intentional killing of a law enforcement officer.

Chemical Diversion and Trafficking. The enrolled bill would establish a comprehensive system for keeping track of legitimate chemicals that can be used in the manufacture of illicit drugs. For example, it would require persons engaged in transactions involving these chemicals to keep records of the transactions and make them available upon request to the Justice Department. In

addition, the enrolled bill would make the import and export of specified chemicals a criminal offense, subject to up to ten years imprisonment and a fine, unless the chemicals are intended to be used for a legitimate purpose.

Money Laundering. The enrolled bill would: better facilitate the use of "sting" operations in connection with money laundering transactions; prohibit a financial institution from issuing a cashiers check or similar instrument for over \$3,000 to a person without adequate identification; provide the Treasury Department with broad authority to require information in connection with domestic currency transactions; and enhance the undercover investigative authorities of the Internal Revenue Service. In addition, the President would be required to impose sanctions on countries (i.e., by denying such countries access to the United States' banking system) that are found not to be cooperative in connection with international currency reporting. The President could waive the requirement if he determines that it would be in the national interest to do so.

Civil Penalties. The Department of Justice would be permitted to impose civil penalties of up to \$10,000 against persons found to possess "personal use" (i.e., very small) quantities of illegal drugs. A civil penalty could not be assessed if the person involved was previously convicted of a Federal or State offense "relating to a controlled substance," and a civil penalty could not be assessed against the same person more than twice. In order to assess a penalty, the Justice Department would have to afford the person involved an opportunity for a hearing on the record. A person against whom a civil penalty is assessed would be permitted to seek de novo judicial review of any such assessment. In any court proceeding to review the assessment of a civil penalty, the facts would have to be proven "beyond a reasonable doubt," the standard of proof that applies in criminal proceedings.

-- "Drug Czar"

Title I of H.R. 5210 would establish the Office of National Drug Control Policy in the Executive Office of the President, to be headed by a Director (the "drug czar") compensated at Level I of the Executive Schedule and appointed by the President (subject to Senate confirmation). The key responsibilities of the Director would include: establishing policies and priorities for drug control; promulgating an annual National Drug Control Strategy; developing a consolidated National Drug Control Program budget proposal; and disbursing funds from a newly-created Special Forfeiture Fund. The first Director would be named by the person elected President in the November 1988 general election.

Two Deputy Director positions and one Associate Director position would also be established. These positions would also be subject to Presidential appointment and confirmation by the Senate. No person serving as the Director, one of the Deputy Directors, or the Associate Director would be permitted to so serve while serving in another Government position. The enrolled bill would terminate the National Drug Policy Board, the White House Drug Abuse Policy Office, and the National Narcotics Border Interdiction System. Finally, the provisions establishing the Office of National Drug Control Policy would be repealed five years after the date of enactment of the enrolled bill.

-- Asset Forfeitures

H.R. 5210 would make many changes to the asset forfeiture laws, including the creation of a new Special Forfeiture Fund for disbursement by the drug czar. These funds would be available in amounts specified in appropriations acts and would be used for supplementing funds otherwise provided to the agencies for implementation of the National Drug Control Strategy. With respect to the Justice Assets Forfeiture Fund, the enrolled bill provides that after all program-related expenses have been met, at the end of FY 1989 only, deposits are to be used for prison construction. At the end of FYs 1990, 1991, and 1992, unobligated balances not to exceed \$150 million are to go into the Special Forfeiture Fund, except that up to \$15 million would remain available for appropriation in the next fiscal year. Both Justice and Customs would be permitted in certain situations to transfer seized property or the proceeds of such seizures to foreign countries that participate in such seizures (e.g., if the transfer is approved by the Secretary of State).

The bill would also establish a new statutory "innocent owner" defense, under which the owner of a conveyance, such as a boat, that is seized for a narcotics offense may recover the conveyance upon a showing that the offense was committed without his knowledge, consent, or willful blindness. Justice and Treasury would be required to issue regulations for expedited administrative procedures for drug-related seizures for violations involving "personal use quantities" of a controlled substance.

-- Interdiction

The three principal Federal agencies responsible for stopping the influx of drugs at the Nation's borders -- the Coast Guard, the Customs Service, and the Federal Aviation Administration -- would be provided with additional appropriation authorizations and authorities to help them fight drug traffickers. For example, the bill would establish a demonstration program for at least three high-risk U.S. international airports for which Treasury would establish air carrier inspection practices. Participating carriers would not

be subject to penalty if illegal drugs are found aboard their aircraft and they establish that they were not grossly negligent and did not engage in willful misconduct.

In addition, the enrolled bill provides that "[n]o information collection requests necessary to carry out . . . this subtitle . . . shall be subject to or affect . . . the annual information collection budget goals established for the Federal Aviation Administration" under the Paperwork Reduction Act. The other requirements of that Act would continue to apply, however (e.g., that paperwork collection requests be submitted to this Office for review).

-- Transportation

The enrolled bill includes several provisions intended to make the Nation's highways and railroads drug and alcohol-free. Among other things, the bill would: authorize a new grant program to encourage States to adopt additional anti-drunk driving programs; increase the criminal penalties for operating a common carrier, such as a passenger train, under the influence of alcohol or drugs; and authorize a one-year demonstration program to encourage States to test drivers license applicants for drugs.

-- State and Local Assistance

Among other provisions, the enrolled bill establishes two grant programs, to be administered by the Bureau of Justice Assistance: (1) Drug Control and System Improvement Grants (to go to States for enforcing State and local laws that establish offenses similar to offenses contained in the Controlled Substances Act); and (2) Discretionary Grants (to go to public or private agencies for specified purposes, such as education or training). In addition, the enrolled bill would authorize appropriations of \$275 million for FY 1989 (\$350 million for FY 1989, \$400 million for FY 1990, and "such sums as may be necessary" for FY 1991) for these and other Bureau of Justice Assistance drug grants.

-- International

H.R. 5210 contains numerous provisions to encourage international cooperation in the drug war. For example, the bill authorizes appropriations of \$101 million for FY 1989 for international narcotics control assistance but would earmark and restrict the use of such funds and add or modify various Presidential reporting and certification requirements. The President would be called upon to ask the United Nations to explore ways to establish an international force aimed at stopping trafficking in illegal drugs.

The enrolled bill would designate the State Department as the lead Federal agency in coordinating international anti-drug assistance. It would also call upon the President to convene an international drug conference and permit the denial or revocation of passports of certain convicted drug offenders. In addition, the enrolled bill contains several provisions that are directed at specific source countries (e.g., Bolivia). (A complete list of the countries covered is included in Attachment "A.") The Export-Import Bank would be permitted to guarantee or insure a sale of defense articles but only if the articles are used to combat foreign anti-narcotics efforts. As noted previously, both Justice and Customs would in certain situations be permitted to transfer forfeited property or the proceeds of forfeited property to foreign countries that participate in the seizure of such property.

-- Education

The enrolled bill would amend the Drug-Free Schools and Communities Act of 1986 to authorize appropriations of \$350 million for FY 1989 for drug abuse education efforts, including establishment of regional centers, outreach activities for dropouts, and counseling and referral centers for drug abusers. The bill would also authorize appropriations for a variety of other drug education programs, including: new grants for discouraging participation of youth gangs in drug activities; new grants for various anti-drug efforts directed at juveniles; and grants to provide after-school programs, such as sports activities. H.R. 5210 would also establish new, separate authorizations for teacher training.

-- Rehabilitation and Treatment

Title II of H.R. 5210 would revise and extend the Alcohol and Drug Abuse and Mental Health Block Grant program and authorizes appropriations of \$1.5 billion for FY 1989 for this purpose. It would also create a new grant program for reducing the waiting period for drug abuse treatment. (The authorization would expire after \$100 million has been appropriated.) Title II would also authorize appropriations for several other grant and demonstration programs, such as: grants for projects to discourage and prevent alcohol and drug abuse among pregnant women; new demonstration projects to provide prevention services to the chronically mentally ill; and demonstration projects to provide drug treatment to adolescents, minorities, pregnant women, female drug addicts and their children, and residents of public housing projects.

The Director of the National Institute on Drug Abuse would be required to work with the existing Commission on Alternative Utilization of Military Facilities to identify potential space for drug treatment programs for non-violent persons.

-- Alcoholic Beverage Labelling

The enrolled bill would require that, beginning 12 months after enactment, containers of alcoholic beverages include a warning statement that: (1) the Surgeon General has determined that women should not drink alcoholic beverages during pregnancy; and (2) consumption of such beverages impairs one's ability to drive a car or operate machinery and may cause health problems. State law in this area would be preempted.

-- Drug-Free Workplaces

The enrolled bill would require that Federal contractors and grantees establish and maintain drug-free workplaces. Contractors and grantees could be suspended, terminated, or debarred for failure to take appropriate personnel action against employees convicted of drug violations. (These provisions would also repeal the drug-free workplace requirement in the FY 1989 Treasury-Postal Service appropriations bill applicable to contractors and grantees.) Section 4804 of H.R. 5210 would expressly exempt contracts performed overseas from these requirements.

-- Drug-Free Housing

Several provisions of the enrolled bill are aimed at curbing illegal drug use at public housing projects. For example, the bill would permit termination of a tenancy in public housing for illegal drug use. In addition: the Department of Housing and Urban Development (HUD) would be required to establish a Clearinghouse on Drug Abuse in Public Housing; and HUD would be authorized to make grants to public housing agencies for use in eliminating drug-related crime in public housing projects (e.g., through the hiring of private security personnel).

-- New Commissions

The enrolled bill would establish a National Commission on Drug-Free Schools to develop recommendations for criteria to identify drug-free schools. The enrolled bill would also establish a National Commission on Measured Responses to Achieve a Drug-Free America by 1995. This Commission would be charged with developing a model uniform code of State laws that represents a "measured response" to achieve a drug-free America by 1995. In addition, a new National Advisory Commission on Law Enforcement would be established to examine compensation issues as they affect Federal law enforcement agencies.

-- User Accountability

H.R. 5210 would make convicted drug abusers accountable for their use of illegal drugs by permitting, at the discretion of the court, certain Federal benefits to be denied various persons convicted of drug violations. (Federal benefits not covered

include any retirement, welfare, Social Security, health, disability, veterans, public housing, "or other similar benefit," or any other benefit "for which payments or services are required for eligibility.") These provisions are more stringent with respect to drug traffickers than drug possessors; however, in either case courts are given considerable leeway in deciding to impose sanctions. The period of ineligibility for Federal benefits could be suspended in certain instances (e.g., if an offender completes an approved rehabilitation program). These provisions would become effective for convictions that occur after September 1, 1989.

Amendments Not Related to Anti-Drug Abuse Efforts

H.R. 5210 includes many amendments that are not related directly, or at all, to anti-drug abuse efforts.

-- Child Pornography

The laws against child pornography and obscenity would be strengthened in several ways. For example, the bill prohibits the "buying and selling" of children for the production of child pornography and establishes detailed recordkeeping requirements for the producers of certain sexually explicit material. The bill also creates a criminal offense for engaging in the business of selling obscene matter with respect to such matter that has moved in interstate commerce. H.R. 5210 would establish procedures for forfeitures in Federal obscenity cases and would prohibit the transmission of obscene material on cable television. These provisions are based in large measure on your proposal, which was transmitted to Congress on November 10, 1987.

-- Public Corruption

The enrolled bill would provide that a scheme to defraud the public of the intangible right of the honest services of a public official may be prosecuted under the Federal mail fraud statutes (overriding a Supreme Court decision to the contrary). This provision is based on a proposal made by the Department of Justice earlier this year.

-- Firearms

The enrolled bill would require the Justice Department to develop a plan for a system for the rapid identification of felons in connection with the sale of firearms. Justice would be required to report to Congress within one year on its proposed system. Justice would also be required to conduct, and complete within 18 months, a study of the feasibility of establishing a similar system for identifying other persons who are ineligible to purchase firearms. H.R. 5210 would establish a new criminal offense of possession of a firearm or other dangerous weapon in specified "Federal facilities" (e.g., courthouses).

-- Miscellaneous

H.R. 5210 includes numerous miscellaneous provisions, some major and some minor, such as: a requirement that Congress consider legislation to reform Federal habeas corpus procedures early in the 101st Congress; establishing the United States Marshals Service by statute (as proposed by the Administration); extending authority to Federal Prison Industries, Inc., to borrow from the Treasury to finance the construction, maintenance, and repair of its industrial buildings (as proposed by the Administration); establishing a Native Hawaiian comprehensive master health care plan (identical to S. 136, which you approved on October 31, 1988); and a requirement that the Department of Transportation undertake various regulatory actions and studies to improve the safety of operations of commercial trucks and buses (the "Truck and Bus Safety and Regulatory Reform Act of 1988").

Budget Impact

-- Authorizations

The enrolled bill authorizes appropriations for FY 1989 totalling \$5.2 billion, as well as additional authorizations for FY 1990 and beyond. These authorizations substantially exceed the amounts actually appropriated for FY 1989 by this bill.

-- Appropriations

Title X of the enrolled bill provides supplemental appropriations of \$991 million for FY 1989. We estimate that these appropriations will increase FY 1989 outlays by \$508 million; the remainder will be spent in future years. We estimate that 1989 outlays will be about evenly divided between supply reduction programs and demand reduction programs.

Agency Views

The Department of Justice, in its enrolled bill views letter, "strongly recommends Executive approval of the bill." According to Justice, the enrolled bill, "[w]hile less than perfect . . . includes a wide range of key demand-side tools and supply-side weapons with which to combat the scourge of drug abuse in our country."

In recommending the approval of H.R. 5210, Justice does note that two provisions sought by the Administration are not included in the enrolled bill. These include proposals to: (1) reform the so-called "exclusionary rule" to permit the introduction of illegally-seized evidence in certain criminal cases; and (2) establish uniform procedures in all Federal judicial districts for the collection of debts owed the United States. Justice also notes its opposition to the provisions of the enrolled bill that would establish a "Drug Czar" and that would

establish a statutory "innocent owner" defense in certain forfeiture cases. Justice says that the provision of the enrolled bill that would permit the use of Federal mail fraud statutes to prosecute certain public corruption cases does not go as far as counterpart proposals made by the Department earlier this year. Finally, Justice states that the supplemental appropriations that would be provided by the enrolled bill are "badly needed."

Justice has prepared a draft signing statement for your consideration, which is attached to its enrolled bill views letter. The draft signing statement makes essentially the same points that are made in Justice's enrolled bill views letter (including language addressing the "innocent owner" defense, see below) and concludes that on balance "the drug bill as enacted is a major success for this Administration and for the American people as a whole."

In its enrolled bill views letter, the Department of Transportation, while recommending the approval of the enrolled bill, joins Justice in registering its concern about the provision of the enrolled bill that would establish a statutory "innocent owner" defense for certain owners of conveyances that are seized for drug violations. Transportation believes that this provision would effectively prohibit the Coast Guard from requiring affirmative actions by vessel owners to prohibit the use or transportation of drugs on their vessels. Transportation recommends that this matter be addressed in a signing statement (but has not suggested language for inclusion in such a statement).

The Treasury Department, in its enrolled bill views letter, recommends approval of H.R. 5210; however, Treasury explicitly disagrees with Transportation (and implicitly with Justice) and recommends that any signing statement not address the innocent owner provision. According to Treasury, the innocent owner provision in the enrolled bill does not weaken current law or limit the agencies' authority to require owners of conveyances to take affirmative steps to ensure that their vessels are not used in connection with illegal drug activities. Treasury is concerned that a signing statement that includes language of the kind sought by Transportation would impair or negate the Government's ability to argue that the innocent owner provision does not change existing requirements.

Treasury has recommended that any signing statement issued in connection with the approval of the enrolled bill include language addressing section 4702, which would require the United States to close its banking system to countries that fail to comply with specified currency reporting requirements. Treasury states that the Nation's allies view this provision "as an affront to their sovereignty." Treasury's recommended language is attached to its enrolled bill views letter. It is intended to reassure the United States' allies that the provision would be

invoked infrequently "and only in a manner consistent with their legitimate concerns."

The Education Department characterizes the changes contained in the enrolled bill as "uneven" and opposes some of them, but nonetheless recommends the approval of the measure. For example, Education opposes the creation of new, separate authorizations for teacher training and the development of early childhood drug abuse materials. According to Education, current law is adequate in this regard. Education raises other concerns but does note that it also supports certain provisions in H.R. 5210, particularly specified amendments to the Drug-Free Schools and Communities Act.

The Veterans Administration (VA) also recommends approval of the enrolled bill but raises a concern about the drug-free workplace requirements of the bill. In particular, the VA would have preferred that the waiver authority in the drug-free workplace provisions be broader (i.e., to enable the exemption of entire classes of contracts or grants, instead of individual contracts and grants, as in H.R. 5210) and that an agency head be permitted to delegate the waiver authority to a subordinate.

The National Security Council (NSC) staff recommends approval of the enrolled bill but objects to provisions contained in subtitles "C," "D," and "E" of title IV that would earmark and restrict the use of foreign assistance funds and add Presidential reporting requirements. The NSC staff states that these provisions "amount to Congressional micromanagement of the U.S. anti-drug effort overseas and infringe upon the Executive Branch's conduct of foreign policy."

The Department of State recommends approval of H.R. 5210 but expresses concerns similar to those of the NSC staff. A draft signing statement, which is attached to State's enrolled bill views letter, makes these points: (1) the role of the National Drug Control Policy Office in the conduct of foreign policy and intelligence matters must be carefully evaluated; (2) the provisions of the enrolled bill that impose restrictions on the Executive's authority to conduct international negotiations -- the draft signing statement cites no example -- will be treated as advisory in nature; (3) the provision of the enrolled bill that would designate State as the lead agency in coordinating international anti-narcotics assistance should help improve the United States' efforts to provide such assistance; and (4) the provision that would permit asset sharing with countries that cooperate in anti-drug efforts is desirable.

The Department of Housing and Urban Development (HUD) recommends the approval of H.R. 5210. In its enrolled bill views letter, HUD raises a number of concerns, however. First, HUD opposes the provision that would permit termination of a public housing tenancy for drug-related activity, because the provision could, according to HUD, be interpreted to limit the authority of

public housing authorities to terminate tenancies based upon other kinds of criminal conduct. Second, HUD opposes permitting public housing authorities to use funds provided under the pilot grant program for hiring security personnel. HUD says that this provision would "reemphasize the impression that public housing is a separate community . . . from the local community at large," and that it could lead local police departments to pay less attention to criminal activity in public housing projects. Finally, HUD is also concerned that implementation of the enrolled bill's drug-free workplace provisions by public housing authorities may be unusually difficult.

Conclusion and Recommendation

The enrolled bill provides the Federal Government with important new authorities and resources in fighting the war on drugs and in enhancing anti-drug abuse education, rehabilitation, and treatment. At the same time, it recognizes that those who use illegal drugs must take responsibility for their actions. The supplemental appropriations made by the bill also represent a good faith effort by Congress to meet the requirements of the Gramm-Rudman-Hollings deficit reduction law and avoid a sequestration in FY 1989.

Many provisions of this legislation (e.g., the death penalty, provisions on chemical diversion and trafficking, child pornography, and anti-public corruption) were sought by the Administration. Furthermore, the most troublesome provisions that the Administration opposed (e.g., concerning limitations on diplomatic immunity and drug testing in the transportation industry) were deleted. Although troublesome provisions remain (e.g., concerning innocent owners and currency reporting) and desirable provisions have been omitted (e.g., reform of the exclusionary rule), the enrolled bill is, on balance, a good bill. Accordingly, I join the concerned agencies in recommending its approval.

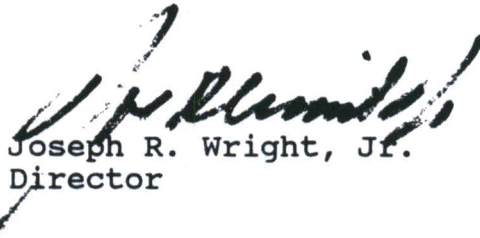
With respect to the disagreement between Transportation and Justice, on the one hand, and Treasury, on the other, over the appropriateness of including "innocent owner" language in a signing statement, we agree with Treasury. We believe it is preferable to resolve this matter within the Administration by seeking a definitive legal opinion about the effect of the "innocent owner" provisions contained in the enrolled bill. Addressing the matter in a signing statement would be premature.

This Office has prepared a draft signing statement for your consideration. It is based primarily on the submission of the Justice Department but incorporates some or all of the language submitted by State and Treasury. Our draft statement: highlights some of the most important and desirable provisions of the enrolled bill (e.g., the death penalty and authority to impose civil penalties); adds asset sharing with foreign governments to a list of provisions that you support

(as in State's draft signing statement); discusses your opposition to the "drug czar" and currency reporting provisions (but incorporates State's concern about the role of the "czar" in foreign affairs and related matters); notes that some desirable provisions (e.g., reform of the exclusionary rule) were omitted from the final bill; and expresses disappointment that Congress has not fully funded the anti-drug programs of the Justice Department.

Paragraph three of the State Department's draft signing statement raises constitutional concerns about certain provisions of the enrolled bill that involve international negotiations. State's draft language has been reviewed and revised by the Department of Justice. We have incorporated Justice's revisions into our draft signing statement.

Finally, our proposed signing statement does not contain a reference to funding for Justice's FY 1990 budget, as proposed by Justice, because the FY 1990 Budget is still under development. Also, in using Justice's language concerning civil penalties, we have corrected the citation of the enrolled bill (section 6486 vice 6480).



Joseph R. Wright, Jr.
Director

Enclosures

STATEMENT BY THE PRESIDENT

Today I have approved H.R. 5210, the "Anti-Drug Abuse Act of 1988." The enactment of H.R. 5210 represents a considerable achievement for the many Executive branch agencies and congressional committees that worked together to craft this legislation. The bill reflects the significant bipartisan effort that went into its development.

While less than perfect, this bill contains virtually all of the provisions that I recommended that Congress adopt and contains a balanced package of tools to curb both the supply of illegal drugs and the demand for them.

I am particularly pleased that the bill provides constitutionally sound procedures extending a Federal death penalty for killings committed during the course of a continuing criminal enterprise, drug trafficking, or importation offense, and to drug-related killings of Federal, State, or local law enforcement officers engaged in, or on account of, their official duties.

The bill also includes a large number of other criminal and law enforcement provisions, including important provisions on money laundering, asset forfeitures (such as the transfer of forfeited property to cooperative foreign countries), essential and precursor chemical diversion, international drug trafficking (including a provision that would designate the State Department as the lead agency in coordinating activities in this area), and offenses involving juveniles.

Section 6486 of H.R. 5210 will permit civil penalties of up to \$10,000 to be assessed for simple possession of controlled substances; however, all criminal sanctions for such offenses are retained. This additional sanction fills a gap in present law and provides a civil fine twice as high as the maximum first offense possession penalty currently available. This section, and the "user accountability" provisions of title V, which provide for the loss of certain Federal benefits for up to five years for repeat "users" and up to life for repeat "dealers," send an unmistakable message, making it clear that such conduct will no longer be tolerated. These provisions hit offenders who otherwise would not be penalized and will ensure that our precious tax dollars no longer subsidize benefits for those who abuse drugs.

Section 7603, in effect, overturns McNally v. United States, 107 S.Ct. 2875 (1987), returning to Federal prosecutors an essential tool for pursuing public corruption and preserving good, honest government. Unfortunately, significant enhancements to anti-corruption law that would have increased penalties and specifically addressed narcotics-related corruption and election fraud were deleted from the bill before final passage.

Major additions to existing law criminalizing additional aspects of child pornography and adding new provisions dealing

with interstate receipt or possession for sale of obscene material are also contained in the bill. These provisions include most of the legislative recommendations of the Meese Commission on Pornography. The major provisions of this Administration-proposed legislation were preserved in the final bill through the untiring efforts of Senators Strom Thurmond and Orin Hatch and Representatives Bill McCollum, Dan Lungren, and Chris Smith.

The bill does include, however, a number of features that my Administration opposed, most notably the so-called "drug czar" provisions in title I, as well as a host of reporting requirements. The drug czar provisions impose new layers of bureaucracy and regulatory procedures that could slow progress and otherwise be counterproductive to focusing Federal drug efforts effectively. In that connection, Congress should be mindful of the potential implications that the drug czar may have for foreign policy and intelligence matters. I am hopeful that the next Congress will be flexible in considering any recommendations that the new Administration may have as these and related provisions are implemented.

I also regret that important provisions sought by the Administration were deleted from the final compromise bill. The House provision extending the decision of Leon v. United States, 468 U.S. 897 (1984), which would have provided exceptions to the "exclusionary rule" for good faith warrantless searches, is a good example.

I note that several provisions of H.R. 5210, such as section 4101(b) (concerning the Organization of American States), instruct the President, or his subordinates, to undertake particular international negotiations. In light of the President's Article II plenary authority to conduct such negotiations, these provisions shall be construed and applied consistent with those constitutional authorities.

I also have strong reservations about section 4702 of H.R. 5210, which would require the Secretary of the Treasury to negotiate currency reporting agreements with foreign governments, under threat of sanctions. We share the goal of strengthening our international money laundering efforts through cooperation with foreign governments; however, this unprecedented effort to punish foreign governments that fail to implement United States banking regulations in their countries is an affront to their sovereignty. I fully expect that it would not be in the national interest of the United States to impose sanctions, except in the most egregious cases, such as where a foreign government tolerates an environment conducive to drug money laundering and is not cooperating in international drug investigations and prosecutions. The most effective way to achieve a united international front against drug trafficking and money laundering is to continue to promote cooperation with foreign governments, not to invite confrontation.

Finally, I must note that, although Congress has provided supplemental appropriations in this legislation for various

anti-drug activities, the resources available to key components of the Department of Justice remain seriously deficient. Even with the additional funds included in H.R. 5210, Congress has underfunded my request for the Bureau of Prisons by \$247 million, the FBI by \$64 million, the Department's Legal Divisions by \$25 million, and the Drug Enforcement Administration by \$3 million. At the same time, \$241 million has been provided for Justice Department grant programs that are not the most effective use of Federal resources, and that should have been phased out years ago. Congress must recognize that denying sufficient resources to the men and women who fight our Nation's war on drugs only makes their jobs, already difficult, even more so.

Despite its shortcomings, this drug bill as enacted is a major success for the United States Government and for the American people as a whole. I look forward to the 101st Congress and the next Administration to continue to build upon the foundation laid by this bill.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/10/88 ACTION/CONCURRENCE/COMMENT DUE BY: COB 11/14/88

SUBJECT: H.R. 5210 - ANTI-DRUG ABUSE ACT OF 1988
SIGNING STATEMENT ATTACHED

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	KRANOWITZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MASENG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
POWELL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RANGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WRIGHT - OMB	<input type="checkbox"/>	<input type="checkbox"/>	RISQUE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
OGLESBY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CRIPPEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
CULVAHOUSE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUCK	<input type="checkbox"/>	<input type="checkbox"/>
DAWSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
DONATELLI	<input type="checkbox"/>	<input type="checkbox"/>	CLERK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>MacDonald</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HOBBS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HOOLEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please provide your comments/recommendations directly to my office by close of business Monday, November 14. Thank you.

RESPONSE: *no comment*

WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/15/88 ACTION/CONCURRENCE/COMMENT DUE BY: 2:00 p.m. Wednesday 11/16

SUBJECT: PRESIDENTIAL REMARKS: SIGNING CEREMONY FOR THE ANTI-DRUG ABUSE ACT OF 1988
(11/15 4:30 p.m. draft)

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	KRANOWITZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MASENG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
POWELL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RANGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WRIGHT - OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RISQUE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
OGLESBY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CRIPPEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
CULVAHOUSE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUCK	<input type="checkbox"/>	<input type="checkbox"/>
DAWSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
DONATELLI	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>DOLAN</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>FAULKNER</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HOBBS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>COURTEMANCHE</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HOOLEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>MACDONALD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REMARKS:
Please provide any comments/recommendations directly to Tony Dolan by 2:00 p.m. on Wednesday, November 16th, with an info copy to my office. Thanks.

RESPONSE:

(Dannerbeck/ARD)
November 15, 1988
4:30 p.m.

PRESIDENTIAL REMARKS: SIGNING CEREMONY FOR THE ANTI-DRUG ABUSE
ACT OF 1988
FRIDAY, NOVEMBER 18, 1988

1988 NOV 15 PM 5:00

Thank you very much. Members of Congress, distinguished guests, ladies and gentlemen welcome to the the White House. This is a very special occasion for everyone here, especially Nancy.

For 8 years she has led the fight to not only rid our society of drugs, but banish any lingering tolerance of the false image that drugs are somehow "cool" or "hip". As a Nation we now realize what Nancy has been saying over the past many years: Drugs give a false high, they feel good only long enough to weave a web of addiction. Once trapped, the user is drawn into an existence from which nothing good can come.

But as many of you here know firsthand, Nancy is the co-captain in our war on drugs. She has had help -- all across this country millions of decent Americans have stood up and joined her. In every corner of our society people are fighting the purveyors of this evil and are just saying no.

And the numbers are encouraging. One in particular gives us great hope: Cocaine use by our Nation's high school seniors dropped by 1/3 last year -- from 6.2 percent in 1986 to 4.3 percent in 1987 -- that is the lowest level in a decade. And the total number of users has leveled off and may be falling.

We not only have made broad progress on the demand side, we have also closed ranks on those who continue to provide drugs.

Arrests, convictions, and prison sentences of sellers and abusers are rising to record levels.

Several months ago here at the White House we honored those heroes who gave their lives in this battle. Heroes like D.E.A. Special Agent Enrique Camarena Salazar and a young rookie cop from New York named Eddie Byrne. Here today is Matthew Byrne who joins us as we give his son's comrades the valuable tools they need to carry forth the fight that young Eddie so valiantly gave his life for. We salute Eddie Byrne, we salute his family for their determination that his death will not be in vain. We salute all brave law officers.

This bill is the product of a bipartisan effort. Important language was dropped from the final version, most notably the easing of the exclusionary rule and random drug testing. While this language would have provided effective methods to enhance drug enforcement, the final product strikes a balance between tough law enforcement and protection of victims rights with the Constitutional guarantees of the rights of criminals. The provision providing the death penalty for narcotics kingpins and drug related murders, along with tough new provisions dealing with everything from money laundering and international banking regulations to international interdiction and state and local drug enforcement are just the weapons Eddie and Enrique's comrades in arms need to fight an effective war.

This bill also addresses the demand side of drug abuse, providing \$1.5 billion in increased drug treatment and prevention

programs and nearly half a billion dollars for drug education programs.

Also included in the bill are harsh new laws to deter the scum who sell or distribute obscene material or child pornography. With fines up to \$100,000 and prison terms of 20 years, we hope to put these people out of business for good.

Our battles aren't fought by any single person, nor can they be won by a single bill. But with the measures we have taken over the past 8 years and the significant additions made today, we are one step closer to drug-free America.

Eight years ago we set a course, we stuck to it and the path we blazed is marked by the success of our accomplishments. Our ultimate destination -- a drug-free America. And now in the tenth hour of this Presidency we give a new sword and shield to those whose daily business it is to excise from America's streets and towns the scourge of illicit drugs.

Ladies and gentlemen, I will now sign the Anti-drug Abuse Act of 1988.