sentence but government appeal of an unusually low one. Government appeal of sentence -- which is clearly constitutional under the case law and is supported by the Judicial Conference assures that balanced case law will develop on questions of the appropriateness of sentencing either above or below the guidelines.

Title II also makes the sentencing options available to a judge more effective. In particular, it makes probation and fines more useable as options to incarceration in appropriate cases. This usefulness is enhanced by placing these options in a sentencing guidelines system that will recommend when their use is appropriate and when it is not.

Title II should also save the government money after the initial start-up phase. It replaces the expensive and cumbersome parole system with a small Sentencing Commission that will not be involved in individual cases. It may reduce somewhat the repeated challenges to a conviction caused by the fact that a defendant thinks his sentence is too high. It may also reduce the caseload of probation officers, since it will not automatically result in post-release supervision of an offender if such supervision is unnecessary.

Before closing the discussion of title II, I should note that the Department welcomes the support of the Judicial Conference of the United States of some form of determinate

sentencing guidelines system with appellate review of a sentence outside the guidelines. However, the Department wishes to note particular disagreement with two major substantive points of the Judicial Conference proposal. First, the Department would make the Sentencing Commission a full-time body with members selected after participation by all three branches of government rather than, as proposed by the Judicial Conference, a part-time body selected only by the judicial branch. We believe that it is important that the work of the sentencing guidelines agency be carried out by a highly visible entity that is able to devote its full energies to creation of sound federal sentencing policy -- and that this is especially important at the initial stages of guidelines development and implementation.

Second, we disagree with the intriguing suggestion of the Judicial Conference that the Parole Commission be retained with a substantially altered role. Under the proposal, the judge, after considering sentencing guidelines, would set both the parole eligibility date for a convicted defendant sentenced to prison and his maximum term of imprisonment. The defendant would be released on his parole eligibility date unless the Parole Commission determined that he had not substantially complied with prison rules, in which case the Parole Commission would set a release date within the maximum. The Parole Commission would set conditions of parole release and would determine the consequences of parole violations. These provisions would, in effect, keep an expensive and cumbersome agency in existence primarily to carry

out a function that the Bureau of Prisons performs today and should continue to perform -- that of determining credit toward service of sentence for good behavior. In addition, the proposal seems to perpetuate a problem with current law: the person who receives street supervision following his time in prison is the one who has time remaining on his sentence rather than necessarily the person who needs supervision, and the better the prisoner complies with prison rules the longer his street supervision. The result is a waste of resources on supervising defendants who may not need it at the same time the system fails to supervise others who should be supervised.

IV. Conclusion

The Administration strongly recommends the passage of title II of S. 829. We do have a number of minor technical suggestions that we would like to submit to the Subcommittee shortly.

TITLE III - The Exclusionary Rule

Title III of the bill sets our a modification of the Fourth Amendment exclusionary rule to restrain it to its proper role, namely deterring unlawful police conduct. Our proposal is identical to that submitted by the Administration and introduced by Chairman Thurmond as S. 2231 in the 97th Congress. Our proposal is, simply, that the exclusionary rule would not be applied in cases in which the law enforcement officers who conducted the search acted in a reasonable good faith belief that their actions were lawful.

Before discussing this proposal in greater depth, I would like to discuss the origin and development of the rule and some specific cases which illustrate the very real contemporary problems created by the rule in quite a large number of cases. At the outset, however, I think it is important to address one of the most seriously misplaced arguments raised in the current debate over the rule, the impact of the rule on the crime rate. Supporters of the rule claim that advocates for modification of the present rule argue incorrectly that reforming the rule will reduce the crime rate. The fact, however, is that advocates for reform do not claim that any such change is a panacea for crime rate reduction. Any thoughtful consideration of contemporary crime must recognize, unfortunately, that there is no single panacea. On the other hand, advocates for reform do point out that the rule operates to free known murderers, robbers, drug

traffickers and other violent and non-violent offenders and that a rule of evidence which has such a result without a reasonable purpose to support it is intolerable.

These heavy costs extracted from society by the rule have not gone unnoticed by the Supreme court. In Stone v. Powell, 428 U.S. 465, 490 (1976), the Court stated that the rule "deflects the truthfinding process and often frees the guilty." The Court has noted that its "cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truthfinding functions of the judge and jury." United States v. Payner, 447 U.S. 727, 734 (1980). The Court's recognition of the price exacted by the rule now causes it to answer the question of whether the rule should be applied in a particular context "by weighing the utility of the exclusionary rule against the costs of extending it..." Stone v. Powell, supra at 489.

The Rule and its Development

In tracing the development of the rule it is important at the outset to recall the specific words of the Fourth Amendment upon which the rule is based: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

It is apparent that the "exclusionary rule" itself is not articulated in the Fourth Amendment or, for that matter, in any part of the constitution, the Bill of Rights, or the federal criminal code. The exclusionary rule is, rather, a judicially

declared rule of law created in 1914, when the United States Supreme Court held in Weeks v. United States, 232 U.S. 383, that evidence obtained in violation of the Fourth Amendment is inadmissible in federal criminal prosecutions.

This doctrine was criticized by many commentators from the start, but the rule became firmly implanted in the federal criminal justice system. The states, however, were divided in their opinion of the rule. In the three decades following Weeks, sixteen states adopted the rule while thirty-one states refused to accept it.

It was not until 1949 that the Supreme court was squarely confronted with the question of whether the exclusionary rule should be applied to state criminal prosecutions. In Wolf v. Colorado, 338 U.S. 25 (1949), the court held that although the guarantees of the Fourth Amendment applied to the states through the due process clause of the Fourteenth Amendment, the Fourteenth Amendment did not forbid the admission of evidence obtained by an unreasonable search and seizure. Later, in Mapp v. Ohio, 367 U.S. 643 (1961), the Court reversed its decision in Wolf and held that because the Fourth Amendment right of privacy was enforceable against the states through the Fourteenth Amendment, "it is enforceable against them by the same sanction of exclusion as is used against the Federal Government."

When first imposed by the Supreme Court In 1914, the exclusionary rule was justified both as a means of deterring unlawful police misconduct and on a judicial integrity ground,

which sought to prevent courts from being accomplices in willful constitutional violations. Over time, it has become clear that the deterrence rationale is the foremost reason behind the rule. Cases such as Stone v. Powell, supra, Michigan v. DeFillippo, 443 U.S. 31 (1979), United States v. Peltier, 422 U.S. 531 (1975), and United States v. Calandra, 414 U.S. 338 (1974), have clearly established that today the rule will be invoked to protect Fourth Amendment rights only when to do so is deemed efficacious as a deterrent to unlawful conduct by law enforcement authorities. In consistently focusing on the deterrence rationale in defining and limiting the application of the rule, the Court has all but ignored the judicial integrity ground. At any rate, to the extent that notions of "judicial integrity" are still a basis for the rule's retention, the Supreme Court in Peltier, supra, has stated that "the 'imperative of judicial integrity' is also not offended if law enforcement officials reasonably believed in good faith that their conduct was in accordance with the law..." 422 U.S. 531, 537-38.

Although the Court recognizes deterrence as the rule's paramount purpose, it has not limited the rule only to those situations in which the law enforcement officer's conduct is susceptible to being deterred. For example, courts continue to suppress evidence seized by law enforcement officers during searches conducted pursuant to duly authorized warrants obtained in good faith but later found defective by an appellate court. Such was the situation in United States v. Alberto Antonio Leon

(9th Cir. Mar. 4, 1983). In that recent case, an informant advised police officers that he had seen two named persons selling drugs from their residence five months before. On the basis of that tip, the police conducted a one-month surveillance of the two people and their residence. The surveillance eventually expanded to cover two other residences and other persons with whom the two earlier identified people had been associating, the circumstances strongly suggesting that all persons and residences were involved in narcotics trafficking. After consulting with three assistant district attorneys, the police obtained warrants from a state court judge for the search of the residences and various automobiles belonging to the suspects. The searches produced narcotics and narcotics paraphernalia.

The defendants were charged with various drug violations but a district judge ruled that the search warrants were defective because the informant's information was probably stale. Much of the evidence obtained by the search was suppressed. The Ninth Circuit affirmed over the objection of Justice Kennedy, who observed in his dissenting opinion that the affidavit in support of the warrants "sets forth the details of a police investigation conducted with care, diligence, and good-faith."

United States v. Shorter, 600 F.2d 585 (6th Cir. 1979), is another example of the exclusionary rule being applied where an authorized search warrant is invalidated by a second judge or court. In that case, local police and agents of the Federal Bureau of Investigation (FBI) arrested a suspected Ohio bank

robber at his home. After the arrest, the FBI agent telephoned a federal magistrate and stated his grounds for a search warrant which was then issued by the magistrate as permitted by law. The subsequent search produced incriminating evidence, including bait bills and a firearm. The trial judge ruled the search lawful, but the conviction was reversed on appeal. The appellate court decided that although the officer had in fact been placed under an oath by the magistrate which incorporated all the testimony already provided in the course of reciting the grounds for the warrant, the failure of the magistrate to require the oath at the beginning of the telephone conversation violated the law because the applicable Federal Rule requires that the oath be obtained "immediately."

These cases involved disagreements between judges about judicial conduct -- there is no police misconduct involved. The police were carrying out their duties as society expects them to do: the officers provided their information fully and honestly to the court and proceeded to carry out the orders of the court once the warrants were issued. Suppression of evidence in instances such as these does not serve the purpose of the exclusionary rule, the deterrence of police misconduct. In fact, it only serves to damage both a community's perception of justice and the morale of law enforcement officers who have followed the rules only to have the evidence suppressed on the premise that they have violated the Constitution. Proper police conduct is thereupon falsely labeled as illegal.

The deterrent purpose of the exclusionary rule also is not served when courts apply the rule to situations where the appellate court cases are not at all clear, where the law is thoroughly confused or even in situations where the cases are in flat contradiction. Police often are confronted with the question of whether to conduct a warrantless search in the field when the circumstances they are facing are not covered by existing case law.

For example, the rule was applied in precisely this type of situation in Robbins v. California, ___ U.S. ___, 101 S. Ct. 2842 (1981). In that case, the Court excluded evidence of a substantial quantity of marihuana found in a car trunk in a decision largely based on two previous cases, United states v. Chadwick, 433 U.S. 1 (1977) and Arkansas v. Sanders, 442 U.S. 753 (1979), neither of which had been decided at the time of the search in Robbins in 1975. On the very same day, the Court decided another case, New York v. Belton, ___ U.S. ___, 101 S. Ct. 2860 which was remarkably similar factually. In both cases, police officers lawfully stopped a car, smelled burnt marihuana, discovered marihuana in the passenger compartment of the car, and lawfully arrested the occupants. Thereafter, in Robbins, the officer found two packages wrapped in green opaque paper in the recessed rear compartment of the car, opened them without a warrant, and found 30 pounds of marihuana. In Belton, the officer found a jacket in the passenger compartment, unzipped the pocket without a warrant, and found a quantity of cocaine.

Both cases required an analysis of the "automobile exception" cases, such as Chadwick, which pertain to the validity of warrantless searches of cars and their contents. When the Court announced its decisions in Belton and Robbins, three justices opined that both searches were legal; three justices opined that both were illegal; and three justice controlled the ultimate decision that Robbins was illegal and Belton was legal. When Robbins was finally decided, 14 judges had reviewed the search. Seven found it valid and seven invalid.

Moreover, the decisions hardly clarified the law of search and seizure in this area. As stated by Justice Brennan in his dissent in Belton:

> "The Court does not give the police any 'bright line' answers to these questions. More important, because the Court's new rule abandons the justifications underlying Chimel, it offers no guidance to the police officer seeking to work out these answers for himself."

It was not surprising, therefore, that the whole field of law involved in these cases was again before the United States Supreme Court less than a year later in United States v. Ross, ___ U.S. ___, 102 S. Ct. 2157 1982). In that case, which involved the search of a brown paper bag containing heroin found in a car's truck, the Court repudiated the holding in Robbins and held that the "automobile exception" to the Fourth Amendment allows police who have lawfully stopped a vehicle which they

reasonably believe to contain contraband to conduct a warrantless search of any part of it, including all containers and packages, in which the contraband may be concealed.

Thus, the rule of law with respect to container searches in automobiles has apparently been finally made clear. Meanwhile, however, the defendant in Robbins who possessed thirty pounds of marihuana, went free because the police at the time of the search did not apply the law as it would be applied at the moment the Supreme Court considered the Robbins case. It is probably a small consolation for the police in that situation that their view of the law was ultimately borne out in a subsequent case. To say that the suppression of reliable, trustworthy, evidence in such a case helps to prevent police "misconduct" is absurd.

The consequence of applying the exclusionary rule in the cases discussed above is two-fold. First, the purpose of the exclusionary rule is not served when the officers believe, in good faith, that they are performing a lawful search. When law enforcement officers obtain a warrant in good faith or when they make a reasonable, good faith attempt to predict the decisions that future courts will make, there exists no logical basis for excluding the evidence they have gathered. Applying the rule in these cases fails to further in any degree the rule's deterrent purpose, since conduct reasonably engaged in, in good faith, is by definition not susceptible to being deterred by the imposition of after-the-fact evidentiary sanctions.

Second, application of the exclusionary rule when the police have acted reasonably and in good faith results in attaching a false label to proper police conduct. This adversely affects the criminal justice system by fostering the public perception that police are engaged in lawless, improper conduct when that is simply not the case. The Supreme Court recognized these effects in Stone v. Powell, 428 U.S. 465 (1976), in which it stated:

> The disparity in particular cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice. Thus, although the rule is thought to deter unlawful police activity in part through the nurturing of respect for Fourth Amendment values, if applied indiscriminately it may well have the opposite effect of generating disrespect for the law and the administration of justice.

The unjustified acquittals of guilty defendants due to application of the exclusionary rule has resulted in a growing concern by our citizens that our system of justice is lacking in sense and fairness. Unfortunately, it seems unlikely that any of these conceptions by the public will change as long as the exclusionary rule remains in its present form and courts continue to expand its application to situations where law enforcement conduct has been manifestly reasonable.

Proposed Legislation Modification

The specific action we suggest in the area of legislative limitation of the rule, as contrasted to legislative abolition of the rule, is based upon a recent significant opinion on the rule rendered by the Fifth Circuit. In United States v. Williams, 622 F.2d 830 (5th Cir. 1980), the Fifth Circuit, after an exhaustive

analysis of the relevant Supreme Court decisions, announced a construction of the exclusionary rule that would allow admission at trial of evidence seized during a search undertaken in a reasonable and good faith belief on the part of a federal officer that his conduct was lawful. A majority of the 24 judges of that court, sitting en banc, concurred in an opinion that concluded as follows (Id. at 846-847):

> Henceforth in this circuit, when evidence is sought to be excluded because of police conduct leading to its discovery, it will be open to the proponent of the evidence to urge that the conduct in question, if mistaken or unauthorized, was yet taken in a reasonable, good-faith belief that it was proper. If the court so finds it shall not apply the exclusionary rule to the evidence.

The reasonable good faith rule announced by the Fifth Circuit is the same rule urged by the Attorney General's Task Force on Violent Crime. If implemented, we believe that this restatement of the exclusionary rule would go a long way towards insuring that the rule would be applied only in those situations in which police misconduct logically can be deterred. Law enforcement officers will no longer be penalized for their reasonable, good faith efforts to execute the law. On the other hand, courts would continue to exclude evidence obtained as a result of searches or seizures which were performed in an unreasonable manner or in bad faith, such as by deliberately misrepresenting the facts used to obtain a warrant. Thus, the penalty of exclusion will only be imposed when officers engage in

the type of conduct the exclusionary rule was designed to deter -- clear, unreasonable violations of our very important Fourth Amendment rights.

It should be noted that the reasonable, good faith rule requires more than an assessment of an officer's subjective state of mind and will not, as is sometimes argued, place a premium on police ignorance. In fact, the rule requires a showing that the officer's good faith belief is grounded in an objective reasonableness. As the Williams court explained, the officer's belief in the lawfulness of his action must be "based upon articulable premises sufficient to cause a reasonable and reasonably trained officer to believe he was acting lawfully." Accordingly, an arrest or search that clearly violated the Fourth Amendment under prior court decisions would not be excepted from the rule simply because a police officer was unaware of the pertinent case law. Thus, there would remain a strong incentive for law enforcement officers to keep abreast of the latest developments in the law.

Constitutionality of the Proposed Modification

In conclusion, I would like to emphasize that the Department of Justice is satisfied that our proposal is fully constitutional. It is very similar to that already adopted in the Williams case, an extensive decision based on a thorough analysis of relevant Supreme Court cases. Moreover, the dissent of the chief Justice in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 422-424 (1971) invited Congressional action in this area. Since our proposal is grounded primarily on

the cases decided over the past ten years in which the Supreme Court has emphasized the deterrence of unlawful conduct as the sole or primary purpose of the rule, the Department has concluded that such a modification would be held to be constitutionally permissible. In addition, as mentioned above, our proposal is fully consistent with the principle of judicial integrity as well as with that of deterrence.

TITLE IV - FORFEITURE

Title IV of our bill is designed to enhance the use of forfeiture, and in particular the sanction of criminal forfeiture, as a law enforcement tool in combatting two of the most serious crime problems facing the country: racketeering and drug trafficking.

There are presently two types of forfeiture statutes in federal law. The first provides for civil forfeiture, a civil in rem action, brought directly against property which is unlawful or contraband, or which has been used for an unlawful purpose. The majority of drug-related property, including drug profits, now must be forfeited civilly under 21 U.S.C. 881. While this civil forfeiture statute has been an extremely useful tool in the effort to combat drug trafficking, a significant drawback is the requirement that a separate civil suit be filed in each district in which forfeitable property is located. Also, the overcrowding of civil dockets may require a substantial delay before these civil forfeiture cases may be heard. Where the property to be forfeited is the property of a person charged with a drug violation, and that violation constitutes the basis for forfeiture, a more efficient way of achieving forfeiture would be to employ the second type of forfeiture statute, a criminal forfeiture statute, which permits the consolidation of forfeiture issues with the trial of the criminal offense.

Criminal forfeiture is relatively new to federal law, although it has its origins in ancient English common law. It is an in personam proceeding against a defendant in a criminal case, and is imposed as a sanction against the defendant upon his conviction. Criminal forfeiture is now available under only two statutes: the Racketeer Influenced and Corrupt Organization or "RICO" statute[1]/ and the Continuing Criminal Enterprise or "CCE" statute,[2]/ a specialized drug offense which punishes those who conduct drug trafficking organizations.

In the last decade, there has been an increasing awareness of the extremely lucrative nature of drug trafficking and of the illicit economy which it generates and through which it is sustained, and thus, of the importance of effective tools for attacking the economic aspects of such crime. A similar awareness with respect to racketeering led to the enactment of the RICO and CCE statutes more than ten years ago.

Both civil and criminal forfeiture hold significant promise as important law enforcement tools in separating racketeers and drug traffickers from their ill-gotten profits and the economic power bases through which they operate. However, because of limitations of and ambiguities in present forfeiture statutes, the law enforcement potential of forfeiture in these areas has not been fully realized. Title IV is designed to address these problems, and is based with minor modifications on the forfeiture provisions of title VI of the Senate-passed comprehensive drug

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1/ 18 U.S.C. 1960 et seq.

2/ 21 U.S.C. 848.

enforcement and violent crime bill of the last Congress, S. 2572.3/ Substantially similar forfeiture legislation, S. 948, is now also before the Judiciary Committee.

The forfeiture provisions of our bill are divided into four parts. The first, Part A, amends the criminal forfeiture provisions of the RICO statute. One of the most important of the RICO amendments would make the proceeds of racketeering activity specifically subject to an order of criminal forfeiture. While it has been our position that the scope of the current criminal forfeiture language of the RICO statute encompasses this type of property, certain appellate courts have not agreed, and this issue is currently pending review by the Supreme Court.4/ In our view, the utility of criminal forfeiture as a means of combatting racketeering would be seriously limited if we were unable to reach racketeering profits, and this amendment is therefore essential to the RICO forfeiture scheme.

Clarifying the scope of property subject to forfeiture goes only part of the way towards making the RICO forfeiture statute more effective. We must also address the serious problem of defendants defeating criminal forfeiture actions by removing, concealing, or transferring forfeitable assets prior to conviction. To counteract this problem, our RICO forfeiture amendments strengthen the government's ability to obtain restraining or

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3/ This title of S. 2572 was, with certain amendments, based on S. 2320, the forfeiture bill prepared by the Administration which was approved by the Senate Judiciary Committee. S. Rept. No. 97-520, 97th Cong., 1st Sess. (1982).

4/ Russello v. United States (No. 82-472, cert. granted Jan. 10, 1982).

protective orders to preserve forfeitable assets until trial and would permit, under limited circumstances, the issuance of such orders prior to indictment -- an authority lacking under current law. They also provide clear authority to void transfers a defendant has undertaken in an attempt to defeat the government's opportunity for forfeiture. Finally, where a defendant has succeeded in removing his forfeitable assets from the reach of the government, our bill would permit the court to order him to forfeit substitute assets of equal value. We believe these amendments are essential to an effective criminal forfeiture statute. In criminal forfeiture, custody of forfeitable assets remains with the defendant until conviction. Therefore, we must have strong authority to prevent improper pre-conviction transfers and to negate the benefits of such transfers when they occur.

Part B of Title IV of the Administration's bill makes several amendments to the Comprehensive Drug Abuse Prevention and Control Act of 1970.5/ The most significant of these amendments is the creation of a new criminal forfeiture statute that would be applicable in all major drug prosecutions. Presently, the sole drug offense to which criminal forfeiture applies is the specialized Continuing Criminal Enterprise statute.6/ The scope of property subject to criminal forfeiture under this new provision would be essentially the same as that now subject to civil forfeiture under the drug laws, namely, the proceeds of

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5/ 21 U.S.C. 801 et seq.

6/ 21 U.S.C. 848.

drug offenses and property used in the commission of these crimes. While there will continue to be cases where the use of civil forfeiture will be either necessary or preferable, the option of proceeding with a criminal forfeiture action should allow greater efficiency in our drug forfeiture efforts by reducing the need to pursue parallel civil forfeiture actions and criminal prosecutions. The new criminal forfeiture statute for drug-related assets tracks the RICO criminal forfeiture provisions as amended in Part A of this Title. Thus, this new statute incorporates important safeguards to protect against the greatest flaw of current criminal forfeiture statutes, the opportunities they present for defendants to utterly avoid the forfeiture sanction by removing, concealing, or transferring their assets before conviction can be obtained.

Another important aspect of Part B of our forfeiture proposal is an amendment of the current civil forfeiture provisions of the drug laws to permit the forfeiture of real property used in the commission of drug felonies. This new authority would permit the forfeiture of buildings used as "stash" houses and illicit drug laboratories, and would also permit the forfeiture of land used to cultivate drugs, a problem, particularly with respect to the domestic cultivation of marihuana, that is of growing concern to federal drug enforcement authorities. The civil forfeiture provisions of our drug laws are also amended in Part B to include a provision for the stay of civil forfeiture proceedings pending the disposition of a related criminal case. Without such stays, the civil forfeiture proceeding can be

manipulated to obtain premature, and otherwise impermissibly broad, discovery of matters that will arise in the government's prosecution of an associated criminal offense.

Through the amendments set out in Part B of our forfeiture proposal, we should be able to improve significantly our efforts to attack the crucial economic aspects of the lucrative illicit drug trade. Increased efforts in this area have obvious benefits. However, we also must recognize that pursuing forfeiture can prove to be an expensive proposition for the United States. Indeed, in certain cases, the expenses associated with forfeiture can exceed the amount that we ultimately realize upon the sale of forfeited assets. In our view, it would be particularly appropriate to make the net profits from drug forfeitures available to defray the costs incurred by the government in obtaining forfeitures. Therefore, Part C of this title establishes a trial four-year program under which amounts realized by the United Stated from the forfeiture of drug profits and other drug-related assets would be placed in a special fund from which the Congress could appropriate moneys specifically for the purpose of paying expenses that arise in civil and criminal forfeiture actions under the drug laws. Among the purposes for which these funds could be used is the payment of rewards for information or assistance leading to a forfeiture. The availability of substantial rewards is essential if we are to obtain significant forfeiture in the secretive and violent setting of drug trafficking.

The final group of forfeiture amendments, which make up Part D of Title IV, are amendments to the Tariff Act of 1930. These provisions govern the seizure and forfeiture of property under the customs laws, and are also applicable to seizures and forfeitures of drug-related property under 21 U.S.C. 881. The most important of these amendments would expand the use of efficient administrative forfeiture proceedings in cases in which no party comes forward to contest a civil forfeiture action. Under current law, administrative forfeiture is available only in those uncontested cases which involve property valued at $10,000 or less; all other cases must be the subject of judicial proceedings. Because of this current low valuation ceiling on administrative forfeitures, judicial proceedings are required in a significant number of forfeiture cases, even though there is no party in opposition to the forfeiture. In these cases, the overcrowding of court dockets often means a delay of more than one year before the case may be heard, and during this period of delay the property is subject to deterioration and the costs to the government in maintaining and safeguarding the property escalate. To address these problems, the Tariff Act is amended in our bill to permit the use of more efficient administrative forfeiture proceedings in uncontested cases involving any conveyances used to transport illicit drugs and any other property of a value of up to $100,000.

Also included in these Tariff Act amendments are two changes in current law that will enhance cooperation between federal law enforcement agencies and their State and local counterparts.

First, new authority is created whereby property forfeited by the United States may be directly transferred to State or local agencies which have assisted in developing the case that led to the forfeiture. Second, the authority for discontinuance of federal forfeitures in favor of State or local forfeiture proceedings is clarified.

Finally, the Tariff Act amendments provide for a trial funding mechanism for meeting the expenses of customs forfeitures which parallels that established for drug-related forfeitures under Part C of this Title. In essence, this provision places the moneys realized from forfeitures under the customs laws in a special fund from which appropriations may be made to cover the costs associated with the seizure, forfeiture, and ultimate disposition of assets.

For the purposes of our testimony today, we have only touched on the more important of the forfeiture amendments of Title IV of the Administration's bill. However, in this title of the bill, we have attempted to achieve a comprehensive improvement of our forfeiture laws. Thus, our proposal not only corrects the most disturbing limitations of current law, but also addresses numerous ambiguities and provides needed guidance in procedural matters, guidance which is particularly lacking in current criminal forfeiture statutes. Forfeiture can be a vital element in our efforts to combat racketeering and drug trafficking. But to achieve this goal, our forfeiture laws must be strengthened as provided in Title IV of our bill.

TITLE V - The Insanity Defense

Title V of the bill deals with the insanity defense and with related procedural matters that apply in the federal criminal justice system. The subject is an important one. Although the insanity defense is raised in comparatively few federal cases and is successful in even fewer, the defense raises fundamental issues of criminal responsibility which the Congress should address. Moreover, the insanity defense is often asserted in cases of considerable notoriety which influence, far beyond their numbers, the public's perception of the fairness and efficiency of the criminal justice process.

It requires little reflection to understand why the public is so concerned about the defense. When it is raised following a crime involving a prominent defendant or victim, in which there is absolutely no question whether the defendant committed the acts constituting the offense -- indeed we may well have been able to see him do it several times over on television news reports -- and yet the highly publicized trial that follows focuses not on those acts so much as on the defendant's mental and emotional history, most lawyers and laymen alike would agree that the focus of the judicial process has become grossly distorted.

In spite of these problems with the defense and its importance, it is ironic, as the Attorney General pointed out last July when he testified before the Committee, that neither the

Congress nor the Supreme Court has yet played a major role in its development. Its evolution in England and in this country over several centuries has been haphazard and confusing. As the Committee knows from its work over the past decade or more on the criminal code revision bills, Congress has never enacted legislation defining the insanity defense. Likewise, the Supreme Court has generally left development of the defense to the various federal courts of appeals. As a result, the federal circuits do not even at present apply a wholly uniform standard. In recent years, however, all of the federal circuits have adopted, with some variations, the formulation proposed by the American Law Institute's Model Penal Code which provides that a "person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the [criminality] [wrongfulness] of his conduct or to conform to the requirements of the law."

As a result, in a trial involving the insanity defense, the defendant's commission of the acts in question is commonly conceded or at least not seriously contested. Instead the trial centers around the issue of insanity and the key participants are highly paid psychiatrists who offer conflicting opinions on the defendant's sanity. Unfortunately for the jury and for society, the terms used in any statement of the defense -- for example the term "paranoid schizophrenia" -- are often not defined and the experts themselves disagree on their meaning. In addition, the

experts often do not agree on the extent to which behavior patterns or mental disorders that have been labeled "schizophrenia," "inadequate personality," and "abnormal personality" actually cause or impel a person to act in a certain way. For example, a December, 1982, statement by the American Psychiatric Association on the insanity defense noted that "[t]he line between an irresistible impulse, and an impulse not resisted is probably no sharper than that between twilight and dusk."

Since the experts themselves are in disagreement about both the meaning of the terms used to define the defendant's mental state and the effect of a particular state on the defendant's actions -- but still freely allowed to state their opinion to the jury on the ultimate question of the defendant's sanity -- it is small wonder that trials involving an insanity defense are arduous, expensive, and worst of all, thoroughly confusing to the jury. Indeed the disagreement of the experts is so basic that it makes rational deliberation by the jury virtually impossible. Thus, it is not surprising that the jury's decision can be strongly influenced by the procedural question of which side must carry the burden of proof on the question of insanity. In this regard, we can vividly recall that several of the jurors in the Hinckley case publicly stated afterwards that they were strongly influenced by the fact that the government had the burden of proof.

Thus, Title V has been drafted to reflect three changes in the insanity defense in the federal system that would restrain it within fair and reasonable boundaries and make it more comprehensible to the jury. First, the defense would be limited to those cases in which the defendant, as a result of mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts, and it is made explicit that mental disease or defect does not otherwise constitute a defense. Second, opinion evidence on the question whether the defendant had the mental state or condition to constitute either an element of the crime or a defense is prohibited; and third, the defendant would be required to carry the burden of proof of his insanity by clear and convincing evidence.

Limiting the defense to those cases in which a mental disease or defect renders the defendant unable to appreciate the nature and quality or wrongfulness of his acts would abolish the volitional portion of the two-pronged ALI-Model Penal Code test for insanity quoted earlier. We have concluded that elimination of the volitional portion of the test is appropriate since mental health professionals themselves have come to recognize that it is very difficult if not impossible to determine whether a particular individual lacked the ability to conform his conduct to the requirements of the law because he was suffering from a mental disease or defect. There is, in short, a much stronger agreement among psychiatrists about their ability to ascertain whether as a

result of mental illness a defendant had an understanding of his acts than about whether he had the capacity to heed the law's strictures.

Opinion evidence on the ultimate question of whether the defendant had the mental state or condition to constitute an element of the offense or a defense would be proscribed in our proposal by an amendment to Rule 704 of the Federal Rules of Evidence. We believe that such a provision is critical in overcoming the abuses of the insanity defense as it is presently employed in the federal system. In many insanity defense trials, prosecution and defense psychiatrists agree on the nature and extent of the defendant's mental disorder. What they disagree about is the probable relationship between his disorder and his ability to control his conduct or even to appreciate its wrongfulness. In our view, expert opinion testimony on whether the defendant could appreciate the nature and quality or wrongfulness of his acts and on his motive, intent, or other mental state should be disallowed. As recognized by many psychiatrists themselves, there is no basis for believing that psychiatry is competent to determine such matters as they existed on a previous occasion as opposed to simply describing the person's mental disorder or defect. We believe that the question of the connection between any mental disease or defect and the defendant's inability to understand his acts is the type of fact question that ought to be left to the trier of fact unhindered by "expert" opinion in an area where no consensus of such opinion exists.

Our proposal also shifts to the defendant the burden of proving his insanity by clear and convincing evidence. Such a shift does not present a constitutional issue. The present rule followed in the federal courts which places the burden of proving sanity on the prosecution stems from the Nineteenth Century case of Davis v. United States, 160 U.S. 469. The rule has been held to establish "no constitutional doctrine, but only the rule to be followed in federal courts." Leland v. Oregon, 343 U.S. 790, 797 (1952). Leland, which sustained the constitutionality of an Oregon statute shifting the burden of persuasion on insanity to the defendant beyond a reasonable doubt, was reaffirmed by the Supreme Court in Patterson v. New York, 432 U.S. 197 (1977), a case dealing with the constitutionality generally of the concept of affirmative defenses in which the burden of persuasion is placed on the defendant. Although Patterson did not deal with the insanity defense, it noted specifically that under Leland "once the facts constituting a crime are established beyond a reasonable doubt, based on all the evidence, including evidence of the defendant's mental state, the State may refuse to sustain the affirmative defense of insanity unless demonstrated by the defendant by a preponderance of the evidence." Patterson, p. 206. As recently stated by the Sixth Circuit: "Patterson makes it clear that so long as a jury is instructed that the state has the burden of proving every element of the crime beyond a reasonable doubt, there is no due process violation. The state may properly place the burden of proving affirmative defenses

such as ... insanity upon the defendant." Krzeminski v. Perini, 614 F.2d 121, 123 (6th Cir. 1980). A little over half of the states now place the burden of persuasion on the defendant.

Our proposal would require the defendant to prove his insanity by clear and convincing evidence, a higher standard of proof than a mere preponderance of the evidence. In our view, it is important to assure that only those defendants who clearly satisfy the elements of an insanity defense are exonerated from what otherwise would be culpable criminal behavior. It is therefore appropriate to require the defendant to demonstrate his insanity by something more than a bare preponderance of the evidence.

Moreover, what our proposal does not do is worthy of special emphasis. While Title V would shift the burden of proof on the insanity defense to the defendant, it does not relieve the government of the burden of proving each and every element of the offense, including any statutorily prescribed mental element such as willfulness or malice, beyond a reasonable doubt.

In sum, we believe that our proposal for a legislative limitation of the insanity defense is reasonable, workable, and fair. It continues the privilege of the defendant to raise the defense of insanity, while restoring the right of society, through the jury, to evaluate all the evidence and determine whether any mental disease or defect that the defendant is able to show was the cause of the crime. In short, the jury will determine whether the defendant committed the crime because he

could not understand what he was doing or could not appreciate the wrongfulness of his conduct due to a mental disease or defect, or whether he had such an understanding or appreciation but decided to do it anyway.

Beyond the reforms of the insanity defense itself which I have just described, Title V contains a number of provisions for the commitment to a mental hospital for treatment of persons at various stages in the criminal justice process who are so disturbed as to present a danger to the community. These provisions are familar to the Committee since they are virtually identical to those contained in recent criminal code revision bills such as S. 1630 in the last Congress and generally arouse little or no controversy. Of paramount importance is the establishment for the first time of a civil commitment procedure for defendants who, for one reason or another, are charged with a crime but not convicted. At present, outside the District of Columbia, there is no federal statute authorizing or compelling the commitment of an acquitted but presently dangerous and insane individual. When faced with such a situation, federal prosecutors today can do no more than call the matter to the attention of State or local authorities and urge them to institute commitment proceedings. Of course there is no requirement that this will occur, and the lack of such a commitment procedure in the federal system creates the very real potential that the public will not be adequately protected from a dangerously insane

defendant who is acquitted at trial. In short, federal prosecutors must at present hope that the state officials will come to their rescue and take up what began as a federal responsibility.

Accordingly, we strongly urge the Committee to include all of these comprehensive procedural reforms as an integral part of the reform of the insanity defense.

TITLE VI -- Reform of Federal Intervention in State Proceedings

Title VI of the bill responds to the serious problem of habeas corpus abuse. The overly broad availability of collateral proceedings in the federal courts has been a growing source of concern in recent years to legal writers, state judges and attorneys general, and federal judges. Indeed, a majority of the Justices of the Supreme Court have strongly criticized the current operation of federal habeas corpus and have called for basic limitations on its scope and availability. 1/ The generally recognized shortcomings of the current system include the affront to the state courts involved in unnecessary re-adjudication of their decisions by the lower federal courts; the impossibility of ever conclusively ending the litigation of a criminal case on account of the open-ended availability of federal habeas corpus; the waste of federal and state resources involved in litigating the frivolous and redundant petitions of state and federal prisoners; and the virtual nullification of

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1/ See Rose v. Lundy, 455 U.S. 509, 546-47 (1982) (Stevens, J., dissenting); Schneckloth v. Bustamonte, 412 U.S. 218, 250 (1973) (concurring opinion of Powell, J., joined by Burger, C.J., and Rehnquist, J.); Burger, 1981 Year-End Report on the Judiciary 21; O'Connor, Trends in the Relationship Between the Federal and State Courts from the Perspective of a State Court Judge, 22 William & Mary L. Rev. 801, 814-15 (1981); Justice Lewis Powell, Address Before the A.B.A. Division of Judicial Administration, Aug. 9, 1982. See also Schneckloth v. Bustamonte, 412 U.S. 218, 249 (1973) (Blackmun, J., concurring); Engle v. Isaac, 456 U.S. 107, 126-28 (1982).

state capital punishment laws that has resulted from delayed and repetitive habeas corpus applications in capital cases.

Title VI incorporates a variety of reforms responding to these abuses. The proposals in the Title originated as S. 2216 of the 97th Congress, which was the subject of hearings before the Senate Judiciary Committee in April of 1982. The proposals were later re-introduced in the 97th Congress by Senator Thurmond as S. 2838 with certain clarifying amendments resulting from the hearings. The proposals of Title VI of this bill are the same as those of S. 2838. The intended interpretation and justification of the proposed reforms have been fully set out in prior statements of the Administration and the bills' sponsors. 2/ In brief, the major reforms of Title VI are as follows:

First, Title VI would establish a time limit on habeas corpus applications. The need for such a reform was cogently expressed in a recent statement of Justice Powell:

2/ See 128 Cong. Rec. S11851-59 (daily ed. Sept. 21, 1982) (statement of Senator Thurmond concerning S. 2838); 129 Cong. Rec. S3147-48 (daily ed. March 16, 1983) (section-by-section analysis of Title VI of S.829); The Habeas Corpus Reform Act of 1982: Hearing on S.2216 Before the Senate Committee on the Judiciary, 97th Cong., 2d Sess. 16-107 (1982) (Administration statements and testimony concerning S.2216). See also William French Smith, "Proposals for Habeas Corpus Reform," in P. McGuigan & R. Rader, eds., Criminal Justice Reform: A Blueprint (Free Congress Research and Education Foundation 1983).

> Another cause of overload of the federal system is 28 U.S.C. §2254, conferring federal habeas corpus jurisdiction to review state court criminal convictions. There is no statute of limitations, and no finality of federal review of state convictions. Thus, repetitive recourse is commonplace. I know of no other system of justice structured in a way that assures no end to the litigation of a criminal conviction. Our practice in this respect is viewed with disbelief by lawyers and judges in other countries. Nor does the Constitution require this sort of redundancy. 3/

Title VI would correct this situation by enacting a one-year time limit on habeas corpus applications, normally running from exhaustion of state remedies. The proposed limitation rule may be compared to various other limits presently imposed on the review or re-opening of criminal judgments in the federal courts, such as the normal 90 day limit on state prisoners' applications for direct review in the Supreme Court. It would provide ample time for state defendants to seek federal review of their convictions following the conclusion of state proceedings. It would, however, create a means for control of the current abuses of repetitive filing and the filing of petitions years or even decades after the normal termination of a criminal case.

A second reform of Title VI addresses the problem of claims that were not properly raised in state proceedings. It is particularly disruptive of orderly procedures in criminal adjudication if a prisoner who failed to take advantage of a fair opportunity to raise a claim in state proceedings is later

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3/ Justice Lewis Powell, Address Before the A.B.A. Division of Judicial Administration, Aug. 9, 1982.

allowed to raise it in a habeas corpus proceeding, with the potential for unsettling a criminal conviction long after it should be regarded as final. Title VI would establish a general rule barring the assertion in federal habeas corpus proceedings of a claim that was not properly raised before the state courts, so long as the state provided an opportunity to raise the claim that satisfied the requirements of federal law.

The main practical import of the proposed rule is for cases in which attorney error or misjudgment is advanced as the reason why a claim was not raised in the state courts, resulting in its forfeiture under state rules of procedure. A procedural default of this sort would be excused in a subsequent habeas corpus proceeding if the attorney's actions amounted to constitutionally ineffective assistance of counsel, since in such a case the default would be the result of the state's failure, in violation of the Sixth Amendment to the Constitution, to afford the defendant effective assistance of counsel. 4/ But minor or technical errors or misjudgments -- which even the most able attorney will sometimes engage in, given the pressures and complexity of criminal adjudication -- would not excuse a procedural default. As Justice O'Connor stated for the Supreme Court in Engle v. Isaac:

4/ See Cuyler v. Sullivan, 446 U.S. 335, 344 (1980) ("The right to counsel prevents the state from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance.").

> We have long recognized . . . that the Constitution guarantees criminal defendants only a fair trial and a competent attorney. It does not insure that defense counsel will recognize and raise every conceivable constitutional claim. 5/

The approach of Title VI is consistent with the clearest interpretations of the current rules by the federal courts of appeals. 6/ The establishment of this interpretation on a uniform basis will avoid many years of additional litigation that would be required to resolve the existing uncertainties in this area through caselaw development.

A third major reform of Title VI is affording finality to full and fair state adjudications of a petitioner's claims. Justice O'Connor has observed:

> If our nation's bifurcated judicial system is to be retained, as I am sure it will be, it is clear that we should strive to make both the federal and the state systems strong, independent, and viable. State courts will undoubtedly continue in the future to litigate federal constitutional questions. State judges in assuming office take an oath to support the federal as well as the state constitution. State judges do in fact rise to the occasion when given the responsibility and opportunity to do so. It is a step in the right direction to defer to the state courts and give finality to their judgments on federal constitutional questions where a full and fair adjudication has been given in the state court. 7/

5/ 456 U.S. 107, 134 (1982).

6/ See Indiviglio v. United States, 612 F.2d 624, 631 (2d Cir. 1979): "Without some showing that counsel's mistakes were so egregious as to amount to a Sixth Amendment violation, a mere allegation of error by counsel is insufficient to establish 'cause' to excuse a procedural default."

7/ O'Connor, Trends in the Relationship Between the Federal and State Courts from the Perspective of a State Court Judge, 22 William and Mary Law Review 801, 814-15 (1981).

To be full and fair in the intended sense the state adjudication must satisfy a number of specific requirements which are fully set out in the legislative history of the proposal. 8/ The state court determination must be reasonable, and must be arrived at by procedures consistent with applicable federal law. This standard would preserve federal re-adjudication in cases presenting demonstrated deficiencies in the state process. It would, however, avoid the excesses of the current standard of review under which an independent determination of all claims is required even where there is nothing to suggest that their consideration by the state courts was in any way the deficient.

The proposed standard is similar to that applied by the Supreme Court in habeas corpus proceedings prior to the unexplained substitution of the current rules of mandatory re-adjudication in Brown v. Allen. 9/ It may also be compared to

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8/ See 128 Cong. Rec. S11852, S11855-57 (daily ed. Sept. 21, 1982); The Habeas Corpus Reform Act of 1982: Hearing on S. 2216 Before the Senate Committee on the Judiciary, 97th Cong., 2d Sess. 16-17, 41-42, 89-101 (1982); 129 Cong. Rec. S3147-48 (March 16, 1983).

9/ 344 U.S. 443 (1953). See Ex Parte Hawk, 321 U.S. 114, 118 (1944): "Where the state courts have considered and adjudicated the merits of . . . [a petitioner's] . . . contentions . . . a federal court will not ordinarily reexamine upon writ of habeas corpus the questions thus adjudicated . . . . But where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy . . . or because in the particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate . . . a federal court should entertain his petition for habeas corpus, else he would be remediless."

standards of review currently employed in various other areas of federal law. One example is the "good faith" standard applicable to judicial review of state executive action in § 1983 suits, under which the disposition similarly depends on the reasonableness of the state official's views concerning the requirements of federal law. The effect of the new standard of review proposed in Title VI should be a relatively quick and easy disposition in federal habeas corpus proceedings of most claims that have previously been determined by the state courts.

Title VI of the bill would also maintain the general conformity of the standards for collateral proceedings involving state prisoners and federal prisoners by creating a time limit for federal prisoners' collateral attacks and clarifying the rules governing excuse of procedural defaults in such proceedings. The collateral attacks of federal prisoners on their convictions present many of the same problems and involve many of the same abuses as habeas corpus applications by state prisoners. Imposing reasonable constraints on such attacks is accordingly an equally appropriate reform. As Justice O'Connor observed for the Supreme Court in United States v. Frady:

> [T]he Federal Government, no less than the States, has an interest in the finality of its criminal judgments. In addition, a federal prisoner . . . unlike his state counterparts, has already had an opportunity to present his federal claims in federal trial and appellate

> forums . . . . [W]e see no basis for affording federal prisoners a preferred status when they seek post-conviction relief. 10/

Finally, Title VI would institute reforms recommended by Judge Henry Friendly 11/ and Professor David Shapiro 12/ in the procedure on appeal in collateral proceedings and the operation of the exhaustion requirement. These reforms will improve the efficiency of habeas corpus proceedings and reduce the litigating burdens presently associated with them.

10/ 456 U.S. 152, 166 (1982).

11/ See Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 144 n.9 (1970) (access to appeal in collateral proceedings).

12/ Shapiro, Federal Habeas Corpus: A Study in Massachusetts, 87 Harv. L. Rev. 321, 358-59 (1973) (exhaustion of state remedies should not be prerequisite to denial of claims on the merits).

TITLE VII -- Drug Enforcement Amendments

PART A - Drug Penalties

Title VII of the bill, which contains drug enforcement amendments, is divided into two parts. Part A provides a more rational penalty structure for the major drug trafficking offenses punishable under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.). Trafficking in illicit drugs is one of the most serious crime problems facing the country, yet the present penalties for major drug offenses are often inconsistent or inadequate. This title primarily focuses on three major problems with current drug penalties.

First, with the exception of offenses involving marihuana (see 21 U.S.C. 841(b)(6)), the severity of current drug penalties is determined exclusively by the nature of the controlled substance involved. While it is appropriate that the relative dangerousness of a particular drug should have a bearing on the penalty for its importation or distribution, another important factor is the amount of the drug involved. Without the inclusion of this factor, penalties for trafficking in especially large quantities of extremely dangerous drugs are often inadequate. Thus, under current law the penalty for trafficking in 500 grams of heroin is the same as that provided for an offense involving

10 grams. This title amends 21 U.S.C. 841 and 960 to provide for more severe penalties than are currently available for major trafficking offenses.

The second problem addressed by this title is the current fine levels for major drug offenses. Drug trafficking is enormously profitable. Yet current fine levels are, in relation to the illicit profits generated, woefully inadequate. It is not uncommon for a major drug transaction to produce profits in the hundreds of thousands of dollars. However, with the exception of the most recently enacted penalty for distribution of large amounts of marihuana (21 U.S.C. 841(b)(6)), the maximum fine that may be imposed is $25,000. This title provides more realistic fine levels that can serve as appropriate punishments for, and deterrents to, these tremendously lucrative crimes.

A third problem addressed by this title is the disparate sentencing for offenses involving Schedule I and II substances, which depends on whether the controlled substance involved in the offense is a narcotic or non-narcotic drug. Offenses involving Schedule I and II narcotic drugs (opiates and cocaine) are punishable by a maximum of 15 years' imprisonment and a $25,000 fine, but in the case of all other Schedule I and II substances, the maximum penalty is only five years' imprisonment and a $15,000 fine. The same penalty is applicable in the case of a violation involving a Schedule III substance. This penalty structure is at odds with the fact that non-narcotic Schedule I and II controlled substances include such extremely dangerous

drugs as PCP, LSD, methamphetamines, and methaqualone, and federal prosecutions involving these drugs typically involve huge amounts of illicit income and sophisticated organizations. Title VII would correct these penalty problems in the areas of both drug trafficking and importation/exportation offenses.

PART B - Diversion Control Amendments

Part B of Title VII contains numerous amendments in the area of diversion control. For example, this part amends the Controlled Substances Act (CSA) to establish a new emergency authority to place an uncontrolled substance under temporary controls which provide for registration, recordkeeping, and criminal penalties of up to five years. This would permit DEA to deal with rapidly developing situations in which a new or uncontrolled drug suddenly becomes a public danger.

Title VII also amends the registration procedures of current law. It would enable the Attorney General to determine by regulation the frequency with which practitioners must register, though in no case, more than once annually or less than once in three years. This will permit DEA to allow 98% of its approximately 600,000 registrants to register once every three years instead of annually as the law now requires. Title VII would greatly alter the standards required for the registration of practitioners by enabling DEA to consider recommendations of the State licensing board, special limitations, and applicants' prior conviction record and other related matters. Finally, Title VII

would also amend provisions governing the revocation and suspension of registration by correcting the present situation in which the law does not specifically provide that failure to maintain the standards required for registration will be a cause for suspension of registration.

Title VII also addresses the recordkeeping requirements of current law by exempting practitioners from these requirements for drugs which are prescribed. The amendment will broaden the current exemption for prescribing which now relates only to narcotic drugs. However, Title VII narrows the current exemption from the recordkeeping requirements for administering drugs, eliminates the exemption for dispensing them, and increases DEA's ability to detect diversion at the practitioner level.

Title VII amends the CSA to provide special grant authority and to authorize resources for expansion of DEA's State Assistance Program to help State and local governments suppress the diversion of controlled substances. DEA's program to assist States in establishing diversion investigation units has proven successful; however, because of lack of explicit authority and necessary resources, States have been hindered in establishing such programs. The new authority will respond to this problem.

Another area addressed by Title VII is the forfeiture of controlled substances possessed in violation of the law. The amendment will correct an oversight in the original Act which included "manufacture," "distribution," etc., but not "possession."

Title VII includes several amendments to the Import/Export Act. For example, it authorizes the importation of limited quantities of certain drugs for scientific and research purposes. The need for such a provision to assist research has continually arisen since the original law was enacted in 1970. The Act is also amended to permit the Attorney General to require, by regulation, import permits for controlled substances in Schedule III. This expands the current authority to require import permits, which now extends only to Schedules I and II and all narcotic drugs in any Schedule. Title VII also amends the Import/Export Act to permit the Attorney General to ensure that the foreign government of destination has approved import for consumption and not merely for transhipment. This will clarify the intent of the present law and permit the Attorney General to require the documenting proof necessary to help assure that the United States does not become a source country for international diversion.