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Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

SENATE—*Thursday, June 21, 1979*

(Legislative day of Monday, May 21, 1979)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by Hon. DONALD STEWART, a Senator from the State of Alabama.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Lord our God, save us from making this precious moment only a ceremonial exercise. But help us to come close to Thee in spirit and in truth. Keep us from being frightened by the magnitude of our problems. Rather, make us thankful Thou hast matched us to this hour. Give us love for one another and the grace to sanctify every task. Finally, we beseech Thee so to bless our efforts that our Nation may be great enough, good enough and strong enough to be a blessing to all mankind.

In the Redeemer's name, we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 21, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DONALD STEWART, a Senator from the State of Alabama, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. STEWART thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

A TRAGIC DEATH

Mr. ROBERT C. BYRD. Mr. President, the civil war in Nicaragua is of serious concern to all of us who regard our relationships with Central and South America as crucial to America's foreign policy.

This is why we are especially saddened and shocked by the execution-style slaying yesterday in that war-torn country of an American citizen, Bill Stewart, a television correspondent for ABC.

One can only be astounded and disturbed by an attitude among the troops of President Somoza's national guard that would give rise to such an outlandish disregard for the life of another.

Mr. Stewart, without the slightest provocation as recorded by a television camera, was murdered in front of witnesses.

Though a single soldier was said to be involved, it is my hope that this arrogant assault on the right of an American newsman to do his job is not pervasive throughout the ranks of the Nicaraguan National Guard.

Mr. President, I share the concern of the State Department—which has asked for a full report on the incident—and the media community which has a responsibility to report to the world the tragic events in Nicaragua.

It is my hope that Secretary Vance will be successful in enlisting the Organization of American States in a collective effort to halt the fighting in the strife-worn country and in obtaining an agreement on a broadly based transitional government there.

In the meantime, it should be made known in the strongest possible terms that the United States deplores this act of callous indifference to human life.

Mr. Stewart was a distinguished newsman who recently excelled in his coverage of the Iranian revolution. He was from my home State of West Virginia, and started his broadcast career at Huntington station WSAZ-TV.

My sympathies go out to his wife, Myrna, and his parents, Mr. and Mrs. William B. Stewart, who reside in Huntington, W. Va.

ABC NEWSMAN BILL STEWART SLAIN IN NICARAGUA

● Mr. RANDOLPH. Mr. President, I join with my colleague, Majority Leader BYRD, and others, in deploring this outrageous act. I am shocked and saddened by this brutal and senseless murder. Bill Stewart was a brilliant newsman with a record of achievement in his early years. He was a dedicated professional, who risked his life in Iran and elsewhere to gather information.

I knew him from his early television career in Huntington, W. Va., his hometown and the city where his parents reside today. He covered our 1978 campaign headquarters for ABC on election day in Charleston, and we talked into the night. I extend my sympathies to his parents, and wife, Myrna, and to his friends and colleagues.●

INTERNATIONAL COAL INITIATIVES

Mr. ROBERT C. BYRD. Mr. President, last month the governing board of the International Energy Agency, meeting in Paris, took a most important step toward improving the energy picture among our industrial allies. The board adopted a comprehensive set of principles to further the use of coal. This action was based on the sober assessment that conventional oil supplies will not be available at reasonable prices and in sufficient quantities to meet growing world demand.

These IEA principles were designed to increase coal production, trade, and utilization through international cooperation. A course of action was outlined for the conversion of utilities and industrial plants from oil to coal along the lines of our own Fuel Use Act and for the development and rapid commercial use of advanced coal technology. I applaud these actions and am encouraged that the international community is recognizing the merits of coal use and development.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

But we must do still more. Energy use and supplies will undoubtedly be the focus of the upcoming Tokyo economic summit. Our industrial partners are expected to be toughminded on America's profligate use of imported oil. It can be anticipated that rising oil prices and uncertain supplies will be seen as posing a grave threat to the world economy. Increased coal use should be a major part of the summit agenda if any progress in the battle for energy security is to be achieved.

Reduction of our dangerous dependence on imported oil is crucial to the economic survival and national security of this country and the entire free world. Coal can, and should, be a cornerstone of any initiatives to bring about that independence.

A unified approach by industrial nations, such as the creation of a coal common market, might be the place to start. Such an agreement could help reduce the reliance of the industrial democracies on imported oil and reduce the market pressures which allow OPEC to impose exorbitant prices. It would have a favorable impact on the U.S. balance of payments since it would promote the export of coal and coal mining and antipollution equipment. And, of course, it would increase employment in the U.S. coal industry.

As the President embarks on his trip to Tokyo, it is my hope that significant progress can be made in implementing the coal policies enunciated by the IEA. We have the resources and technology to make coal a vital component of the international energy supply picture. Now we must have the will and the wisdom to make the promise a reality.

BURNING COAL INSTEAD OF OIL

Mr. ROBERT C. BYRD. Mr. President, the last few days have brought some encouraging initiatives on the energy front. Production of synthetic fuels from coal has been the focus of several bills introduced in the Congress. Coal use and development by the industrial democracies promises to be a major topic on the agenda, as I have already indicated in another statement, at the upcoming economic summit in Tokyo. But we can do more, now to ease the domestic energy shortage by promoting greater use of coal by utilities and industrial plants. Using coal to generate power could free almost 1 million barrels of oil per day, and that is about the equivalent of the present national oil shortfall. This can only be done by ending the regulatory uncertainty which surrounds coal use.

The Washington Post, in a editorial which appears today, concurs in the need to end the regulatory morass which prohibits the increased use of coal.

I ask unanimous consent that the editorial entitled "The Fast Way to More Fuel," be printed in the RECORD at this point.

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

THE FAST WAY TO MORE FUEL

The fastest and most direct way to expand American energy supplies is to begin, forcefully, to shift oil-burning power plants to coal. That strategy is second only to conservation in the speed with which it could make a real difference in a tightening fuel shortage. Making synthetic fuels out of coal is very much worth doing, for the long term, but synthetics can't contribute much before the late 1980s. In contrast, burning more coal to generate power could free perhaps 1 million barrels of oil a day—the equivalent of the present national oil shortage—within five years. The coal strategy is an obvious choice, but it has been proceeding very slowly. Why?

One reason is uncertainty over environmental rules. Congress intended to rewrite the Clean Air Act in 1977, but got bogged down in a long quarrel that lasted until late 1978. Then the new law left the key decision on power plant standards to the Environmental Protection Agency, and the final ruling appeared only this month. Perhaps these delays were inevitable. Coal smoke is toxic, and requires careful regulation. But during that long debate, the utilities had no way of knowing what it would cost to use coal. That was a powerful incentive to avoid any great commitment to it.

But economic uncertainty has also slowed progress. To the great surprise of the utilities, the country's consumption of electric power is no longer rising as fast as it used to. That's conservation of the most useful and beneficial kind. But, with demand far below their expectations and a recession probably coming, the utilities have grown more cautious than ever about embracing large construction programs.

At this point, the government has to end the uncertainty. It has to tell the utilities that it will be in their own interest, as well as the nation's, for them to move rapidly and steadily toward greater use of coal. Tax cuts and other subsidies on a substantial scale would be justified to get a fast response. Coal generates about 44 percent of the country's electricity, compared with 17 percent for oil and 14 percent for natural gas. (The rest is nuclear and hydroelectric power.)

Public policy now needs to push hard to replace that oil and gas with coal, by converting those oil- and gas-fired plants that are capable of it, and by buying the rest into early retirement. It will take a lot of money, both public and private. But when you consider the costs of severe and repeated oil shortages and disruptions, the price of coal conversion begins to seem entirely reasonable.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 3 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I reserve that time until the distinguished minority leader has had an opportunity to speak.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

A TRAGIC DEATH

Mr. BAKER. Mr. President, I join the majority leader in expressing the regrets—indeed, I believe the outrage—of American citizens at the murder of Bill Stewart.

I hope and trust that this extremely unforunate matter will not go unpunished in Nicaragua. I think it was inexcusable.

A RATIONAL AND REASONABLE ENERGY PLAN

Mr. BAKER. Mr. President, on the matter of coal policy, I commend the majority leader for his statements in that respect.

Try as I will, I cannot pass up the temptation to say that we might also, while we are at it, do something about things such as the Tellico Dam. It is finished, or at least 95 percent complete. It cannot now be finished. It could serve as an additional reservoir for the generation of electricity at a downstream dam and as a hydroelectric source.

Some way, we have to sort out our devotion to environmental integrity, which I support, and reality, which we must observe.

We have a problem before us with respect to the general energy policies of the country. There will be room enough for all of us to sacrifice, and all of us will be called upon to do our part. It is time that we try to put together and publish a rational and reasonable energy plan that assumes nothing and starts from scratch, in a determination to free this country of its dependence on foreign fuel, and to provide the requirements of our population, of commerce and industry, for fuel in the future.

Mr. President, I yield now to the distinguished Senator from Oregon (Mr. HATFIELD).

Mr. HATFIELD. Mr. President, I thank the outstanding minority leader, Mr. BAKER, for his yielding time to me this morning.

Mr. President, I ask unanimous consent that Mr. Greg Doublestein, of my staff, be accorded the privilege of the floor at this moment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mr. HATFIELD in connection with the introduction of legislation are printed under statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Tennessee.

Mr. BAKER. Mr. President, I have no need for the time remaining under the standing order, if there is any time remaining.

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. BAKER. Mr. President, I inquire of the majority leader or anyone else if they have any need for those 5 minutes. I will be glad to yield it to the majority leader if he has need for it.

Mr. ROBERT C. BYRD. I would appreciate it if the distinguished minority leader will yield that time to me.

Mr. BAKER. Mr. President, I yield the remainder of my time under the standing order to the majority leader.

Mr. ROBERT C. BYRD. I thank my friend.

TREASURY INTERNATIONAL AFFAIRS AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 976.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 976) entitled "An Act to authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal year 1980", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That section 5 of the Act of November 8, 1978 (92 Stat. 3092) is amended by inserting "and $22,375,000 for fiscal year 1980," after "1979,".

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I move that the Senate concur in the amendment of the House of Representatives to the bill, S. 976, to authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal year 1980 with an amendment, which I send to the desk.

UP AMENDMENT NO. 295

Mr. PROXMIRE. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposes an unprinted amendment numbered 295.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter to be inserted by the amendment of the House of Representatives, insert the following:

That section 5 of the Act of November 8, 1978 (92 Stat. 3092) is amended—

(1) by inserting "(a)" after "SEC. 5.";

(2) by inserting "and $22,375,000 for fiscal year 1980," after "1979"; and

(3) by adding at the end thereof the following:

"(b) In addition to the amount authorized by subsection (a), there are authorized to be appropriated for fiscal year 1980 not to exceed $800,000 which shall be available only for the payment of (1) any increase pursuant to the Federal Pay Comparability Act of 1970, or section 5382(c) of the Civil Service Reform Act of 1978, in salaries of employees engaged in the functions described in subsection (a) and for the payment of increases in agency contributions attributable thereto; and (2) any increases in allowances and benefits arising from increases in the cost of living authorized to be provided pursuant to section 2.".

Mr. PROXMIRE. Mr. President, the House has amended and returned to the Senate, S. 976, an authorization bill reported by the Committee on Banking, Housing, and Urban Affairs on May 15 and passed by the Senate on May 22. The purpose of the bill is to authorize appropriations for fiscal year 1980 to meet the expenses associated with the international affairs functions of the Treasury Department. Those functions include research on international economic and tax policy and foreign investment, and representation of the United States at international conferences and negotiations on trade financing, monetary relations, taxation, energy, and natural resource issues. Treasury also maintains attaches in key foreign capitals such as London, Tokyo, and Paris to represent U.S. interests.

Until this year the expenses associated with Treasury's international responsibilities have been met by dipping into the exchange stabilization fund, an off-budget fund used to support the dollar in the exchange markets. Three years ago the Banking Committee insisted that the administration present legislation to eliminate the use of the exchange stabilization fund to pay administrative expenses. The fund was not created to pay administrative expenses; it was created to help stabilize the dollar. Administrative expenses should be subject to the regular budget process and to Congressional authorization and appropriation. Public Law 95-612 adopted last year insures that Treasury administrative expenses follow the normal authorization and appropriation procedure.

S. 976, the bill to authorize appropriations to Treasury for fiscal year 1980, as passed by the Senate would have authorized not more than $24 million to be appropriated to Treasury for such administrative expenses, including any sums needed to cover cost-of-living pay adjustments which are likely to be mandated by this fall. Treasury had requested $22,752,000 for its normal expenses and an open-ended amount to cover cost-of-living increases in salaries, pay, retirement, and other personnel benefits authorized by law. The Senate Banking Committee felt that an open-ended authorization was inappropriate and put a cap of $24 million on appropriations, whether regular or supplemental.

The House has now acted upon the legislation as well. The House Banking Committee reduced from $22,752,000 to $22,375,000, because in their judgment the expenses of the Treasury Department would not rise as rapidly as Treasury had projected, especially if Treasury were more conservative in its use of outside consultants and contractural services. I concur with the judgment of the House Banking Committee; I believe Treasury can stay within the lower limit without eliminating activities vital to our international monetary and trade relations.

The House did not authorize any appropriations to meet cost-of-living increases which will be extended to Federal employees this fall. They, quite properly in my view, objected to authorizing an open-ended amount to meet such expenses. At my request the Treasury Department has provided their best estimate of the cost of such increases in fiscal year 1980.

Mr. President, I ask unanimous consent that the letter from Treasury be printed in the RECORD.

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

THE UNDER SECRETARY OF THE TREASURY, FOR MONETARY AFFAIRS,
Washington, D.C., June 12, 1979.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On June 8, the House of Representatives passed H.R. 3347, authorizing appropriations for the Treasury Department's international affairs functions in fiscal year 1980 in the amount of $22,375,000. The House deleted language from the bill authorizing an indefinite amount for nondiscretionary costs, such as cost-of-living pay adjustments. In comparison, the Senate Committee on Banking, Housing and Urban Affairs reported S. 976, authorizing appropriations of $24 million for Treasury's fiscal year 1980 international affairs functions.

The bill as reported by your Committee is clearly preferable to the Treasury. The House-passed bill not only would require Treasury to absorb a cut of $377,000 in its basic fiscal year 1980 funding request of $22,752,000, but also would require us to absorb an additional cut in our programs to accommodate fiscal year 1980 cost-of-living adjustments. These latter amounts are substantial. At a minimum, the cost-of-living adjustments will total $800,000 to meet the projected 5.5 percent cost-of-living increase in Treasury salaries in fiscal year 1980.

Consequently, it is essential to the ongoing work of this Department that the Senate add the sum of $800,000, to meet cost-of-living adjustments, to the House-passed authorization of $22,375,000. If the Senate so acts, no further amounts will be required.

I greatly appreciate the speed with which your Committee has handled this legislation, and hope that you will be able to support a satisfactory resolution of this remaining issue.

Sincerely yours,

ANTHONY M. SOLOMON.

Mr. PROXMIRE. Mr. President, they estimate that $800,000 will be needed at the minimum; they say it is essential to the ongoing work of the Treasury Department that the Senate add the sum of $800,000, to meet cost-of-living adjustments, to the $22,375,000 proposed by the House.

I believe the Senate should accede to Treasury's request but should specify clearly the purposes for which the additional $800,000 may be used. The amendment I have proposed limits the use of the funds to meet cost-of-living increases to three specific purposes: First, pay increases pursuant to the Federal Pay Comparability Act of 1970; second, pay increases pursuant to section 5382(c) of the Civil Service Reform Act of 1978, that is, for those Treasury employees who will be in the new Senior Executive Service and whose salaries will be frozen at least until the fall; and third, increases in allowances and benefits for Treasury personnel stationed overseas—such allowances and benefits are adjusted periodically to correspond to allowances

and benefits afforded comparable U.S. Foreign Service personnel by the State Department. I believe that the bill amended in this fashion will meet the minimum needs of Treasury while avoiding any open-ended authorization of appropriations.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion to concur of the Senator from Wisconsin.

The motion was agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I yield such time as he requires from the remaining time under my control to the Senator from Wisconsin.

Mr. PROXMIRE. I thank the majority leader.

GENOCIDE CONVENTION WOULD STILL ALLOW AMERICA TO TRY HER OWN CITIZENS

Mr. PROXMIRE. Mr. President, a criticism of the Genocide Convention frequently expressed by its opponents is that it could result in the United States forfeiting its right to try its own citizens when a charge of genocide is brought by a foreign government.

Mr. President, nothing could be further from the truth.

This treaty places no limit on the power of our Government to try American citizens at home.

Let me repeat that.

In no way does the Genocide Convention limit our power to try American citizens on American soil.

The evidence for this is very clear.

First of all, the report of the legal committee of the General Assembly explains that the treaty "does not affect the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside the state."

Second, the Senate Foreign Relations Committee stated unequivocably that the United States will maintain the power to try its citizens for acts committed abroad.

Third, the proposed implementing legislation for the treaty directs the Secretary of State to reserve the right of the United States to try its own citizens for alleged acts of genocide when he negotiates the relevant extradition treaties.

Mr. President, it is clear that the United States will maintain the right to try its own citizens for acts committed abroad. This is the interpretation of the General Assembly when it drafted the treaty. This is the conclusion reached by the Foreign Relations Committee when it reported a formal understanding to the treaty. And, finally, this premise has been included in the recommended implementing legislation.

There is absolutely no reason to fear that the Genocide Convention would undermine this ability.

Therefore, once again I urge my colleagues to support the ratification of this treaty.

I thank my good friend, the majority leader, and yield back the remainder of the time.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator from Wisconsin.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, while the distinguished minority leader is here, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 233, 234, 235, 237, and 238.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, all five of these numbers are cleared on our calendar. We have no objection to their consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, these are for the most part minor bills.

LIABILITY FOR THE REPAYMENT OF CERTAIN ERRONEOUSLY MADE CONTRIBUTIONS BY THE UNITED STATES

The Senate proceeded to consider the bill (S. 400) to relieve the liability for the repayment of certain erroneously made contributions by the United States, which had been reported from the Committee on the Judiciary with an amendment on page 2, beginning with line 16, insert the following:

SEC. 2. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by the act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 252(a) of the Disaster Relief Act of 1970, any unit of local government or any of the following privately owned libraries is relieved from any liability for the repayment of contributions erroneously made by the United States for disaster relief activities for the benefit of the following private facilities which were damaged or destroyed by Hurricane Agnes:

(1) the William D. Himmelreich Memorial Library in Lewisburg, Pennsylvania, in the amount of $4,136;

(2) the Milton Library in Milton, Pennsylvania, in the amount of $21,869;

(3) the Shippensburg Public Library in Shippensburg, Pennsylvania, in the amount of $12,827;

(4) the West Shore Public Library in Camp Hill, Pennsylvania, in the amount of $26,772;

(5) the Osterhout Library in Wilkes-Barre, Pennsylvania, in the amount of $457,318; and

(6) the West Pittston Library in West Pittston, Pennsylvania, in the amount of $9,984.

SEC. 2. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by the Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-215), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to release six privately owned libraries in Pennsylvania from liability for the repayment of contributions erroneously made by the United States for disaster relief following Hurricane Agnes.

HISTORY

An identical bill, S. 1147, was favorably reported by the Judiciary Committee of the 95th Congress and passed the Senate on September 14, 1978. No final action was taken by the House.

STATEMENT

The facts are set out in the favorable report of the General Counsel of the Department of Housing and Urban Development. The report is attached to and made a part of this report, as follows:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF THE GENERAL COUNSEL,

Washington, D.C.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.
(Subject: S. 400 (Schweiker), 96th Congress.)

DEAR MR. CHAIRMAN: This is in response to your request for our views on S. 400, a bill to relieve the liability for the repayment of certain erroneously made contributions by the United States.

The bill would release six privately owned libraries in Pennsylvania from liability for the repayment of contributions erroneously made by the United States for disaster relief in connection with Hurricane Agnes.

In June 1972 a number of States, including Pennsylvania, suffered extensive damage from tropical storm Agnes. Section 252(a) of the Disaster Relief Act of 1970 (Public Law 91-606) authorized Federal payments to State and local governments for the repairs, restoration or replacement of public facilities. Accordingly, the Federal Government[1] made payments to local governments for repairs to destroyed or damaged public facilities including the six privately owned libraries stipulated in the bill. However, it was later determined that although these libraries were nonprofit entities and did receive some public support, they were, as privately rather than publicly owned facilities, improper recipients of the disaster relief funds.

The payments were made in an emergency situation when speedy determination of eligibility and dispensing of assistance were absolutely essential. There were at the time some indicia of the public nature of the libraries to support a determination of public ownership—all received public funds from local tax revenues and provided services free of charge to the public, and five of the six library facilities were in structures owned by a library board or association and had corporate names implying public ownership.

It was not until the spring of 1976, when the FDAA's Central Office reviewed a request for a time extension for completion of repairs to one of the libraries involved, that the question arose as to the eligibility of the libraries for assistance as publicly owned facilities. In June 1976, this Department's Office of General Counsel issued a legal opinion concluding that the Federal Government had not been authorized to make contributions to repair damages to the six libraries in question since, despite the fact that they were nonprofit institutions supported in part by public funds, they did not belong to a State or local government as required by the

[1] Authority for making these payments was at this time vested in the Office of Emergency Preparedness in the Executive Office of the President. Authority for disaster relief assistance of this nature was subsequently (1973) vested in this Department's Federal Disaster Assistance Administration (FDAA).

Disaster Relief Act of 1970. In the meantime, the libraries had expended the Federal funds received under the act in reliance upon the Federal Government's determination as to their eligibility.

The libraries, although technically privately owned, served the public without charge. Given the speed with which a large volume of disaster assistance applications had to be processed after tropical storm Agnes, and the public nature of these facilities, the mistake that occurred is understandable. To require the libraries to reimburse the Government for these grants at this time would only serve to penalize the beneficiaries for their services—the public. In our opinion, this is a case of limited applicability where, because of the unique circumstances involved, the remedy provided by the bill will not establish an undesirable precedent.

Accordingly, we would have no objection to the enactment of S. 400.

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

Sincerely,

EDWARD W. NORTON,
Acting General Counsel.

The Comptroller General of the United States sets forth his reasons for not objecting to the enactment of this legislation in the following correspondence:

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., May 22, 1979.

B-194541.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: This concerns your request for our comments on S. 400, 96th Congress, a bill to relieve certain privately owned libraries in Pennsylvania from liability for repayment of $561,066.09 erroneously remitted to them by the Federal Government.

In June 1972, as a result of Hurricane Agnes, the six privately owned libraries identified in S. 400 suffered varying degrees of damage. Subusequent to the President declaring Pennsylvania a major disaster area, the Federal Disaster Assistance Administration (FDAA) approved applications from a number of local governments in Pennsylvania on behalf of the libraries, pursuant to the Disaster Relief Act of 1970, Pub. L. 91-66, 84 Stat. 1744. (That Act has been essentially repealed by the Disaster Relief Act of 1974, 88 Stat. 143, 164, 42 U.S.C. 5121 *et seq.* (1976). A total of $551,066.09 was provided to the libraries for repairs.

In spring 1976, while reviewing a request for a time extension for completion of repairs for one of the libraries, the FDAA requestioned the eligibility of the libraries to receive assistance as publicly owned facilities. In June 1976, the Office of General Counsel of the Department of Housing and Urban Development (HUD) issued a legal opinion concluding that the funds were improperly provided to the libraries since they were privately owned; assistance awards under the Disaster Relief Act of 1970 were limited to publicly owned institutions. By the time this conclusion was reached, the libraries apparently had expended all or nearly all of the funds received.

A private relief bill similar to S. 400 (S. 1147, 95th Congress) was reported on favorably by your Committee and was passed by the Senate on September 14, 1978; however, it was never voted on in the House, presumably due to time considerations. In response to a request for its comments on S. 1147, HUD's Office of General Counsel concluded that relief for the libraries was warranted because:

"The libraries, although technically privately owned, served the public without charge. Given the speed with which a large volume of disaster assistance applications had to be processed after tropical storm Agnes, and the public nature of these facilities, the mistake that occurred is understandable. To require the libraries to reimburse the Government for these grants at this time would only serve to penalize the beneficiaries of their services—the public. In our opinion, this is a case of limited applicability where, because of the unique circumstances involved, the remedy provided by the bill will not establish an undesirable precedent . . ." (Quoted in S. Rep. No. 95-1183, 95th Cong., 2d Sess. 3 (1978).)

As a matter of general policy, this Office does not favor legislation granting private relief of indebtedness to the United States Government. We take this position because the beneficiaries of such legislation are afforded an advantage not enjoyed by others similarly situated who have not had special legislation passed on their behalf. B-188817 (July 11, 1977). Exceptions have been made, however, when the circumstances are extraordinary and unlikely to be replicated, and when equitable considerations strongly favor relief. (*Id.*)

The damage resulted from a natural disaster; the funds were applied for and received in response to the damage caused by the disaster and were eventually expended for repairs. We also note that HUD, whose Office of General Counsel concluded that the funds were awarded improperly, found that the unique circumstances warranted private relief. Additionally, the Disaster Relief Act of 1974, *supra*, which repealed the 1970 Act, contains a section which authorizes assistance for repair, restoration, reconstruction or replacement of private nonprofit educational facilities damaged in disasters. 42 U.S.C. sec. 517(b) (1976). According to the sponsor of this bill, these six libraries are the only ones nationwide, to whom such erroneous payments were made. Moreover, the libraries do have public support, even though they are not publicly owned. In view of all the foregoing factors, we would not object to the granting of the relief described.

We would point out two technical matters that the Committee may wish to consider. First, we think S. 400 might include a provision giving any certifying or disbursing officer involved in the approval or expenditure of the monies credit for the amounts for which liability is relieved. A provision of thi stype is included in H.R. 2064, 96th Cong., a related bill in the House. If such a provision is not included, such certifying and disbursing officers could still be held liable for the amount of the improper payments. Second, we think that private relief should not include any insurance monies that might have been received by the libraries for damages for which Government funds were also provided. We do not think the libraries should be twice indemnified for the same damage if, in fact, that did occur.

We hope we have been of assistance.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General.

COST

The enactment of this legislation involves no direct additional expenditure to the Government.

Accordingly, the committee recommends favorable consideration of S. 400.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

YAEKO HOWELL

The Senate proceeded to consider the bill (S. 404) for the relief of Yaeko Howell, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

That, notwithstanding the provisions of section 212(a)(23) of the Immigration and Nationality Act, Yaeko Howell may be issued a visa and admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that Act: *Provided*, That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-216), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provisions of existing law relating to one who has been convicted of a violation of any law or regulation relating to the illicit possession of, or traffic in, narcotic drugs or marihuana in behalf of the spouse of a U.S. citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 50-year-old native and citizen of Japan, presently residing in Otu-Shi, Japan, and is not employed. Beneficiary married to M. Sgt. Kennard Howell, U.S. citizen on February 26, 1970, in Tokyo. There are no children of this marriage. Sergeant Howell enlisted in the Air Force in May 1956, and is presently serving at Williams Air Force Base, Ariz. Beneficiary was convicted on February 21, 1956, for possession of 0/0329 grams of diacetyl-morphine and was sentenced to 8 months forced labor with 20 days pretrail confinement to be included in the punishment.

Beneficiary was denied immigrant visa at the American Consulate, Quebec City, Canada, in 1974, due to narcotic conviction in 1956. Beneficiary has made four entries into the United States as a nonimmigrant visitor and has led an exemplary life since 1956. She is anxious to join her husband in the United States. Sergeant Howell has had an outstanding career in the Air Force and would like to separate from the Air Force in 1982 because he will have served his maximum service time, however, he doesn't feel he can live in Japan because of the lack of job opportunities for him.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

STEVE WING-ON YAN

The Senate proceeded to consider the bill (S. 276) for the relief of Steve Wing-On Yan, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

That, for the purposes of the Immigration and Nationality Act, Steve Wing-On Yan shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct one number from the total number of immigrant visas and conditional entries which are made

available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96–217), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of permanent residence in the United States to Steve Wing-On Yan. The bill provides for payment of the required visa fee and for an appropriate visa number deduction.

STATEMENT OF FACTS

The beneficiary of the bill is a 40-year-old native of Hong Kong and a citizen of the United Kingdom, who was admitted to the United States on an exchange visitor visa as a radiologic technologist in July 1971. He was employed by the O'Connor Hospital in San Jose, Calif., when he was recruited by the Hahnemann Medical College and Hospital of Philadelphia. The Hahnemann Center looked for 18 months for a radiologic technologist with beneficiary's qualifications, who is a qualified radiation therapy technologist in cancer research and treatment; has specialized skills in treatment planning, dosimetry accessory design and construction, supervoltage machines, and has certification for such complicated equipment as linear accelerators, beatatrons, cobalt reletherapy machines and cyclotrons. In addition to research, beneficiary is involved in instructing radiation therapy technologists and participates in the preparation of dosimetry for cancer patients receiving care at hospitals in the regional radiation therapy network.

Beneficiary has received valid approved labor certification and has had a valid approved sixth preference petition filed in his behalf by the Hahnemann Medical College and Hospital, and has been approved for issuance of a sixth preference visa; however, due to the unavailability of visa numbers for Hong Kong, he has been unable to receive permanent resident status.

The amendment agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

LOURIE ANN EDER

The Senate proceeded to consider the bill (S. 229) for the relief of Inocencio Eder and Lourie Ann Eder, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert the following:

That, in the administration of the Immigration and Nationality Act, Lourie Ann Eder may be classified as a child within the meaning of section 101(b)(1)(E) of such Act upon approval of a petition filed in her behalf by Federico P. Eder and Irinea R. Eder, lawful permanent residents and citizens of the United States, respectively, pursuant to section 204 of such Act. The natural parents, brothers, or sisters, of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96–219), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to facilitate the admission into the United States of the adopted child of a lawful permanent resident and a U.S. citizen. The bill has been amended to remove the name of the male beneficiary inasmuch as an administrative remedy is available to him.

STATEMENT OF FACTS

The beneficiary of the bill is an 18-year-old native and citizen of the Philippines who currently resides in that country with relatives of her adoptive mother. The beneficiary was adopted in the Philippines on May 9, 1973, by Mr. and Mrs. Federico P. Eder. Mr. Eder is a retired laborer, his wife is not employed. They have no natural children. The bill, as introduced, provided for the relief of Inocencio Eder, the adopted son of Mr. and Mrs. Eder. However, an immigrant visa is available to Inocencio's father and it appears the child will be able to immigrate with him.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: A bill for the relief of Lourie Ann Eder.

SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

The Senate proceeded to consider the resolution (S. Res. 171) authorizing supplemental expenditures by the Committee on Environment and Public Works for inquiries and investigations, which had been reported from the Committee on Rules and Administration with an amendment on page 2, line 2, strike "$167,000" and insert "$217,000"; so as to make the resolution read:

Resolved, That section 2 of Senate Resolution 43, Ninety-sixth Congress, agreed to March 7 (legislative day, February 22), 1979, is amended by striking out the amounts "$1,386,200" and "$17,000" and inserting in lieu thereof "$1,787,900" and "$167,000", "$217,000", respectively.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96–220), explaining the purposes of the measure.

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

Senate Resolution 171 as referred would amend the annual expenditure-authorization resolution of the Committee on Environment and Public Works (S. Res. 43, agreed to Mar. 7, 1979) by increasing by $401,700—from $1,386,200 to $1,787,900—funds available to the committee for inquiries and investigations through February 29, 1980. Of the $401,700 increase, $150,000 could be expended for the procurement of consultants, increasing funds available for that purpose from $17,000 to $167,000.

An explanation for the committee's request of additional funds is contained in its report to accompany Senate Resolution 171 (S. Rept. 96–194), an excerpt of which is as follows:

The additional funds would be applied to a special investigation into the accident of the Three Mile Island Nuclear Power Station and a study of related issues involving Federal regulation and control of civilian atomic energy. The investigation and study would be conducted by the committee through its Subcommittee on Nuclear Regulation. The investigation and study are expected to be completed within 1 year. * * * Because the accident took place after approval of Senate Resolution 43, it is necessary to authorize supplemental expenditures by the Committee on Environment and Public Works for the specific investigation and study of the accident.

In compliance with the request of the Committee on Environment and Public Works, the Committee on Rules and Administration has amended Senate Resolution 171 by increasing from $150,000 to $200,000 the portion of the current request ($401,700) which could be expended for the procurement of consultants. No increase in the current request for funds would result from this action. The amount which could be expended for the procurement of consultants in Senate Resolution 43 would be increased from $17,000 to $217,000.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider en bloc the votes by which the bills were passed and the resolution agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

RECOGNITION OF SENATOR PRYOR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Arkansas (Mr. PRYOR) is recognized for not to exceed 15 minutes.

ARKANSAS FARMERS AND DIESEL FUEL—SPECIAL RULE 9

Mr. PRYOR. Mr. President, I would like to take just a few moments today to express my alarm at the crisis being experienced by our farmers and diesel fuel distributors in the State of Arkansas. This is not just an energy crisis, Mr. President, it is going to be an economic crisis for the farmers of our State and the farmers in many other States, and eventually for the consumers of America.

Heavy spring rains forced the delay of spring planting of soybeans, cotton and rice in our State. When the fields began to dry, our farmers began working around the clock to make a crop this year. But to run their tractors, it takes diesel fuel and in Arkansas, diesel fuel has become a very, very scarce commodity.

Only last month in Des Moines, Iowa, the President of the United States promised us that he would not let rural America run dry. He then directed the Department of Energy to implement special rule 9 which was to insure that agriculture receive all the fuel it needed to plant and harvest its crops.

Mr. President, it is with much regret, but with greater alarm and frustration, that I report to you today that special rule 9 has not made 1, I repeat, not 1 gallon of diesel fuel available to one farmer in Arkansas.

Mr. President, it is too late to plant

rice and cotton. Our extension service advises that yesterday was the "cut-off" date for planting soybeans with optimal yield. Yet, approximately 2,000,000 acres of our 7,000,000 acres of farmland in Arkansas remain unplanted because Arkansas farmers simply cannot get the fuel they have been promised by the President himself. This delay in planting threatens thousands of farmers in Arkansas with millions of dollars in crop loss. Such a disastrous crop year would deal an incredible blow to the economy of our small State.

When the President announced special rule 9, we had high hopes. However, I would like to take a little of my time today to tell the Senate exactly what happened when we went to the Department of Energy for assistance under this rule. I am afraid our experiences with DOE are quite representative of the increasing failure of our billion dollar bureaucracy to respond to the needs of the American people and to be sensitive to real and human problems in the agriculture area.

Four weeks ago, a local fuel distributor who serves over 300 farmers in some four major agricultural counties in Arkansas started trying to tell the regional DOE officials that he could not get diesel from his regular supplier and that he needed them to issue a "redirect order" to an alternate supplier. I do not have the time, and the CONGRESSIONAL RECORD does not have the space, to detail all that has happened to this one distributor over the past weeks in trying to get diesel to his farming customers. However, I would like to give you a general picture of his efforts in trying to work his way through the bureaucratic maze.

Following Government regulations, this distributor submitted to DOE all of the certification procedures that are required to prove how much diesel he sold to farmers in the month of April 1979. A week went by without hearing a word. He then called the regional office of DOE to complain and ask the status of his case. The regional office told him to send them a telegram. He did that immediately. Three more days went by. Still he had had no answer, no phone call from DOE. In the meantime, farmers were wearing his phone out yelling for diesel fuel in order to plant their crops.

Finally, in desperation, he called my office for help. We called the same people at DOE in Dallas and also in Washington and, were told they had never received a letter or telegram and the process must be begun once again. Other distributors have been shuttled from bureaucrat to bureaucrat and from office to office—with equally frustrating results.

Mr. President, I must point out that these distributors were at least able to talk with DOE. Others have not been that fortunate. When they have called DOE in Dallas, they have received a recording asking them to leave their name and number and informing them that someone would return the call within the next 4 days.

Mr. President, our farmers do not have 4 days to wait for some bureaucrat to get back with them. The Arkansas extension service reports that, starting today, soybean farmers will lose a bushel per acre per day in yield for each day they lose in planting. Arkansas farmers are in a crisis situation.

We have nearly 2 million acres yet to plant in Arkansas and over 250,000 acres of wheat to harvest. Each day they cannot get into the fields is costing the farmer millions of dollars. An ultimate food shortage will mean nothing but escalating food prices.

I guess I would feel better about this horrible situation if I thought DOE was sensitive to the problems of rural America and was making an honest effort to solve these problems. But I believe they have become callous to the problems the people outside the urban areas are suffering because of our present shortage.

When my staff called the regional office of DOE to ask for assistance in redirecting fuel to Arkansas, we were told "there is no shortage—there is plenty of fuel floating around out there if you are willing to pay for it."

Mr. President, it is not a question of being willing to pay for it. Our farmers cannot afford $1.15 a gallon for fuel that others are buying for under $.60. For that matter, neither can the American public, who will be forced to pay higher prices for farm products at the marketplace because of the shortage of fuel this season.

The above stories are bad enough. However, I have one more example of the attitude of the Department of Energy that even I did not believe when it happened.

Two days ago, I tried to reach Mr. Charles McRae, who is the person in charge of implementing special rule 9 at the Department of Energy here in Washington. Where was Mr. Charles McRae? I hoped he could assist me in taking rapid action to do something about the situation in Arkansas, which is at crisis proportions. I was told that Mr. McRae was not available since he was on a vacation.

Now, I wish to remind my colleagues that the special rule 9 program is scheduled to expire on July 31. But Mr. McRae could not wait to go on vacation.

This is the kind of bureaucratic insensitivity my staff and I have been dealing with for the past several weeks while trying to take care of the individual problems for farmers and distributors. We have had some success, but mostly frustration.

Mr. President, I have to admit, I have been a critic of the Department of Energy and its policies for some time. I guess, to be perfectly honest, I really did not expect much out of them in this crisis. However, what really disappointed me was the attitude of "the People's Department," the Department of Agriculture.

Where were they when the farmers needed them? Where were they when we were battling the bureaucracy for what the farmers had been promised by the President under special rule 9? I am sad to say they are conspicuous by their absence in the implementation of special rule 9.

Mr. President, now we learn that President Carter is considering rescinding special rule 9 within the next few days. Such action would be a horrible mistake. It would be a slap at the farmers of my State and the farmers of this Nation.

I remind my colleagues that this problem does not end with the termination of the planting season. For in several months our farmers will be facing a similar crisis when it comes time to harvest. Even more tragic than the present situation would be for our farmers to plant their crops and not have the fuel to get them out of the fields.

Yes, even more frightening than the way special rule 9 had been administered is the prospect for our farmers of not having a special rule 9 at all.

It was to confirm or deny this rumor as well as my desire to try to bring some immediate relief to the situation in Arkansas that I met this morning to discuss special rule 9 with Paul Burke, the head of the DOE diesel task force; Doris Dewton, Assistant Administrator of Fuel Regulation, DOE; and Dr. Weldon Barton, head of USDA's Office of Energy.

Mr. President, I am happy to report that at long last we were able to make some progress.

Hopefully, from this meeting we will be able to redirect several million gallons of diesel into our State within the next few days. However, I was disappointed with DOE and the Agriculture Department's insensitivity to those States where millions of acres remain to be planted. Their attitude was that since most of the Nation has finished planting the need for special rule 9 no longer exists. Such an attitude will mean that thousands of Arkansas farmers will be left high and literally dry.

Mr. President, in conclusion let me emphasize the fact that this is not just a farmer's problem. The inability of our farmers to plant and harvest their crops will have an impact on every one of our 220 million American citizens.

It is my hope that the President will not in any way do anything to diminish the impact of special rule 9; and certainly it is my hope that he will not attempt to abolish special rule 9, but that he will in fact bolster special rule 9 and make certain that the farmers of this country receive an adequate supply of diesel fuel.

Mr. McGOVERN. Mr. President, will the Senator from Arkansas yield to me?

Mr. PRYOR. I will be more than happy to yield to the distinguished Senator from South Dakota.

Mr. McGOVERN. Mr. President, I just want to commend the Senator from Arkansas on what he has said about the rumor—and I hope it is a rumor—that special rule 9 may be nullified, a rule that was designed to take care of the very urgent need of our farmers for fuel. I would think the entire country would be alarmed by this prospect, because what we are talking about is not only the need of the farm families of this country, but we are talking about the Nation's food supply. Much of it has been planted, but very little has been harvested or dried.

I underscore everything the Senator from Arkansas has said today. He is not only speaking for the farmers of Arkansas, but for the farmers of South Dakota

and all the rest of this country. I hope his words will be heard downtown at the Department of Energy.

Mr. PRYOR. I thank the Senator very much.

Mr. TALMADGE. Mr. President, will the Senator from Arkansas yield?

Mr. PRYOR. I am certainly glad to yield to the Senator from Georgia.

The ACTING PRESIDENT pro tempore. The Senator's time has expired, unfortunately.

Mr. TALMADGE. I ask unanimous consent that the Senator may proceed for 2 more minutes.

Mr. PRYOR. I might say to my colleague——

The ACTING PRESIDENT pro tempore. Will the Senator from Georgia permit the Chair to recognize the Senator from Iowa, and see if he will be willing to yield?

Under the previous order, the Senator from Iowa (Mr. JEPSEN) is recognized for not to exceed 15 minutes.

Mr. JEPSEN. The Senator from Iowa is pleased to yield 2 minutes to the Senator from Georgia.

Mr. TALMADGE. Mr. President, I am pleased to join the Senator from South Dakota in commending the Senator from Arkansas on the speech he has made. I think it is most appropriate at this particular time.

All of us, of course, are gravely concerned about the shortage of energy in our Nation, the shortage of fuel oil, the problems of truckers, and many other problems that confront our country at this time, caused by the shortage of energy in America today.

But if the American people think they have seen problems with the shortage of energy up to this time, they have seen nothing compared to what they will see if the farmers of this country do not have sufficient energy to produce food and fiber. That is the most basic of all the things in the world, having enough to eat.

Fortunately, heretofore here in America we have been blessed with an abundance of food. We can provide not only the food for more than 200 million Americans, but we have been providing food to save countless millions of lives overseas from starving to death. If we come to a time in this country when our farmers will not have the energy to produce and to harvest their crops, we will have turmoil such as this country has never witnessed before in the history of the Republic.

I thank my colleague.

Mr. PRYOR. Mr. President, if the Senator from Georgia has any time left, I thank him for his comments, and especially for meeting with us earlier in the day in relation to special rule 9 and getting diesel fuel for our farmers. I appreciate his cooperation and leadership in this particular area.

I thank the distinguished Senator from Iowa, who is also a member of the Committee on Agriculture, for yielding us this additional time.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

STATE OF IOWA SUPPORTS BALANCED BUDGET AMENDMENT

Mr. JEPSEN. Mr. President, the Iowa State Legislature recently voted in favor of a resolution requesting the convening of a constitutional convention for the purpose of proposing an amendment to the Constitution requiring a balanced budget, pursuant to article V of the Constitution.

Mr. President I ask unanimous consent that the text of Senate Joint Resolution No. 1 adopted by the 68th General Assembly of Iowa and certified by the Secretary of State on June 6, 1979, be printed in the RECORD at this point.

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

SENATE JOINT RESOLUTION 1

Whereas, with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

Whereas, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

Whereas, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

Whereas, knowledgeable planning, fiscal prudence, and plain good sense require that the budget reflect all federal spending and be in balance; and

Whereas, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is one of the greatest threats which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

Whereas, under Article five (V) of the Constitution of the United States, amendments to the federal Constitution may be proposed by the congress whenever two-thirds of both houses deem it necessary , or on the application of the legislatures of two-thirds of the several states the congress shall call a constitutional convention for the purpose of proposing amendments which shall be valid to all intents and purposes when ratified by three-fourths of the several states, and we believe such action is vital; NOW THEREFORE,

Be it resolved by the General Assembly of the State of Iowa:

Section 1. The Iowa general assembly proposes to the congress of the United States that procedures be instituted in the congress to propose and submit to the several states before July 1, 1980, an amendment to the Constitution of the United States requiring that the federal budget be balanced in the absence of a national emergency.

Sec. 2. Alternatively, effective July 1, 1980, if the Congress of the United States has not proposed and submitted to the several states an amendment as provided in section one (1) of this resolution, the Iowa general assembly respectfully makes application to and petitions the congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.

Sec. 3. Effective July 1, 1980, this application by the Iowa general assembly constitutes a continuing application in accordance with Article five (V) of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made similar applications pursuant to Article five (V), but if the congress proposes an amendment to the Constitution identical in subject matter to that contained in this resolution, or if before July 1, 1980, the general assembly repeals this application to call a constitutional convention, then this application and petition for a constitutional convention shall no longer be of any force or effect.

Sec. 4. This application and petition shall be deemed null and void, rescinded, and of no effect in the event that such convention not be limited to such specific and exclusive purpose.

Sec. 5. The Iowa general assembly also proposes that the legislatures of each of the several states comprising the United States apply to the congress requesting the enactment of an appropriate amendment to the federal Constitution, or requiring the congress to call a constitutional convention for proposing such an amendment to the federal Constitution if the Congress of the United States has not proposed and submitted to the several states an amendment as provided in section one (1) of this resolution before July 1, 1980.

Sec. 6. The secretary of state of Iowa is directed to send copies of this resolution to the secretary of state and presiding officers of both houses of the legislatures of each of the several states in the union, the speaker and the clerk of the United States house of representatives, the president and the secretary of the United States senate, and each member of the Iowa congressional delegation.

NATO CONCERNS ABOUT SALT II

Mr. JEPSEN. Mr. President, in recent day we have heard much about how our NATO Allies are giving general support to the new strategic arms limitation agreement between the United States and the Soviet Union. To support this conclusion, some of my fellow Senators have quoted recent statements by European leaders such as the new British Prime Minister, Margaret Thatcher, and the West German Chancellor, Helmut Schmidt.

As interesting as these statements are, they do not represent the entire range of feelings that our European Allies have concerning SALT. I think it is important to realize that Allied leaders have said little about the details of the SALT II agreement. Europeans want the continuing benefits of détente which they hope SALT will reinforce, in addition, they do not wish to unnecessarily antagonize the Carter administration by openly criticizing aspects of the new agreement which may worry them.

The SALT II debate will have overwhelming significance for the future of our country and all viewpoints need to be aired. It is for this reason, Mr. President, that I wish to take note of the views of the Christian Democratic Union/Christian Social Union (CDU/CSU) faction in the West German Bundestag on security and arms control matters. The CDU/CSU faction constitutes the largest faction in the German Parliament with 254 seats out of the total of 518 seats. This faction has always been the strongest supporter of NATO in Germany. Therefore, their views are particularly important in evaluating

European perspectives of SALT. While the CDU/CSU faction has always been in favor of disarmament and arms control and has supported arms control negotiations when they have been realistic, the faction at the same time has questions about some of the seeming ambiguities of the SALT II agreement and desires clarification of certain points in the agreement that are still unclear to the Europeans.

In particular, these West German legislators have pointed out that it is vitally important to NATO that SALT II not impede the modernization or supplementation of weapons such as the Pershing II missiles and the cruise missiles that are necessary to the defense of Western Europe. Also, they have argued that the treaty arrangements must be "balanced, verifiable, and unambiguous." Finally, they are worried about the increasing vulnerability of American land-based ICBM's. These are all serious matters which rightly concern me, as well as other Members of the Senate.

Accordingly, I ask unanimous consent that the CDU/CSU resolution on security and arms control which was introduced in the German Bundestag on March 9, 1979, be printed at this point in the RECORD.

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

Be it resolved by the Bundestag:

As a result of the debate of March 8 and 9, 1979, on the above-mentioned inquiries and the Government's reply, the German Bundestag states that:

1. The supreme goal of the Federal Republic of Germany's security policy is the ensuring of its territorial invulnerability, its external security and its political freedom of action through, on the one hand, sufficient defence capability, and, on the other hand, efforts towards abolishing political causes of tension, towards arms limitation and towards disarmament.

For decades the security and freedom of the Federal Republic of Germany has been based on this country's active membership in the North Atlantic Alliance and in the European Community.

This rootedness in the shared destiny of free peoples and democratic states will continue to be the basis of our security and of our policy of doing away with political causes of tension and armament in Europe, of decreasing military confrontation, and therefore of serving peace in Europe and throughout the world.

2. Our defense necessities and our possibilities of disarmament are to be oriented according to the extent and kind of threat by the Soviet Union with its allies; that is, according to its military potential and the expansive goals of its foreign policy.

It is with increasing concern that we must ascertain what the Soviet Union has been doing during the years of efforts towards East-West détente and during the concomitant negotiations on arms limitations: Instead of subjecting itself to the anticipated degree of military moderation, the Soviet Union has undertaken mass-scale armament, and has evidenced growing readiness to risk direct and indirect intervention throughout the world.

Through its arms policy and its arms-control policy, the Soviet Union is seeking, not a peace-stabilizing military balance, but, instead, military superiority and its projection as political influence.

3. As a result of this offensive Soviet arms policy, we must ascertain with concern that:

Deterrence is being made more difficult because of the Soviet Union's having achieved approximate parity with the United States on the nuclear-strategic level, and because of the threat that by the mid-1980s the Soviet Union will be capable of destroying, in a first strike, the American land-based Intercontinental Ballistic Missiles (ICBMs);

As a result, all the more importance is attached to the imbalances at the lower levels of deterrence, in particular: the Soviet Union's immense superiority in the sphere of nuclear medium-range weapons, the Soviet preponderance in the tactical nuclear realm, the continuingly increasing superiority of the Warsaw Pact forces in the conventional sphere.

Accordingly, the German Bundestag calls on the Government of the Federal Republic of Germany:

1. In its security policy, to seek, jointly with its allies, a balanced combination of, on the one hand, the requisite defense precautions, and, on the other hand, possible limitation of arms so as to compensate for the existing disequilibrium in the military balance of power.

2. In particular, to see to it:

That the necessary decisions on development, production and stationing of medium-range weapons (for example, pershing II, Cruise missiles) are taken promptly, so as to maintain the credibility of NATO's deterrence capability in Europe;

That the compensatory reinforcement and modernization of NATO armament anticipated in the Long-Term Defense Program (LTDP) be undertaken without delay; and

That a decision be taken as to the production and stationing of the neutron weapons required, in particular, as defense against the Eastern superiority in armor.

3. Within the negotiations on Mutual Balanced Forces Reduction (MBFR):

To move ahead with negotiations, without the pressure of self-imposed deadlines and without further advance concessions by the West;

In so doing, to uphold, undeviatingly and unadulteratedly, NATO's jointly agreed negotiating goals; and

In particular, to oppose any form of fixating the Soviet superiority in the reduction zone as well as to counter any Soviet claim to a voice as to the strength of the Federal German Armed Forces (Bundeswehr)—with a resultant military and political special status for the Federal Republic of Germany.

4. Vis-a-vis the United States, in view of the American-Soviet Strategic Arms Limitation Talks (SALT), to uphold the following European interests:

(a) The anticipated non-circumvention clause in the 8-Year Treaty must not impede the modernization and supplementation of the weapons necessary to the defense of the NATO area in Europe, or the accordingly necessary cooperation between the U.S. and the European allies.

(b) The treaty arrangements themselves must be balanced, verifiable and unambiguous.

(c) After expiration of the period of validity of the protocol within the SALT II treaty arrangements, all weapons options (for example, Cruise missiles) required for European security must be reopened.*

(d) Even before ratification of SALT II, a joint NATO negotiating strategy for the follow-up negotiations* must be worked out.

5. To call U.S. attention to the significance for European security that is attached to the invulnerability of the American land-based ICBMs; and

6. To reaffirm the principle of shared risks and obligations that is the foundation of the alliance's effectiveness, unity and viability. This principle must not, however, rule out the taking of measures indispensable to the Federal Republic of Germany's security.

*Negotiations on measures to deal with the so-called "gray zone" weapons: Soviet medium-range bombers and nuclear rockets, not covered in the proposed SALT II treaty, to which all of Europe, in particular the Federal Republic of Germany, is exposed.

THE PHILOSOPHY OF MARGARET THATCHER

Mr. JEPSEN. Mr. President, Margaret Thatcher's recent victory in the British elections was a victory for all those who believe in the importance of a free economy. I think it was no coincidence that her victory in Great Britain was followed by a conservative victory in the Canadian elections as well. I fully expect that the United States will continue this trend next year.

Mr. President, in spite of her great victory and her position as Conservative Party leader for the past several years most Americans are unfamiliar with Margaret Thatcher and her philosophy. For this reason I was very interested to receive a copy of a speech she gave in 1975 at the Institute for Socioeconomic Studies in New York. This speech, entitled "Let the Children Grow Tall," sets forth the basic themes of Margaret Thatcher's philosophy: The growing burden of government and its stifling effect on incentive, the virtue of work, and the productive power of a free economy.

In order to acquaint my colleagues with Mrs. Thatcher I ask unanimous consent that her speech be printed in the RECORD at this point.

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

LET THE CHILDREN GROW TALL

(An address by the Right Honorable Margaret Thatcher, M.P.)

Mr. President, Ladies and Gentlemen:

I must first thank you, Mr. President, for that very charming introduction. It has made me a little bit nervous. I feel I always ought to be giving a demonstration, rather than giving a talk.

I will do my best. I know you had Lord Barber here last year and he gave you a talk all about the Tax Credit Scheme. This year, I am going to talk rather more about the economic and social sphere, without which one can get absolutely nowhere.

I do notice that Americans appear to be curiously interested in what is happening in Britain today. What you are writing and saying about us we consume avidly, together with the regular flow of self-criticism which is a long-established part of our staple diet.

In the spring, Eric Sevareid caused quite a stir when he waved us his fond farewell on television and he has now become a national name in Britain. (Indeed, he might have been instrumental in inducing the Prime Minister to occupy our television screens for the best part of an hour. And I could have done with not more than half an hour, as I think some other people could have done, too.)

Only a week or two ago Vermont Royster wrote that: "Britain today offers a textbook case on how to ruin a country . . ."

I do take some consolation that there is only one vowel sound difference between "ruin" and "run" a country. That small vowel sound is "I".

However, the rather morbid and fatalistic tone of much of what is written about Brit-

ain by commentators on both sides of the Atlantic is misplaced. So, I am very grateful to The Institute for Socioeconomic Studies for giving me such a splendid opportunity to try to put one or two things straight.

I think most outside observers have not noticed that amidst our well-published difficulties a new debate is beginning—or perhaps I should say an old debate is being renewed—about the proper role of Government, the Welfare State and the attitudes on which it rests.

May I stress that the attitudes are extremely important. Of course, many of the issues at stake have been debated on countless occasions in the last century or two and some are as old as philosophy itself. But, the Welfare State in Britain is now at least 30 years old. So after a long period in which it was unquestionably accepted by the whole society, we can now do more than discuss its strength and weaknesses in the hackneyed, abstract language of moral and political principles. We can depart from theory and actually look at the evidence and see how it has worked and what effect it has had on the economy. We ought now to assess it before we decide what to go on and do next.

The debate is centered on what I shall term, for want of a better phrase, the "progressive consensus".

Things that are called progressive are not always progressive in practice. But, of course, some of them are—and the progressive consensus is the doctrine that the State should be active on many fronts in promoting equality in the provision of social welfare and in the redistribution of wealth and income. That philosophy is well-expressed in a quotation well-known in my country about social justice—and again I pause for a moment to point out that, if ever you see a word with "social" in front of it, I think you ought to analyze it fairly carefully and see precisely what it means. One of the reasons I think we have got some things a little bit not-quite-straight is that we have not always been precise with our use of language. If you are going to think straight you must talk straight and be very precise with the way you use words.

There is a quotation on social justice. It is: "Because market forces tend toward growing inequality in incomes and property, massive redistribution is necessary if political freedom and other civilized values are to be preserved.

"So it should be the aim of the democratic state to re-share these rewards—to socialize the national income if you like to call it that. There can be no doubt that by far the most effective method has proved to be the instrument of public finance, and in particular progressive direct taxation and centrally financed public services."

Now, that is the end of the quotation on social justice. It so happens that it was written in 1962 by a former Labour Cabinet Minister.

However, I am not particularly interested in party politics tonight. For such views are held in varying degrees in all our political parties, in schools and universities and amongst social commentators generally. It is interesting that they are now being questioned right across the same broad spectrum.

It is not that our people are suddenly reverting to the ideals of total laissez faire, or rejecting the social advances of recent decades. It is rather that they are reviving a sober and constructive interest in the noble ideals of personal responsibility, because in some respects the concepts of social responsibility have turned sour in the practice and we are making an attempt to identify and eliminate errors and fallacies to consolidate and retrench before advancing further.

It is in that constructive spirit, and as a former Secretary of State for Education and Science myself, that I am speaking to you tonight. I shall try and concentrate on three broad issues, particularly in view of that quotation which I read to you a short time ago which has some very strange phrases in it. The three issues are: One, what are the facts about the distribution of wealth and incomes? Two, to what extent is greater equality desired in Britain today? Three, has the economy been strengthened by the promotion of more equality and the extension of the welfare state?

Now, what I have to say involves quite a number of statistics because with a measure of scientific training and a period spent at the Revenue Bar and dealing with Treasury matters, one has tried to adduce a mass of evidence. But, I will try and put the statistics in as human a way as I can. So, let me start with the facts. All of you in either science or law and the wiser ones in politics say one first must find the facts.

Most people say that the distribution of the incomes and wealth in Britain is highly inequitable, that it has changed little, despite the steps taken by government to even it out. From there, it is only a short step to two complementary arguments: either that redistribution would greatly swell the incomes of the average man or that the wealth of the rich is sufficient to finance the substantial extension of the role of the state.

I think both are conducive, but neither of them are attitudes which I think we would particularly wish to encourage in the modern state.

Fortunately, a major study has just been published by the newly created Standing Royal Commission on the Distribution of Income and Wealth. It gives the first proper statistical picture of the changes that have taken place in Britain between the last war and the year 1972–73, the latest year for which figures are available.

May I quickly tell the findings because these are the facts on the distributions of income and wealth. Let us start with income, and, of course, the relevant income is income-after-taxes. We find that in 1972 income-after-taxes in Britain was divided roughly as follows—at the upper end of the scale, the top one percent of income earners got four percent of income, four times the average. If you take the top ten percent, they had twice the average and if you take the bottom ten percent, a bit under half the average.

Now, if you look at it from half the average income at the bottom to four times the average income at the top, it is not really a very wide range of income. It is most dramatic by any set of rules. Indeed, research has shown that the distribution of income in Britain is surprisingly similar to that in Poland, which is a rather shattering conclusion to reach!

That is where we were in 1972. So let us have a look at the changes. Over the previous 40 or so years, you find that, taking account of taxes, the share of taxable wealth of the top one percent of earners, which used to be 12 percent, is now four percent. So it has come down over 40 years from about 12 percent to about four percent. And, the share of the taxable income of the poor has not increased to so great an extent. But, nonetheless, they are markedly better off in relative as well as in absolute terms than they were before the war. By 1972, the tax-free benefits in cash and kind added about half to the pre-tax income of a typical household in the bottom ten percent. For poor families with many dependents, the gain could be nearer 100 percent. Today the figures would probably be higher still.

Now, those are the income figures. They show quite considerable changes over 40 years. But at the moment in Great Britain the range of income is not unduly wide.

Let us turn quickly to have a look at wealth. Of course, capital assets have been more unevenly spread than income in Britain, as in most other countries. For this reason they have been the chief target of egalitarian critics. In Britain, it is almost an undisputed truth that ten percent of the population owns 80 or 90 percent of all assets.

But, in fact, that is not so. The Royal Commission has now set up the figures. You find that ten percent of the population over 18 own less than half of personal wealth, when state pension rights are counted as an asset, as they should be.

As you will appreciate, even these figures are rather misleading, since wealth is normally unevenly distributed between husbands and wives, old and young. If these distorting factors could be properly allowed for, the picture might well look still less extreme.

As with income, there have been big changes over the years. On a narrow definition of wealth which excludes pension rights, the top one percent of the population owned: personal wealth of 69 percent in 1911; personal wealth of 50 percent in 1938; personal wealth of 38 percent in 1960; and personal wealth of 28 percent in 1972 (or 16½ percent if pension rights are included in wealth holdings).

So the facts about economic inequality (as opposed to the myths) are these: the rich are getting poorer and the poor are getting richer. This is due both to market forces and the actions of Government through the tax system. And it is no longer the case that taking further money from the rich will make a significant difference to the wealth of the bulk of the population. Nor will taxing them more heavily pay for much more Government spending.

Finally one notes that it would do little to diffuse economic power more widely. It is already largely in the hands of Government and labor unions.

So much for the facts of economic inequality in Britain. Now, let me look at the second question: To what extent is more equality desired in Great Britain today?

These statistical myths lead directly to the claim that there is a widespread sense of resentment and injustice over the current degree of inequality in our society and great enthusiasm for its elimination. This political judgement is closely linked in many commentators' eyes with the quite separate proposition that class divisions in Britain are severe and reinforced by economic inequality.

My own experience in politics has always made me doubt that argument. Now, fortunately, more work has been done. We have had a massive survey of political and economic groups reported in July, 1975.

This is what it showed: ". . . little spontaneous demand for the redistribution of earnings across the board occupational categories and (the suggestion) that any such redistribution would in itself provide no solution to any problems of pressure-on-pay. Neither is it necessary to allay any general feelings of injustice in society . . . It may be little consolation to the Government in present circumstances that the chief requirement for maintaining general satisfaction with incomes and earnings is steady economic growth . . . rather than massive redistribution . . . This point is a crucial one to be met by those who suggest that any problem we have is one of distribution rather than of resources of growth."

Despite the evidence of what ordinary people actually want, there remains in Britain a powerful and vocal lobby pressing for greater equality—in some cases even, it would seem, for total equality. One tries to analyze what it is that impels them to do so.

Of course, one important pressure is undoubtedly the ordinary desire to help our fellow man. But often the reasons boil down to an undistinguished combination of envy and what might be termed "Bourgeois Guilt."

Envy is clearly at work in the case of the

egalitarian who resents the gap between himself and those who are better off, while conveniently forgetting his own obligations to those poorer than himself.

Bourgeois Guilt is that well-known sense of guilt and self-criticism that affects people, not only the very rich, when looking the other way, at the position of those poorer than themselves. It is not for me as an individual to criticize or ridicule their doubts and worries. But, as a politician, I must criticize the attempts of such people to impose on others a program of impoverishment through the medium of the State. That brings happiness to no one except to those who impose it.

In a free society, they can give away as much as they want to, to whom they want to. If they believe in pooling their possessions with others in a commune, they are welcome to do so.

The point of this section is that it has been shown that there is a far less general desire for equality, as opposed to equity, in Britain today, than is often claimed.

The facts about equality are that people don't appear to want further distribution. They are more interested in growth and new resources of wealth.

Now, I can turn to the third section—a vital one—called, "Is Socializing National Income Good for the Economy?"

The promotion of greater equality goes hand-in-hand with the extension of the Welfare State and state control over people's lives. Universal and usually free social services necessarily transfer benefits-in-kind and cash from the richer to the poorer members of the community.

Taken together, they define rather well the process of "socializing the national income" which occurs in my first quotation. How far has it strengthened our economy?

The public sector has been a large part of the British economy since the early post-war years. Despite the statistical fog which surrounds all international comparisons, it is clear that the Government's share in GNP has been consistently one of the highest of the OECD countries. And for at least twenty years it has risen faster in the UK than elsewhere. Today the State controls in various ways well over half of our national income.

In fact, this year about 56 percent of the gross national product is controlled and spent by the state.

Now, of course, the tax-bill has risen sharply, particularly for the private citizen. In the later '50's and '60's, the increase in tax and social security payments in effect knocked about one percent off the gross of private spending each year. The massive transfer of resources from the private to the public sector—and correspondingly to that an enormous increase in taxation—is what has been probably one of the major sources of inflation.

Let me take a typical wage earner, a man and wife with two children with industrial earnings. Typically, you find that since 1963—not very long ago—the State has increased its take from the average salary from a negligible five percent to about 25 percent today.

But, of course, you can imagine what has happened. The wage earner has said, "I want to keep my net income intact." This sentiment has been quite a strong factor in his demanding more wages and salaries, as replacement for what has been taken away in taxation.

So they press their employers for ever-higher wage increases and this has led to a relentless acceleration of cost and price increases, from two percent per annum in the mid-1930's to 25 percent today.

And so, of course, they have also pressed not only for increased pay, but for increased growth, sometimes financed by inflationary policies.

Of course, it is one thing to have increased government expenditures when you have genuine increased growth. It is quite another thing to go on increasing government spending when you have no growth.

There are many who regard this desire for private spending as irrational, selfish and unworthy. After all, they say, the taxes have financed a substantial growth in the provision of public goods. Any economist will tell one that this is a part of increasing living standards. Unfortunately, any experienced politician or detached observer can also now see that in practice people attach peculiar importance to using their own money to buy what they want when they want. Moreover, they cannot relate the tax-man's apparently arbitrary and growing take to the services it finances. These services they regard as one's absolute right, a kind of manna from heaven.

We will come to the end of that time. They are not manna from heaven.

I know you will find that this has a familiar sound to some of the problems that you have to deal with now. So, that is how the average person has reacted to what is called "Socializing the National Income."

He expects the benefits to come from somewhere, but he is not prepared to pay increased taxes (and remember I said in Britain the Government controls 56 percent of the expenditure of the gross national product).

One consequence is a very heavy taxation on companies. In turn, company profits have steadily been reduced. And they have had to pay increased corporation taxes.

The inexorable acceleration of wages, partly in response to overtaxation, has naturally resulted in a wage-price spiral—a spiral with a twist in it. For various reasons, business cannot raise prices far enough or quickly enough to preserve its profits when wage increases are large and accelerating. So, profits have fallen for many years on any measure—before tax, after tax, as share in national income or as a rate of return on capital. Since retained profits are the principal source of funds for investment and profit levels, the main incentive, capital expenditure in private industry, has faltered more and more. The upswings have got shorter and the downswings deeper and longer with succeeding cycles of activity. Manufacturing investment next year—1976—is likely to be little higher in real terms than it was ten years before. It appears, as a natural consequence, that our underlying rate of economic growth has stopped improving after thirty years of modest but perceptible acceleration.

The situation has not been made any easier recently by the curious belief that profits are rather evil and of little economic significance. Both the present and previous Governments have therefore had little choice but to pursue price and profit controls as part of their counter-inflationary policies. The levels of profit emerging from these controls were selected with insufficient regard for their effects on capital spending, employment or growth and they have bitten hard. Our economy has thus been pushed into a loss of profit and therefore an investment recession at a time when the world economy was in serious downturn.

Now the damage has been done, the situation can only be put to rights if considerable price rises can be made and accepted by labor without any response in the form of wage increases. It is a pretty challenging "IF".

Two decades of declining profits naturally mean that the saver who invests in equity shares has had a raw deal. The real rate of return has recently been negative even before tax, let alone when changes in the capital value of investments are allowed for. However, Government has made the position worse by taking powers to restrain dividends still further—in the name of fairness and equity, one should note! The case for doing so was simple. Unless profit distribution is restrained, how, it was asked, could one expect unions and workers to acquiesce in a program of wage restraint?

It is bad enough that this seductive little trade-off is based on a very unjust bargain. Savers and retired people have already suffered severely from the costs of accelerating inflation which they have done nothing to cause. Why should they make yet further sacrifices to induce those who have already gained so much at their expense to desist for a while?

What is at stake is more than a painful injustice. Negative real profits and dividend control must, if sustained for any period, have a corrosive effect on the life insurance and pensions institutions. They are put in a position in which it becomes more and more difficult to plan and guarantee the flow of future income which they have promised their beneficiaries.

Private employers for their part find themselves faced with the sudden need to make enormous payments into their pension funds even to maintain their existing pension obligations in money terms.

I am not suggesting for a moment that these great institutions are dying or dead. But they have a nasty fight on their hands.

Some of the problems I have talked about combine together to create further subtle distortions of the market-place which are not immediately evident.

The first is an unbalanced competition for savings. The process works like this. The Government increases its spending to fulfill its commitments to extend its activities. The wage earner begins to revolt against the consequent rising tax burden. His resentment leads to higher wages, and lower profits, lower corporate taxes, and ultimately slower growth. It also deters the Government from raising taxes in line with spending. So the Government has a growing deficit and then has to borrow growing sums of money, assuming, of course, that it does not resort to the printing press.

In doing so, it competes with the private company and the homebuyer in the savings market. The private company finds it increasingly impossible to bid for funds, since its profits are depressed. The housebuyer may still be able to do so, but even then he is probably subsidized by the savers who lend him the money. At the end of the day, a public spending bill which exceeds the taxable capacity of the economy sucks away money which should be spent on investment in industry or private housing.

The second distortion is an unbalanced competition for labor. As wealth increases, spending patterns switch from industrial products toward services in all economies. This will affect the pattern of employment and competition for labor between the private and Government sectors.

Public sector employment in Britain has steadily grown at a substantial rate for more than a decade—about one percent per annum—while the overall working population has contracted. The net effect has been to reduce the pool of labor available to private employers. So when the economy entered its last major upswing, in 1972–73, labor shortages were encountered unexpectedly soon. Although the leap in production was as large and sudden as any we have experienced, employment in industry scarcely increased at all. Many of the missing workers had in effect been absorbed by Government during the previous period of slack business activity.

The importance of this cannot be understated, particularly for a trading economy like ours. The private sector creates both the goods and services we need to export to pay for our imports and the revenue to finance public services. So one must not over-load

it. Every man switched away from industry and into Government will reduce the productive sector and increase the burden on it at the same time.

One other effect that I would like to refer to in Great Britain about the incentive effect of taxation is that it has been particularly damaging on middle and upper management. The level of taxation has been such that it has not been possible for us to pay our management as much as they could get in other countries in net taxed income. For example, a British employer wanting to promote his manager in terms of post-tax salary from £8,000 per annum to a top job and £12,000 per annum would have to give him an extra £15,000 per annum! This sort of increase is more than most firms can think of at the best of times. Thus, rewarding skill or hard work has become almost prohibitive. The whole country therefore loses much of the benefit of competition in the labor market.

If you look across to the continent, you will find that other countries may be able to pay their managers less, but they nonetheless provide a much higher net taxed income. The result has been, if British companies put top management in Europe or elsewhere on French salaries or French levels, they cannot get them back. We cannot pay a big enough gross salary. Accordingly, losses of highly trained manpower through emigration are becoming more serious despite the depressed state of the world economy.

These have been the economic effects of pursuing far too much equality. I think we may have very much come to the end of the road. In fact, we find that the persistent expansion of the role of the State and the relentless pursuit of equality has caused and are causing damage to our economy in a variety of ways.

It is not the sole cause of what some have termed the "British Sickness," but it is a major one.

CONCLUSIONS

What lessons have we learned from the past 30 years?

First, the pursuit of equality is a mirage. What is more desirable and more practicable than the pursuit of equality is the pursuit of equality of opportunity. And opportunity means nothing unless it includes the right to be unequal. And the freedom to be different.

One of the reasons why we value individuals is not because they are all the same, but because they are all different. I believe you have a saying in the Middle West, "Don't cut down the tall poppies—let them rather grow taller."

I would say: Let the Children Grow Tall—and some grow taller than others, if they have it in them to do so. We must build a society in which each citizen can develop his full potential both for his own benefit and for the community as a whole; in which originality, skill, energy and thrift are rewarded; in which we encourage rather than restrict the variety and richness of human nature.

Holding these views as strongly as I do, you can imagine that I was particularly interested to read this description of some of the problems in Czechoslovakia: "The pursuit of equality has developed in an unprecedented manner, and this fact has become one of the most important obstacles to intensive economic development and higher living standards. The negative aspects of equality are that lazy people, passive individuals and irresponsible employees profit at the expense of dedicated and diligent employees, unskilled workers profit at the expense of skilled ones and those who are backward from the point of view of technology profit at the expense of those with initiative and talent."

That was not written by a quiet capitalist. It is a quotation from the action program of the Czechoslovakian Communist Party adopted in the Dubcek days of 1968. Unfortunately, Dubcek went, but the lesson they learned is that the unbalanced pursuit of equality leads to an insufficiency of resources.

Nothing that I am saying tonight should in any way be seen as a diminution of our recognized responsibilities to those people who, through physical, mental or social handicaps, suffer disadvantages. Rather, it is a consciousness that unless we have incentive and opportunity, we shall not have the resources to do as much as we want to do. Having been a Secretary of State for Education, I am the first to understand that.

Second, we must strike a proper balance between the growing demands and powers of the State and the vital role of private enterprise. For private enterprise is by far the best method of harnessing the energy and ambition of the individual to increasing the wealth of the nation; for pioneering new products and technologies; for holding down prices to the mechanism of competition; and, above all, for widening the range of choice of goods and services and jobs.

Government must therefore limit its activities where their scope and scale harms profits, investment, innovation and future growth. It must temper what may be socially desirable with what is economically reasonable.

Third, we must measure the consequences of the economic and political demands of some of our people. We must have regard to the effect of those demands on our political and social framework. We must devote ourselves to a greater understanding and more realistic pursuit of true justice and liberty and the maintenance of the free institutions on which these values depend.

In the coming months we shall all be thinking particularly of the achievements of the United States in the two hundred years of its existence and of the lessons your country can still teach the rest of the world. May I conclude with the modest hope that you will also spare a few moments to learn from our recent experience. It shows, in my view, how essential it is to escape from the facile arguments which both our countries have experienced—and to reaffirm, before it is too late, those true values which both our countries traditionally have shared.

Those values have never been more important than they are today.

THE SOMOZA REGIME—MURDER IN COLD BLOOD

Mr. McGOVERN. Mr. President, the prolonged tyrannical rule of Nicaragua by the Somoza family and their henchmen in the National Guard has served to instill violence as a way of life in that troubled country. For more than 40 years, one Somoza government after another has run roughshod over the rights of the Nicaraguan people, leaving an indelible stamp of torture, assassination, and misrule.

These are the trademarks of the Somoza regime, a reign of terror, implemented and carried out by the regime's private army—an army which, I regret to say, the United States, over the years, helped to create, helped to equip, and helped to train. But it is an army which neither serves the Nicaraguan people nor brings credit to us.

This point was driven home unmercifully to the American people last night as they watched the evening news and witnessed the cold-blooded murder of an American newsman at the hands of Somoza's National Guard forces. If nothing else, the senseless murder of ABC reporter Bill Stewart ought to indicate to the American people in no uncertain terms that the Somoza regime is capable of the most insane brutality and is willing to inflict any degree of human suffering in an effort to remain in power. If this comes as a surprise to the people of our country, it certainly comes as no surprise to the people of Nicaragua. After all, they are the ones who have suffered repeatedly—decade after decade; generation after generation; one Somoza after another.

Mr. President, I regret that more of us were not here last week when the senior Senator from Nebraska, ED ZORINSKY, who ably serves as chairman of the Subcommittee on Western Hemisphere Affairs, spoke out on the issue of U.S. policy toward Nicaragua and warned the American people about the nature of the Somoza regime. In many ways, his description and assessment of that regime were prophetic:

> For Somoza, the people of Nicaragua will endure no more; they are willing to oppose him openly and they are willing to fight and die in an effort to depose him. They know Somoza. They have lived with him for years. They have been subjected to his greed, his lust and his brutality. They know that among the Idi Amins of this world, Tacho Somoza stands tall. But like Idi Amin, Somoza's days are numbered—and the people of Nicaragua know that, too.

I commend the Senator for his diligence and attention to this issue. He did his best to alert us to the realities of the Nicaraguan situation and he took the initiative in trying to get the Carter administration to adopt a policy calling for the removal of General Somoza. Such a policy recognizes that this is the only way of bringing an end to the fighting and the turmoil that engulfs that country, all because of one man—Gen. Anastasio Somoza.

In an effort to move this policy forward, I was pleased to add my name, along with those of Senator ZORINSKY, Senator CHURCH, Senator KENNEDY, and Senator LUGAR, to a recent letter sent to President Carter which the Senator from Nebraska initiated. The closing paragraph of that letter makes this plea to the Carter administration:

> We hope that, without further delay, you and your Administration will openly advocate a policy which will make it abundantly clear to President Somoza that he must step aside and open the way for a political settlement that will bring an end to the crisis and bloodshed.

Mr. President, under the guise of democracy, freedom, and capitalism, the Somoza family has raped, pillaged, and corrupted the social and political fabric of Nicaragua. Their greed and thirst for power have known no limits. And not surprisingly, their actions have brought the nation of Nicaragua to the brink of disaster—and beyond. It is not the Communists; it is not the extremists of the left; it is not foreign invaders who have sown the seeds of destruction in Nicaragua. No, it is Somoza himself who is responsible. His vile conduct and unprincipled rule have only served to make the current revolution unavoidable. And so it

is. It is a nationalist revolution directed against one man and his private army. And it is so recognized by our democratic friends and allies in this hemisphere: Colombia, Costa Rica, Ecuador, Mexico, Panama, and Venezuela. They know that a nationalist revolution is taking place in Nicaragua. It is high time we knew it, too.

Mr. President, I ask unanimous consent that a copy of the letter mentioned above to President Carter and an article from today's Washington Post, describing the savage murder of Bill Stewart and his Nicaraguan interpreter, Juan Espinosa, be printed at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., June 18, 1979.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We want to underscore our deep concern about the growing political and military crisis in Nicaragua. As you know, the situation there has worsened dramatically since the initial outbreak of violence in September of last year and the failed mediation effort in January of this year.

During that period, we recognize that the Administration did its utmost to develop a viable political solution to the Nicaraguan conflict. We also realize that following the demise of the mediation proposal, the Administration undertook a number of minor actions designed to evidence its disapproval of the Somoza government. However, despite these efforts and our good intentions, there has been little in the way of positive results.

At this point it is patently obvious that the major stumbling block to a solution in the Nicaraguan crisis is President Somoza himself. His determination to remain in power and to disregard the broad-based opposition to his regime serves only to polarize opposition forces and to lay the foundation for an extremist political solution. No other nation in the hemisphere, with the sole exception of Cuba, would welcome such an event.

In an effort to avoid this kind of development, we believe the time has come for the United States Government to declare in no uncertain terms that it views President Somoza as the principal impediment to a political settlement in Nicaragua and that it is our policy to support those nations seeking his removal from power and endeavoring to pave the way for a moderate political solution acceptable to the people of Nicaragua and to the democratic nations of this hemisphere. Indeed, to prolong the crisis at this juncture can only serve to reduce the chances for such a solution.

We hope that, without further delay, you and your Administration will openly advocate a policy which will make it abundantly clear to President Somoza that he must step aside and open the way for a political settlement that will bring an end to the crisis and bloodshed.

EDWARD ZORINSKY,
Chairman, Subcommittee on Western Hemisphere Affairs.
RICHARD G. LUGAR,
Ranking Member.
FRANK CHURCH,
Chairman, Senate Committee on Foreign Relations.
GEORGE MCGOVERN,
U.S. Senator.
EDWARD KENNEDY,
U.S. Senator.

[From the Washington Post, June 21, 1979]

ABC REPORTER HELD, SHOT

(By Karen DeYoung)

MANAGUA, NICARAGUA, June 20.—ABC Television correspondent Bill Stewart, 37, was shot and killed today by a Nicaraguan National Guard soldier while attempting to film war destruction in a Managua neighborhood.

Stewart's Nicaraguan interpreter also was killed in the incident, filmed by eyewitnesses who described it as a deliberate shooting carried out after Stewart had been ordered to kneel.

[Dramatic films of the shooting, made by survivors among the ABC crew, were shown on U.S. television evening news programs.]

Tonight, President Anastasio Somoza offered his condolences and promised a "full investigation."

The slaying came a day after government radio and a newspaper owned by Somoza attacked foreign reporters covering the civil war here, accusing them of communist sympathies.

[In Washington, President Carter said, "The murder of . . . Bill Stewart in Nicaragua was an act of barbarism that all civilized people condemn." Secretary of State Cyrus Vance asked the U.S. Embassy in Managua and the Nicaraguan government for a full report on the shootings.]

Max Kelley, a personal secretary to Somoza who questioned the ABC crew after Stewart's death, told them the shooting was the "action of an individual soldier," ABC sound technician Jim Cefalo said.

Before Somoza's statement, the Nicaraguan government radio said Stewart's death was a result of sniper shots by Sandinista rebel guerrillas.

John Bargeron, a U.S. vice consul in Nicaragua charged with facilitating shipment of Stewart's body to the United States, was heard telling the ABC crew that "this is a war of murder. It was a normal execution. Nicaraguans are killed like that every day."

According to Cefalo, who witnesed the shooting, the incident began when the ABC team, traveling in a clearly marked press van, approached a National Guard patrol in the eastern Managua neighborhood of El Riguero.

Stewart and his interpreter, Juan Espinosa, got out of the van and walked toward a soldier with their hands raised, carrying a white flag and government-issued press credentials, Cefalo said.

As the soldier approached them, his rifle raised, Stewart went down on his knees with his hands up, Cefalo told reporters in an emotional, hastily called news conference.

"He stepped back and motioned . . . It looked like he told (Stewart) to put his hands behind his back. Bill started to comply, and the guard stepped back, put the rifle to (Stewart's) head and shot once."

A quiet man whom colleagues described as a "good reporter who was extremely cautious," Stewart arrived here from his home in New York June 10. A veteran correspondent, married with no children, he covered the revolution in Iran and civil war in Lebanon.

Stewart's death pointed up the growing antagonism between the beleaguered Nicaraguan government and army and the foreign press corps covering the civil war.

The government has repeatedly accused the foreign press, including reporters from the United States, Europe and other Latin American countries, of distorting the situation here in its description of strong public support for the anti-Somoza insurrection led by Sandinista National Liberation Front guerrillas.

Tuesday, the government radio network began broadcasting charges that foreign reporters were part of an "international Communist conspiracy" to topple Somoza and install a Marxist government. An article in the Somoza-owned newspaper Novedades Tuesday accused the international press of "criminal silence" about what it called Sandinista Communists.

"None of the correspondents who have been coming to Nicaragua in the past two years has ever told the truth," the paper said, "either because they are paid by or are part of the vast net of Communist propaganda."

In a meeting with reporters this evening, Somoza said, "I ask you, as president of Nicaragua and as supreme commander of the armed forces, to accept my most deep condolences" for what he termed an "unforgiveable and isolated incident."

"I ask you to understand that I really feel for the death of Bill Stewart," Somoza said. "I never wanted it to happen in Nicaragua."

Somoza said those held responsible would be punished under the "full weight of the law." He asked ABC to provide a military court with a copy of film cameraman Jack Clark shot of the execution.

Representatives of all three American television networks said their crews would leave in the morning on an evacuation plane provided by the U.S. Air Force.

Ironically, a number of correspondents who also covered an outbreak of civil war here in September have noted a more cooperative attitude on the part of National Guard soldiers. In September, reporters who attempted to talk with Guards on patrol or at checkpoints were often pushed and shoved or threatened at gunpoint and ordered to leave.

Since large numbers of reporters began arriving here after the Sandinistas renewed their offensive three weeks ago, Guard soldiers have been noticeably more cordial and helpful.

Cefalo said that the El Riguero neighborhood, which the guerrillas apparently already had left, was quiet and gunfire could be heard only in the far distance.

"In the first area we came to," Cefalo said, "the Guards were quite pleasant. They assisted us and at one point asked if we would take pictures of them showing how their morale was up. One of them had a guitar and they all sang and we shot it."

"They told us they had another outpost several blocks away," he said. As they approached this second group of soldiers at a deserted rebel barricade on a dirt road through the low income neighborhood, "Bill felt that rather than drive up to them and make them nervous, he would walk up with the interpreter and explain what we were doing."

As the two got out of the van, Cefalo said, a Guard motioned for them to go back. "The interpreter told them we meant no harm and walked ahead." Cefalo said he then looked up from his equipment "and saw Bill on his knees with his hands raised."

He said Espinosa, the interpreter, was taken behind a nearby building and shot. Although the rest of the crew had remained in the van several yards from the two on foot and could not hear conversations that went on, Cefalo said he believed the soldier accused the interpreter of being a guerrilla.

A number of soldiers standing behind the one who shot did not interfere, Cefalo said, and "there seemed no great concern about it." The other crew members were then instructed to come forward and show their credentials. They were told they could take Stewart's body in the van and they left without further comment from the soldiers.

Back at the hotel, Stewart's body lay in the back of the van, blood seeping out onto the pavement, while reporters gathered somberly. In the lobby, a large group of Nicaraguan government officials who have moved into the hotel for security stood with their families and bodyguards.

The two groups have tried to avoid each

other over the past week as tension has grown in the city.

One Nicaraguan standing with the officials walked over to a group of correspondents and said angrily, "You people didn't make this much of a fuss when Pedro Pablo Espinosa was killed." Espinoza, a Novedades columnist, was reportedly executed by guerrillas last week inside a Managua barrio.

Stewart, who was based in New York, had been with ABC since 1976. While covering the Iranian revolution, he had an exclusive interview with Ayatollah Ruhollah Khomeini in which Khomeini defined his concept of the Islamic republic he is now forming.

Before joining ABC, Stewart worked as a reporter and commentator for television stations in Minneapolis, Philadelphia and New York. He was a graduate of Ohio State University and earned a master's degree at Columbia University.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 10 minutes, and that Senators may speak therein up to 2 minutes each.

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

DEMOCRACY AT WORK IN ZIMBABWE-RHODESIA

Mr. HELMS. Mr. President, this morning's papers report that Mr. James Chickerma and seven other members of the Zimbabwe-Rhodesian Parliament have defected from the Muzorewa government.

This is an important development, one that shows that democracy is at work in Zambabwe-Rhodesia. It will lead ultimately, I think, to a strengthening of the political process in that country. It shows that change is possible within the framework of the new constitution, and that differing points of view can be accommodated on a peaceful and constructive basis.

Prime Minister Muzorewa no doubt would prefer not to see a defection from his party. That is only natural. But I think that, in the long run, he will find that the political competition is natural and inevitable. There are few African countries that can boast of a free opposition, particularly one with competent and able leadership. I doubt that the Prime Minister's ability to govern will be affected at all.

It is important that we keep in perspective the withdrawal of James Chickerma and seven of his colleagues from the Parliamentary coaltion supporting Prime Minister Muzorewa.

There are a number of personal and tribal factors involved.

All eight are members of the same Zereka branch of the Shona tribe which received relatively short shrift in the cabinet. Muzorewa's Manyika tribesmen fared much better in obtaining cabinet seats.

There is also a history of rivalry between the two leaders of the factions. Chickerma has tried unsuccessfully on several occasions to compete with Mr. Muzorewa for the top position within his party.

To me, however, the most important lesson to be drawn from the events of the past few days of politial manauvering in Zimbabwe is this:

In a parliamentary system, if a prime minister commands the confidence of a majority of the members, he continues in power until the next scheduled general election. However, if for any reason, he loses the confidence of the majority in Parliament, then there are new elections and a new leader is chosen.

Many might have preferred to see James Chickerma in the Cabinet of Mr. Muzorewa. He is an extremely capable man. But, it is essential to recognize the obvious right of Bishop Muzorewa as prime minister to name anyone or exclude anyone he may wish to his Cabinet.

Looking down the road, however, I am convinced that the broadest based possible government in Zimbabwe composed of those individuals and groups who support democracy and a free economy is in the interest of the new nation. And I would hope that at some point it may be possible to add new strength to the Cabinet of the new Prime Minister.

Should this not happen, and should a majority of the members of the Parliament grow dissatisfied, the constitutional process clearly provides for another means of broadening the base of the government.

NORTH CAROLINA FARMERS HURT BY TRUCKERS STRIKE

Mr. HELMS. Mr. President, today the farmers in North Carolina are in a state of distress due to the strike by the independent truckers.

The problem lies not in the fact that the truckers in North Carolina are on strike, but rather in the fact that the North Carolina truckers are so intimidated by threats of violence and vandalism from truckers in other States who are on strike that they refuse to haul produce to markets in other States.

As a result, tons of fresh produce are rotting in the fields. Farmers are about to lose the value of their crops. Soon, the price of food will reflect these losses.

I have a telegram from the Honorable Jim Graham, North Carolina Commissioner of Agriculture, which reads as follows:

P.O. Box 27647, RALEIGH, N.C.,
June 13, 1979.

Senator JESSE HELMS,
Capitol One D.C.:

I urge you to use the full power of your office to help bring an end to the Independent Truckers strike as soon as it is humanly possible. Thousands of containers of fresh vegetables are sitting in eastern North Carolina tacking sheds, sold and ready for shipment but no trucks are available. This situation will worsen as we are approaching a peak period in harvest of these crops. It is imperative that efforts be made to bring about stability in fuel prices to encourage the truckers to return to their needed role. Unless this is done, damage of these perishable products alone will be in the millions of dollars and consumer food cost will skyrocket. The seriousness of this situation cannot be overemphasized.

JAMES A. GRAHAM,
North Carolina Commissioner of Agriculture.

Mr. President, I also have a letter from Mr. Roland H. Vaughan of James E. Wood & Co., peanut brokers of Edenton, N.C., that gives one man's view of this problem. I ask unanimous consent to have it printed in the RECORD at this time.

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

JAMES E. WOOD & CO.,
Edenton, N.C., June 15, 1979.

Senator JESSE A. HELMS,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR HELMS: We are all struggling with this Nation's energy woes and sacrifices are being made by all sectors as prices edge higher. Other than getting used to higher fuel prices I don't know yet what the average consumer can do except conserve. We are fully aware that high fuel costs will affect different industries and individuals in different ways, which brings me to the point of this letter.

This Nation is very dependent on the trucking industry to move its goods about. We have just recently witnessed an inflation filled settlement with the Teamsters in an effort to avoid a prolonged strike which would eventually have done considerable harm to our economy. Now as fuel costs are rising we are being subjected to an act which in my humble opinion is totally defiant and against the law.

I am referring to independent truckers blocking the entrances to private businesses and they are doing this by using roads and accesses that were built with Federal tax dollars. The protest movement is denying access to privately owned businesses and it is preventing those truckers who want to continue operational from getting the needed fuel to complete their runs.

The underlying question I have in light of this activity is, where is the law enforcement in this country? How can a group of Independent Operators tie up the fuel pumps of this country and nothing be done about it, or no one running the risk of prosecution? Can any group of consumers deny other consumers access to a private business because they happen to think that the price of goods and services being sold there are too high? I don't think so and question the position of the Government in enforcing the laws of this land regarding individual rights to do business where one chooses, especially along the Federally supported roadways of this country.

Our business is heavily involved in trucking and almost exclusively with independent trucking, so I am not without sympathy. However, their situation should not exempt them from facing up to the law when they operate outside legal bounds in blocking gas pumps to other consumers. What's wrong with bringing in a fleet of wreckers and towing the trucks out of the way? I get sick and tired of everybody sitting back and waiting for someone else to remove the problem.

Small wonder why our position in the world is declining when we refuse to deal directly with our own problems in a forceful manner. People should be made to seek proper channels for the solutions to their problems and should not be allowed to take matters into their own hands whenever things go against them. Somehow we need to return to a more orderly way of solving our problems.

Thank you for hearing my frustrations

and I would appreciate any clarification you might offer if my opinion is entirely off the wall. Keep up the good fight and rest assured that you have a tremendous amount of support in your efforts.

Sincerely,

ROLAND H. VAUGHAN.

Mr. HELMS. Mr. President, the problems described in these two communications require immediate attention. Accordingly, I have written a letter to the President asking his immediate attention to this matter. The letter reads as follows:

U.S. SENATE,
Washington, D.C., June 20, 1979.

The PRESIDENT,
The White House,
Washington, D.C.

MR. PRESIDENT: The independent truckers strike is having disastrous effects on the nation's agricultural community—effects that will soon be felt by the food-buying consumer. Your immediate action is essential to insure that harvested agricultural produce will be shipped to market.

The independent truckers who haul agricultural produce are refusing to transport produce to market because of fears of acts of violence and other reprisals against them by other independent truckers who are participating in the strike. Tons of fresh produce are rotting in packing sheds. Our farmers are in a state of panic because they are about to lose their crops. They are frustrated because they do not know who to turn to for help.

Granted, the independent truckers have serious problems and valid complaints. I am very much in sympathy with their situation. Their demands should be given serious consideration.

At the same time, the truckers who want to work should be allowed to work, secure in the knowledge that they will be protected from acts of violence and vandalism.

Mr. President, your leadership is crucial in this time of crisis. I urge you to use the full power of your office to insure the safety of any independent trucker who wants to work, including, if necessary, calling upon the governors of the various states involved to activate the National Guard.

Your immediate and definitive response to this plea on behalf of our farmers will be appreciated. Your action will benefit not only our farmers, but our consumers and truckers as well.

Respectfully yours,

JESSE HELMS.

Mr. HELMS. Mr. President, clearly quick and firm action is needed in this crisis. I sincerely hope that the President will see fit to make this issue his chief priority until conditions are such that the produce haulers can carry agricultural products to market without fear for their personal safety, or the safety of their equipment.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business?

If not, morning business is closed.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

RESOLUTION CONCERNING MUTUAL DEFENSE TREATIES

Mr. ROBERT C. BYRD. Mr. President, has the Chair had an opportunity to lay down the pending business?

The PRESIDING OFFICER. No. The Chair has not.

The Senate will resume its consideration of the pending business, Senate Resolution 15, which the clerk will state by title.

The legislative clerk read as follows:

A resolution (S. Res. 15) concerning mutual defense treaties.

The Senate resumed the consideration of the resolution.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. GOLDWATER. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the Goldwater amendment in the nature of a substitute to the perfecting amendment to the resolution.

Mr. GOLDWATER. Has there been any time agreement for a vote?

The PRESIDING OFFICER. No, there has not.

Mr. GOLDWATER. Mr. President, I address myself to the chairman of the committee.

We have been over this and over it and over it. This resolution has been in this body since January 15. It has had rather complete hearings before the Foreign Relations Committee. It has been debated on the floor. I would be perfectly willing to agree to a time limitation on my amendment. I am not proposing to speak for Senator BYRD, who is the author of the resolution.

So I ask unanimous consent that we vote at 2:30 on my amendment.

Mr. CHURCH. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. GOLDWATER. Mr. President, I ask the chairman if he has another time he would like us to consider.

Mr. CHURCH. I say to the Senator from Arizona, in explanation, that the pending business is now the Goldwater amendment in the nature of a substitute. Depending upon how that is voted on, the next question before the Senate could be the amendment proposed by the able Senator from New York (Mr. JAVITS) and me. If we were to agree at this time to a time limitation as to a vote on the Goldwater substitute, we would be left without any time limit for voting on the Church-Javits amendment.

Therefore, it would be unwise, in our judgment, to enter into any unanimous-consent agreement that is restricted, alone, to the amendment in the nature of a substitute which is offered by the Senator from Arizona.

Furthermore, Mr. President, it may well be advisable, under the circumstances, to move to table the Goldwater substitute; and that, in our view, would have to be part of any possible unanimous-consent agreement.

There is a further consideration: Many Senators have not had an opportunity to examine the ramifications of the Goldwater substitute. On its face, it would seem to cause the Senate to take no position on the notice already given by President Carter concerning termination of the Mutual Defense Treaty between the United States and Taiwan. Yet if Senators will look more carefully into this question, they will see that the adoption of the Goldwater substitute—unlike the amendment offered by Senator Javits and myself—could open up litigation concerning the constitutional authority of the President to terminate the Taiwan mutual defense treaty.

It is our opinion that when the Senate originally voted on the Byrd resolution, it intended to send a message to the President relative to the future; that message was that mutual defense treaties, in the view of the Senate, should not be terminated in the future without the concurrence of the Senate. I have no quarrel with putting the President on notice that, in the future, the Senate intends that it should have a role in the termination of mutual defense treaties.

But I am adamantly opposed to reaching back into the past—and turning over to the court—the issue of whether this past action of the President was constitutionally valid.

Mr. GOLDWATER. Mr. President, I asked the question about unanimous consent. I did not go into all of this.

Mr. CHURCH. I am simply giving the reasons why it seems to us that this matter should be discussed further. All Senators should thoroughly understand all of the ramifications before a vote occurs. I am therefore constrained to object.

Mr. GOLDWATER. Mr. President, I hope that the Senator will reconsider. I do not know of a subject that has been discussed on this floor this year that has been more thoroughly explained to the Members of this body. I think I have written at least two letters to every Member of the Senate. I know that the President has been calling all night. I know that the State Department has been most active in contacting the Members of this body. I know that Mr. Brzezinski has been most active in contacting the Members of this body, offering the argument, which I do not agree with, that my amendment would destroy the so-called progress that has been made in Red China and the People's Republic of China.

My contention, and this is one of the reasons I wish to call it to a close this afternoon, is that I believe that you gentlemen and the State Department are more interested in stopping my access to the courts than in stopping the language of my amendment. For the first time in the 200-year history of our country the President acted, in my opinion, outside constitutional prerogatives in attempting to abrogate a treaty.

The Senate is supposed to have a voice in the formulation and termination of treaties and the Senate always has. As far as advance notice, I remember last fall we passed a Senate resolution telling the President that he could not terminate any treaty with Taiwan until he called on us for our advice and consent. I have said I would be perfectly willing to introduce an amendment for the President for our consideration, which would make it legal in that respect, if he would request it in accord with the Constitution.

My fear, I say to my friend from Idaho, is here it is 1 o'clock and if we proceed to debate this thing we will not get to any vote without unanimous consent and we are going to be losing Senators all afternoon from your side and from our side.

So what will we have? We will have a situation where once again this whole thing gets put off until next week and then next week we will find that there has been an agreement made to bring up the voting amendment offered by the Senator from Indiana and this subject will be pushed aside again. I am anxious to bring this to a close. I am anxious to get a determination on it. It has been since the 15th of January. So I seriously and sincerely hope that my friend from New York and my friend from Idaho will agree to a time certain to vote this afternoon on this amendment.

If Senator BYRD does not want to give time on an amended resolution, or if the amendment goes in the way of something the Foreign Relations Committee and the chairman and ranking minority member know the State Department is working on as an alternative approach, that is entirely a different horse. But I hope that we could agree now to vote, say, at 2:30 p.m. That is in an hour and a half. I assure my friends that anything I say will be repetitious, and anything that you say will be repetitious, and I do not think that our colleagues need any more repetition in this field because if we are not going to vote today, I suggest that we just forget the whole thing until sometime when we can set a time certain and vote. It might be after the Fourth of July, but we are not getting anyplace here.

I ask my friend to consider once again an unanimous-consent agreement to vote on my amendment No. 234 at a time certain which would be 2:30 p.m. today.

The PRESIDING OFFICER. Is there objection?

Mr. CHURCH. Yes, Mr. President. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CHURCH. I have explained the reasons for my objection. It is not that I want to delay this matter unduly. But I do want the Senate to be fully apprised of what is involved here. When the Senator from Arizona says that we—the Senator from Idaho and the Senator from New York—are trying to deny him his day in court, I say that is nonsense. He can go to court tomorrow. Any citizen can go to court. He has already been to court in a proceeding which attacked the constitutional validity of the President's action in terminating the Taiwan defense treaty. The district court has said he lacks standing.

And it said he lacks standing because the Senate has not, in effect, conferred standing upon him.

Mr. GOLDWATER. Preserving my rights in court is precisely what I say is involved.

Mr. CHURCH. If this amendment in the form of a substitute is approved, that is what the Senate will be doing. It will be taking an action that confers standing, that reopens the case and reverses the position that the court has taken by allowing it to take jurisdiction.

It is one thing to ask the Senate to remain neutral. But it is quite another matter for the Senator to ask that he go to court with our endorsement. And that is what he is asking.

I cannot accept the proposition that it is our intention to deny him his day in court. That simply is not so.

On the other hand, I believe it would be a grave mistake for the Senate to endorse his action by approving the substitute that he has offered that is now pending.

That is not readily apparent from a quick reading of the substitute, which seems innocuous enough on its face. But it does become evident when one reads the decision of the court dismissing the action that the Senator from Arizona has previously brought. I simply want to make certain that the Senate has sufficient time to understand what it is doing.

That is why at this time I am unable, as much as I would like to oblige the Senator from Arizona, to agree to the unanimous consent that he has proposed.

Mr. GOLDWATER. I know full well that I have gone to court and the judge has handed down an opinion in which the judge states that until this body or the Congress takes some action that would indicate that we are exercising our responsibilities, he does not feel that he should hear the case.

Now, this does not stop this case. We have already filed an appeal with him. If he denies it or we lose it, or you lose it, it is going to the appeals court, and regardless of what happens there, this is going to wind up in the Supreme Court of the United States sometime, probably a long time from now.

If the Senator means what he says about not wanting to work a hardship with me in my relationship to the Court—and I am speaking for eight other Senators and some Members of the House—then I might say the language of the Byrd resolution would not need any amendment by the Senator from Idaho. Had he not placed that amendment, I would never have put my amendment in. His amendment is not neutral.

All I am trying to do is to show the judge by our action that we are trying to take action in view of the prerogatives we have and the responsibilities that we have in the Senate as an institution.

I think the Church amendment is so worded now as to tie in with the judge's opinion and to deny the further progress of the lawsuit, whether he believes that or not. I do not accept the description of my suit or my amendment in the language he uses because I think this has got to be settled, and it is amazing to me that two men, who have stood on this floor against overwhelming odds time and time again and have argued for the constitutional rights of this Senate, would take the attitude that the President's action in December was correct.

It is the first time in the history of the United States that a mutual defense treaty has been sought to be unilaterally abrogated by any President. The only interest I have—and it certainly does not tie in with the People's Republic of China—is to make sure that this President or whoever the next President might be or whoever the President is 50 years from now cannot unilaterally abrogate a treaty, especially ones of mutual defense. That is my sole interest, Mr. President, nothing else. It is the reason why I hoped we could look forward sometime this afternoon to a vote.

I do not think we are going to accomplish anything by standing here on the floor going over the same arguments we have used time and again.

I felt sure that sometime today we would reach a vote. But if the Senator is going to say, "no," to a unanimous consent request, then I guess all we have to do is just keep on talking. I am perfectly willing to do that because, like the Senator, I live a long ways from my home, and I cannot get out there.

So I wish during the course of whatever arguments I make that you two gentlemen would confer with the idea that you allow a time certain.

If for reasons that you have no control over, something that the administration would like to present later on, and over which I certainly have no control, then I think that should be made plain on the floor.

If it requires putting it off for another time, I am not going to argue about that. I think we are wasting time standing here on the floor today without being able to say, "Well, at 2:30 or 3 we are going to vote."

I hope you two gentlemen can get together because if you are not, then I will just have to proceed.

Mr. CHURCH. Mr. President, the last of my wishes, and the least of my wishes, would be to inconvenience the Senator from Arizona or to necessitate a prolonged debate on this issue. That, as he knows, is not my purpose. I will, of course, confer with the majority leader, who makes such decisions, but I do wish to reiterate that the Court has said, in the action previously brought by the Senator from Arizona questioning the validity of President Carter's termination of the Taiwan mutual defense treaty, the following:

> If the Senate or the Congress takes action the result of which falls short of approving the President's termination effort, then the controversy will be ripe for a judicial declaration respecting the President's authority to act unilaterally. Until then the complaint is dismissed without prejudice.

One cannot read that concluding sentence of the Court's opinion without recognizing that the adoption of the Goldwater substitute would constitute an action that falls short of approving the President's termination of the mutual defense treaty with Taiwan. That is why the Senator is pressing for the adoption of his substitute. He wants the endorsement of the Senate. He wants the Senate to adopt a measure which will reinstate his case in court. That is a far cry from denying him his day in court which, of course, we have not done, nor would ever want to do.

Under the circumstances and until the 100 Senators have had an opportunity to read these debates or participate in them to examine the true ramifications involved in the substitute now before us, I think it would be unwise to vote. I do not believe we should rush to a vote when it is entirely possible that large numbers of Senators have not fully informed themselves as to the true nature of the issue before us.

For that reason, as much as I would personally like to oblige the Senator, I have to object to his unanimous-consent request.

(Mr. TSONGAS assumed the chair.)

Mr. GOLDWATER. Mr. President, it is obvious that we are not going to get agreement, so let me proceed inasmuch as it is my amendment and that is the order of business.

The amendment is offered as a compromise to the Church amendment. My amendment would remove any connotation that in voting for the Byrd resolution the Senate has repudiated the President's entire China policy, which as I understand, is the major purpose of the Church amendment.

However, unlike the Church amendment, my proposal would, I believe, preserve my right, and the right of eight other Senators, to pursue the ongoing lawsuit which we have filed to uphold the Senate's historic shared power in the field of treaty termination.

Our case is presently pending in the U.S. District Court for the District of Columbia where we have filed a motion for reconsideration of Judge Oliver Gasch's preliminary ruling of June 6. Needless to say, whichever side eventually loses in the district court will appeal to the Federal appeals court. Thus, the case is very much alive and active.

Mr. President, in circumstances such as these the Senate has never before attempted to deny any Senator, or group of Senators, of their right to go to court. Never has the Senate deliberately and knowingly deprived one of its own Members of the opportunity to pursue a case which is already in the courts.

But that is exactly what the Church amendment seeks to do. It is specifically aimed at retroactively shutting the doors of the court to nine Senators who are already in court.

The Senator from Idaho, Mr. CHURCH, has repeatedly discussed my lawsuit during explanations of his amendment. He has circulated a "Dear Colleague" letter of which the entire page 2 is devoted to the legal action that I have brought.

So to my mind there is no secret about what the Senator is trying to do. He wants to put a roadblock in the path of independent judicial review of the President's treaty termination effort.

The Senator's amendment asks the Senate to forget the Constitution. He asks us to forget the rightful powers of the Senate.

The amendment by the Senator from Idaho would have us put our heads in the sand and just ignore whether the President has usurped legislative power or not. He is saying to the courts, "Don't tell us whether the President acted legally or not. We do not want to hear it."

Mr. President, I believe this would put the Senate in a ridiculous position.

Why are we afraid of the courts?

Why can the Senate not trust the courts to interpret the Constitution?

This may be the only opportunity in a long time for the Senate to get a clear answer to this very important constitutional issue.

I should think my colleagues would welcome the opportunity to test in court the very proposition for which the Senate voted overwhelmingly only a few weeks ago, when we said that the Senate should participate with the President in the termination of any mutual defense treaty.

If the Senator is afraid of my language being retroactive in intent or purpose, I need only remind him that last fall the Senate took a very definite, hard stand in a resolution which, while having no binding effect, expressed the sense of the Senate as requiring the President to consult with us before abrogating any treaty of mutual defense.

Now, I would like to emphasize that the Church amendment is not neutral on the constitutional issue. It is actually a backdoor attempt to legitimize the President's action without making the Senate vote directly on the issue.

By preventing any challenge in court to the legality of the President's attempted termination of the Taiwan defense treaty, the Church amendment would allow the President's effort to stand as it is, in effect approving it.

If the Senator from Idaho really wants to have the Senate ratify the President's conduct with respect to the Taiwan treaty, why did he not put it in the form of a straight-forward amendment saying so? Something, by the way, Mr. President, which I have offered to do. The Senator could have introduced an amendment saying that under its constitutional prerogatives "the Senate hereby gives its advice and consent to the termination of the treaty." That would end it. It would be all over.

That is the proper way to do it. That is the traditional, historic way the Senate would act in a matter of this nature.

But, no, the Senator attacks my right—and the right of the Senate as an institution—to get a court decision regarding the prerogatives of the Senate.

Mr. President, that is all that is at stake here. The chairman of the Foreign Relations Committee claims there is more involved. He asserts my lawsuit will upset everything the President has done in moving to a new relationship with the People's Republic of China and with Taiwan.

But that allegation is not correct. I think it is a scare tactic. It has nothing to do with the real question before us.

Mr. President, I have stood here in the Senate Chamber and said repeatedly that I am not attempting to reverse the President's recognition of Red China. I am not trying to prevent the growth of trade relations with the PRC; nor am I seeking to hinder the development of cultural and other ties with mainland China.

For this reason, I have offered a substitute for the Church amendment. My amendment would clearly state that the Senate does not approve or disapprove of the termination of the defense treaty with Taiwan. It would leave the question open.

My amendment recognizes that the President has not requested legislative approval of the termination of that treaty and that the matter has not been before us.

My amendment would clarify that the Senate has not repudiated the President. We have not denied him authority to terminate the treaty; nor have we granted him authority to terminate the treaty.

If the courts should later rule that the President must request legislative approval before he can complete the termination of the treaty, that will be a different matter. The policy issue would then be squarely before us. But we have not reached that point at this time.

Mr. President, I submit this amendment in the spirit of accommodation to the wishes of any Senators who desire to make it clear that they have not and are not reopening all the President has done regarding relations with the PRC and Taiwan.

The Senate has made it abundantly clear that it asserts a shared power to approve or disapprove of treaty termination. The Senator from Virginia, my good friend HARRY F. BYRD, JR., has done the Senate an invaluable service by offering his resolution that puts the Senate emphatically on record as declaring that it has a right to participate in the treaty termination process.

The Senator from Virginia has made his point and the point that I and many other Senators have been putting forward.

In voting for the Byrd amendment on June 6 and rejecting the open-ended language proposed by the Foreign Relations Committee, the Senate clearly demonstrated that it possesses a shared power with the President to act in terminating a defense treaty.

Now, I am willing to clarify that our strong vote for the Byrd amendment was not a repudiation of the President's entire normalization policy. It is merely an assertion of our rights as a coequal institution in this Republic.

That is all the Byrd resolution is about, and that is all my lawsuit is about.

It is about the rights of the Senate, and the rights of each of us as Members of this body.

Mr. JAVITS. Mr. President, I sat with unaccustomed silence while the discussion was going on about a unanimous-consent agreement. As Senator GOLDWATER knows, I do not duck responsibility. I would like the Senate to know that I am very much a party to the

objection, and that I think the objection is very valid and very well taken, and essential to the national interests of the United States.

I have rarely seen Senator GOLDWATER as persistent about a matter. He is always rather the soul of brevity in things like that: "Once it is done it is done." He must feel very strongly about it, and I respect that. I have said that many times before, in addition to my great affection for him, and were there not great issues at stake, I would be the last person in the world not to try to conform to his wishes.

But where we are dealing with a matter of deep substance, extremely harmful, in my opinion, to the Senate and extremely harmful to the interests of our country, I just do not see how we can yield on a matter of that kind.

Those are very strong statements I have just made, and I would now like to prove them, because, Mr. President, the issue of the Taiwan mutual defense agreement is a very serious one, and the issue of our recognition of the People's Republic of China—and its recognition of the United States—is one of the most portentous decisions in foreign policy this country has ever made.

It so happens that, just strictly as a matter of fortune, I was in at the beginning, at the takeoff, as Arthur Vandenberg used to say, which took place in 1970, Mr. President, when I was one of two delegates to the United Nations. We do rotate this great experience between the House and the Senate and among the members of each of the Foreign Affairs Committees. I wrote the speech which said that the United States would review its policy with the People's Republic of China, and emphasized our fidelity to the mutual security agreement with Taiwan. That was the day of the two-China policy. We got President Nixon to approve it. It was subsequently implemented and expanded by the breakthrough of Henry Kissinger, one of the most brilliant things he has ever done, and of President Nixon. Ultimately, we came to the conclusion, as a result of the Shanghai communiqué, that we could not have a two-China policy. We had to fish or cut bait.

This was the matter of gravest concern to me when President Carter first told us a few hours before he announced an exchange of Ambassadors with the People's Republic. I was not at all convinced that this could or should be done. But after really deeply thinking it over, based upon these origins which I have described, I came to the conclusion that it was possible to construct a relationship with Taiwan which would protect not only its economic system but its social system as well. I set my mind to working on how that could be done, in cooperation with Senator CHURCH and other Senators, both inside and outside the committee, who had the same motivation, and with the administration, with which we did not agree at all.

We gradually developed and perfected a plan which finally found satisfaction in the Congress by a vote of 89 to 4. Finally, after all the arguments were in, and all the struggles were had, the Senate voted 89 to 4 to approve that Taiwan legislation. The structure has been built upon that. We have an agency there and they have an agency here. Nongovernmental, it is true, but still an agency. The authorities there have expressed finally, after thinking the whole world was falling in on them, their agreement with the fact that this will work out and that it is the way to go.

There is a feeling of real security now on that island. People are investing again and owning property, doing big business. The hope is there for a resolution of something which very often causes irredentism and war, either by the Taiwanese revolting or the People's Republic trying to take Taiwan, a war which would plunge us into a terrible situation.

Now, Mr. President, the Senate comes along and deals with a constitutional question, which is in what has been called by a Justice of the Supreme Court the "twilight zone" of that document—very much like the war powers area, which I will come to in a minute—and deals with it. It changes what we did in the Foreign Relations Committee and makes its own decision, according to the position of HARRY BYRD. Great, that is what we are here for. With that kind of exercise of responsibility we belong in the policymaking of the country respecting foreign policy. If we can contrive and pass a Taiwan act, if we can deal with a twilight zone question such as this one about the termination of treaties by a resolution of the question in the political forum on the basis of resolving the doubts which the Constitution raises then we have earned our spurs. We have earned the right to participate effectively in the foreign policy of this country.

But, Mr. President, if those who oppose the termination of a mutual defense treaty with Taiwan, if those who even opposed the recogniton of the People's Republic of China, are going to retrade the deal—and that is what this is all about—then the Senate will lose its right to participate in shaping the foreign policy of the country by virtue of irresponsibility. Everybody has acted already on the Taiwan question, the administration, the People's Republic of China, the Senate, and the Congress. If we are going to backtrack on that, Mr. President, then I think we put our own status in grave jeopardy.

This is a people's government, and what is going to pass here is going to be very largely responsive to the views of our country and the confidence which they have in us and we have in them. That is what is at stake here.

We all love BARRY GOLDWATER, and he wants us to act on his particular proposition because he does not like what we did. That is what it is all about. That is a point at which love has to yield to the highest interests of the country. That is what this argument is all about. And I am a party to it. We cannot do it. Well, we can, in a sense, certainly, by voting it, but we will make a very grave mistake if we do.

What are we members of the Foreign Relations Committee for if we are not going to be the expert advisers on these matters to the Senate? They can do what they please, of course they can, but at least they have to hear us in a considered way so that the whole situation is laid out before our colleagues and they know what they are really doing.

It is very significant, Mr. President, that in the amendment authored by Senator CHURCH and I to make it clear to the courts and, what is even more important than courts or at least as important as courts—I do not wish to denigrate the courts at all—is other countries, including the People's Republic and the people on Taiwan, that as far as this matter is concerned it is closed. It is settled. We have made our determination. We have laid down our law. We are going to stick with it and that is it. There is nothing in the world more important in foreign relations than certainty when you can get it, Mr. President. We have it here up to now. Let us not destroy it.

So, Mr. President, I think the issue of the Senate and the standing of the Senate, and of where the Senate fits into foreign policy, is at stake.

Second, this judge, Judge Gasch, very wisely—and the courts have done this time and again in situations like this—said, "This is a political decision, gentlemen." I would again like to read the last of his opinion. He said:

> For these reasons, the court believes that the resolution of the ultimate issue in this case should in the first instance be in the legislative forum. If the Congress approves the President's action, the issue presently before the court would be moot. If the Senate or the Congress takes action, the result of which falls short of approving the President's termination effort, then the controversy will be ripe for a judicial declaration respecting the President's authority to act unilaterally. Until then the complaint is dismissed without prejudice.

Now, Mr. President, the court says to the legislature, to wit, the Senate and the Congress, "If you take and exercise jurisdiction, then that lets me out." But, he said, "If you don't, or if you leave it up in the air, that lets me in"—clearly implying that he can get in.

Mr. President, what could be more damaging to the Senate than to invite judicial intercession in a role which is uniquely the Senate's and which is granted by the court to be uniquely the Senate's? The nice, equitable character of Senator GOLDWATER's substitute, that we neither approve nor disapprove of the Taiwan treaty termination, sounds very nice, but it does exactly what the court says it wants us to do if we want it to decide.

I could not think of any worse outcome for the struggle which has been waged around here for years in order to assert again, after the long period since the end of World War II, the determination of the Senate that the foreign policy of the United States is going to be made by the President and the Congress, where that fits, or the President and the Senate, in the case of treaties.

I think that is critically important to lay the issue out very clearly for our colleagues. Then they may do exactly as they please. They have the right, if they wish to, to torpedo the Senate's role in foreign policy. That is their privilege, and I think that is what they will be doing.

Mr. President, I speak about this with some feeling, because I spent a good part of my life on the war powers resolution, which posed before us exactly the same issue of principle. That issue was this: We have the power to declare war; the President, as Commander in Chief, has the authority to deploy the forces of the United States. We have found, through bitter experience, that he may deploy those forces in such a way or over such a time as to bring on a war, which we do not have to declare, because if somebody shoots at a U.S. gunboat, which is what happened in the Tonkin Gulf, he has the right to move into war to any extent necessary to deal with that threat to the Armed Forces of the United States.

So there was a twilight zone: When do you move over from an action which a Commander in Chief not only has a right to take but which we want him to take in terms of the self-defense of the United States and its Armed Forces, into war, which only Congress can declare? So we settled the question by declaring a methodology.

The point is that we cannot change the Constitution. We can turn handsprings on any kind of bill or legislation but we cannot change it. It is what it is or what the Supreme Court interprets it to be. So, Mr. President, we did not try to change the Constitution in respect of the war powers resolution. What we did was develop a methodology. We set a time within which we said a self-defense action or any other action within the authority of the President as we saw it, short of war, was appropriate. But then we said that, at the end of that time, it becomes war as we define it. At that point, we can tell him, "Here, here, Mr. President, get out unless we give you the necessary authority."

That is essentially what the Senate has done in Senator HARRY BYRD's resolution. The Senate has declared a methodology in respect of a twilight zone in the Constitution, saying, "If you are going to terminate a treaty, you have to get our approval if it is a mutual defense treaty." That, I think, is entirely proper and entirely constitutional. But if we are going to go adventuring, Mr. President, into backtracking on something locked into the foreign policy of the United States because Senators did not agree with that policy and think they have found a way to undo it, and that we should be a party to it, we would be destroying, in my judgment, our credibility as a proper agency to join with the President in respect of foreign policy which is, in my judgment, one of our most dearly won rights regained following World War II.

Mr. President, that kind of issue cannot necessarily be decided in an hour and a half. That is why Senator CHURCH, with my support—I do not want to duck that responsibility at all—made the objection that he did, and quite properly did so, in my judgment, in the highest interest of the Senate and in the highest interest of the country.

Mr. GOLDWATER. Mr. President, I shall not be long, but what the distinguished Senator from New York said about the Byrd resolution I could not agree with more. The question that arises in my mind is: Why did it become necessary to have the chairman of the Committee on Foreign Relations attempt to attach an amendment that would put restrictions onto the Byrd resolution? If that had not happened, I would never have offered mine at all. I do not want the language to infer that I want to stop the termination that we have gone through with Taiwan or the recognition of the People's Republic. This is one of the things that bothers me.

The Senator referred to the judge's decision. I am reading from the decision:

> If the Senate or the Congress takes action the result of which falls short of approving the President's termination effort, then the controversy will be ripe for a judicial declaration respecting the President's authority.

I might say, Mr. President, that is all I am asking. I am asking for that kind of independent, judicial determination.

These are the reasons that disturb me, Mr. President. Why, for the first time in 200 years, do we have a President unilaterally abrogating a treaty? Again, it is amazing to me to hear Members of this body, who took the same oath that all of us have taken relative to the Constitution, defend what I consider to be an unconstitutional action by a President. I feel that, had the President sent a resolution asking this body to approve the abrogation of the treaty with Taiwan in accord with the Constitution, it would have passed this body. That is why I have said several times here, and I may yet do it, that I may offer an amendment that will do precisely that. It is mystifying to me, it is very, very mystifying to me, why we hear the arguments against the Senate's constitutional rights in the formation and abrogation of treaties.

The Senator mentioned the War Powers Act and he and I fought on that one, too. I might say that if I ever raise enough money, we are going to try the constitutionality of that, just as something for us to look forward to in our older years.

Unbelievably, the various Presidents of this country, have called out the troops over 200 times in the history of this country. Yet we have had only five declared wars and two of them were the same war. But that is an entirely different subject and I can understand the Senators saying that they did use the same kind of approach, because here again, an attempt has been made, down through our history, to get the question answered: What is the power of President as the Commander in Chief of our forces? We cannot find it spelled out in the Constitution. That is why I think a test of that will be valuable.

Mr. President, it is increasingly obvious to me that the opponents of my amendment are not going to have a vote on this this afternoon, so I am just going to sit down and let them carry the burden of the argument, and I shall be glad to listen.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARRY F. BYRD, JR. Mr. President, the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from Idaho (Mr. CHURCH), have ably debated the pending proposal.

I do not propose at this time to comment on that.

I do want to take a few moments, however, to clarify and summarize just what the Senate has already done.

Mr. President, the background is this.

On the first day of this session—January 15—I introduced a resolution which would put the Senate on record as stating that a President could not unilaterally terminate a treaty.

I was convinced that since the Senate is a partner with the President in the treaty-making process, it also is a partner in the treaty-terminating process.

The reason for the resolution, of course, was President Carter's action last December in granting diplomatic relations to the People's Republic of China and simultaneously serving notice that he intended to terminate the mutual defense treaty with the Republic of China on Taiwan.

I favor the President's decision to enter into diplomatic relations with mainland China.

While I disapproved of President Carter's casting overboard a long-time friend and ally, Taiwan, my fundamental concern was whether a President could unilaterally nullify a treaty.

The Byrd resolution was debated in the Senate on March 7 and 8. After lengthy debate, I agreed not to press it to a vote at that time so as to permit the Senate Foreign Relations Committee to hold hearings.

Despite the fact that the Foreign Relations Committee's report on the Taiwan enabling legislation stated that the Senate does have a constitutional role in the treaty-terminating process, both the chairman of the committee (Mr. CHURCH) and the ranking Republican (Mr. JAVITS) argued that the President could unilaterally terminate a treaty.

The Foreign Relations Committee held hearings on the Byrd resolution and reported back to the Senate a resolution which reversed the purpose and intent of the Byrd resolution and instead enunciated the view held by Senators CHURCH and JAVITS, the two ranking members.

After full Senate debate, I moved to substitute the original Byrd resolution for that reported by the Senate Foreign Relations Committee.

By a vote of 59 to 35 the Senate approved the Byrd resolution declaring it to be the judgment of the Senate that a treaty can be terminated only with the approval of the Senate.

The Senate has spoken loud and clear; the precedent has been established that in the judgment of the Senate a President cannot unilaterally nullify a treaty.

Mr. President, I suggest the absence of a quorum.

Mr. JAVITS. Will the Senator withhold that?

Mr. HARRY F. BYRD, JR. I withhold it.

Mr. JAVITS. I thank the Senator. I will put one in later.

I thank the Chair.

Mr. President, Senator GOLDWATER asked, and I gather it is implied from the next argument of the Senator from Virginia (Mr. HARRY F. BYRD, JR.), about why we felt the amendment we drafted respecting the Taiwan Treaty specifically was necessary. That is all of record before the Senate in debate, but I would like to summarize it because the question has been raised and it fits in at this point in the RECORD.

The Byrd resolution says:

It is the sense of the Senate that approval of the United States Senate is required to terminate any mutual defense treaty between the United States and another nation.

Mr. President, the fact is that the Taiwan Mutual Defense Treaty between Taiwan and the United States was terminated by the President giving a notice of termination effective 1 year from January 1, 1979. The words of art used in the resolution of Senator HARRY F. BYRD, JR., which was adopted by the Senate, could be construed—I say, could be construed—not to apply if they were left alone, and the interpretation we gave them on the floor respecting Taiwan took account of the fact that was the final notice, that was the only notice. Indeed, I put it in the RECORD in text, and I will do it again, just so the issue is clear. Mr. President, I ask unanimous consent that the State Department's notice of termination dated December 23, 1978, delivered to the authorities on Taiwan be printed in the RECORD.

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

NOTICE OF TERMINATION

DECEMBER 23, 1978.

On behalf of the United States of America, and pursuant to article X of the Mutual Defense treaty between the United States of America and the Republic of China, signed at Washington December 2, 1954, I hereby give notice of the termination of this treaty. This notice shall be effective on and as of January 1, 1979, and under the terms of article X of the treaty, the treaty will terminate one year after that date.

WARREN CHRISTOPHER.

Mr. JAVITS. But subsequently we faced a declaration which came from one of the sponsors of the Byrd amendment, which said, "Well, we are not going into the notice of termination about Taiwan. Maybe it does and maybe it does not apply."

So that the interpretation of the authors, which is critically important in this matter—because, obviously, it is in court, and Senator GOLDWATER's case is being appealed—changed the situation so far as the record is concerned. Therefore, we had no choice, considering the issues as I described them a little while ago, but to try to make the question crystal clear.

Also, Mr. President, it is very significant that a number of Members have joined in this amendment by Senator CHURCH and me to make it crystal clear that the Taiwan Treaty is ended, thus indicating that our concerns about the matter were not figments of our imagination. That is why, as a matter of duty and responsibility, we had to move as we did.

One other point, Mr. President: I do not think it is quite accurate to describe what the Foreign Relations Committee brought in as being the converse of Senator BYRD's proposition, and I will state why, because, again, I had something to do with trying to draft the words as to what the committee desired and intended.

We said that, for practical purposes, it is not necessary to decide that question on constitutional grounds; that we can simply fully safeguard the right of the Senate or Congress to terminate a treaty—whatever we wish—because there is no question about the law; that if we write it in a reservation to a treaty, that is it; that is the end of it.

Second, we applied that generically to all treaties, not just mutual defense treaties; because we felt that that was a perfectly fair and proper provision to make in any treaty—mutual defense or otherwise.

Last, because we know how many treaties are made by the United States—tax treaties, treaties about extradition, and a whole host of other matters—we provided that the Senate could be selective and could put such a reservation into any treaty where it felt it wished to reserve the right to concur either in itself or in the entire Congress.

It seems to me that that was hardly 180 degrees from what Senator BYRD intended, and I do not see that he has done any more except to make it generic as to mutual defense treaties. The Senator may differ with me, but that is my considered judgment; and I think that, in either case, the will of the Senate would have been followed fully.

Mr. President, I suggest the absence of a quorum.

Mr. GOLDWATER. Mr. President, will the Senator withhold that?

Mr. JAVITS. Yes.

Mr. GOLDWATER. Mr. President, the charge is plainly untrue that a court decision in my lawsuit might reverse the course of our Government's new relations with the People's Republic of China.

In the first place, the United States has already recognized the PRC. That is done and over with.

Second, ambassadors have been exchanged. Embassies have been established.

Third, several agreements have been signed, including one in principle relating to the settlement of outstanding claims of U.S. nationals. Trade agreements and contracts have been signed, and substantial and increasing trade and cultural contacts are taking place between the PRC and ourselves.

Before recognition, trade was already substantial, exceeding $1 billion in 1978. Two-way trade with Communist China will likely reach close to $2 billion this year.

These important aspects of normalization are already going forward. The idea that all of this will be reversed because of a lawsuit which does not challenge recognition and which does not raise any question about growing trade relations or other ties, is pure hogwash.

It is nothing but speculation, a sort of scare tactic.

Mr. President, I can reveal today that no one on behalf of the administration even asked the Communist Chinese whether it would be acceptable to them if the President came to Congress or the Senate for approval of the termination of the defense treaty with Taiwan. The constitutional method of terminating the treaty was never discussed. At no time during negotiations with them did the Red Chinese object to terminating the treaty by the normal process of getting legislative authority.

These facts came out in the answers of Assistant Secretary of State Warren Christopher to questions put to him by my attorneys during the lawsuit which is still pending in Federal court.

On the other hand, Eugene Rostow, a former Undersecretary of State for President Johnson, has given a statement under oath that Vice Premier Deng, the top leader of Communist China, told him last June 22 that termination of the Taiwan Treaty was not vital to improved relations between the PRC and the United States.

Dr. Rostow had a long conversation with Mr. Deng in Peking last June, during which 50 pages of notes were taken. From those notes, Dr. Rostow records Deng as saying "the organization of strategic and economic cooperation between our two countries does not have to wait on the final resolution of the Taiwan question."

In his sworn statement, Professor Rostow continues:

The Vice Premier stated that it would be preferable if the United States accepted the Chinese terms for normalization, but did not insist on that point . . .

So there is no evidence Peking would break relations or cut off trade if the courts should decide the President must request legislative approval of his decision to terminate the treaty. In fact, the court need only rule that the process of terminating the treaty is incomplete.

If it should eventually decide in favor of the shared power of the Senate, the court would not rule that the treaty cannot be terminated. It would merely say to the President that he should allow the legislature to participate in his policy before the action was final. The People's Republic of China could hardly fault the President if a court, outside of his political control and influence, should decide his notice of intent to terminate the treaty was not binding until the Senate joined in making the final decision.

Also, I point out that President Carter, himself, has taken the very risk of damaging our new relations with the People's Republic of China, which is being charged against my lawsuit. On March 16, the Chinese Communist Foreign Minister, Huang Hua, met with our

Ambassador, Leonard Woodcock, in Peking and warned that passage of the Taiwan Relations Act would violate the agreement between the two countries on establishing diplomatic relations.

According to the official press release distributed by the Embassy of Communist China, the Foreign Minister protested that:

> If the bills are passed as they are worded now, and are signed into law, great harm will be done to the new relationship that has just been established between China and the United States.

The Chinese Government singled out as being particularly offensive several provisions of the bill. These provisions declared that:

First. The United States considers any efforts to resolve the Taiwan issue by other than peaceful means "of grave concern to the United States;" second, the United States will maintain its capacity "to resist any resort to force or other forms of coercion that would jeopardize the security, or social or economic system of the people on Taiwan;" third, the future of Taiwan will be determined "by peaceful means;" fourth, the term "people on Taiwan" includes "the governing authority on Taiwan;" fifth, any reference in U.S. laws to foreign countries and governments should apply to Taiwan; and Sixth, the properties belonging to the former Republic of China in the United States are not affected by recognition of the People's Republic of China.

Mr. President, I am reminded at this point that last night, on the news or in the newspaper, I heard or read that the Soviet Union has now said that if we change one word of the SALT agreement, it will not be binding on them, nor will it continue to be considered. Well, I wonder whether we are going to be influenced by the Soviet Union as we have been influenced by scare threats from the People's Republic of China. They are not going to bother me.

I have submitted an amendment to that treaty with respect to the Backfire bomber. The Russians can talk until their heads fall off, but I am going to try to get that amendment adopted by the Senate.

But getting back to the point that I have been trying to make, as my colleagues know, each of these supposedly objectionable provisions remained intact in the final bill signed by President Carter on April 11 as Public Law 96-86. Thus, in signing that law, President Carter took a risk that he would offend the PRC and upset the new relationship. He did so with advance warning and in the face of a specific protest by Communist China that his action might have harmful consequences.

Yet he did sign the law. And Communist China did not reverse its relations with our country.

Mr. President, I say that the President's own action shows that we cannot rely on any scare stories about what the Chinese Communists will do. The President himself did not believe their threats.

But how is President Carter's action in signing a law, which was strongly protested by Red China, different from what I am doing in the Court today? Why will my lawsuit upset the applecart any more than President Carter's act in signing the Taiwan Relations Act?

Obviously, it will not interfere with the new relations we have with China. We are a Nation of rule by law, not rule by decree. It will not hurt one thing if I or anyone else asks the Court to rule that the President should abide by democratic processes in carrying out his policies.

It may be true that he can get a majority of Congress to approve the termination of the treaty. But first he has to request it. That would remove the constitutional problem and allow our new policies in the Pacific to continue on course.

Mr. JAVITS. Mr. President, I am brought to my feet by the statement that that will remove the policy suestion and keep us on course. The policy question is removed by the Byrd amendment. It is finished. The only effect possible of the litigation that Senator GOLDWATER describes is the fact that it may lead to an invalidation of the termination of the Taiwan agreement.

While Senator GOLDWATER says, "Well, they did not actually pull out on a previous occasion when we signed with Taiwan," he does not know any more than I do what they would do on this occasion.

The point is that it is another way of trying to destroy that relationship. They would have another opportunity and a very valid one to pull out, because constantly it was reiterated time and time and time again that the essence of the recognition of Communist China and their recognition of the United States in terms of the exchange of ambassadors was based upon the fundamental point that the mutual defense relationship, the treaty, with Taiwan would be terminated.

So why give them this opening when it is unnecessary if we all agree that that should not be done? And that is what we are trying to nail down in view of the fact that a question has been raised about it, whether it has been raised by litigation or anything else.

Finally, if Senator GOLDWATER has a place in court, it is only because of his claim that the Constitution of the United States simply will not permit the President to terminate a treaty. That is litigable. There is nothing we can say or do to undo that. But we have already shown that his amendment tied directly to the judge's decision does exactly what the judge asks by our action, if we should be so unwise as to pass this amendment, delivering the jurisdiction to the court. It is for those reasons that we must as strongly as we can oppose it.

Might I say, also, that the statement that the President has never terminated a treaty, which is what I understood the Senator to say, is just not a fact.

The record, which is before every Senator, at pages 151, et cetera, of the hearings, will show that the President has terminated a dozen treaties without congressional involvement, and the counsel for the plaintiff in Senator GOLDWATER's case even admitted in court that these were examples, except that he sought to distinguish those terminations from this termination on the ground that it represented a termination, because of changed circumstances. Nevertheless, it was a termination without congressional participation.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. GOLDWATER. I specifically said a mutual defense treaty.

Mr. JAVITS. All right. I accept that clarification.

Mr. President, I again suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. RIEGLE). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, with respect to the bill (H.R. 4289), Calendar Order No. 239, the supplemental appropriations bill, that there be a time limitation on the bill of 1 hour, to be equally divided; a time limitation of 30 minutes to be equally divided on any amendment in the first degree, with the exception of 1 hour on an amendment by Mr. WEICKER a time limitation of 1 hour on a Hatfield amendment; a limitation of 2 hours to be equally divided on one Boschwitz amendment, or a limitation of 1 hour, equally divided, on each of two Boschwitz amendments; and a limitation of 20 minutes on amendments in the second degree; a limitation of 10 minutes to be equally divided on debatable motions, points of order, and so forth.

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object——

Mr. ROBERT C. BYRD. Will the Senator let me finish? A limitation of 10 minutes, equally divided, on debatable motions, points of order, or appeals.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I reserve only to advise my colleagues on this side of the aisle that the time limitation the majority leader has just requested has been worked out over some period of time on this side, and we have no objection to its being granted.

Mr. ROBERT C. BYRD. Mr. President, I amend my request to provide that the time on the bill be equally divided between the Senator from Washington (Mr. MAGNUSON) and the Senator from North Dakota (Mr. YOUNG), and that the agreement be in the usual form with respect to division and control of time.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. This does not stop any other Member from amending?

Mr. ROBERT C. BYRD. Oh, no.

Mr. JAVITS. Very well; that is fine.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. HARRY F. BYRD, JR. As I understand, there is a time limitation of 1 hour on the bill, to be equally divided?

Mr. ROBERT C. BYRD. Yes.

Mr. HARRY F. BYRD, JR. Will the Senator amend that to give the Senator from Virginia 15 minutes?

Mr. ROBERT C. BYRD. Yes, Mr. President, I amend the request to provide that the Senator from Virginia (Mr. HARRY F. BYRD, JR.) may have control of 15 minutes on the bill.

Mr. BAKER. Mr. President, reserving the right to object, will the Senator yield for just 1 moment?

Mr. ROBERT C. BYRD. Yes. Mr. President, I temporarily withdraw the request.

Mr. ROBERT C. BYRD subsequently said: Mr. President, I renew my request with the following proviso: That any amendment dealing with funds for the Virgin Islands is not to be covered by the agreement.

The PRESIDING OFFICER. Is there objection? Without objection, the request is agreed to.

The text of the agreement follows:

Ordered, That when the Senate proceeds to the consideration of H.R. 4289 (Order No. 239), an act making supplemental appropriations for the fiscal year ending Sept. 30, 1979, and for other purposes, debate on any amendment in the first degree (except ten amendments by the Senator from Connecticut (Mr. WEICKER), on which there shall be 1 hour each; one amendment by the Senator from Oregon (Mr. HATFIELD), on which there shall be 2 hours; one amendment by the Senator from Minnesota (Mr. BOSCHWITZ), on which there shall be 2 hours, or two amendments by the Senator from Minnesota (Mr. BOSCHWITZ), on each of which there shall be 1 hour) shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; debate on any amendment in the second degree shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 10 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 1¼ hours, to be divided and controlled, respectively, with 30 minutes for the Senator from Washington (Mr. MAGNUSON), 30 minutes for the Senator from North Dakota (Mr. YOUNG), and with 15 minutes for the Senator from Virginia (Mr. HARRY F. BYRD): Provided, That the said Senators, or any one of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

AUTHORITY TO SIGN DULY ENROLLED BILLS AND RESOLUTIONS DURING THE RECESS OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over until Monday, the Vice President of the United States, the President of the Senate pro tempore, and the Acting President pro tempore be authorized to sign all duly enrolled bills and joint resolutions.

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

AUTHORITY TO RECEIVE MESSAGES DURING THE RECESS OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over until Monday, the Secretary of the Senate be authorized to receive messages from the House of Representatives and/or the President of the United States, and that they may be appropriately referred.

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

ORDER FOR RECESS UNTIL 10 A.M., MONDAY, JUNE 25, 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 o'clock a.m. on Monday next.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

Has the order been entered already that upon the completion of the orders for the recognition of the two leaders or their designees under the standing order on Monday, the Senate will proceed to consider the supplemental appropriation bill?

The PRESIDING OFFICER. The Senator is correct.

DIRECT POPULAR ELECTION OF THE PRESIDENT AND VICE PRESIDENT

Mr. ROBERT C. BYRD. Mr. President, under the authority that has been previously granted to me, I call up Calendar Order No. 66.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 28) proposing an amendment to the Constitution to provide for the direct election of the President and Vice President of the United States.

The Senate proceeded to consider the joint resolution.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate adjourn for 30 seconds.

There being no objection, at 2:33:15 p.m., on Thursday, June 21, 1979, the Senate adjourned until 2:33:45 p.m., the same day.

AFTER ADJOURNMENT

THURSDAY, JUNE 21, 1979

The Senate met at 2:33:45 p.m., pursuant to adjournment, and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings be dispensed with.

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to exceed 2 minutes, and Senators may speak therein for 1 minute; that no resolutions come over under the rule, and that no action occur whatsoever under rule XIV.

The PRESIDING OFFICER. Is there objection? The chair hears none. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, if any Senators wish to direct remarks to the unfinished business now, the constitutional amendment on direct elections, they may do so during the remainder of the day. I do not anticipate any rollcall votes. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

THE MURDER OF MR. STEWART

Mr. DURENBERGER. Mr. President, I stand with great sorrow over the brutal and savage killing yesterday of ABC News Reporter Bill Stewart. The deliberate, senseless murder of Mr. Stewart has left all of us in a state of shock.

Mixed with my sorrow, though, is indignation, anger and bitterness over this heinous crime. We, as American citizens and representatives of the public, cannot let this unspeakable act of aggression go unchallenged.

In a very real sense we must hold Nicaraguan President Anastasio Somoza responsible for this crime. His constant railing against American journalists for their coverage of the civil war created the atmosphere in which a National Guard soldier assumes the power of an executioner.

We must condemn this act of barbarism with our actions, not only our statements.

I have sent a telegram to the family of Mr. Stewart, but words printed on a

sheet of paper cannot express the depth of my feelings.

I ask my colleagues and all Americans to pause for a moment of silence in honor of Mr. Stewart and ask unanimous consent that the following article from the Minneapolis Tribune be printed in the RECORD.

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

FORMER WCCO REPORTER STEWART KILLED IN NICARAGUA

MANAGUA, NICARAGUA.—Bill Stewart, an ABC News correspondent and former reporter for WCCO-TV in Minneapolis, was shot in the head and killed by a national guardsman Wednesday at a government roadblock in Nicaragua.

ABC-TV crewmen with Stewart said he and a Nicaraguan interpreter, Juan Francisco Espinosa, were killed deliberately by troopers as other guardsmen watched.

President Anatastio Somoza said a military court already has been formed to investigate the killings and "those guilty will be punished."

Staff members in Managua of the three major U.S. networks, ABC, NBC, and CBS, said they would leave Nicaragua to protest the slayings. They said they would accompany Stewart's body when it is returned to the United States. Plans call for the body to be flown to Panama today aboard a U.S. Air Force cargo plane.

In Washington, President Carter decried the killing as "an act of barbarism that all civilized people condemn."

A State Department spokesman said Secretary of State Cyrus Vance asked for a full report from the U.S. Embassy and from the Nicaraguan government.

All three television networks presented film on their evening news programs of Stewart's murder.

The crew soundman, James Cefalo of Miami, said the interpreter apparently told guardsmen at the roadblock on the east side of Managua that Stewart wanted to conduct interviews and explained they meant no harm.

He said Stewart had a presidential press card in his hand when he was shot.

Cefalo, watching from the crew's van, gave this account:

Guardsmen motioned for Stewart and the interpreter to split up, and, after a few moments, "I saw Bill on his knees with his hands raised.

"The guardsmen approached and motioned for them to lay face down . . . Then one guard walked over and kicked Bill in the side. After Bill was kicked, the guard stepped back, motioned for him to put his hands behind his head.

"Then the guard stepped forward and shot him once in the head" with a rifle. "Then they motioned for the driver to pull the van ahead. That was when we saw the interpreter's body."

The eastern section of the city has been the scene of heavy fighting between national guardsmen and Sandinista rebel forces who are attempting to oust Somoza and end four decades of his family's rule.

Stewart worked for WCCO from November 1972 to July 1978 as an investigative reporter and anchor man of the noon news. He replaced Dave Moore when Moore was on vacation.

News Director Ron Handberg said yesterday, "He was one of the finest investigative reporters we ever had."

Bill Carlson, host of WCCO's "Midday" show and a close friend of Stewart's, said Stewart had recently been in Iran on assignment. Carlson said, "He was very concerned with going to Nicaragua. He said that he found in Iran that anybody on a street corner can kill you and never be called to account for it. . . . He wasn't very pleased about going to another country like that." He had been in Nicaragua about a week, according to Carlson.

While in Iran, Stewart had an exclusive interview with Ayatollah Ruhollah Khomeini during which the religious leader described his plans for an Islamic republic.

While at WCCO, he won an award in 1974 for a five-part series on the security guard industry.

Stewart is survived by his wife, Myrna, and his parents who live in Huntington, West Virginia.

THE NEED FOR PROMPT ISSUANCE OF OLDER AMERICAN ACT REGULATIONS

Mr. COHEN. Mr. President, 8 months ago, on October 18, 1978, the President signed into law the Comprehensive Older Americans Act of 1978. At that time, I was a Member of the House of Representatives and I took a keen and active interest in the enactment of this legislation. The 95th Congress significantly restructured this important statute, which is the principle vehicle for providing Federal assistance to State and local programs for the elderly.

As a Senator from a rural State, I have a strong interest in the efforts contained in Public Law 95-478 to expand services to the elderly who reside in rural areas. There is a critical need to extend aging services in the less densely populated areas of our country where governmental services are generally less available. But the new initiatives contained in the 1978 amendments to the Older Americans Act remain largely unrealized. The multiyear planning process has yet to take effect and the States have not been given any guidance on how best to implement the statutory requirement that they expand their effort to meeting the needs of the rural elderly to 105 percent of the fiscal year 1978 level.

Mr. President, in the process of consolidating the social service, senior center, and nutrition programs into a single service delivery mechanism, Congress did not provide a specific authorization for multipurpose senior centers. It was assumed that the centers would continue and expand as one of the social services authorized under part B. The joint explanatory statement of the committee of conference said that—

> In deleting the separate authorization, the Conferees emphasize the importance of multi-purpose senior centers in developing a comprehensive social service network, and expect that area agencies will continue to place appropriate emphasis on their development and expansion.

In spite of this language, there have been reports from various States that funds previously earmarked for senior centers are being diverted to support other social services. This is only one example of where the drift and lack of executive leadership on the Federal level has served to weaken an important component in the aging network

Mr. President, I could go on at great length citing example after example of significant changes contained in Public Law 95-478. The State and area agencies on aging are operating in a vacuum when it comes to implementing this new law. The longer this situation is allowed to continue the more harm will be done to our aging programs. I would, therefore, urge Secretary Califano and Commissioner Benedict to do everything in their power to expedite the publication of proposed regulations implementing the Comprehensive Older Americans Act Amendments of 1978. Even if those regulations were to be published in the Federal Register today, it would not be possible to have them in place on October 1, when the new fiscal year begins. The longer this delay continues, the more it will dislocate these important programs. Right now, the difficulties are largely being felt within the aging network. But, in the not too distant future, the detrimental impact will begin to be felt by senior citizens all across this Nation.

THE IMPORTANCE OF NICARAGUA

Mr. HELMS. Mr. President, the situation in Nicaragua grows more grave with every passing day. It is a situation that has been exacerbated by the actions of the United States in its diplomatic relations with the Somoza government. The heart of the matter is the fact that the guerrilla war in Nicaragua is not being supported indigenously; it is plainly receiving its strongest support from Cuba, Panama, and Costa Rica. Even today it is reported that another 700 guerrillas are approaching Nicaragua through Costa Rica, coming from Panama.

Whatever the merits or demerits of the Somoza government, the truth of the situation is that the Sandinista rebellion is an international operation, financed, trained, and supplied from abroad. The new guerrillas reportedly include not just Nicaraguans, but Panamanians, Spaniards, Chileans, and East Germans. The weapons captured from the Sandinistas have been traced not only to supplies illegally smuggled from the United States by the Panamanian Government, but also to arms manufactured especially for Cuba with unique identifying marks.

The suffering people of Nicaragua are the target of this warfare, not the perpetrators.

There has been an attempt by the media to portray the war as an uprising by the people against an evil and rapacious dictatorship. But even in their reports it becomes obvious that the people are not flocking to support the Sandinistas. The people themselves are the victims of a terrorist campaign conducted by the Sandinistas, as well as victims of the warfare perpetrated by the guerrillas. The Sandinistas are literally holding the people hostage, and many of them are being killed in the crossfire that results when the legitimate Government attempts to restore order.

From what I have been able to find out, the Somoza government is neither the best nor the worst of governments in the Western Hemisphere. But it is a government which is legitimately elected, under

a constitution that is perfectly adequate. The President was elected in an election supervised by 22 observers from the Organization of American States. Yesterday I spoke with Ambassador Turner Shelton, who was the U.S. Ambassador to Nicaraugua at the time of the election, and he told me that he had never seen an election that was more free and fair.

Incidently, Ambassador Shelton, himself a career U.S. diplomat, narrowly escaped assassination at the hands of the Sandinistas.

Now it is not the purpose of the Senator from North Carolina to judge the election, nor the Constitution which was the basis for it. Nevertheless, the Constitution itself is in existence. It provides the basis for peaceful reform, if reform is called for. It provides for elections in 1981, in which neither the President nor his son are eligible to participate. There has been absolutely no evidence that conditions in Nicaragua are so bad that they justify a violent revolution to effect reform.

Moreover, President Somoza himself has constantly shown himself open to peaceful change, provided that such chance does not leave a political vacuum or chaos. Unfortunately, it is always very easy to destabilize a governmental structure and to pull it down. It is very difficult to substitute a stable political structure that still leaves intact the political, property, and human rights that the West considers essential to decent civilization.

In every case where the United States has participated in bringing down an established government—In South Vietnam, for example, or Cambodia, or Cuba, or China—we have seen a human and social disaster, in which the substitute is Communist tyranny.

There is no question at all what would be set up if the Sandinistas took over. The so-called provisional government of the Sandinistas, already announced, consists of three Communists (or, as the media prefers, "Marxists"), a collaborator businessman, and an unfortunate widow who is being exploited for her husband's name. We know full well that Communist and prosocialist nations are the main spearhead behind the guerrilla movement. If the Sandinistas take over, it will be the first step to bringing Castroism to the mainland, and will destabilize the entire region around the Panama Canal. It is not in the security interests of the United States or the Western Hemisphere to allow that to happen.

Any pressure, therefore, to force President Somoza to step down, with no concern for what may follow, is a step into chaos and disaster. Therefore, I call upon President Somoza to resist any untoward pressure, from the United States or from other nations, to step down unless it can be assured that a structure of free government, one that is demonstrably the will of the people, will follow and maintain full political, property, and human rights. If President Somoza should yield at this time and allow the Communist guerrillas to take over, he will be condemning his people and the people of the Western Hemisphere to a draconian fate.

I know that, in the past, President Somoza took the initiative, and called for a plebiscite on his government. He was then and no doubt is now willing to submit his government to a vote of the people. But a team of international negotiators, headed by U.S. Ambassador William G. Bowdler, insisted that such a plebiscite be held on terms that would make it virtually impossible to check on the legitimacy of the electors; moreover, it would have imposed a government based upon arbitrary divisions of power among the negotiating groups, including the Sandinistas. There was absolutely no requirement that the new government prove that the components actually represented the will of the people. It would be interesting to know whether the Sandinistas would be willing to submit to a true plebiscite.

I think that President Somoza was wise to reject such terms, because he has a duty either to fulfill his constitutional office, or resign in such a manner that the structures of government survive to protect the rights of the people.

The same test must be applied to any action that is taken at the present time. Nicaragua is presently in a difficult situation. The economy is at a standstill because of the guerrilla warfare. United States humanitarian aid to the poor has been cut off in an attempt to force the President to resign. Even food is growing scarce.

The United States should immediately take action to get humanitarian assistance to the people of Nicaragua, and to shut off the military supplies and outside reinforcements that the Communists are now sending in to support the Sandinistas. I hope that this afternoon's meeting at the OAS will achieve a consensus that the first requirement is to stabilize the situation and prevent outside interference. If that does not happen, we may all realize, too late, the crucial importance of Nicaragua to the security of the hemisphere.

WE'RE GONNA MISS YA, DUKE

Mr. GOLDWATER. Mr. President, I ask unanimous consent that a statement appearing in this morning's Wall Street Journal entitled "We're Gonna Miss Ya, Duke," be printed in the RECORD.

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

WE'RE GONNA MISS YA, DUKE

When you came riding into town, varmints scrambled, dance hall girls powdered their noses, and yellow-bellies ran for the hills.

You ambled into our hearts, stiffened our spines, and made us stand taller.

From the sands of Iwo Jima to the gates of the Alamo, you taught us all a lesson.

Sure, your movies were play-acting. But they showed that our true strength is in our people. The worker on the production line, the fighting man, truck driver, waitress, miner, farmer, nurse, cowboy.

Wherever you're going, Duke, roll yourself a smoke, take a slug of whiskey, lean back, put a thumb under your suspenders—and take pride that you taught us the meaning of true grit.

John Wayne gave more to America than he took from America. How many of us can say the same?

SAVING NICARAGUA FROM SOMOZA

Mr. BUMPERS. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the New York Times of Wednesday, June 20, 1979, entitled "Saving Nicaragua from Somoza."

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

SAVING NICARAGUA FROM SOMOZA

The Carter Administration has urgently summoned the foreign ministers of the Americas to try, against hope, to find a democratic path out of Nicaragua's civil war. The alternatives are bleak: a victory of General Somoza's National Guard that preserves his corrupt dictatorship, or a military triumph by the Sandinist guerrillas that overwhelms their partners in the battles of the past year. Now, as before, the General's refusal to depart dims the prospects for democrats.

The security of the United States and other American nations is not necessarily threatened by Sandinists or any other revolutionary movement. That security, however, can be affected by the ways in which such movements come to power and by the quality of government they provide, particularly if all these circumstances should make them dependent on the support of Soviet, Cuban or other unfriendly governments. What hope remains in Nicaragua rides on the Sandinists' willingness to join in a broad political coalition of opposition forces, represented by the announced Provisional Government. That cooperative spirit is likely to disappear, though, if General Somoza loses a fight to the finish. Then those who wield the guns may want to rule alone and look to revolutionary regimes for support.

It is not the Organization of American States, therefore, that can make Nicaragua safe for democracy—not at least without the kind of intervention that would be imprudent even if it were more widely favored. General Somoza must finally admit that his refusal to yield power is abetting radicalism, not preventing it. When the United States and the O.A.S. begged him to permit a free election last fall, he refused to consider anything that he could not control. He thought his National Guard, once refreshed, would prevail. But he plainly underestimated not only the guerrilla forces but also the depth of the opposition to him throughout the country.

Now that he is on the ropes again, the Carter Administration cannot quite bring itself to declare the General finished, as a number of Latin governments have done. It wants him to yield in some orderly fashion and it wants to hold the hemisphere's governments to a joint policy. The reasons for this maneuvering probably have more to do with politics in the United States than in Nicaragua, but they are not unimportant. The legislation carrying out the controversial Panama Canal treaties is still in trouble in Congress where General Somoza has his share of friends. President Carter can do without the title of midwife to a Central American radical regime.

Perhaps there is still time for the O.A.S. to persuade General Somoza that the constitutional values he professes can be served only by his withdrawal. The United States interest, in any case, lies in the future of Nicaragua, not General Somoza.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

SPECIAL INTERNATIONAL SECURITY ASSISTANCE ACT OF 1979

Mr. CHURCH. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1007.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1007) entitled "An Act to authorize supplemental international security assistance for the fiscal year 1979 in support of the peace treaty between Egypt and Israel and related agreements, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Special International Security Assistance Act of 1979".

STATEMENT OF POLICY AND FINDINGS

SEC. 2. (a) It is the policy of the United States to support the peace treaty concluded between the Government of Egypt and the Government of Israel on March 26, 1979. It is a significant step toward a full and comprehensive peace in the Middle East. The Congress urges the President to continue to exert every effort to bring about a comprehensive peace and to seek an end by all parties to the violence which could jeopardize this peace. The peace treaty between Egypt and Israel having been ratified, the Congress finds that the national interests of the United States are served—

(1) by authorizing the President to construct air bases in Israel to replace the Israeli air bases on the Sinai peninsula that are to be evacuated;

(2) by authorizing additional funds to finance procurements by Egypt and Israel through the fiscal year 1982 of defense articles and defense services for their respective security requirements; and

(3) by authorizing additional funds for economic assistance for Egypt in order to promote the economic stability and development of that country and to support the peace process in the Middle East.

(b) The authorizations contained in section 4 do not constitute congressional approval of the sale of any particular weapons system to either Israel or Egypt. These sales will be reviewed under the normal procedures set forth under section 36(b) of the Arms Export Control Act.

(c) The authorities contained in this Act to implement certain arrangements in support of the peace treaty between Egypt and Israel do not signify approval by the Congress of any other agreement, understanding, or commitment made by the executive branch.

CONSTRUCTION OF AIR BASES IN ISRAEL

SEC. 3. Part II of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new chapter:

"Chapter 7—AIR BASE CONSTRUCTION IN ISRAEL

"SEC. 561. GENERAL AUTHORITY.—The President is authorized—

"(1) to construct such air bases in Israel for the Government of Israel as may be agreed upon between the Government of Israel and the Government of the United States to replace the Israeli air bases located at Etzion and Etam on the Sinai peninsula that are to be evacuated by the Government of Israel; and

"(2) for purposes of such construction, to furnish as a grant to the Government of Israel, on such terms and conditions as the President may determine, defense articles and defense services, which he may acquire from any source, of a value not to exceed the amount appropriated pursuant to section 562(a).

"SEC. 562. AUTHORIZATION AND UTILIZATION OF FUNDS.—(a) There is authorized to be appropriated to the President to carry out this chapter not to exceed $800,000,000, which may be made available until expended.

"(b) Upon agreement by the Government of Israel to provide to the Government of the United States funds equal to the difference between the amount required to complete the agreed construction work and the amount appropriated pursuant to subsection (a) of this section, and to make those funds available, in advance of the time when payments are due, in such amounts and at such times as may be required by the Government of the United States to meet these additional costs of construction, the President may incur obligations and enter into contracts to the extent necessary to complete the agreed construction work, except that this authority shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(c) Funds made available by the Government of Israel pursuant to subsection (b) of this section may be credited to the appropriation account established to carry out the purposes of this section for the payment of obligations incurred and for refund to the Government of Israel if they are unnecessary for this purpose, as determined by the President. Credits and the proceeds of guaranteed loans made available to the Government of Israel pursuant to the Arms Export Control Act, as well as any other source of financing available to it, may be used by Israel to carry out its undertaking to provide such additional funds.

"SEC. 563. WAIVER AUTHORITIES.—(a) It is the sense of the Congress that the President should take all necessary measures consistent with law to insure the efficient and timely completion of the construction authorized by this chapter, including the exercise of authority vested in him by section 633(a) of this Act.

"(b) The provisions of paragraph (3) of section 636(a) of this Act shall be applicable to the use of funds available to carry out this chapter, except that no more than sixty persons may be engaged at any one time under that paragraph for purposes of this chapter.".

SUPPLEMENTAL AUTHORIZATION OF FOREIGN MILITARY SALES LOAN GUARANTIES FOR EGYPT AND ISRAEL

SEC. 4. (a) In addition to amounts authorized to be appropriated for the fiscal year 1979 by section 31(a) of the Arms Export Control Act, there is authorized to be appropriated to the President to carry out that Act $370,000,000 for the fiscal year 1979.

(b) Funds made available pursuant to subsection (a) of this section may be used only for guaranties for Egypt and Israel pursuant to section 24(a) of the Arms Export Control Act. The principal amount of loans guaranteed with such funds shall not exceed $3,700,000,000 of which amount $2,200,000,000 shall be available only for Israel and $1,500,000,000 shall be available only for Egypt. The principal amount of such guaranteed loans shall be in addition to the aggregate ceiling authorized for the fiscal year 1979 by section 31(b) of the Arms Export Control Act.

(c) Loans guaranteed with funds made available pursuant to subsection (a) of this section shall be on terms calling for repayment within a period of not less than thirty years, including an initial grace period of ten years on repayment of principal.

(d)(1) The Congress finds that the Governments of Israel and Egypt each have an enormous external debt burden which may be made more difficult by virtue of the financing authorized by this section. The Congress further finds that, as a consequence of the impact of the debt burdens incurred by Israel and Egypt under such financing, it may become necessary in future years to modify the terms of the loans guaranteed with funds made available pursuant to this section.

(2) In order to assist the Congress in determining whether any such modification is warranted, the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate, by January 15 of each year, an annual report regarding economic conditions prevailing in Israel and Egypt which may affect their respective ability to meet their obligations to make payments under the financing authorized by this section. In addition to such annual report, the President shall transmit a report containing such information within thirty days after receiving a request therefor from the chairman of the Committee on Foreign Relations of the Senate or from the chairman of the Committee on Foreign Affairs of the House of Representatives.

SUPPLEMENTAL AUTHORIZATION OF ECONOMIC SUPPORT FOR EGYPT

SEC. 5. There is authorized to be appropriated to the President to carry out chapter 4 of part II of the Foreign Assistance Act of 1961, $300,000,000 for the fiscal year 1979 for Egypt, in addition to amounts otherwise authorized to be appropriated for such chapter for the fiscal year 1979. The amounts appropriated pursuant to this section may be made available until expended.

TRANSFER OF FACILITIES OF THE SINAI FIELD MISSION TO EGYPT

SEC. 6. The President is authorized to transfer to Egypt, under such terms and conditions as he may determine, such of the facilities and related property of the United States Sinai Field Mission as he may determine, upon the termination of the activities of the Sinai Field Mission in accordance with the terms of the peace treaty between Egypt and Israel.

CONTRIBUTIONS BY OTHER COUNTRIES TO SUPPORT PEACE IN THE MIDDLE EAST

SEC. 7. (a) It is the sense of the Congress that other countries should give favorable consideration to providing financial assistance to support peace in the Middle East. Therefore, it is the sense of the Congress that the President should consult with other countries to develop a common program of assistance to, and investments in, Israel and Egypt and other countries in the region should they join in Middle East peace agreements.

(b) It is the sense of the Congress that other countries should give favorable consideration to providing for support for the implementation of the peace treaty between Egypt and Israel. Therefore, the Congress requests that the President take all appropriate steps to consult with other countries and to promote an agreement for the establishment of a peace development fund whose purpose would be to underwrite the costs of implementing a Middle East peace.

(c) The President shall report to the Congress within one year after the enactment of this Act with regard to (1) the efforts made by the United States to consult with other countries in order to increase the economic assistance provided to Egypt and Israel and others in the region participating in the peace process by other donors, and (2) the impact on Egypt's economy of Arab sanctions against Egypt.

PLANNING FOR TRILATERAL SCIENTIFIC AND TECHNOLOGICAL COOPERATION BY EGYPT, ISRAEL, AND THE UNITED STATES

SEC. 8. (a) It is the sense of the Congress that, in order to continue to build the struc-

ture of peace in the Middle East, the United States should be prepared to participate, at an appropriate time, in trilateral cooperative projects of a scientific and technological nature involving Egypt, Israel, and the United States.

(b) Therefore, the President shall develop a plan to guide the participation of both United States Government agencies and private institutions in such projects. This plan shall identify—

(1) potential projects in a variety of areas appropriate for scientific and technological cooperation by the three countries, including agriculture, health, energy, the environment, education, and water resources;

(2) the resources which are available or which would be needed to implement such projects; and

(3) the means by which such projects would be implemented.

(c) The President shall transmit the plan developed pursuant to subsection (b) to the Congress within 12 months after the date of enactment of this Act.

REPORT ON COSTS TO THE UNITED STATES OF IMPLEMENTING THE PEACE TREATY BETWEEN EGYPT AND ISRAEL

SEC. 9. Not later than 90 days after the date of enactment of this Act, the President shall submit to the Congress a detailed and comprehensive report on the costs to the United States Government associated with implementation of the peace treaty between Egypt and Israel. The report shall include estimates of all costs of any kind to any department or agency of the United States Government which may result from United States activities in support of the peace treaty.

Amend the title so as to read: "An Act to authorize supplemental international security assistance for the fiscal year 1979 in support of the peace treaty between Egypt and Israel, and for other purposes.".

UP AMENDMENT NO. 296

Mr. CHURCH. Mr. President, I move that the Senate concur in the amendments of the House with an amendment in the nature of a substitute which I send to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. CHURCH) proposes an unprinted amendment numbered 296.

In lieu of the language proposed to be inserted, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Special International Security Assistance Act of 1979".

STATEMENT OF POLICY AND FINDINGS

SEC. 2. (a) It is the policy of the United States to support the peace treaty concluded between the Government of Egypt and the Government of Israel on March 26, 1979. This treaty is a significant step toward a full and comprehensive peace in the Middle East. The Congress urges the President to continue to exert every effort to bring about a comprehensive peace and to seek an end by all parties to the violence which could jeopardize this peace.

(b) The peace treaty between Egypt and Israel having been ratified, the Congress finds that the national interests of the United States are served—

(1) by authorizing the President to construct air bases in Israel to replace the Israeli air bases on the Sinai peninsula that are to be evacuated;

(2) by authorizing additional funds to finance procurements by Egypt and Israel through the fiscal year 1982 of defense articles and defense services for their respective security requirements; and

(3) by authorizing additional funds for economic assistance for Egypt in order to promote the economic stability and development of that country and to support the peace process in the Middle East.

(c) The authorities contained in this Act to implement certain arrangements in support of the peace treaty between Egypt and Israel do not signify approval by the Congress of any other agreement, understanding, or commitment made by the executive branch.

CONSTRUCTION OF AIR BASES IN ISRAEL

SEC. 3. Part II of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new chapter:

"Chapter 7—AIR BASE CONSTRUCTION IN ISRAEL

"SEC. 561. GENERAL AUTHORITY.—The President is authorized—

"(1) to construct such air bases in Israel for the Government of Israel as may be agreed upon between the Government of Israel and the Government of the United States to replace the Israeli air bases located at Etzion and Etam on the Sinai peninsula that are to be evacuated by the Government of Israel; and

"(2) for purposes of such construction, to furnish as a grant to the Government of Israel, on such terms and conditions as the President may determine, defense articles and defense services, which he may acquire from any source, of a value not to exceed the amount appropriated pursuant to section 562(a).

"SEC. 562. AUTHORIZATION AND UTILIZATION OF FUNDS.—(a) There is authorized to be appropriated to the President to carry out this chapter not to exceed $800,000,000, which may be made available until expended.

"(b) Upon agreement by the Government of Israel to provide to the Government of the United States funds equal to the difference between the amount required to complete the agreed construction work and the amount appropriated pursuant to subsection (a) of this section, and to make those funds available, in advance of the time when payments are due, in such amounts and at such times as may be required by the Government of the United States to meet those additional costs of construction, the President may incur obligations and enter into contracts to the extent necessary to complete the agreed construction work, except that this authority shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(c) Funds made available by the Government of Israel pursuant to subsection (b) of this section may be credited to the appropriation account established to carry out the purposes of this section for the payment of obligations incurred and for refund to the Government of Israel if they are unnecessary for that purpose, as determined by the President. Credits and the proceeds of guaranteed loans made available to the Government of Israel pursuant to the Arms Export Control Act, as well as any other source of financing available to it, may be used by Israel to carry out its undertaking to provide such additional funds.

"SEC. 563. WAIVER AUTHORITIES.—(a) It is the sense of the Congress that the President should take all necessary measures consistent with law to insure the efficient and timely completion of the construction authorized by this chapter, including the exercise of authority vested in him by section 633(a) of this Act.

"(b) The provisions of paragraph (3) of section 636(a) of this Act shall be applicable to the use of funds available to carry out this chapter, except that no more than 60 persons may be engaged at any one time under that paragraph for purposes of this chapter.".

SUPPLEMENTAL AUTHORIZATION OF FOREIGN MILITARY SALES LOAN GUARANTIES FOR EGYPT AND ISRAEL

SEC. 4. (a) The Congress finds that the legitimate defense interests of Israel and Egypt require a one time extraordinary assistance package due to Israel's phased withdrawal from the Sinai and Egypt's shift from reliance on Soviet weaponry. The authorizations contained in this section do not, however, constitute congressional approval of the sale of any particular weapons system to either country. These sales will be reviewed under the normal procedures set forth in section 36(b) of the Arms Export Control Act.

(b) In addition to amounts authorized to be appropriated for the fiscal year 1979 by section 31(a) of the Arms Export Control Act, there is authorized to be appropriated to the President to carry out that Act $370,000,000 for the fiscal year 1979.

(c) Funds made available pursuant to subsection (b) of this section may be used only for guaranties for Egypt and Israel pursuant to section 24(a) of the Arms Export Control Act. The principal amount of loans guaranteed with such funds may not exceed $3,700,000,000 of which $2,200,000,000 shall be available only for Israel and $1,500,000,000 shall be available only for Egypt. The principal amount of such guaranteed loans shall be in addition to the aggregate ceiling authorized for the fiscal year 1979 by section 31(b) of the Arms Export Control Act.

(d) Loans guaranteed with funds made available pursuant to subsection (b) of this section shall be on terms calling for repayment within a period of not less than thirty years, including an initial grace period of ten years on repayment of principal.

(e)(1) The Congress finds that the Governments of Israel and Egypt each have an enormous external debt burden which may be made more difficult by virtue of the financing authorized by this section. The Congress further finds that, as a consequence of the impact of the debt burdens incurred by Israel and Egypt under such financing, it may become necessary in future years to modify the terms of the loans guaranteed with funds made available pursuant to this section.

(2) In order to assist the Congress in determining whether any such modification is warranted, the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate, by January 15 of each year, an annual report regarding economic conditions prevailing in Israel and Egypt which may affect their respective ability to meet their obligations to make payments under the financing authorized by this section. In addition to such annual report, the President shall transmit a report containing such information within 30 days after receiving a request therefor from the chairman of the Committee on Foreign Relations of the Senate or from the chairman of the Committee on Foreign Affairs of the House of Representatives.

SUPPLEMENTAL AUTHORIZATION OF ECONOMIC SUPPORT FOR EGYPT

SEC. 5. There is authorized to be appropriated to the President to carry out chapter 4 of part II of the Foreign Assistance Act of 1961, $300,000,000 for the fiscal year 1979 for Egypt, in addition to amounts otherwise authorized to be appropriated for such chapter for the fiscal year 1979. The amounts appropriated pursuant to this section may be made available until expended.

TRANSFER OF FACILITIES OF THE SINAI FIELD MISSION TO EGYPT

SEC. 6. The President is authorized to transfer to Egypt, on such terms and conditions as he may determine, such of the facili-

ties and related property of the United States Sinai Field Mission as he may determine, upon the termination of the activities of the Sinai Field Mission in accordance with the terms of the peace treaty between Egypt and Israel.

CONTRIBUTIONS BY OTHER COUNTRIES TO SUPPORT PEACE IN THE MIDDLE EAST

SEC. 7. (a) It is the sense of the Congress that other countries should give favorable consideration to providing support for the implementation of the peace treaty between Egypt and Israel. Therefore, the Congress requests that the President consult with other countries in order to (1) promote and develop an agreement for the establishment of a peace development fund whose purpose would be to underwrite the costs of implementing a Middle East peace, and (2) encourage investments in Israel and Egypt and other countries in the region should they join in Middle East peace agreements.

(b) Not later than January 31, 1980, the President shall report to the Congress with regard to (1) the efforts made by the United States to consult with other countries in order to increase the economic assistance provided by other donors to Egypt and Israel and to others in the region participating in the peace process, and (2) the impact on Egypt's economy of Arab sanctions against Egypt.

PLANNING FOR TRILATERAL SCIENTIFIC AND TECHNOLOGICAL COOPERATION BY EGYPT, ISRAEL, AND THE UNITED STATES

SEC. 8 (a) It is the sense of the Congress that, in order to continue to build the structure of peace in the Middle East, the United States should be prepared to participate, at an appropriate time, in trilateral cooperative projects of a scientific and technological nature involving Egypt, Israel, and the United States.

(b) Therefore, the President shall develop a plan to guide the participation of both United States Government agencies and private institutions in such project. This plan shall identify—

(1) potential projects in a variety of areas appropriate for scientific and technological cooperation by the three countries, including agriculture, health, energy, the environment, education, and water resources;

(2) the resources which are available or which would be needed to implement such projects; and

(3) the means by which such projects would be implemented.

(c) The President shall transmit the plan developed pursuant to subsection (b) of the Congress within 12 months after the date of enactment of this Act.

REPORT ON COSTS TO THE UNITED STATES OF IMPLEMENTING THE PEACE TREATY BETWEEN EGYPT AND ISRAEL

SEC. 9. Not later than 90 days after the date of enactment of this Act, the President shall submit to the Congress a detailed and comprehensive report on the costs to the United States Government associated with implementation of the peace treaty between Egypt and Israel. The report shall include estimates of all costs of any kind to any department or agency of the United States Government which may result from United States activities in support of the peace treaty.

NON-PROLIFERATION OF NUCLEAR WEAPONS

SEC. 10. In accordance with the Nuclear Non-Proliferation Act of 1978, the Congress strongly encourages all countries in the Middle East which are not parties to the Treaty on the Non-Proliferation of Nuclear Weapons to become parties to the Treaty.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote.

The PRESIDING OFFICER. The Chair heard a motion to reconsider. Was there a motion to table the motion to reconsider or not?

Mr. CHURCH. Mr. President, I withdraw the motion to reconsider.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. JAVITS subsequently said: Mr. President, earlier the Senate acted respecting a House-Senate conference on S. 1007, generally known here as the Egypt-Israel package of authorizations. I was not on the floor at the time.

We found that the differences between the House and the Senate were so minor that they could be compromised by agreement with the House adopting an amendment and the Senate then concurring, which the Senate did.

Mr. President, I ask unanimous consent that an explanatory statement of the House-Senate conference on S. 1007 be printed in the RECORD.

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

EXPLANATORY STATEMENT OF HOUSE-SENATE CONFERENCE ON S. 1007

I. STATEMENT OF POLICY AND FINDINGS

A. The House bill included all policy language at the beginning of the bill in a separate Section 2. The comparable Senate policy statements were placed at the beginning of each section. The Senate receded to the House and adopted general policy language in a separate Section 2.

B. Both the House and Senate bill contained a policy statement interpreting the scope of the authorization. The Senate receded to the House and adopted the House language on Section 2(c).

II. SUPPLEMENTAL AUTHORIZATION OF FOREIGN MILITARY SALES LOAN GUARANTIES FOR EGYPT AND ISRAEL

The Senate bill contained Section 3(a) which stated: "The Congress further finds that the legitimate defense interests of Israel and Egypt require a one-time extraordinary assistance packages due to Israel's phased withdrawal from the Sinai and Egypt's shift from reliance on Soviet weaponry." The House did not have a comparable provision. The House receded to the Senate and accepted the language which is now contained in a new Section 4(a).

III. TRANSFER OF FACILITIES OF THE SINAI FIELD MISSION TO EGYPT

Section 6 of the House bill authorized the transfer of the U.S. Sinai Field Mission to Egypt. The Senate included the comparable version in S. 584, the International Security Assistance Act of 1979. The Senate receded to the House.

IV. CONTRIBUTIONS BY OTHER COUNTRIES TO SUPPORT PEACE IN THE MIDDLE EAST

Both bills contained provisions calling for contributions by other countries to support peace in the Middle East. However, there were three areas of difference: (a) Both bills called for the establishment of a "Middle East Peace Development Fund." The House bill also called for a common program of assistance and investments, while the Senate version referred only to assistance. The Senate receded to the House; (b) The Senate bill calls for a report 180 days after enactment, which describes efforts to get other donors involved and measures the impact of Arab sanctions against Egypt. The House requires a report after one year. The House receded to the Senate; and (c) The House includes a reference to the Middle East Peace Fund as being available to "others participating in the peace process." The Senate version did not contain comparable language. The Senate receded to the House.

V. PLANNING FOR TRILATERAL SCIENTIFIC AND TECHNOLOGICAL COOPERATION BY EGYPT, ISRAEL, AND THE UNITED STATES

The House bill calls for a report on planning for trilateral scientific and technological cooperation by Egypt, Israel, and the United States to be submitted by the President on developing a plan for such cooperation in one year. The Senate bill had no comparable provision. The Senate receded to the House.

VI. REPORT ON COSTS TO THE UNITED STATES OF IMPLEMENTING THE PEACE TREATY BETWEEN EGYPT AND ISRAEL

The House bill provided for a report within 90 days on the costs to the United States of implementing the peace treaty. The Senate had no comparable provision. The Senate receded to the House.

VII. NON-PROLIFERATION OF NUCLEAR WEAPONS

The Senate bill contained a provision that stated "In accordance with the Nuclear Non-Proliferation Act of 1978, the Congress strongly encourages Israel and Egypt to become parties to the Nuclear Non-proliferation treaty."

The House receded to the Senate with an amendment which would encourage all countries in the Middle East which are not parties to the Treaty on Non-Proliferation of Nuclear Weapons to become parties to that treaty.

Mr. JAVITS. Mr. President, I have been over the details in advance and approve the amendment made by the House and for its approval here by the Senate. I wish to have that of record, because neither I nor the minority leader was on the floor at the time. There is no point in reopening the matter, but we do wish to make clear that it was a matter agreed upon by all parties and hence is perfectly all right.

Mr. BAKER. Will the Senator yield to me for a moment?

Mr. JAVITS. I yield.

Mr. BAKER. Mr. President, I join the Senator from New York in expressing my agreement to this procedure. I regret that it was not possible for me to be on the floor at the time, but under these circumstances and with that explanation, I am perfectly content to let matters stand as they are.

DIRECT POPULAR ELECTION OF THE PRESIDENT AND VICE PRESIDENT

Mr. ROBERT C. BYRD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. Resuming the unfinished business, which the clerk will state by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 28) proposing an amendment to the Constitution to provide for the direct popular election of the President and Vice President of the United States.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER (Mr. EXON). The Senator from Indiana.

Mr. BAYH. Mr. President, I appreciate the courtesy of our distinguished colleague, the majority leader, for bringing

again to the floor of the Senate the pending business, Senate Joint Resolution 28.

This, of course, is, as we all know, a constitutional amendment which would provide for the direct popular vote of the President and the Vice President.

This is the second time this year that the matter has been before us. Previously we were told that the matter had not been fully heard, despite the fact that if one cares to conduct a little careful analysis of the amount of time given to the direct popular vote proposal in hearings and committee meetings, over the past several years, there has been more than four times as much time devoted to studying and hearing this proposition, that the President and Vice President should be elected by direct popular vote, than any of the other constitutional amendments which we have adopted in modern times.

Be that as it may, the matter was returned to the Judiciary Committee under the compromise agreed to and, under the leadership of our distinguished majority leader, it is back before us once again.

The Senator from Indiana became actively involved in this debate and this issue back in the mid 1960's in his role as chairman of the subcommittee of the Judiciary that was then named the Subcommittee on Constitutional Amendments. I was then the sponsor of a constitutional amendment which was introduced in conjunction with the Attorney General and then President Johnson which would have taken away the independence of electors. In fact, it would have removed the elector from the electoral scheme and automatically transmitted the State's electoral votes to the tabulation in the House of Representatives, thus removing one of the imperfections which exists in the present electoral college system; namely, the right under the Constitution of each elector, really, to do what he wants when the time comes to cast his vote.

We noted that occurrence in the last election where one elector in the great State of Washington was elected by Republican voters, or at least elected by a majority of the Washington voters who carried the State for the Republican candidate for President, then President Ford, and despite that fact, this delegate in Washington thought he knew better than the people of Washington and he cast his vote for Ronald Reagan.

I should suggest that this was completely legal under the Constitution. It has been done several times before. It is this independent feaure of electors that is one of the shortcomings of the electoral college system.

This shortcoming would have been addressed by that amendment I first introduced several years ago.

Since that time, this particular amendment has been named the automatic plan. There are some of our colleagues today who favor the automatic plan.

I saw recently where our distinguished colleague from Connecticut (Mr. WEICKER) introduced a plan. I understand from talking to some of my other colleagues that they, too, would support an automatic plan simply removing the independence of electors.

I must say to my colleagues, I think this is an improvement. But I have since come to the conclusion, after holding series after series of hearings on this matter, that this would not be the right course of action, for two basic reasons.

First of all, traditionally, we have not amended the Constitution of the United States for trivial matters, and as important as I think the removal of independence of electors from the electoral college is, I think this is trivial compared to other problems confronting us.

More importantly, Mr. President, I think there are some major changes that can take place that will make the election of the President and Vice President conform to the way we elect all other officials.

I see our distinguished new colleague, and old friend of mine from Nebraska, now our distinguished Presiding Officer. His election to the Senate and his election to the Governor's chair in his State of Nebraska were accomplished by direct popular vote.

Our State legislators, our mayors, our county clerks, our sheriffs—all our officials are elected by direct popular vote mechanism, so it is not a new and novel system. It is one for which there are only two exceptions; namely, the President and the Vice President.

One of the reasons why I did not originally support the direct popular vote alternative to the electoral college system was a very pragmatic one. I was laboring under the illusion that under the electoral college system, the small States had an advantage. I can count, and I came to the rather ill-considered conclusion that since the small States had an advantage and since at least a third or more are small States in our country, we could not get such a proposition passed by two-thirds of the Congress and that we never could get it ratified.

Interestingly enough, since having reaching that early decision, in looking at the facts, a lot of interesting facts have come to light that were not apparent at that time to the Senator from Indiana.

First, if one starts with the end process of ratification, we have conducted two different polls of State legislative bodies. I am corrected by my staff: There have been three polls of sitting State legislatures. I think it would be of some interest to the Senate to learn that in each poll, a majority of the State legislators and the legislatures in the States said they would vote to ratify an amendment for direct popular vote.

To suggest that ratification is going to be an impossible task is just not borne out by the fact that I think most State legislators say, "I was elected by direct popular vote; Senators and Members of the House of Representatives were elected by direct popular vote. Why shouldn't we elect a President and Vice President in that manner?"

At least, there was no feeling that was evident in these polls that small-State senators and representatives in the State legislatures are unwilling to ratify.

Then I moved on in my thinking to taking a look at the resolution itself. I was surprised to find—and I call this to the attention of my colleagues in the Senate—that there was a whole array of small-State Senators who traditionally have been avid supporters of direct popular vote.

One of the great Senators, who is no longer here—unfortunately, we do not have with us now anybody was fits her description—was the great lady from Maine, former Senator Margaret Chase Smith. Maine is a relatively small State from the standpoint of population. She was one of the early proponents of direct popular vote, and she remained resolute that we should have direct popular vote until the day she left the Senate.

I looked down the list, and I saw our two Senators from Hawaii, a small State—and a whole list of small-State Senators—at one time or another have supported this proposal.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of Senators cosponsoring this amendment who represent what we call small States, from the standpoint of population, so that our colleagues can see that there is no clear division here where you have all the small-State Senators on one side and all the large-State Senators on the other.

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

COSPONSORS

Cosponsors of the Direct Election Amendment from States with less than 10 electoral votes

Bellmon, Burdick, Chafee, DeConcini, Dole, Ford, Garn, and Gravel.

Hatfield, Huddleston, Inouye, Jackson, Leahy, Magnuson, Matsunaga, Packwood, Pell, Pryor, Randolph, Ribicoff, and Stafford.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. LONG. Mr. President, this problem occurs to me: I wonder, for the sake of argument, if the Senator's position did not prevail, how the Senator would feel about a proposal whereby you would simply say that you would continue to follow the electoral college procedure but that the candidate who got a majority of the popular vote would receive an electoral bonus of 50 or 75 or even 100 votes. How would that appeal to the Senator?

Mr. BAYH. I would prefer that to the present system, because the practical effect of that plan, which has been suggested, would be almost invariably to guarantee the popular vote winner.

Really, my own reluctance to that—as someone who long ago was told by people like his friend from Louisiana that there is more than one way to skin a cat—is that this is a sort of devious way to accomplish the goal I want to accomplish; and I wonder whether we do better to say flat out that we have a direct popular vote.

Mr. LONG. The thought that occurred to me is that small States might well feel that their influence had been reduced, that their significance in the overall totality of things had been downgraded; but that, on the other hand, we could respect the weight of each State and at the same time achieve approxi-

mately the same objective by doing such a thing.

Assume, for the sake of argument, that the States of New York and California both have a very close count but that the person who did not get the majority vote carried those two big States, although he carried them by a very thin margin, perhaps only by a thousand votes in each State. Conceivably, the other candidate might have had a majority of the votes, even though he lost in the States of New York and California by a close vote. If you gave the kind of bonus we are talking about to the person who got the majority of the votes, that person then would be the winner, even though he did fail to carry those two great States.

It occurs to me that that might be a way—if not overwhelmingly popular in the Senate—in which we could muster the support and have the 37 States necessary to ratify a constitutional amendment. I just thought that might have some appeal to the Senator, and I wanted to get his judgment on it.

Mr. BAYH. As I said to the Senator from Louisiana, I prefer that to the present system. I think that on almost all occasions, it would accomplish the results that the Senator from Indiana feels should be required of a fair election.

I hope that as we go through this debate, it will be possible to lay out the numbers as to who benefits and who loses with the electoral college. I think there is a great misconception about the way this system works.

Some of our small-State senators are very concerned about giving up what they perceive to be an advantage under the electoral college system. As I pointed out, many of them are not, because many are cosponsors of direct popular vote.

I know we will have a chance to listen to the distinguished Senator from Oklahoma (Mr. BELLMON), who was appointed to the American Bar Association panel, which represented a broad cross section of the country's leadership. We had HENRY BELLMON, who at that time was Governor of Oklahoma, which is a less-populous State, and he would classify himself as a conservative. There was Otto Kerner, who was more liberal, from Illinois. We had Professor Wright of the University of Texas Law School, who was chairman.

Senator BELLMON said:

> When I sat down with that panel, I didn't want to have anything to do with the direct popular vote business, because I thought any small State had an advantage. The more I studied that, the more I found it did not have an advantage.

What I think we have in the electoral college system is that, depending upon what the circumstances are and who votes for whom and what States, in one instance the small States might do the tipping, and in another instance the large States might do the tipping.

Mr. President, I ask unanimous consent to have printed in the RECORD material prepared by Doug Bailey, who did the PR work for the Ford campaign.

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

1976 STATE-BY-STATE SPENDING IN THE GENERAL ELECTION BY THE PRESIDENT FORD COMMITTEE

	Electoral vote	Local spot television	Local print advertising	Survey research	Organizational support
Alabama	9	$42,500	$11,000	$6,200	$16,300
Alaska	3	7,200			16,100
Arizona	6			500	12,100
Arkansas	6			300	3,700
California	45	619,000	89,000	54,470	312,000
Colorado	7			6,990	22,000
Connecticut	8	55,000	400	11,100	31,700
Delaware	3		1,100		7,900
Florida	17	147,000	27,000	24,934	64,800
Georgia	12				14,700
Hawaii	4	9,000			19,400
Idaho	4				7,700
Illinois	26	294,000	75,000	25,520	165,400
Indiana	13	67,000	18,000	4,286	42,900
Iowa	8	55,000	21,000	14,840	25,800
Kansas	7				1,900
Kentucky	9	26,000		6,754	30,800
Louisiana	10	61,000	10,000	6,754	8,200
Maine	4	14,000			10,400
Maryland	10	67,000	6,000	10,559	73,500
Massachusetts	14				15,200
Michigan	21	178,000	58,000	2,014	44,900
Minnesota	10				10,800
Mississippi	7	22,000	8,000	11,140	16,300
Missouri	12	143,000	31,000	8,710	49,000
Montana	4	7,000	3,000		7,300
Nebraska	5				$8,700
Nevada	3	$15,000			11,200
New Hampshire	4				9,800
New Jersey	17		$73,000	$26,818	9,100
New Mexico	4	11,000		3,250	15,900
New York	41	664,000	134,000	34,979	246,200
North Carolina	13	51,000	37,000	10,979	73,900
North Dakota	3	10,000			9,000
Ohio	25	278,000	100,000	22,859	136,100
Oklahoma	8	39,000	14,000	3,800	14,500
Oregon	6	61,000	15,000	3,800	24,100
Pennsylvania	27	331,000	124,000	32,556	155,900
Rhode Island	4	25,000		2,360	7,500
South Carolina	8	44,000	16,000	3,950	15,800
South Dakota	4	7,000			11,800
Tennessee	10	54,000		13,887	23,200
Texas	26	217,000	36,000	36,000	170,900
Utah	4				5,900
Vermont	3			1,127	11,800
Virginia	12	67,000	16,000	12,344	81,500
Washington	9	83,000		8,127	28,200
West Virginia	6		100		5,300
Wisconsin	11	67,000	29,000	17,803	27,100
Wyoming	3				5,100
District of Columbia	3	85,000	600		1,800

Mr. BAYH. Mr. President, Doug Bailey laid out the record of the budgeting of where the Republican Party spent all their money in the last campaign. There were some of the smaller States where it did not spend any. There were places where neither Democrats nor Republicans went to campaign. So that conception that small States have an advantage under this system is really not borne out by fact.

But anything we can do to allay the concerns that some people might still have about electoral reform, the Senator from Indiana is prepared to study and consider. There might be some other way we could do this. I am not wed to any particular mechanism. I am wed to what I feel are results, and I do not know whether we will have two-thirds of this body go along. If we do not, we will not amend the Constitution. If we do, hopefully we will have at least made another step.

The House of Representatives passed this measure by a vote of 331 to 70 back in 1969, and that is the last time it has been voted on. It was filibustered to death when we got it over here. We did not really have a chance to vote on it.

It seems to me what we are after is to make sure whoever wins is the winner by some term that is reasonably accepted.

All of us are declared winners if we have more votes than the people running against us.

In our election as Senators and every other election everyone's vote counts the same, whether you come from a small State or a large State.

Last, to deal with this automatic plan attempt to cure the problem of some electors in Washington, Indiana, Louisiana, or Nebraska who feel they know better than the voters, we should take these characters out of it and see that the people are the ones who do the voting.

Mr. LONG. Mr. President, I certainly agree with the Senator that the idea of an elector elected to vote on the theory he is going to vote for one candidate and then goes in there and votes for another is an absolute outrage, and there should be a law to put people in jail for doing that.

Mr. BAYH. Perhaps. But interestingly enough I think you can make a pretty good constitutional case that they have a right to do that. In fact, as my colleague from Louisiana knows, as he has been around here a lot longer and studied these problems a lot longer than I have, when the original electoral college was established we did not have any parties and electors were supposed to go in there and exercise independent judgment. But there has been so much change since then that the idea of doing that, I think, is philosophically wrong, even if it is not constitutionally wrong.

Mr. LONG. I agree with the Senator, and I thank the Senator.

Mr. BAYH. I thank my friend from Louisiana.

Mr. President, I ask unanimous consent that the following staff persons be permitted access to the floor during the debate and votes on Senate Joint Resolution 28: Marcia Atcheson, Louise

Milone, Steve Holley, Linda Rogers-Kingsbury, Nels Ackerson, and Fred Williams.

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

Mr. BAYH. So to return to the previous discussion, before the colloquy, of my own maturation of thoughts on this particular subject, I became convinced that the small States did not have an advantage and that there were certain basic equities that should exist in the election procedure of this country and we should make a major effort to try to accomplish that kind of reform instead of some sort of a de minimis reform like just removing the electors.

So, as I briefly described to my friend and colleague from Louisiana, did the bar association commission. They studied it for a year, and they came up with the direct popular vote proposal which is now before the Senate. It has been the product of lengthy discussion, debate, and hearings.

The list of organizations favoring this proposal is long: The American Bar Association, the Chamber of Commerce, the AFL–CIO, the UAW, the League of Women Voters, the National Farmers Union, Common Cause.

Mr. President, so that we do not offend anyone because of my weak memory, I ask unanimous consent that we print a list of interest groups in the RECORD at this point.

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

INTEREST GROUPS IN SUPPORT OF DIRECT ELECTION

U.S. Chamber of Commerce;
American Bar Association;
AFL–CIO;
UAW;
League of Women Voters;
Common Cause;
American Civil Liberties Union;
National Federation of Independent Business;
The Farmers Union; and
Americans for Democratic Action.

Mr. BAYH. Mr. President, I will not continue at length at this particular time, but I urge our colleagues who have not made up their minds yet—indeed I urge some of them who have made up their minds on both sides of this issue—to avail themselves of the report that has been forthcoming from the Subcommittee on the Constitution of the Judiciary Committee and let us look at the record. Let us see what has happened in past elections, and then let us have a chance to vote on this matter and see if we cannot put this particular part of our Constitution in order.

I say to my colleagues as one who has, I am sure, bedeviled his colleagues more than they like to be bedeviled about this over the years, I must confess that I do not feel that this electoral college change, direct popular vote issue, is the most important issue before the country at this time. I do not. I get a little tired of reading and hearing from some people the old cliche that "If it ain't broke don't fix it." It is sort of like saying to the farmer whose barn is not on fire, "Don't take out fire insurance."

I recall when I was standing in this exact spot and we were trying to get the 25th amendment to the Constitution passed which dealt, as my colleagues know, with the way of dealing with Vice Presidential vacancies and Presidential disabilities, I had more than one of my colleagues who rose and said: "Well, Senator BAYH, in the 180-year history of this country we never had a President and Vice President die or be removed from office in one 4-year period of time. So why fix it?"

As we now know, before the ink was dry on the 25th amendment we had the tragedy of the Agnew resignation followed by the Nixon resignation, and I suggest to my colleagues if it had not been for the intervening step made legal and possible by the 25th amendment, namely, the appointment of President Ford and the ratification by Congress of President Ford as Vice President it is highly unlikely that a strong partisan President like Richard Nixon would have ever resigned and turned the Presidency over to Carl Albert as a Democrat. Because of the 25th amendment it was possible for us to move out of that crisis, put a new President in there who had credibility, and move on.

So I suggest that not only have there been three times in the history of this country where we have had a President who had fewer popular votes than the person he was running against, nevertheless getting a majority of the electoral college, and thus becoming President, but also we have had a number of very near misses. We had a near miss in 1960 when John Kennedy was elected President. We had a near miss in 1968; in fact if you look at 1968, a change of less than 70,000 votes out of about 50 million votes cast would have made the situation almost unbelievably complex where you would have had neither Humphrey nor Nixon having a majority of the electoral college; you would have had a fellow by the name of George Wallace sitting there with 46 of those free and independent electors. He could either have auctioned them off to the highest bidder, completely constitutionally, or this matter would have gone to the House of Representatives where each State has one vote, as we know. We narrowly escaped that.

And more recently we had an even closer flirtation with the malfunctioning of the electoral college system. In 1976, the last election, we had President Carter with a 1.7 million vote plurality, yet if there had been a change of less than 10,000 votes combined in the States of Ohio and Hawaii, President Ford would have had a majority of the electoral college and would have been President.

To show you how this system can malfunction, if there had been a change of about 11,000 votes in the States of Ohio and Delaware there would have been a dead tie—well, not quite. There would have been 269 votes for Carter, 268 votes for Ford, and 1 for Reagan because of that elector in Washington. Neither of the candidates for President would have had a majority of the electoral college despite the fact that President Carter had a million-and-a-half vote plurality, and the matter would have gone to the House of Representatives.

That is the kind of problem we are trying to deal with. I think we deal with it in a very forthright way by establishing the same kind of criteria for electing President and Vice President that we now apply for all other officers. Let us have the vote, and the person who gets the most votes wins. Everybody's vote counts the same, and the people do the electing, not a bunch of faceless electors who now have the final power.

The Senator from Indiana is prepared to yield the floor at this time. I understand some of our other colleagues desire to be heard on this, and I assume in the days ahead we will have ample opportunity to discuss this. As our distinguished colleague from Arkansas has said more than once, and perhaps he will join us yet here this afternoon and have a chance to say it more eloquently than the Senator from Indiana, you can look around the country and you look at the response from State legislators, and if you look at every poll that I have seen in every region of the country you will find a large majority of the people favoring this.

One of the areas of the country where there is a great deal of concern about small States is out in the great Rocky Mountain heartland of America, and one of the great newspapers out there in Salt Lake City, the Salt Lake City Tribune, conducted a poll not too long ago and found that 80 percent of the people in that general Rocky Mountain area were for direct popular vote.

Now, interestingly enough, some of those Senators out there, in good conscience, feel they have an advantage as small States under the present system. But that is not an advantage that is either perceived or desired by the people out there. They think we ought to have direct popular vote.

So, as Senator PRYOR has said, and as I suggested to you, when you get right down to it, the only people who are against direct popular vote are the politicians who feel they know a little bit more about how the system works or about how it should work than the people.

I suggest the time has come to take this step of putting the election of the President on a truly democratic basis. I think that is one of the things we can do that will help start us along the path of restoring credibility in our political institutions. I do not suggest that this is a panacea, and that you wave a magic wand and suddenly they are going to believe, their political leaders are going to believe, that this is the way to express themselves and make themselves known in the process, just by having a direct popular vote for the President.

But I think as you go through this debate in the coming days and see the number of votes cast and not counted, and you see the disincentive to participate in the political process that exists under the electoral college system, I think you can see that if we give the people a direct popular vote they will know that those votes are going to count and they are going to count for the candidate for whom they are cast.

I still cannot help but be a bit amazed at people who will defend a system as

being an incentive for participation in the process where the result exists in every election that is typical of the situation that existed in my State and its neighboring State of Ohio in the last election.

We had a tough contest in both Indiana and Ohio for President. When the votes were counted President Carter had carried Ohio, President Ford had carried Indiana, and because of the nuances of the electoral college system every Democratic voter in Indiana who cast a vote for President Carter had his or her vote cast for President Ford. Right across the State line in Ohio every Republican voter who had his vote cast for Gerry Ford had his vote counted for Jimmy Carter.

It is that kind of thing we are trying to get rid of. Let everybody vote and let every vote count for the candidate for whom it was cast and count the same and the person who gets the most votes wins.

Mr. President, I think there are some other colleagues who, I have been advised, want to be heard on this matter so the Senator from Indiana just might make another observation or two pending their arrival, and wherever they may be at this moment I want them to know I am prepared to yield the floor upon their arrival.

Mr. President, there are a number of concerns that have been expressed by some of our colleagues, and some very articulate and very well-intentioned editorial writers and newspaper columnists throughout the country, and I think all these matters should be debated and discussed. We should not just change the Constitution because of some whim that one Senator or even a majority of Senators might have.

I have described the problem. The problem is, does it make the burdens of the Presidency more difficult if a President is not a clear choice of more people than one of his adversaries? I think the answer to that is evident. I have heard it described to me—and perhaps our colleague from Massachusetts can describe it from his personal experience—but I have heard it described to me as the difficulty that President Kennedy perceived in governing back in the 1961–62 period. His margin of victory was a very narrow margin of victory from a popular vote standpoint.

I can see how that could be the case. I have about come to the conclusion that it is an impossible burden which we place on any human being when we put him in that Oval Office. Certainly no human being can adequately perform all of the responsibilities that are the President's in a manner that he would like. Yet we have only human beings to serve. The question is how can we structure our Government in such a way as to make it more possible for mere mortals, with all of our various imperfections, to improve their chances of doing a better job of running the Presidency?

One of the things we can do to help relieve a potential burden which would be placed on a President if he were to be thrust into that office by an electoral vote majority without a popular vote majority is to remove that possibility. Let us see to it that every President who sits there is a President who is clearly the choice of more people than one of the other candidates.

As I have said earlier, that has not been the case in the past. And interestingly enough, although in the Hayes-Tilden election there were certain allegations—fraud and the corrupt election commission, and there can be no question about that—the results were that the winner was the popular vote loser.

If one goes back to the John Quincy Adams-Andrew Jackson confrontation, the matter went to the House of Representatives. To be sure, the winner, John Quincy Adams, had fewer popular votes than the man he was running against, Andrew Jackson, and interestingly enough, I would ask some of my colleagues who are expressing the thought that the direct popular vote would make it easy to win a campaign by carrying a few States by a large margin, thus ignoring the rest of the country, and that really is a problem for which protection is ample under the electoral college system—for those of our colleagues who have very well-intentioned feelings about that, I wish they would go back to that Andrew Jackson-John Quincy Adams election, because there, not only did John Quincy Adams win with fewer popular votes, he also won with only a third of the States. He carried only a third of the States. In fact, as I recall, there were 7 States out of 24 that he carried; so that is just over a fourth.

There are no protections like those our colleagues talk about under the electoral college system. In fact, I think those of us who have studied it very much are aware that you can carry the 10 largest States, theoretically, by one vote per State, and throw in the District of Columbia, and you are elected President, even though defeated by a landslide.

I think we ought not to look at those aberrations, which are not apt to happen, but look instead at what actually has happened. In the Benjamin Harrison campaign, in between the two Cleveland terms, Harrison got a majority of the electoral vote though he was not the popular vote winner.

Of more interest are the two recent instances where 10,000 popular votes separated the country from the possibility of a 1½ million popular vote winner on one side and an electoral college vote winner President on the other.

Mr. President, as we go on with our debate here through the next few days, I hope these matters will surface, and I hope our colleagues will have a chance to see firsthand how this system has functioned, and decide whether they want it to continue to function in that way.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. EXON). The Chair, in his capacity as a Senator from Nebraska, suggests the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I ask unanimous consent that Tom Parry, James Lockemy, Stephen Markman, Charles Wood, Dennis Shedd, Frankie Sue Del Papa, and Jim Stewart, of the staffs of various Senators and the committee, be accorded the privileges of the floor throughout this debate and any votes thereon.

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

Mr. HATCH. Mr. President, Senate Joint Resolution 28 would abolish the electoral college and substitute a system for the direct election of the President and the Vice President. In the event that no candidate received a vote of 40 percent of those cast, the resolution provides for a runoff election between the two candidates drawing the most votes for each office.

I am in agreement with Prof. Charles Black, professor of jurisprudence at the Yale Law School, who says of this amendment, "If it passes, it will be the most deeply radical amendment which has ever entered the Constitution of the United States."

CONSTITUTIONAL PRINCIPLES

Direct election, while undeniably appealing in some respects, strikes hard at some of the most enduring principles of our system of government.

It takes one of the strands of the American political fabric—political equality—and seeks to reweave a new cloth with this single strand.

Political equality and democracy and majority rule represent some of the most basic concepts that underlie our political system. But they are not alone. Our system is not as simple as those who speak only of majority rule and "one-man, one-vote" would have us believe. The Founding Fathers did not bequeath us with a simple system of government, a system conforming to a single, unwavering principle. Rather, they gave us a remarkably durable system that contemplates checks and balances, separation of powers, federalism, concurrent majorities, limitations of powers, and protections of minority rights. Each of these principles must be considered when this body legislates and, even more importantly, when it attempts to proposed new amendments to the Constitution.

Senate Joint Resolution 28 attaches overriding priority to the single value of political equality. In the process, these other values are necessarily subordinated. A former president of the American Bar Association states that—

> There is no valid reason why the concept of one person, one vote should not be applied to the highest officers in our land.

By the same token, is there any "valid reason" why the States should be represented equally in this body, despite unequal populations? Is there any "valid reason" why the President of the United States should be able to veto legislation endorsed by a majority of the direct rep-

resentatives of the people? Is there any "valid reason" why the Constitution of the United States cannot be amended by simple "one-man, one-vote" majorities? And what is the "valid reason" for enabling that most highly undemocratic of institutions—the Supreme Court—to overturn decisions that might have been reached by an overwhelming consensus of the people and their representatives?

The idea of democracy in America, as has been observed by Irving Kristol and Paul Weaver, is an idea that has been "vulgarized and trivialized" in recent years. "Far from being a complex idea, implying a complex mode of government, the idea of democracy has been debased into a simple-minded arithmetical majoritarianism." They describe it as "government by adding machine." It is an idea of democracy rejected by the drafters of the Constitution, and an idea, if accepted, that threatens the whole of that document. Such democracies, according to James Madison in the Federalist No. 10:

> Have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and in general have been as short in their lives as they have been violent in their deaths.

PRESENT ELECTORAL SYSTEM

The present electoral college results from two broad provisions of the Constitution. Article II, section 1 provides that each State is entitled to a number of electoral votes equal to the combined number of Senators and Members of the House of Representatives for that State. These votes are cast in each State by "electors" who are appointed "in such manner as the legislature thereof may direct." While in the early years of our Republic, States differed substantially in the manner in which they exercised this power, by the 1830's virtually every State awarded its electoral votes to the Presidential candidate who carried the State's popular vote. By 1860, this was the unanimous procedure of the States.

Thus, it is interesting to observe that the Constitution currently permits the States to allocate electors on whatever basis they so choose. The State of Maine recently became the first State in this century to deviate from the "winner-take-all" formula, deciding to allocate two of the State's four electoral votes to the statewide popular vote winner with the other two to be allocated to the popular vote winner in each congressional district. Thus, the "winner-take-all" formula is not a constitutional requirement but simply one adopted individually by the 50 State legislatures.

The formal electoral college procedure involves assemblies in each of the State capitals approximately 1 or 2 months after the Presidential elections at which electors committed to the winning candidate meet to cast their votes. The votes are then certified and transmitted to Congress where the official results are announced in January before a joint session of Congress.

In the event that no candidate for President or Vice President receives a majority of the vote, the provisions of the 12th amendment are invoked.

This permits the House of Representatives—with each State delegation entitled to a single vote—to select a President from among the three leading candidates, and the Senate to select a Vice President from among the two leading candidates. Theoretically, the 12th amendment permits the President and Vice President, in the case of a deadlock, to be from different parties.

The 12th amendment was ratified in 1804 in order to prevent a recurrence of the situation that developed in the 1800 election conducted under the original provisions of article II, section 1. In that year, Thomas Jefferson and Aaron Burr had each received the same number of votes in the electoral college, the intention being that Jefferson be President and Burr Vice President. Because the original Constitution contained no provisions concerning the separate designation by the electors of their choices for President and Vice President, the election was thrown into the House of Representatives and the Senate for final determination. Although Jefferson eventually emerged the winner, it was clearly recognized that article II was in need of reform.

Nor has the electoral college been static in other respects. It is not an inflexible, nor an archaic institution. The electors to be chosen were originally conceived of as persons who were to exercise a certain independence of judgment in their selection of the President and Vice President. It is probably not true, as some have suggested, that the electors were to function as a sort of supernominating committee with final selection to take place in the Halls of Congress. Yet, few of the Founding Fathers contemplated the purely popular appointment of electors.

The concept of the elector has gradually evolved so that the elector today is little more than an automaton committed to cast his vote for a specified candidate. Since 1832, there have only been an estimated 10 so-called faithless electors out of a total 17,000 electors appointed since then.

None has come anywhere close to actually affecting an issue. In the opinion of some constitutional scholars, the States can eliminate even the infrequent appearance of the faithless elector through a simple statute.

As observed by Martin Diamond, the late professor of government at Georgetown University:

> The electoral college never was fundamentally intended to operate in an undemocratic way.

Its genesis was rooted, not in an effort to deprive the people of their legitimate voice in their government, but in an effort to establish a forum that—First, would reflect the so-called great compromise that had been achieved concerning representation in the two Houses of Congress; and second, be sufficiently independent of both Congress and the State legislatures. By providing electoral representation to the States on the basis of their combined representation in Congress, the great compromise was extended to both the legislative and executive branches of Government. By creating the office of the elector, an institution was created that was neither subservient to the Congress nor the State legislators. There has never been a time in the history of the country, even in its earliest days, that the electors did not respond closely to the popular will of the electorate. In 1796, for example, the third presidential elections in the country's history, every elector cast his ballot in a manner generally considered to have been mandated by his State.

OPPOSITION TO THE ELECTORAL COLLEGE

The case against the electoral college is basically a simple one. The electoral college, so the argument goes, is an archaic and outmoded institution that runs counter to the basic democratic principles of one man, one vote, and perpetually threatens to elect to the offices of President and Vice President candidates receiving a minority of the popular vote. It is also argued that the winner-take-all system—which as has already been observed is not inherent in the electoral college—discourages two-party competition in one-party States, and alienates minority-party voters who find their votes aggregated in behalf of the opposition in the allocation of electoral votes.

EXPERIENCE OF THE ELECTORAL COLLEGE

Proponents of direct election have referred to the electoral college as electoral Russian roulette. Every 4 years, they lament the fact that the electoral college could theoretically give victory to a popular vote runner-up. And every time that there is a close election, they point to the fact that a shift of "x" votes here or "y" votes there would have achieved that very thing.

While such computations make for fine parlor games, let us take a quick look at exactly how the electoral college has worked for the past 200 years. There have been 47 Presidential elections since the Constitution was ratified in 1788. Supporters of direct election refer to three elections in which the electoral college "mis-fired" and gave us the "wrong" President.

In 1824, John Quincy Adams, Andrew Jackson, Henry Clay, and William Crawford opposed each other for the Presidency. Andrew Jackson who received more popular votes than his competitors lost in the electoral college to the popular vote runner-up John Quincy Adams. Was the electoral college at fault in the 1824 election? Was this the year that the so-called loaded pistol of the electoral college misfired? I think not.

Not only did Jackson fail to receive a popular majority in the election—he had a plurality of only slightly above 40 percent of the total vote—but there was no popular election whatsoever in at least six States that year. These included some in which Adams was extremely strong, including New York. In these States, electors were still chosen by State legislators. The four candidates in the race appeared together on the ballot in only five States, with neither Adams nor Jackson on the ballot in every State. Because no candidate received a majority of either the popular or the electoral vote, the election was thrown into the House

of Representatives pursuant to the 12th amendment. There, Adams prevailed. According to one observer of that election:

> The popular will had been so dimly revealed in 1824 that the House could not have subverted it.

Of a total population of 11 million, accurate vote totals were tallied for approximately 150,000 ballots.

In 1876, Rutherford Hayes won the electoral college vote despite losing the popular vote by seven-tenths of 1 percent of the total vote to Samuel Tilden. The only difficulty with attributing this result to a "misfiring" of the electoral college is that the 1876 election was also the most corrupt and scandalous in the history of the Nation. One political scientist has said of the election:

> In our Centennial year, the electoral process was so debased and dishonored by fraud that only an eccentric majoritarian would single out the technical runner-up Presidency of Hayes as a matter for criticism and concern.

Following the election, Congress, for the only time in our history, convened a special electoral commission to investigate vote fraud in a number of States. Popular vote totals and elector credentials were the subject of serious challenge in nearly a dozen States. Whether it was Tilden or Hayes that ended up with 48.5 percent of the popular vote is something that we will probably never know with any degree of certainty.

The election of 1888, the third election to which opponents of the electoral college point, is probably the only instance in which a legitimate popular vote winner may have failed to win the electoral vote. In that year, Grover Cleveland won 49.6 percent of the popular vote to 48.9 percent by Benjamin Harrison. Harrison, however, prevailed in the electoral college. Even this election, however, was characterized by allegations of substantial vote fraud by the infamous Tammany Hall machine in New York City. If sustained, such vote fraud, almost totally in behalf of favorite-son Cleveland, would have been more than enough to turn around the popular vote figures. In addition, a study by the Library of Congress has concluded that, absent voter fraud and intimidation against black and Republican voters in the South, Harrison would have won the popular vote. Everything else aside, Cleveland's problem in 1888 was simply that his election campaign was an overly sectional one in character. He ran up extremely heavy margins of victory in a few one-party States in the Deep South and in some sections of the Northeast, but did not wage the sort of broadly effective, national campaign that the electoral college demands. It is exactly this sort of campaign against which the electoral college is aimed.

Our Founding Fathers wished to create incentives in Presidential campaigns for conducting broad-based, national campaigns, rather than sectional or local ones. They desired to promote Presidential coalitions of "cross-sectional" majorities, or majorities approximately reflective of the overall composition of the American electorate, rather than majorities unconcerned about anything but arithmetical calculations.

Thus, in the history of this country, there has only been a single occasion on which the electoral college may have accorded victory to a popular vote runnerup. It is worth noting that the Republic survived that election, as did Cleveland, who was elected to his second term of office in 1892.

If the ultimate disaster of the electoral college is that it elects a 49 percent runnerup to office every two centuries, I am willing to endure it. Its strengths far outweigh that slim and unterrifying possibility.

DAMAGE TO THE TWO-PARTY SYSTEM

The moderate two-party system that exists in this country is not an accident of history. It is not a fluke. It is a direct function of our Nation's political institutions, including the electoral vote system. In the absence of the electoral vote system, there is a strong likelihood that party politics in this country would more closely resemble the multiple party states on the European continent. The French electoral system, for example, closely resembles the direct election that would be established by the present resolution. There would likely be a proliferation of smaller and frequently more extreme political parties, with governments perpetually dependent upon the support of at least some of these parties for their position. Professor Bickel predicts:

> The monopoly of power enjoyed by the two major parties would not likely survive the demise of the Electoral College.

The present electoral system serves as a disincentive to serious participation by third parties. Their ideas may be considered seriously, and ultimately integrated into the platforms of the two major parties, but such parties themselves are unlikely to become dominant electoral forces.

There is no possibility that they will gain electoral votes, or provide much obstacle to the major parties, unless they are capable of winning a majority on a statewide level. There is no possibility that they will deny an electoral college majority to a winning candidate unless they can demonstrate enough strength within several States to carry those States.

The impact of the electoral vote system upon third parties was illustrated well by the election of 1968, an election ironically that proponents of direct election point to as justification for their proposal. Reference is often made to the professed intention of Gov. George Wallace, the American Independent Party candidate, to create an electoral vote deadlock in order to permit himself to serve as kingmaker of sorts in the electoral college. To that end, he obtained affidavits from his electors which pledged them to vote for himself or for the individual of his choice, pledges of rather dubious legality. Certainly, it is argued, this is not how the President of the United States should be elected.

Mr. PERCY. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. PERCY. Mr. President, since the Senator from Illinois was addressed by the Senator from Utah on this particular subject, which I have not really familiarized myself with, I have now spent 2 or 3 hours on it and met with several people, reviewed the material, and feel that the Senator from Illinois is now better informed and getting better informed on this particular issue.

I thank my distinguished colleague for alerting me to this matter.

Mr. HATCH. I thank the Senator so much.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH (continued). In fact, that is exactly how the President of the United States is not elected.

George Wallace, who at one point early in his campaign garnered nearly as much support as the Democratic nominee in opinion polls, and who garnered in excess of 20 percent of the vote in late-campaign opinion polls, eventually won only 13 percent of the popular vote. This translated into approximately 8 percent of the electoral vote. The Wallace candidacy came nowhere close to achieving its goal of electoral deadlock.

Because it was recognized that, outside the Deep South, Wallace was unlikely to carry pluralities in any States, the "wasted vote" syndrone was clearly in evidence. Rather than casting their votes for an individual who had no chance to gather electoral votes in their States, large numbers of Wallace sympathizers swallowed hard and cast their vote for one of the two major party contenders. In this manner, the electoral system minimizes, rather than exaggerates, third party influence in Presidential campaigns.

As Columnist George Will has remarked:

> It was the electoral college that revealed the fundamental truth which was that Governor Wallace (in 1968) was a regional candidate. It guaranteed that he would be confined in the decisive voting—the electoral votes—to the South. Therefore, it made clear in late October to those elsewhere who might have been tempted to vote for him that he was, in essence, a frivolous vote. That caused the withering away of his support in the final days.

Under a system of direct election, specifically that proposed by Senate Joint Resolution 28, splinter parties are provided with incentives, rather than disincentives, to participate in Presidential elections. Senate Joint Resolution 28 specifies that, in the event of no candidate receiving 40 percent of the popular vote, a runoff is to take place among the two top vote-getting candidates. The existence of the 40 percent threshold—indeed the existence of any precise threshold figure short of 50 percent—insures a proliferation of small parties.

Rather than having to engage in the hopeless task of attracting large numbers of votes to defeat a major party candidate, and thereby exerting influence, small splinter parties will be competing only to deny the major parties the threshold vote percentage. Splinter parties will not be competing against the larger parties, but against the 40 percent threshold. It will not be necessary that there be a dominant third party or fourth party capable by itself in denying

the threshold level to the major parties, but simply that minor parties, taken in the aggregate, be able to keep both parties beneath this figure. The general election will be transformed into a national primary.

It is going to resemble the Boston Marathon with Presidential candidates representing every special interest group in this country. Each will seek to push the major parties—what is left of them—below the 40-percent threshold, and position themselves to negotiate during the prerunoff period.

The traditional case against voting for third parties—the wasted vote argument—will no longer exist. Each vote for a 3d or 4th or 10th party, however insignificant these parties, will count toward denying to a major party the achievement of the threshold percentage.

Proponents of direct election like to point out that only in the election of 1860—Abraham Lincoln's first Presidential victory—would a runoff have been necessitated under the 40-percent rule. Thus, we are assured, the contingency procedure is something likely to occur only under highly unusual circumstances.

This argument is not untypical of many that have been expressed by proponents of direct election. They seek to change the rules of the Presidential election game in one significant respect while assuming that everything else about the game is likely to remain the same. This is not likely to be the case. Splinter parties have never posed major problems in Presidential elections because their participation has been strongly discouraged by the ground rules; change the ground rules and we will experience splinter parties emerging from all corners. Splinter labor parties, splinter right-to-life parties, splinter racist parties, and splinter one-issue parties of every conceivable hue. As suggested by Michael Uhlmann, the author of a forthcoming book on the electoral college, the question facing these parties will no longer be "why run?", but "why not run?".

What will be their incentive beyond the opportunity to make life difficult for the major parties? These parties, in the event of a runoff election, will be positioned nicely to negotiate for their support prior to the runoff election. George Will suggests that, "they would try to force a second vote so they could sell their support." Minority, often extremist minority, parties will be able to exert an influence under the direct election system that is wholly denied them under the electoral vote system. Coalition building that currently takes place prior to the general election, and within the confines of the two parties, will be shifted to the hectic, pre-runoff period and take place within the context of inter-party coalitions. It will be a time, in Madison's words, of "extraneous management and intrigue." There will be no incentives for pregeneral election compromises and moderation; such action may indeed limit the flexibility of the parties in the postgeneral election period.

In addition, traditional notions of party, responsibility will be sharply altered. The consensus effect of the national convention process will be lost as losing candidates will have new encouragement to pursue post-convention campaigns.

A word is in order about the precise impact of the "winner-take-all" or unit-rule system, upon the complexion of our two party system. While the unit-rule has been much maligned—and indeed there is disagreement among us on the merits of preserving this system—it should be recognized that it has made a significant contribution in the moderating influence that it has had upon the American political system. Parties are under a strong inducement to extend their appeal as broadly as possible within a State since anything less than outright victory will result in zero electoral votes. Except in unusual circumstances, both parties have to appeal to large numbers of voters and special interests who are not inextricably identified with either of the two major parties. As they seek to broaden their bases, each of them appealing to essentially the same core of nonalined voters, the parties become more and more like each other.

While this may make for Presidential elections with less spectator appeal, and less capable of effecting cataclysmic change, than they might otherwise be, this does insure a certain stability in the system. When candidates are perceived as falling outside this consensus, landslide majorities for the opposition are usually guaranteed.

Thus, whatever the drawbacks of the unit-rule, it should be understood that this system does have the generally desirable effect of encouraging parties to become broad, inclusive, accommodating, temperate institutions, rather than exclusive and rigidly ideological ones.

(Mr. PRYOR assumed the chair.)

RISK OF FRAUD, RECOUNTS AND RUNOFFS

It is my opinion that direct election would be an invitation to fraud, would encourage interminable vote challenges and recounts, and create chaos in what is currently an orderly and rational transition period between administrations.

Much of this stems from the fact that direct election, in effect, substitutes for fifty separate State elections, a single national election. As a result, the benefits of "compartmentalization" derived from the electoral vote system are lost. As noted by Professor Ernest Brown of the Harvard Law School:

> The present system insulates the States. When the vote is counted by the states, those lines insulate the area of contest and keep it local, and they insulate the significance of the contest.

With respect to fraud and vote corruption, for example, there is presently incentive for such activity only in those States, obviously, in which it can make a difference. Unless there is a relatively close contest within a State, there is no inducement for fraud. As a result, fraud in Presidential elections under the present system has been a relatively unusual occurrence and, when it has transpired, it has only rarely been capable of influencing an election nationally.

Under a system of direct election, new incentives would exist for vote fraud in every precinct in every State across the country. Each vote wrongfully obtained would have potentially national significance regardless of the closeness of the campaign in any single State. In the event of a close national election, there may well be tremendous pressure for vote manipulation and maneuvering, particularly in the western-most States. The change of a very few votes per precinct, across large numbers of precincts, would pose great difficulty of detection.

The electoral vote system does not foster any more or less honesty among vote counters than does direct election; it is simply that vote chicanery is discouraged by limiting the scope of its significance. As Theodore White has put it, under the present system, "the crooks are each sealed in their own state containers."

By the same token direct election would sharply undermine the certainty of electoral counts. Contested elections, which may well pose constitutional crisis in their own right, will become routine in close elections such as those of 1960, 1968, and 1976. There will be an incentive placed upon forcing such challenges and recounts because the shift of even a handful of votes in a number of precincts across the Nation may have a substantial impact upon close national election. Under the present system, there are inducements for challenges and recounts only where an election in an individual State is close.

It is not unlikely that in razor-thin elections there will have to be recounts of each of the nearly 200,000 polling places across the country. In even the most honestly and conscientiously managed polling places, it is unusual that recounts do not result in minor vote adjustments. No narrowly losing Presidential candidate could afford to forfeit the opportunity to cumulate those votes through a recount.

The impact of fraud and vote recounts is not limited, under a system of direct election, to whether or not Candidate Smith or Candidate Jones becomes President. It may also play a critical role in determining whether or not Candidate Smith is forced into a runoff, and, if so, whether or not he will be opposed by Candidate Jones or Candidate Thomas. Not only might the leading candidates' votes have to be recounted and reanalyzed, but the total vote, including disqualified, damaged, write-in ballots, et cetera, will have to be assessed in order to determine whether or not 40 percent of the total vote equals 20 million votes or 20 million plus one. Consider the nightmarish situation in which the country is placed, during what has otherwise been a smooth inter-regnum period, if Candidate Smith is initially given 40.1 percent of the vote, Candidate Jones 30 percent, and Candidate Thomas 29.9 percent. The existence of a runoff and the identity of the runoff participants would be uncertain for, at minimum, a three- or four-week recount period. Political data analyst Lance Tarrance considers it "computationally impossible" to certify such an election outcome for up to a several-month period. He notes that the electoral vote system currently serves the largely overlooked function of "cleaning out much of the error debris in our election

tabulation system by concentrating on State outcomes, rather than a national outcome."

How much time would the candidates have to campaign following the general election and the recount if a runoff were forced? What if the runoff were also decided by a narrow margin? The country could be well into January without an inkling of who its next President would be. Whoever the new President, his opportunity to reflect over his victory and prepare for his new administration would be virtually nil. No doubt, the scars of doing extended battle would also deny him any significant "honeymoon" period.

During a juncture in which wounds are now allowed to heal, and during which the President is transformed from a narrowly partisan figure into the spokesman for a single people, direct election would give us the paralysis of recounts and the bitterness of electoral conflict. Backroom coalitions and bargaining that, under the present system, would have been long forgotten would now just be beginning.

H. NEED FOR A FEDERAL ELECTION CODE

At a time when there is so much disillusionment with concentrating power in the Federal Government, Senate Joint Resolution 28 would nationalize one of the most important functions currently performed by the States—the administration of elections. A uniform, national election code imposing uniform election procedures upon each of the 50 States is a virtual certainty if direct election is instituted.

While distinct electoral practices can be tolerated within each State since Presidential elections are now conducted on a State-by-State basis, this cannot obviously be permitted once a single national election has been established. So long as the ballot procedures, or residency requirements, in Kentucky or Arizona do not affect elections in Missouri or New Hampshire, they can be tolerated. Under a system of direct election, however, what occurs in each precinct in each State affects every other precinct in every other State. If, for example, a precinct in west Texas counts both checkmarks and "X's" on its written ballots, while a precinct in Connecticut counts only checkmarks, is not the electoral influence of the west Texas precinct increased at the expense of the Connecticut precinct?

Prof. Richard Smolka, professor of government at American University and the author of numerous works on elections, has testified eloquently with respect to those areas in which the Federal Government will have to preempt the States under direct election. Among the issues that Congress will have to deal with:

Times, places, and methods of voter registration;

State residency laws (S.J. Res. 28 authorizes Congress to "establish uniform residency qualification");

Absentee ballot requirements and procedures;

Methods by which candidates and political parties can qualify for the ballot;

Who has the right to use party names? May a candidate run on the liberal or conservative party tickets in New York, or the DFL or IR tickets in Minnesota, and have their votes aggregated with differently named parties in their States?

Can Presidential ballots be combined with State or local ballots? Will voting be by party row or party column? Can a party level be used? Will ballot position be fixed?

What will voting hours be? What types of voting machines will be permitted? How large an area may a precinct comprise? What sorts of election officials must oversee each precinct?

Who will count ballots? Who will rule in disputed ballots? What appeals procedures will be established? What showing will be necessary for a recount? How will ballots be maintained pending recounts?

These questions form the tip of the iceberg. Under a system of direct election, the most minute and insignificant aspects of election, qualifications, and procedures will be transformed into grand matters for congressional and Federal judicial determination. One of the few remaining areas in which federalism still flourishes will be eliminated. Decisionmaking that is currently handled in a responsible, orderly manner by thousands of election officials throughout the country will be rigidly centralized in Washington, D.C. A grandiose new bureaucratic structure will undoubtedly be necessary to administer these responsibilities.

A national election code would be particularly dangerous to the extent that it reflected the biases of the party then in the majority in the National Government.

ADDITIONAL POWER TO NATIONAL MEDIA

One matter that concerns me greatly about the direct election proposal is that it will enhance the role of the national media in Presidential election campaigns. Increasingly, in recent years, political reforms designed to open up the system have had the net effect of increasing the influence of the communications media, and those who are skillful in utilizing it.

Curtis Gans, testifying on behalf of the Americans for Democratic Action in 1977, explained,

For two decades, or ever since the advent of television as a central factor in American lives, the practice of politics has increasingly been dominated by the political commercial, image making and mass media manipulation. Only the need to maximize the vote in key states has forced national campaign managers to expend resources for organization in the several states. However, should this nation move to a system of direct popular vote for President, what few remaining incentives to political organizations would be lost. Electoral contests would be between Pat Caddell and Robert Teeter, between Deardourff and Bailey and Rafshoon. The contest would not be among those who could recruit and organize the largest number of participants in the process but rather who could most effectively and skillfully manipulate media imagery.

In the absence of political and geographical boundaries, campaigns could be conducted on a centralized basis. The institution best equipped to promote such a campaign would be the national mass media.

Ronald Wilner, testifying on behalf of political consulting firm, Robert Goodman Agency, commented:

Advertisers buy on a cost-per-thousand basis ratio. . . . A dollar spent anywhere will reach virtually the same number of potential voters. However, there is a way to beat the prevailing cost-per-thousand ratios and that is by taking advantage of the efficiencies offered in network advertising. I would suspect that we would see our Presidential candidates using a lot more of it—network advertising—than in the past. Lacking the need for a state-by-state strategy, they would be prime candidates as network advertisers.

Such an economic incentive would sharply increase the likelihood that national media would be more frequently and intensively used, increasing their influence over the Presidential election process.

In the place of traditional election day maps illustrating which candidate carried which State, Theodore White predicts that direct election will introduce us to election day maps illustrating which candidate carried which media markets.

MINORITY INFLUENCE

It is not only the smaller States, that stand to lose influence through the implementation of direct election. Not surprisingly, in view of the weight that the electoral vote system accords the principle of concurrent majorities, or "reasonable" majorities, cohesive minority groups within the larger States also stand to lose substantial electoral influence.

According to Vernon Jordan, chairman of the Black Leadership Forum, direct election would result in "serious setbacks for minorities." In their study for the Brookings Institute on direct election, Wallace Sayre and Judith Parris observed that direct election would cause metropolitan areas to "lose their most important point of leverage in the total political system." The ability of these areas, heavily populated by minority groups, to hold the balance of power in larger, competitive two-party States would be lost. Instead, they would simply be tossed into the national electoral pool indistinguishable from any other voters.

Jordan, testifying on behalf of the Urban League, the NAACP, the National Urban Coalition, PUSH, and the Southern Christian Leadership Conference, warns too that direct election would—

Inevitably mean the formation of black political parties, voting along racial lines and increasingly separated from the major parties who would themselves be weakened and dependent upon conditions with splinter groups. This would not only weaken the political system, but would be a polarizing factor destructive of racial harmony.

The American Jewish Congress has testified also in recognition of the contribution of the electoral vote system to minority rights and aspirations.

I might suggest that my colleagues read the testimony of both Vernon Jordan and Howard Squadron, the representative of the American Jewish Congress. It is some of the best testimony that the Senate Judiciary Committee received during this year's hearings.

Mr. BAYH. Will the Senator yield?

Mr. HATCH. Yes.

Mr. BAYH. Does the Senator from Utah associate himself with the logic of Mr. Squadron and Mr. Jordan?

Mr. HATCH. That is correct.

Mr. BAYH. That is rather interesting. I have heard the Senator from Utah very eloquently describe what he feels to be a small State advantage, under the electoral college system, in that his constit-

uents would lose as citizens of small States; now he is suggesting that the Senate ought to buy the argument of Vernon Jordan and Howard Squadron, who are arguing that the large States have the advantage. It either has to be fish or fowl, it seems to me.

Mr. HATCH. That is not quite what they argue.

Mr. BAYH. That is exactly what they argue.

Mr. HATCH. No, they argue that discrete minorities within large States benefit under the electoral vote system.

Mr. BAYH. The Senator will find, if he reads their entire statements, that Vernon Jordan and Howard Squadron consistently argue that their constituencies—frankly, I think erroneously so—are advantaged due to their residence in large electoral vote States. Their whole argument is that there are heavy concentrations of Jewish voters and black voters in New York with a big impact on electing 41 electors and, thus, on the outcome of the election; more than they would if their votes counted equally with everyone else's throughout the Nation. That is the large State argument.

My friend from Utah, on the other hand, has been one of the most persuasive arguers for the small State argument.

Mr. HATCH. I thank my friend from Indiana, but as a matter of fact, I have not been one of the most major proponents of that point of view. I think that is true—that small States will be hurt by Senate Joint Resolution 28, but I think that there are many more persuasive and pertinent arguments than that one. I have attempted to concentrate my time on these other arguments.

I will say that I do think the small States were given an advantage by the electoral vote system. The Founding Fathers, through the "Great Compromise," sought to satisfy the smaller States who were concerned about being overwhelmed by the larger States. Arising out of that compromise was equal representation of the States in the Senate, and the article V guarantee of permanent "equal suffrage."

Mr. BAYH. The Great Compromise dealt with representation in the legislative branch. It did not have anything to do with the electoral college.

Mr. HATCH. I respectfully disagree.

Mr. BAYH. With all respect, if the Senator reads the Constitution, he will find otherwise.

Mr. HATCH. While I agree with the Senator that the compromise dealt most immediately with representation in the legislative branch, it was not long before it was extended—for most of the same reasons—to the executive branch as well.

Further, it is my view that in at least one sense, none of the States will benefit from the establishment of direct election. As we have already noted, direct election would totally eliminate the role of States as States in the electoral process. Once direct election has been implemented it will make no difference whether or not Maine or Virginia or New Jersey become more "powerful." That is a relevant concern only to the extent that the States matter at all in the electoral process. By removing the States as intermediaries in the electoral process each of the States becomes less of an influence with the executive branch of the National Government.

With respect to the conflicting array of sophisticated computer studies, on the small-State large-State debate, the critical consideration in the argument is how Presidential candidates themselves view the importance of the States. As observed by one of our colleagues, who has been through the experience, Senator GOLDWATER:

> What these mathematical studies miss is the human factor. They do not take account of the human psychology which governs real-life politics . . . I am afraid that direct election would destroy the special extra weight now given in elections for protection of smaller States. For even if a candidate fails to visit a given State, he may well take a particular position on this or that issue calculated to attract voters in that State.

Former Presidential adviser Richard Goodwin has testified to the same effect. He has noted that—

> Most Presidential campaigns are concentrated on no more than twenty percent of the vote, the swing vote, on the assumption that the rest are pretty well committed. Today, nearly every State has a swing vote which, even though very small, might win the State's electoral vote. Thus, nearly every State is worth some attention.

While I do disagree with the Senator from Indiana on these matters, he is certainly the leading authority on direct election of the President in this body. I have admired the breadth of his knowledge throughout hearings on this matter.

Let me continue with what the American Jewish Congress has stated about the present electoral system:

> By tending to inhibit the nomination of candidates likely to be objectionable to sizable minority groups, the electoral system assures attention to the needs and desires of groups whose interests might be given much less consideration under a system of direct popular election.

This point was echoed by the American Farm Bureau Federation with respect to the minority interests of rural America.

DIRECT ELECTION AND CRISES OF LEGITIMACY

While we have heard much about the potential crisis entailed in the election of a 49-percent runnerup under the present electoral system,there are several important risks involved under a system of direct election: First, a candidate can become President with only regional support. It is quite conceivable that a candidate could concentrate nearly full-time efforts on maximizing vote totals in heavily populated, but relatively circumscribed geographical areas. Other areas could be almost totally ignored. Direct election does not require that a candidate carry on a genuinely "national" campaign as does the electoral college; it is concerned only with the magnitude of vote majorities, not with their distribution.

Second. A candidate can become President without a majority, indeed, even without a plurality, in a single State. This is basically the converse of the first possibility. A candidate whose support is insufficient to gain him a majority or plurality in a single State may emerge victorious in a three-way competition if his votes are distributed evenly throughout the country. Thus, a candidate could be elected President of the United States without having captured a single one of those States.

Third. The candidate prevailing in the runoff election might have placed a distant second in general election. Such a candidate would hardly be likely to have an overwhelming public mandate. Professor Brown of Harvard Law School observes of such a candidate that—

> The majority that supports him in the runoff is at best a reluctant majority, and he remains substantially in pledge to those who swung support to him in the runoff, since it has been demonstrated that he could not have won without them.

The New Republic asks:

> Will the results of the first election ever be forgotten, or will those results actually define the new President's ability to govern?

One of the strengths of the present system is that it gives us but a single election. Not since 1824 has it been necessary to invoke the contingency provisions of the 12th amendment. The unit-rule provisions of the electoral system has the effect, further, of magnifying the popular vote margin into a larger electoral vote margin, thus discouraging prolonged challenges and disputes even in the case of close elections.

Fourth. Finally, in light of the democratic preoccupation of direct election advocates, it is worth stressing that such a system of presidential election will routinely give up presidents who are opposed by a majority of the electorate. These advocates may lament the fact that the 49.8-percent Presidency comes along every century or so under the electoral system, but they are giving us a system which, through its encouragement of splinter parties, is likely to make 50-percent presidencies a historical curiosity. If one-man, one-vote is the overriding, all-compelling American principle, how can advocates of direct election tolerate a system that expressly contemplates and would encourage 40-percent Presidents? We feel it is important to note that, under the electoral system, the nation has generally been governed by Presidents who have achieved much better than a 40-percent plurality. Only three have been elected in the history of the country with less than 45 percent of the popular vote.

Whatever the threshold level established by a direct election amendment, it is virtually certain the Presidential campaigns will be fought in the context of candidates narrowly succeeding or narrowly failing to achieve that margin. With a 40-percent threshold, it is likely that we will have a 50-percent Presidency only in rare landslide election years, as observed by Vernon Jordan:

> The paradox is that democracy and democratic practice is better served under the indirect electoral college system than under the misleadingly democratic direct election system.

Efforts to compare the relative "crises in legitimacy" of Presidents elected under different electoral systems are, of

course, speculative. We do, however, have the benefit of experience with the electoral college to suggest that a "runner-up" Presidency would be as readily accepted and "legitimate" as, for example, the Presidency of a Gerald Ford, who was elected not at all to either the Presidency or Vice Presidency. In the same way that the 25th amendment, then less than a decade old, lent respectability to the Ford administration, article II of the Constitution would seem sufficient to do the same for a "runner-up" Presidency.

According to Prof. Judith Best, author of a study on direct election:

> If a truly sectional President were to be elected under this system, the country would be ripe for civil discord, if a President, let us say because of an overwhelming victory in the populous eastern megalopolis, won a majority or plurality of the popular votes although receiving insignificant support in the other sections of the country, he would be considered "their" President, not "our" President by the rest of the country. He would have great difficulty governing.

Presidential acceptance, or "legitimacy" depends upon more than simple arithmetical preponderance; it also rests upon tradition, the stability of the regime, the naturalness of transition, the integrity of the person, the base and breadth of his support, and public perception of the "fairness" of the system.

While the "crisis" attached to the electoral vote system involves what is in substance a mere technical violation of bastardized Democratic theory, the "crisis" of direct election (a far more real possibility in our opinion) is the pitting of region against region. The electoral college is an impediment to sectionalism; it is a bulwark against Presidents and Presidential campaigns that are relatively unconcerned about large sections of the country. Professor Best notes, in comparing the relative gravity of "crises" fostered by 49.8 percent Presidents and by sectionalist Presidents, that the former is a "pin prick," the latter a "bleeding artery":

> A truly sectional President * * * would be a substantive violation of the spirit and intent of the constitutional system as a whole.

BURDEN OF PROOF

It is my opinion that the Republic has survived nicely for two centuries under the electoral system. In general, we have elected to the offices of President and Vice President persons who have served those offices well. The Nation has developed and prospered under the leadership of these persons. There have been no major constitutional crises concerning the election of President and Vice President. There have been no crises in legitimacy. There have, in general, been smooth transitions between officeholders and between political parties.

In short, the electoral system has worked reasonably well to select the executive authority. It is not a perfect system, but it is a more than workable system that has proven its effectiveness in the course of nearly 50 hard-fought Presidential campaigns.

Because the present system has worked well and continues to work well and because of the radical nature of the proposed change, it seems to us that proponents of Senate Joint Resolution 28 bear a very heavy burden of proof. They must show beyond a reasonable doubt that first, the present system is seriously flawed and should be changed, and second the proposed direct election system would be a significant improvement. The burden of proof is not on defenders of the present system. It is upon those who would reject a system that has worked, in favor of one that might or might not work.

As observed by Richard Goodwin, former advisor to Presidents Kennedy and Johnson, in speaking of direct election of the President,

> We will exchange a mechanism which is clumsy but has worked well for an ideal construction of political theory whose consequences can't be foreseen . . . It is not enough to demonstrate that direct election will probably be an improvement. It must be shown beyond all reasonable doubt that the adverse consequences which are predicted by many will not occur.

The late Prof. Alexander Bickel of the Yale Law School warned, "The sudden abandonment of institutions is an act that reverberates in ways no one can predict and many come to regret."

It is curious that far greater scrutiny seems to have been given the present system, the defects of which are known and certain, than to the system of direct election, the defects of which remain unknown or speculative. We believe that a proportioned debate on Senate Joint Resolution 28 must accord as great attention to weighing the merits and demerits of direct election as to those of the present system. After listening to 4 days of testimony this year, and reviewing the debate from previous years, it is our judgment that proponents of Senate Joint Resolution 28 have not met the burden of demonstrating theirs to be a superior system to the present one.

CONCLUSION

I would be remiss if I did not mention that I am also concerned about several technical difficulties with Senate Joint Resolution 28, including its failure to specify a time limit for ratification, and the possibility of its abolition of the electoral college between the time of a general election and the time of the formal electoral college processes.

I am concerned also, in light of the need for uniformity of State election procedures under a system of direct election, that nothing in Senate Joint Resolution 28 precludes the States from relaxing suffrage qualifications, for example, lowering their voting age to 16, and thereby achieving an advantage with respect to the other States. In order not to lose relative influence, it will be necessary for each State to follow the lead of that State most liberal in its voting requirements.

In addition, it is noteworthy that, upon the submission of this amendment to the States, the States will be faced simultaneously with three separate constitutional amendments for the first time since the bill of rights was considered in 1789–91. A fourth amendment may well be offered the States as a result of their own initiative in petitioning for a constitutional convention. I find it ironic, to say the least, that the proponents of this resolution are insistent upon submitting the present amendment to the States despite an almost total absence of public demand for this measure, while doing its obstructive best with respect to an amendment that is being demanded by the public—the balanced budget amendment.

I have heard absolutely no public hue and cry for the immediate proposal. Public opinion polls, relied upon by the committee, which purport to show public support for Senate Joint Resolution 28 suffer from the usual weaknesses that arise from attempting to distill complex constitutional debate into a single Harris or Gallup poll query.

For the reasons that I have stated, I am strongly opposed to the pending resolution. I respectfully urge my colleagues to examine it with the greatest of care and caution.

In proposing an amendment to the Constitution that would totally alter the processes of what Theodore White refers to as the "central rite" of our democracy, I believe that Senate Joint Resolution 28 forbodes changes of the greatest dimension in our system of Government. Each of us must consider whether or not such changes are truly needed.

I ask unanimous consent that certain additional material be printed in the RECORD.

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

QUESTIONS AND ANSWERS ABOUT THE ELECTORAL VOTE SYSTEM

BURDEN OF PROOF

Q. The electoral vote system has operated for nearly two hundred years to select a president in a single general election and to smoothly transfer executive power. Why should we want to change such a successful system, especially by a constitutional amendment which—according to noted constitutional scholar Charles Black of Yale Law School—would be "the most deeply radical amendment which has ever entered the Constitution of the United States"?

A. This is the fundamental question and the question which proponents of direct election have least adequately answered. A direct election system should be adopted only if it is shown to a reasonable degree of certainty that (a) the present system produces unsatisfactory results and (b) direct election would result in significant improvement. The burden of proof is not on defenders of the present system. It is upon those who would reject a system that has worked in favor of one which might or might not work.

RISK OF RUNNER-UP PRESIDENT

Q. Under the present system it is possible that a candidate could be elected president who had received fewer popular votes than one of his opponents.

Is the possibility of a runner-up president so likely and so undemocratic that the system that allows it should be changed?

Under modern conditions would such a runner-up president be accepted by the American people as legitimate and could such a president effectively govern?

A. A runner-up President has been elected only once in the history of our country. It is very unlikely that under the modern two-party system and broadly based, nation-

al campaigns, this would happen again. In 1888 Benjamin Harrison won the electoral vote contest, and therefore the election, despite a narrow loss to Grover Cleveland in the popular vote (the difference was less than one percentage point). Cleveland's narrow popular vote victory and his electoral vote loss both resulted from his sectionalist campaign strategy, which was aimed at achieving large margins in one region of the country. Harrison conducted a genuinely national campaign.

The one-man, one-vote, majoritarian principle is only one of the political values on which our government was based The Founding Fathers established a government where the will of the national majority is limited, for example through the Bill of Rights, and is expressed indirectly through the states. Citizens participate in the election of members of Congress and the President only through their states. As a result, federal power—both legislative and executive—reflects regional/geographical as well as population factors. Less populous regions of the country have been given a slightly greater influence over federal decisions than would be due them because of their share of the national population. This arrangement has served the cause of national unity.

The election of a President who had received broad support—hence an electoral vote victory—but slightly fewer popular votes, would be very unlikely to produce a crisis. A crisis did not occur in 1888, as indicated, nor even in 1974 when Gerald Ford became President despite receiving no popular votes.

Constitutionally valid procedures automatically produce results that have great legitimacy. This legitimacy would only be undermined if influential political and opinion leaders constantly claim that a runner-up President would be undemocratic and illegitimate. Therefore, when such leaders predict a future crisis, they are in effect making self-fulfilling prophecies. The American people are perfectly capable of understanding and accepting the reasons why the electoral vote system was developed and the advantages which it still possesses over direct election.

FAITHLESS ELECTOR PROBLEM

Q. Under the present electoral vote system, a voter casts his vote for President for a slate of electors each pledged to cast his electoral vote for the particular Presidential candidate favored by such voter. How serious is the problem of the "faithless elector," the elector who does not cast his vote for the candidate to whom he is pledged?

A. Of the nearly 18,000 electors that have been selected in U.S. history, no more than a dozen have failed to cast their votes as pledged. None of these has come anywhere near affecting the outcome of an election. Nevertheless, few of the supporters of the electoral vote system defend the office of elector. We merely question the significance of the problem. What could easily be cured by a simple and noncontroversial amendment (some scholars have even suggested that a statute would be sufficient) should certainly not be used as a justification for a change as radical as direct election.

WINNER-TAKE-ALL RULE

Q. Under the electoral vote system, the Presidential candidate receiving the most popular votes receives all of the State's electoral votes. Is this fair or democratic?

A. The "winner-take-all" rule is not required by the U.S. Constitution. The Constitution merely assigns to states their total electoral votes. The individual states decide how such votes are to be allocated. One state, Maine, has decided to award two electoral votes to the statewide winner and one to the winner in each congressional district. Most states probably adhere to the "winner-take-all" rule because it maximizes the influence on the election outcome of the majority choice, which in effect is accepted as the state choice, the collective choice of all citizens of the state. Nevertheless, the citizens of any state could—if they desired—follow the lead of Maine and abandon the "winner-take-all" rule. No amendment of the U.S. Constitution would be necessary.

A further point worth mentioning is that the "winner-take-all" rule favors a moderate, two-party system (see question 7 below).

QUESTIONS AND ANSWERS ABOUT THE DIRECT ELECTION PROPOSAL, S. J. RES. 28

RISK OF SECTIONALIST PRESIDENT

Q. Would direct election increase the likelihood of a "sectionalist" President?

A. Yes. The direct election system would permit the election of a President who received an overwhelming margin in one section or even one state of the country, yet who lost everywhere else. The electoral vote system, on the other hand, is biased in favor of candidates who receive geographically broad support. Since under the electoral vote system the margin of victory within a state is irrelevant, extra-wide margins in a few states cannot compensate for losses in other states with a greater total number of electoral votes.

RELATIVE RISK OF CRISIS

Q. Which would be the more likely and more damaging result—election of a "runner-up" President under the electoral vote system or election of a "sectionalist" President under the direct election system?

A. Election of a President who had received broad support but slightly fewer popular votes would probably not produce a crisis as has already been indicated.

On the other hand, election of a President who had received support in only one region of the nation might well result in a major crisis, with the people of most states regarding the President as "their" President not "our" President. The crisis would be deepened by the likelihood that the President would be seeking to serve the interest of the special constituency that elected him, and by the substantial friction that would be likely to exist between the President and the Congress (with its nationwide constituency and slightly disproportionate influence for less populous states).

DAMAGE TO TWO-PARTY SYSTEM

Q. Would direct election hurt our moderate, two-party system?

A. Yes. Politics under direct election would probably resemble that of the multiple party states on the European continent.

The electoral vote system and the "winner-take-all" rule together operate to discourage third parties since there is no possibility that such parties can gain electoral votes except by winning on a statewide level. Rather than "throw away" their votes, many sympathizers of third parties vote for one of the major party candidates. Direct election would encourage third parties since statewide victories would no longer be necessary.

S.J. Res. 28 contains an additional incentive for the formation of minor parties. In the event no candidate received 40 percent of the popular votes, a run-off election would be required between the top two candidates. Therefore, if the votes cast for minor party candidates taken together denied the major candidates the 40 percent plurality necessary to avoid a runoff, such minor parties would be in a very good position to negotiate for policy and personnel concessions prior to the run-off election. For example, if five Presidential candidates receive 39, 39, 11, 10 and 1 percent of the vote, respectively, then each of the minor parties, including the smallest, could deliver victory to either major party in the run-off election.

DAMAGE TO FEDERALISM

Q. Would direct election damage federalism?

A. Yes. Under direct election the States would have no significance. Under the electoral vote system, votes are counted separately for each state. A state choice is selected reflecting the majority view in such state. This strengthens the feeling of being a citizen of one state as distinguished from other states (other federal elections do not have the same effect since voting in Congressional elections does not affect the outcome outside the voters' own states). Whatever strengthens the awareness and pride of state citizenship and the realization of separate state interests will strengthen the federal system by reducing the desire of voters to see powers flowing from their state to the national government in Washington or even to the local representative of that national government (who would still be responsible ultimately to a national constituency.) Direct election would also require Congress to enact a national election code to replace those within the 50 states.

DECREASED PLURALITY FOR WINNING CANDIDATE

Q. Only three Presidents in our history have elected with less than 45 percent of the popular vote. S.J. Res. 28 provides that a 40 percent plurality would be sufficient for victory. Wouldn't such a provision make it likely that most presidents would be elected under direct election with a lower percentage of the popular vote than is usually received by winning candidates under the electoral vote system?

A. Yes. Because of its encouragement of minor parties (see above), S.J. Res. 28 would probably result in Presidential elections where the victors would receive little more than 40 percent of the vote, unless a runoff election were held. Such a change seems antidemocratic and destructive of legitimacy, both allegedly primary concerns of direct election supporters.

FRAUD AND UNCERTAINTY OF ELECTION RESULT

Q. Wouldn't direct election invite fraud, encourage vote challenges and recounts, and make less likely an orderly transition period between administrations?

A. Yes. Under the present system there is no incentive for fraud within a particular state unless the contest within such state is relatively close. As a result, fraud in Presidential elections has been relatively rare and even when present has usually not been great enough to change the national outcome. Under direct election, however, each vote fraudulently obtained would have potentially national significance. Similarly, direct election would undermine the certainty of electoral counts. Challenge and recounts would be encouraged because the shift of even a handful of votes in a number of precincts across the nation could have substantial impact upon close national elections. Furthermore, all votes might have to be recounted—not merely that involving the leading candidates—in order to determine whether the 40 percent plurality necessary to avoid a run-off election had been obtained. If both the initial and run-off elections were close and involved recounts and uncertainty, the country might not know who its new President would be until near inauguration day and the opportunity of such a President to prepare for his administration would be dangerously small.

IS ELECTORAL REFORM THE ANSWER?

(By Alexander M. Bickel)

For the first time since the Progressive era of sixty years ago, the American political system may be at a point of significant mutation. The Progressive era gave us women's suffrage and the popular election of senators,

without which the federal government would surely now seem hopelessly anachronistic; the direct primary, which has become a domesticated household creature; and also the initiative, the referendum, and the recall, which have survived here and there, but for the most part wildly, in a state of nature, owing to lack of regular contact with humans. These reforms answered essentially to the populist idea—identified in the American political tradition with Andrew Jackson and in some measure with everyone else ever since—that the ills of society and its government will be cured by giving a stronger and more certain direction of affairs to a popular majority. Today, as earlier, this idea remains the battle cry of reform. It alone inspired the Supreme Court's reapportionment decisions from 1962 onward, which may be viewed either as having inaugurated the current age of political reform or as a reflection of it; and it alone is the overt inspiration of proposals, for which the performance of the system this season has generated much support, to abolish the electoral college and the Presidential nominating conventions.

Confidence in the majority crosses class and ideological lines; nearly everyone believes that if the majority were but allowed to speak often and loudly enough, it would speak with his own voice. Even for those who would try to control the processes by which a majority is formed, and who would restrain and educate the majority before yielding to its wishes, the democratic faith is, finally, faith in the good will and good sense of the preponderant number of men. Nevertheless the populist principle in its unqualified state is simplistic and insufficient. Over time, it begets a dialectic of illusion and disillusion. Its sanguine slogans sound hollow and become terms of derision with extraordinary rapidity. "The Old Order Changeth," wrote William Allen White in 1910. In 1920, he said to Ray Stannard Baker: "What a —— world this is. . . . If anyone had told me ten years ago that our country would be what it is today . . . I should have questioned his reason."

The proclamation of a New Politics will also be recalled in irony later if it is given nothing but a populist content now. It is nice to think that there is an immediate majority out there which necessarily favors great good works, and which consists of persons each moving in an individual orbit, adrift from parties and other structures, and yet capable of exercising power if only every man had one vote. But the body politic is not like that. Majorities do not arise spontaneously and are not found; they must be constructed and then maintained. They are conglomerates of many groups, all of them minorities, each of which must have its share of power, some of which weigh in with intensity of feeling rather than numbers, and some of which must sometimes even be granted a veto, in order that there may be peaceable government enjoying common consent. If this is the Old Politics, it is the part which is a permanent necessity.

Unqualified populists or not, political reformers must in any case proceed with caution. James I spoke of the mystery of the King's power. The institutions of a secular, democratic government do not generally advertise themselves as mysteries. Yet they are. Their actual operation must be assessed, often in sheer wonder, before they are tinkered with, lest great expectations be not only defeated, but mocked by the achievement of their very antithesis. Defeat and mockery, to assert briefly what is common knowledge, were the partial result of the direct primary, and certainly of the referendum, the initiative, and the recall, which turned into tools of minority pressure; and defeated expectations and unwanted consequences, to assert briefly what will in time also be common knowledge, have followed from the Supreme Court's reappointment decisions.[1]

There are great virtues in a conservative attitude toward the structural features of government. The sudden abandonment of institutions is an act that reverberates in ways no one can predict, and many come to regret. There may be a time when societies can digest radical structural change: when they are young and pliant, relatively small, containable, and readily understandable; when men can watch the scenery shift without losing their sense of direction. We are not such a society. We are well served by an attachment to institutions that are often the products more of accident than of design, or that no longer answer to their original purposes and plans, but that offer us the comfort of continuity, and challenge our resilience and inventiveness in bending old arrangements to present purposes with no outward change. The English know this secret, and so does the common law that we inherited from them. We have, of course, many institutions and arrangements that, as they function, no longer conform to the original scheme, and we have bent most of them quite effectively to the purposes of our present society, which in all respects differs enormously from the society of nearly two hundred years ago. The Supreme Court is one such institution, and the Presidency itself is another. The fact that we have used them without modifying their structures has lent stability to our society and has built strength and confidence in our people.

THE ELECTORAL COLLEGE

The "Humpty-Dumpty electoral college," as one of its critics has called it, is another old institution put to interesting new uses. Now the chief target of reformers, the electoral college was unquestionably invented to serve ends most of which we no longer care to serve, and most of which it no longer serves. Only in form does it remain what it was invented to be. Pursuant to Article II of the Constitution and the Twelfth Amendment, it still consists of as many electors from each state as the state has senators and representatives, and it still convenes quadrennially to elect a President and a Vice President of the United States. But although it was probably intended and clearly not forbidden to act independently, it has hardly ever done so, certainly not in modern times. Electors compete for the office in a popular election, but with very infrequent exceptions, which have never proved significant, they do so in complete anonymity; electors are pledged to Presidential and Vice-Presidential candidates for whom, if they win by a majority or plurality, they cast their state's electoral vote.

These features of the system, unforeseen and unintended by its originators and sanctioned by custom rather than by the Constitution, have in modern times made the large, populous, heterogeneous states—where bloc voting, as by ethnic or racial minorities or other interest groups, often determines the result—the decisive influence in Presidential elections. Recently, Mr. John F. Banzhaf, III has analyzed the various possible arrangements of electoral votes, and the circumstances in which any given state could change the result of an election.[2] He has also calculated the chances of a voter affecting the outcome in his state, and the chances that the outcome of a national election would then itself be altered. His conclusion is that voters in "states like New York and California have over two and one-half times as much chance to affect the election of the President as residents of some of the smaller states." Pennsylvania, Ohio, Michigan, Illinois, and even the lesser industrial states, are also in advantageous positions. The reason is that while a voter in a large state has less chance of influencing the result in his state (because there are, of course, more people voting) he potentially influences a larger number of electoral votes; and so, despite the apparent dilution of his vote, he actually exercises much greater control over the outcome of the national election. This power he derives directly from the electoral college system.[3]

What we have known to be true, then, is true. We can now establish mathematically why modern Presidents have been particularly sensitive to urban and minority interests—modern Presidents of both parties, that is to say, have been more responsive to urban interest than have other factions in their parties. And only men who can be thus responsive are generally nominated and elected. Goldwater in 1964 is something of an exception; he was nominated, Mr. Nixon in 1968 was no exception. If he made some unfamiliar sounds, that was because of the particular urban mood of the day.

In modern times and in most of our politics, urban interests in the big states have contended against interests that have a more rural, nativist, and Protestant orientation. The latter interests have tended to dominate Congress, the former the Presidency. Urban-rural, pluralist-homogeneous—this has been the great divide in American politics. The task of the Presidential candidate, Republican or Democratic, is to bridge it from either side. The electoral college does not guarantee the Presidency to the Democrats. Rather the system requires both parties at least to make inroads into the urban and ethnic vote in order to win. Mr. Nixon in 1968 barely did, and he barely won. But then it was a three-way race, and some of the Wallace urban vote is to be credited to Nixon, either directly or as a subtraction from Humphrey strength. In any case, the industrial states were, as ever, the decisive battleground. The big states would matter in any scheme that took account of the popular vote in whatever fashion, directly or with qualifications. But the electoral college as it has evolved is so rigged that the big states count disproportionately. That is its critical attibute.

Each of our major parties is, in consequence, as James M. Burns has recently reminded us, two allied parties—a Congressional party, rural and small-town moderate to conservative in orientation, and a Presidential party, which is substantially more urban-liberal. (How often has it been true that the Republicans have lost Congress to the Democrats, and the urban liberals have lost the Democrats to Congress!) No doubt, the urban electorate is not always progressive, humane, and large-minded, and the more homogeneous rural and small town electorate sometimes is. The drift of attitudes among big city voters is nothing to be proud of just now, nor was it in the early 1950's. On the other hand, the Progressive movement of a half-century ago had deep roots in the rural West and Midwest. Still, the urban and the rural-small town outlooks and interests do generally differ. So long as that remains true, the former should properly exert particular influence through the Presidency because the latter are likely to prevail in Congress.

The difference in interest and outlook may not always obtain. The demography of the United States and its politics will not necessarily abide unaltered, world without end. The country, we are told, is increasingly urban, and TV and the other "media" are, God help us, leveling cultural and other distinctions. But urban is a term that can cover many ways of life; the ethnic and racial composition and the traditions and attitudes of an urbanized Nebraska or Georgia are still not those of New York, Chicago, or Cleveland. If there are major changes in the

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offing, they are not here yet, and their nature is not readily predicted.

The proposal to abolish the electoral college that is now being actively considered emanated from a special committee set up by the American Bar Association, and it has a very great deal of bipartisan Congressional support. It has even spawned a thoroughly documented and well-argued book.[3] The proposal calls for a constitutional amendment providing for election of Presidents and Vice Presidents by nationwide popular vote, with a run-off in the event that no candidate attains a plurality of 40 percent. Such a system would put a premium, not on carrying the big industrial states, but on achieving the largest possible majority in the smaller, more homogeneous ones. It would create a Presidency with little or no incentive to act as a counterweight to Congress, and as a particular spokesman for urban and minority groups.

Recognizing that the proposal would most likely achieve this result, advocates of the direct popular election contend that no counterweight is needed, or is any longer proper, in view of the Supreme Court's reapportionment decisions. It was fitting—so the argument goes—for the President to be oriented toward the cities and minority groups so long as Congress looked the other way, but Congress looked the other way because of malapportionment, and malapportionment is no more. Hence the reasons, such as they were, for tolerating the undemocratic aberration of the electoral college no longer hold. It is time for the system to be ideologically pure. The Court has said that the Constitution commands equal apportionment. We should, therefore, reapportion the Presidency. In effect, we must now amend the Constitution to make it mean what the Supreme Court has said it means.

This is, in itself, an arresting argument. But its paradoxical nature is not the main thing wrong with it. What is fundamentally wrong is that it fails to take account of a whole order of very different considerations. A system of countervailing centers of power may be better for a country as large and still as diverse as ours than one in which Congress and the President represent more nearly the same constituency. Under the present system we are able to strike a nice balance in our government, and make it an instrument for achieving general consent, rather than merely for working the will of some supposed majority of the moment; therefore, instead of changing the Constitution to make it conform to the Supreme Court's reapportionment decisions, we ought perhaps to work to overturn those decisions.

Even if one accepts the reapportionment decisions and their exclusively majoritarian bias, however, the trouble is that the proponents of the direct popular election wildly overestimate the immediate impact and durability of these decisions. It is, to begin with, impossible without additional constitutional amendment to reapportion the House entirely: state lines prevent. Secondly, it is foolhardy to bank on the permanence of the reapportionment decisions, just exactly as we now know them: they are subject to relitigation every decade, with every census. Third, gerrymanders, which the Court has not yet attempted to control, can accomplish all that the most sophisticated or antiquated malapportionment ever achieved. But fourth and most important, we do not know that Congress is what it is because of malapportionment. It is quite probable that in much larger measure the nature of Congress is determined by its internal methods of distributing power—chiefly the seniority and committee systems. These are very solidly entrenched. They reward length of service and expertise, as in one fashion or another all legislatures, really all permanent institutions, must. Long tenure is, in turn, most often the gift of a homogeneous district, which will tend also to liberate a Congressman from the varied concerns of a closely-divided and diverse constituency, and thus enable him to specialize singlemindedly in a branch of legislative business. Congress, finally, may be what it is because any districted constituency will vote for a Congressman from a more restricted and probably more conservative perspective than when it votes as part of the entire national constituency in Presidential elections. Herein may lie the explanation of a certain divergence between the Senate, atrociously malapportioned and proof against reform even by constitutional amendment but elected by statewide voters, and the districted House of Representatives. All this means that in any circumstances the President is fairly bound to represent a constituency that is not the same as that of the House, but it means more plainly that Congress cannot be radically changed by reapportionment, and that the system should emphasize and preserve rather than seek to suppress the different orientation of the Presidency.

There is yet another, quite discrete objection to the proposal for direct popular election, which would be sufficient in itself. This is that the monopoly of power enjoyed by the two major parties would not likely survive the demise of the electoral college. Now the dominance of two major parties enables us to achieve a politics of coalition and accommodation rather than of ideological and charismatic fragmentation, governments that are moderate, and a regime that is stable. Without forgetting that of all the mysteries of government the two-party system is perhaps the deepest, one can safely assert that each major party exerts centripetal force; that it ties to itself the ambitions and interests of men who compete for power, discouraging individual forays and hence the sharply-defined ideological or emotional stance; that it makes, indeed, for a climate inhospitable to demagogues; and that it provides by its very continuous existence a measure of guidance to the marginally interested voter who is eminently capable of casting his ballot by more irrelevant criteria. The system, in sum, does not altogether take mind out of politics, but it does tend to insure that there are few irreconcilable losers, and that the winners can govern, even though—or perhaps because—there are equally few total victories. Multiparty systems also govern by compromise and coalition; they compromise and coalesce, however, not before the election, but after, having first offered the voter his choice among pure positions. Self-contained ideologies thus take root, and become hard-edged. Accommodation is more difficult, partial, grudging, short-lived, and often impossible. Such a system makes for more mind, perhaps, and certainly less government.

The electoral college deters challenges to the two major parties, because an effective challenge must have not merely some popular appeal, but support of sufficient regional concentration to garner an electoral vote. In 1912, William H. Taft, the real third-party candidate in the extraordinary circumstances of that year, had 23.2 per cent of the popular vote and 8 electoral votes, and in 1924 Robert M. LaFollette had 16.6 per cent and 13 electoral votes. Only from a regional base can a third party penetrate the electoral college. Thus in 1948 Strom Thurmond had such a base, and Henry Wallace did not. Each got 2.4 per cent of the popular vote, but Thurmond had 39 electoral votes, 31 more than Taft in 1912, and Wallace had none. George Wallace this year also ran on about the only issue which still massively unites a region—hence his 45 electoral votes. Otherwise, his 13 per cent of the popular vote would have been as meaningless as Taft's or LaFollette's.

With popular election, non-regional interests that have failed to influence conventions would unquestionably be tempted to enter the general election in the hope of gathering enough votes to bargain with in a run-off. And enough entrants may be foreseen to insure a run-off every time. In such conditions the two major parties could not long sustain themselves. A geographically-based candidacy such as that of George Wallace would have no less incentive to manifest itself under a system of popular election than it does now. All other possible separate candidacies, ideological but not regional, would have more. Thus we would see on a national scale the kind of unstructured politics that characterized much of the single-party South in its heydey. The real election was the Democratic primary, which would draw several candidates, who then sorted themselves out between the first vote and the run-off. Two or four years thence, everything started afresh.[4]

Apart from a theoretical attachment to pure majoritarianism, proponents of the direct popular election of the President rely also on a parade of possible horrible consequences of the present system. Both the electoral college and the direct popular election can produce plurality Presidents, like Nixon in 1968, who come in ahead of their opponents by less than a clear majority of the total popular vote. The electoral college, however, can also bring a minority President into office—that is, one who got fewer popular votes than his runner-up. Yet putting aside an esoteric dispute in 1960 about how to apportion the popular vote in Alabama, there has not been a minority President in this century; and in an election that was not stolen, as in 1876, or thrown into the House, as in 1824, we have had only one such President in our history. But it made little difference that Grover Cleveland lost in 1888 to Benjamin Harrison even though he had 100,000 more votes; he won four years earlier, when he did become President, by only 23,000. It would have made equally little difference if, without affecting the actual result in the electoral college, Mr. Nixon had nosed out John F. Kennedy in 1960 by 100,000 votes, or Mr. Humphrey had prevailed by a small margin in 1968. When some 70 million votes divide so closely, only an immensely dogmatic majoritarianism would insist that the so-called winner has the sole legitimate claim to office. In truth, there is a stand-off, and the question is merely of a convenient device—any convenient device previously agreed upon—for letting one of two men govern.

Unquestionably, the legitimacy of the electoral college result and the effective discharge of the office would be affected should the loser of the popular vote by a substantial margin win the Presidency. But of this, as past statistics consistently show, the risk is miniscule, and it is offset by the advantages of the electoral college in the more likely case of a close popular vote. For in the electoral college, a narrow popular victory is perceived through a magnifying glass. Indeed, even if it should put a narrow loser in office, the electoral college would probably insure greater acceptance for him than the winner by a very small margin could expect in a system of direct popular election.

Beside electing a minority President, which it is not apt to do, the electoral college is capable of two other tricks, both of which George Wallace has badly frightened people with. Since the Constitution permits the college to act as an independent, deliberative body, individual electors may take it into their heads to behave accordingly, and should no one have a majority of electoral college votes, some uncommitted or third-

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party electors could certainly play a decisive role. Obviously they should not, since they are obscure men who were not elected to perform a deliberative function. This is an eventuality that should be guarded against, but it calls for perfecting the present system, not for abandoning it. The Johnson administration has proposed a constitutional amendment which would abolish the electors and their college as a physical entity, and would automatically award the total electoral college vote of each state, calculated as at present, to the winner of a majority of plurality of the popular vote in that state.

A difficulty of rather another sort, and one not so easily solved, is the deadlock. The Constitution now provides that should no one succeed in obtaining a majority in the electoral college, the House of Representatives shall elect a President; each state shall have one vote, to be cast in accordance with the wishes of a majority of that state's delegation in the House. One may think it unlikely that patriotic men, committed in virtually every other aspect of their activities to majoritarian principles, would do today what was done in 1824, and vote into office not the winner of the popular vote by a substantial plurality (Andrew Jackson), but his runner-up (John Quincy Adams). Nevertheless, the possibility of intolerable abuse exists, and there is no reason not to guard against it. One suggestion, put forward by Representative Jonathan Bingham of New York, is to have a run-off election still within the electoral college system—that is, a repetition of the previous exercise, but this time between the two top candidates. This has some of the disadvantages of the popular election proposal with its run-off, since it might also tend to make splinter candidacies more profitable and hence more likely. Another possibility, favored by the Johnson administration, is to recognize frankly that in the event of a deadlock a choice is required through a deliberative process, rather than through a process—which by hypothesis has just failed—of registering the popular wish. I shall touch presently in some detail on the coalition-making that precedes the general election in the present system. Deadlock means that it has failed and must be tried again. Coalition-making is a function for representative, deliberative institutions. Congress sitting in joint session and reaching decisions by a majority of the individual votes of its members is the best available deliberative institution for this purpose, and Congress is the institution the Johnson administration proposal would use.

THE NATIONAL PARTY CONVENTION

Originally, Presidential candidates were nominated by Congressional caucuses, but by 1824 this system had come to seem insufficiently representative and was replaced by the national party convention, beginning in 1832. Now that system, too, has come to seem insufficiently representative, and also inadequately deliberative. More and more, as the increasing incidence of first-ballot nominations plainly suggests, it merely registers the previously-expressed wishes of a constituency. What that constituency is, however, whether it is in any sense the masses of party adherents, or merely the professional party cadre, is gravely in question. And so the majoritarian reformers would substitute a national primary election for the convention.

A national primary would undoubtedly attract numerous candidates, and its decisive stage would be the run-off. Consequently, as Nelson Polsby and Aaron Wildavsky have written,[5] "the United States might have to restrict its Presidential candidates to wealthy athletes. No man without enormous financial resources could ever raise the millions required for the nominating petition, the first primary, the run-off primary, and the national election; and no one who was not superbly conditioned could survive the pace of all these campaigns." Polsby and Wildavsky argue also that a national primary would badly strain the two-party system, because in periods of the dominance of one of the parties, which of course occur, voters would be drawn to that party's primary, viewing it as their only real opportunity to participate decisively in the entire electoral process, and they would be drawn in such unnaturally large numbers as to threaten the other party with atrophy.

In any event, a national primary would not avoid the coalition-building function, which must be discharged, whether before or after the general election. The consequence would be merely that this function would be de-institutionalized. Between the first primary and the run-off, men would come together, without structure and without form, and sort out their support for one of the two candidates who had emerged in the leading position. This would be the time and this would be the fashion of the coalition-forming process in each party, and, ultimately, if Polsby and Wildavsky are right, in one party alone, as—again—in the once solid South.

Of course, if Polsby and Wildavsky are right, the general election would be a formality of little moment, and we would have the least desirable of all systems of direct popular election, one that provides for no prior nominating process of any sort. It would amount to a multi-party system, in which the bargaining that is essential for constituting a government is postponed until after the election. The disadvantages that would follow have been mentioned. They are enormous. But even assuming that Polsby and Wildavsky are too pessimistic, that the two parties would survive, and that the work of making a coalition would proceed in each party between the first primary and the run-off, the upshot would be a coalition-forming procedure scarcely more responsive to an appropriate constituency than the most irresponsible convention we are likely to witness. The two top contenders would have been chosen by popular pluralities, to be sure, though their vote would likely be of the order of 20 to 25 per cent, and whatever choice between them the rest of the candidates and their managers made would require ratification in the run-off, just as convention choices are up for ratification in the election now; but subject to this constraint, which operates equally on the conventions, the candidates and the managers would make their decision in some back room, at least as free of any other constraint as the convention bosses who picked Harding in 1920. This is scarcely what the proponents of the national primary intend, yet it is what they would get—at best.

To reject the national primary is not to concede, however, that the national party convention as we now know it is acceptable. No American political institution is more visible than the convention, and none is less visibly constituted and run. An examination of the 1968 Democratic Convention, for example, reveals some rather remarkable practices, which are common, with an occasional variation, in the Republican party as well. There are states where all or part of the delegation to the national convention is appointed by the governor or state chairman (e.g., Georgia, Louisiana), or by the state executive committee (e.g., New York), which may last have been elected two or four years earlier (e.g., Pennsylvania, Maryland), or by a state convention whose members, in turn, are appointed by local party functionaries (e.g., Michigan, Illinois).

The Democratic Convention was studied in the summer of 1968 by an unofficial, privately-funded Commission on the Democratic Selection of Presidential Nominees, of which Governor, now Senator, Harold E. Hughes of Iowa was chairman. (It was brought together on the initiative of a few delegates who were members of the Convention's Credentials and Rules Committees, and it made recommendations, and issued a report from which the facts about the convention that I am here able to cite are chiefly drawn.[6]) Over 600 delegates to the 1968 Convention, the Hughes Commission found—approximately half the number needed to win a nomination—"were selected by processes which have included no means [however indirect] of voter participation since 1966." This is utterly unjustifiable.

A party's professional cadre should, no doubt, have a voice. The professionals are, if nothing else a faction that deserves representation, and it is sound institutional policy to reward their services with a measure of influence. They symbolize, moreover, the continuity of the party, and play a principal role in giving it an identity. But if they lend the party its character of an "organized appetite," as Felix Frankfurter once wrote[7] their appetite is sometimes keener for power in the organization than for organizing to secure the power of government. At any rate, no one need fear that the professionals will go unrepresented. Even in states where delegates are elected in direct primaries, the cadre knows how to maintain its foothold (as David, Goldman, and Bain have pointed out[8]). The problem in constructing a convention is not to assure a voice for the professionals, but to dislodge them from a controlling position.

Methods of delegate selection that do bear scrutiny, as appointment by the professional cadre will not, are election by a state convention to which representatives are chosen, in turn, either directly or through an additional stage of district conventions, at precinct caucuses open to all party members; and direct election either in a winner-take-all, at-large primary as in California, or in at-large and district primaries, with (e.g., New Hampshire), or without (e.g., New Jersey) an accompanying state-wide preferential poll, in which the people have a chance to vote for actual Presidential candidates.

It would be difficult and unwise to opt on a national basis for any one of these acceptable methods to the exclusion of the other ones. The winner-take-all state primary has its virtues. It is a trial heat, a shakedown cruise for candidates, and a preview for the public. It catches attention and generates interest. Politics is an educational endeavor before and after it is anything else, and in this endeavor the major state primary helps. The drama is heightened for all concerned by the winner-take-all feature; for the candidate with little support from the professionals the attractiveness of the primary is enhanced, as for the public is its authenticity as a preview. And the winner-take-all primary injects into the convention's process of judgment a prediction that is more than a guess, and more reliable than a poll, of what the party faces in the general election. But the state-wide, winner-take-all primary as universal practice would avoid few of the shortcomings of a national primary. If a reasonably obvious national winner were turned up, the convention would merely register the choice. Or else, if the state primaries produced no conclusive winner, as would more often happen, the convention's task would be what it is today, but it's composition would be most unsuited to a satisfactory performance of that task.

There are, by and large, as I have been implying, two sorts of multi-member democratic institutions: the representative, deliberative assembly, and the body meant to register a single prior decision of its constituency. Congress is the typical institution of

Footnotes at end of article.

the former sort, the electoral college of the latter. Institutions charged with registering the decision of a majority of their constituency should consist of members responsive to that majority, and of no one else. (In 1796, a Federalist voter said of a member of the electoral college: "Do I choose Samuel Miles to determine for me whether John Adams or Thomas Jefferson is the fittest man for President of the United States? No, I choose him to act, not to think.") Deliberative institutions, on the other hand, should reflect as many significant factions in the total constituency as possible. That is why all American legislatures are districted. None is elected at large, to be a creature wholly of the majority, nor does any state send to Congress an entire delegation elected on a statewide basis. It is particularly necessary to represent the minority in a deliberative assembly that, like the national party convention, sits only briefly and periodically, and has as its sole object the composition of a governing coalition. The minority must be there, quite simply in order that some portion of it may be coalesced with; or more accurately, no relevant majority exists for purposes of constituting such a deliberative assembly until the assembly's own majority-building work is done, and that work can be done only if the total or near-total constituency is present through its delegates. Thus delegations chosen in winner-take-all primaries, speaking for a majority and perhaps a plurality of a state party, are welcome as one element in the mix of the convention, not as the universal element.

Delegations selected in district primaries are likely, subject to the accidents of geography, to represent minorities as well as majorities in a state party, and so are delegations chosen at state conventions whose members were elected at open precinct caucuses—but this last will be so only if one highly important condition has been met. At many precinct caucuses, district conventions, and then state conventions, the unit rule prevails, so that at each stage minorities may be left unrepresented. This is, to be sure, not the practice everywhere, but the Hughes Commission confirmed some of Senator McCarthy's complaints that it was the practice used to his disadvantage by the Democratic party in some states; and used here and there, one may add, by the McCarthy people themselves, when they had the chance. Hence, while accepting the value of the winner-take-all primary in a few states, the Hughes Commission recommended absolute abolition of the unit rule at all levels; it also recommended abolition of any system of "direct appointment" of delegations, in whole or in part, by state party executives or other officials, and the selection of delegates by procedures that "permit meaningful popular participation" within a period of not more than "six months before the Convention itself."

Somewhat to everyone else's surprise, and perhaps also to its own, the 1968 Democratic Convention adopted the following resolution offered by a minority of its Rules Committee:

It is understood that a State Democratic Party, in selecting and certifying delegates to the National Convention, thereby undertakes to assure that such delegates have been selected through a process in which all Democratic voters have had full and timely opportunity to participate. In determining whether a state party has complied with this mandate, the convention shall require that:

(1) The unit rule not be used in any stage of the delegate selection process; and

(2) All feasible efforts have been made to assure that delegates are selected through party primary, convention, or committee procedures open to public participation within the calendar year of the National Convention.

This is almost the whole of the Hughes Commission recommendation. In addition, as the Hughes Commission also suggested, the chairman of the Democratic National Committee was instructed to set up a special committee charged with helping the states implement these policies.

The millennium is not yet here. The language of the resolution is in some respects fairly specific—and means that most professional appointment and minority-exclusion practices (in non-primary states) are out. But appointment of some delegates, or in New York, by a state committee itself elected in the year of the convention, remains possible. Even where it is specific and entirely satisfactory, moreover, the policy must be implemented, and there are portions of it which call for further legislative efforts prior to implementation. One surmises from prior experience, unfortunately, that a certain gradualism is likely to characterize implementation of this new policy.

In the course of implementation, a difficult problem is bound to surface, concerning access to the party and adherence to it, or if you will, concerning the definition of the party. One aspect of this problem emerged in the loyalty-oath controversies that have bedeviled the Democratic party for a generation. The American major party is a coalition formed every four years from a center of gravity that is apt to shift every so often. The stable factor is that the center of gravity of the Republicans is generally somewhere to the Right of the Democratic one, and at any rate, always somewhat different. But each party reaches out every four years, the one usually to the Left, the other usually to the Right, and both toward the center of the continuum of public opinion and private interest, in the effort to create as large a governing majority as its centripetal force can command. Therefore, although each has a professional cadre, and although each exerts its centripetal force from a different point on the spectrum of opinion and interest, each is also something of a new coalition every quadrennium. The implications for the loyalty-oath issue, which the Democrats ultimately accepted, are that it is hardly consistent to require any group, as a condition for coming to the convention and engaging in the coalition-making process, to promise beforehand to abide by the result, even though, as may happen, it is affirmatively excluded from the coalition. The convention is the occasion of forming the party for a particular election, and no one can say with detailed assurance beforehand what kind of a party it will be. Hence, although the issue was fudged somewhat in the patchwork compromise about the Georgia delegation at the 1968 Democratic Convention, the Democrats require only that delegates promise to use their influence to see to it that the nominees of the convention are listed as Democratic nominees on the ballot in their states, not that they promise necessarily to support the nominees.

The implications for procedures of delegate-selection should be similar. It ought not to be necessary, as it is in many states, to have been a registered Democrat or Republican at some prior time in order to participate in a Democratic or Republic primary, or in party caucuses. The party ought each year to be open to all those groups which in that year wish to enter into the process of forming the coalition that will be the Democratic or Republican party. If the parties were as open as they should be, large numbers of people who had voted Democratic in the past might in 1968 have moved to form in the Republican party a coalition around Rockfeller, or Charles Percy, or John Lindsay—candidates oriented more to the Right in some aspects than would normally suit them, but more satisfactory than what they foresaw as the probable Democratic nominee. Or anti-Vietnam Republicans might have helped put together in the Democratic party an alliance turning on the war issue, under such a candidate as Eugene McCarthy. But the truly open party would encounter difficulties, more serious in primaries than in local caucuses and conventions, and more serious in precinct caucuses than in state, let alone national, conventions, with their larger membership, more demanding activities, and greater exposure.

The trouble is that each party is periodically a new coalition, all right, but each is also, and ought to be, an organism with a continuous existence, particular characteristics, and a corps of permanently loyal supporters. And the two parties must compete, else there will soon be one, and then many, whether in the guise of parties or factions. What can happen when the permanent loyalists are free to float is exemplified in the few states that do allow cross-over of voters, or that might allow, as California did until just recently, cross-filing by candidates. The upshot in California in primaries for state office was the nomination, not infrequently, of the same man in both primaries. This destroyed party competition rather effectively. Nor is competition apt to flourish when there is a cross-over of voters intent on selecting the candidate most desirable from the other party's point of view, the weakest candidate, easiest to beat. The cross-over voter may also be happy with the probable (or certain, if there is no contest) outcome in his own party, and go into the other primary in search of, as nearly as possible, the same result. This is not coalition-building, but coalition duplicating. It is too nearly the same as the joint nomination of a single man through cross-filing. The two parties would not discharge their function if they did not overlap, or if they assumed polar positions, but though the ground on which they maneuver for differentiation is narrow, they must remain distinct in order to remain two. Party caucuses open to everyone are also subject to being captured by forces wishing to short-circuit party competition.

Nothing in the resolution adopted at the 1968 Democratic Convention suggests a way out of this dilemma. The special committee to be established by the Democratic National Committee will need to grapple with it on its own. In the Republic party, any approach to a solution of this problem, as to other reforms, is even more remote. The Democratic committee will probably be inclined at first to go along with restrictive practices, which grant access to the party only to those who have in the past indicated adherence to it, or at least not registered as members of the other party. That would be understandable, but wrong. The open party, with its risks, is the prime objective. For party habits are strong, and Machiavellian cross-overs, while they occur, are rare. What is more common, and should be encouraged, is unaffiliated floating by voters who, if excluded at the nominating stage, are likely to be disaffected by the limitations of choice in the general election.

Each party should, accordingly, be open in each election year, in primaries and caucuses, to everyone willing at the time to register as a member. The registration would be largely symbolic and would not necessarily exclude cross-overs, if for no other reason that it would be as impossible as it would be ill-advised to try to bind individuals to vote the party ticket in the general election. But the symbolism would be endowed with some consequences. Certainly it should be stipulated that a voter may participate in the nominating process of only one major party in any given year.

MINOR PARTIES

The survival of the convention and of the two-party system it sustains is not a unanimously shared objective, particularly in this season. Its virtues rather than its imperfections gain for the two-party system its most

implacable enemies. The moderate coalition, the sensible accommodation, the muted ideology, the politicians who strive to borrow each other's protective coloration and who jostle one another in the center—all this, the price of broadly-based government, of general acquiescence and of stability, is paid in frustration. The choice in the general election between two candidates either of whom can satisfy most people, or at least radically dissatisfy very few, always leaves some of us with no choice at all. Hence the minor party, a steady obbligato in our political symphoney. It is sometimes a regional, and commonly an ideological, interest group, which has not been accommodated because it wants something too precise, too clear-cut, because it wants it on principle now and not later, wants all of it, wants it intensely, of course, and wants it when someone who is otherwise in a better position to bargain wants the very opposite with equal intensity.

The minor party is also a group which has summoned the courage to bring prematurely to the fore a basic issue, perhaps a moral one. that the country must face, and in time will face. The word "prematurely" is used here from the point of view of the major parties, the defect of whose virtues is that they are liable to be sluggish in addressing newly arisen fundamental issues, moral ones especially. They are too intent on power to take the risk before they have to. Again and again, minor parties have led from a flank, while the major parties still followed opinion down the middle. In time, the middle has moved, and one of the major parties of both occupy the ground reconnoitered by the minor party; or to change the figure, the major parties, as Disraeli said of Peel and the Whigs, at last catch the minor parties bathing and walk away with their clothes. So it was with the anti-slavery Free Soilers, with the Populists in 1892, with the LaFollette Progressives and even the earlier Eugene V. Debs Socialists—and, to be sure, with the Prohibitionists, who are a useful reminder that the Anti-Masonic, Know-Nothing, Thurmond States' Rights, and George Wallace Independent parties must not go unmentioned, lest small-party romanticism run away with one. But as an outlet for frustration, as often a creative force and a sort of conscience, as an idealogical governor to keep major parties from speeding off into an abyss of mindlessness, and even just as a technique for strengthening a group's bargaining position for the future, the minor party would have to be invented if it did not come into existence readily and regularly enough. It is an indispensaable part of the system whose beneficient chief aim is to suppress it. And its existence is at any rate constitutionally protected.

The two-party system, as the late Justice Robert H. Jackson once said in another context, is a political practice "which has its origin in custom [and] must rely upon custom for its sanctions." Therefore, even though it is up to state legislatures under Article II, Section 1 of the Constitution to prescribe the manner in which electors who will choose a President and Vice President are themselves to be chosen, an attempt by law to secure the major parties' monopoly of Presidenttial power would most assuredly fail. It would founder against the Equal Protection Clause of the Fourteenth Amendment, which forbids unreasonable discriminations among voters and also among candidates—which, in other words, safeguards a right to vote free from unreasonable discriminations, and also a right to be a candidate. And it would run afoul as well of the First Amendment, as incorporated into the Due Process Clause of the Fourteenth, for the First Amendment has been interpreted to guarantee a right of effective political association, and that right would be denied by any statute making it impossible to achieve the end for which political association is ultimately undertaken.

It is true that no state actually decrees in so many words that in order to be allowed to vote or run for President or for Presidential elector a person must be a member, or submit himself to the procedures, of the Democratic or Republican party. And only Ohio has come near to saying as much indirectly. Ohio allowed no independent, nonparty candidacy, and a minor party could place a candidate on the ballot only if it filed a petition signed by voters equal in number to 15 percent of the total vote cast in the last gubernatorial election—in 1968, upwards of 430,000. Additional difficulties were also put in the way. The minor party had to organize itself through primary elections on the same scale as the major ones, and persons who voted in a major party primary at the previous election were not qualified to participate in organizing the minor party. On October 15, 1968, in the first decision of its kind, the Supreme Court held the Ohio scheme unconstitutional.[10] The suit was brought in behalf of George Wallace, whose name the Court ordered placed on the ballot. A federal district judge had remarked at an earlier stage of the case that the "'two-party system is not a cliche in Ohio, but a statutorily enforced fact."[11] It is no more.

Other states may not quite make the two-party monopoly a statutory fact, but a great many make life hard for the minor party. The requirement of signatures on a petition in a number equal to 15 percent of the total vote at a past election, itself a grave impediment, is rare, but Arkansas imposes it also. And a number of states have distribution requirements, which also present serious obstacles. Thus in Idaho a petition must be signed by 3,000 voters, no more than 150 of whom are residents of any single county; Illinois requires 25,000 signatures, with 200 from each of at least 50 counties; and New York requires 12,000, fifty at least from each county. In Florida, where a very substantial portion of the population lives in Dade County, no more than 13.3 percent of the total number of necessary signatures may come from any single county. Finally, a very large number of states, while they have workable provisions for getting a new ticket on the ballot, set early dates for qualification, as early as March in Pennsylvania and apparently in Alabama; April in Kentucky and West Virginia; May in Michigan and New Jersey; and June, July, and August in many more.

The legal position respecting obstacles of the kind just described is not clear. A court would be unlikely to hold that the states may not encourage the two-party system by giving a certain edge to the major parties. But it is a long way from achievement of this objective to choking off all political action that is not encompassed by the two established parties. The latter the states may not do, and the problem is to define what amounts to doing the latter. In general terms, the courts would probably agree to the proposition that laws which make it impossible for an initially small group of voters to put a candidate on the ballot through a reasonable and not prohibitively expensive effort in a reasonable amount of time are unconstitutional. A criterion such as this should work out to render unconstitutional a requirement for obtaining the signatures of anything over 5 per cent of the electorate.

Under existing analogous judicial decisions, the most vulnerable requirements are those concerning distribution. The Illinois one was upheld by the Supreme Court in 1948[12] but that was before the Supreme Court's more recent reapportionment decisions. Today it could be strongly argued that any distribution requirement is a form of malapportionment, a way of giving more weight to a signature in a small county than in a large one, and therefore invalid under the reapportionment cases—and, one may say in passing, invalid for better reason than malapportionment of a legislature itself.

Early qualifying dates obviously do not in themselves present insuperable barriers. The argument against many of them would be that a state may seek to give an edge to the two established parties, and for that reason discriminate against independent candidates and persons who wish to cast their votes for them, but—administrative and housekeeping necessities to the side—it may discriminate only by means that are rationally suited to favor the two-party system. Now the important third-party movements in our history—George Wallace this year is a point-proving exception—came into being after the two major party conventions, and were enabled to come into being at that time because major party conventions used to be held much earlier than at present. In 1892, Harrison and Cleveland were nominated in June. The Populists, disappointed by the Democrats, met later and nominated a third candidate, General James B. Weaver. In 1912, Theodore Rcosevelt fought his heart out in the Republican convention in June. Having been defeated, he formed the Progressive Party. Again, in 1924, Coolidge and Davis were nominated in June. The third-party LaFollette candidacy took shape in July. The characteristic American third party, then, consists of a group of people who have tried to exert influence within one of the major parties, have failed, and later decide to work on the outside. States in which there is an early qualifying date tend to force such groups to forego major-party primary and other pre-nomination activity and organize separately early in an election year. For if they do not, they lose all opportunity for action as a third party later. From the point of view of fostering the two-party system this counter-productive. It is calculated to induce early third-party movements, like the present George Wallace party; calculated to drive people away from the coalition-building process that is the genius of the two-party system, and into a premature and more likely permanent ideological separatism, which is precisely what the two-party system successfully prevents.

Major party conventions now tend to be held in August. Any qualifying date earlier than the end of September or even early in October can hardly be supported by any practical reason having to do with the printing of ballots and the like. The only purpose of earlier qualifing dates therefore, can be to encourage two-party action and discourage third parties. This is, to a degree, a valid purpose, but to force people to commit themselves to third-party action without trying first to influence the major parties is no way to enhance the two-party system.

It is, of course, not possible to predict just what the courts would do in detail on questions of this kind,[13] but since state election statutes are shot through not only with anti-third party provisions that are wrong on principle, but also with many which positively disserve the objective of protecting the two-party system, wholesale legislative reform is called for, regardless of what the courts may do.

The country, Walter Lippmann wrote in September 1968, "has entered a period of revolutionary change of which no one can foresee the course or the end or the consequences." For, he continued, "the central institutions of the traditional life of man"—the family, the church, the territorial state, the schools, and the universities—"are increasingly unable to command his allegiance and his obedience." Naturally, Mr. Lippmann's diagnosis was that the old two-party system is shattered. This also is the conclusion of many who speak from position rather radically to the Left of Mr. Lippmann's. For myself, I cannot deny it, but my instinct is to disbelieve it. I thought that such a figure

Footnotes at end of article.

as Robert Kennedy would have been capable even this year, let along four years hence, of restoring a sufficiency of order to what Mr. Lippmann, quoting Erasmus, calls the "irremediable confusion of everything." Men want change, and they turn away, or to George Wallace, because the major parties are sluggish, but they do not turn in either direction inevitably or irremediably; many of those same people turned earlier to Robert Kennedy, and many even to Eugene McCarthy.

This is not the place to speculate on whether the United States deserves a revolution, needs one, or will get one regardless. But short of revolution, the work of politics in the United States, and the work of politics even for those who set radical social goals, is most effectively and enduringly done within the regime, not in opposition to it as such; within the system whose improvement I advocate, but which I praise. And even if the old two-party system, as Mr. Lippmann says, is shattered without knowing it, and destined to come down, it is hardly arguable that for that reason it should hasten to bring itself down with such innovations of at best unpredictable and at worst baneful effect as the direct popular election of Presidents and the national primary. Nor is there any reason why it should not reform its electoral college, its conventions, and its election laws in ways consistent with its nature and designed to advance its values. After all, the system may yet belie the jeremiads and disappoint the revolutionaries. It may persist in the mystery of survival, and against that event, it might as well improve itself.

FOOTNOTES

[1] See Robert G. Dixon, Jr., *Democratic Representation: Reapportionment in Law and Politics*, pp. 17–18, 21–22, 574–581.

[1] J. F. Banzhaf III, "One Man, 3,312 Votes: A Mathematical Analysis of the Electoral College," *Villanova Law Review*, Winter 1968, pp. 303–346.

[3] Neal R. Peirce, *The People's President*, Simon and Schuster, 400 pp., $8.95.

[4] See V. O. Key, Jr., *Southern Politics*, pp. 406–23.

[5] Nelson W. Polsby and Aaron B. Wildavsky, *Presidential Elections*, pp. 229 *et seq.*

[6] In addition to Senator Hughes, the Commission consisted of Representative Donald M. Fraser of Minnesota, who served as vice-chairman, Harry Ashmore, Julian Bond, Frederick G. Dutton, Mrs. Doris Fleeson Kimball, and the present writer. Its staff was headed by Thomas P. Alder as director, Geoffrey Cowan as associate director, and Simon Lazarus as editor. The Commission's report is entitled *The Democratic Choice*. See also Paul T. David, Ralph M. Goldman, and Richard C. Bain, *The Politics of National Party Conventions* (The Brookings Institution), pp. 249 *et seq.*

[7] *Law and Politics*, p. 316.

[8] *The Politics of National Party Conventions*, p. 243.

[9] *Ray v. Blair*, 343 U.S. 214, 233 (1952), (Jackson, J., dissenting).

[10] *Williams v. Rhodes*, Supreme Court of the United States, October 15, 1968.

[11] *Williams v. Rhodes*, Civil Action Nos. 68-248, United States District Court for the Southern District of Ohio, Eastern Division, August 29, 1968 (Kinneary, J., dissenting).

[12] *MacDougall v. Green*, 355 U.S. 281 (1948); see also *Moore v. Shapiro*, Civil Action No. 68C1569, United States District Court for the Northern District of Illinois, Eastern Division, October 3, 1968.

[13] See *Hadnott v. Amos*, Civil Action No. 2757-N, United States District Court for the Middle District of Alabama, Northern Division, October 11, 1968, an adverse initial decision summarily reversed by the Supreme Court on October 19, 1968.

THE ELECTORAL COLLEGE AND THE AMERICAN IDEA OF DEMOCRACY

(By Martin Diamond)

In 1967, a distinguished commission of the American Bar Association recommended that the Electoral College be scrapped and replaced by a nationwide popular vote for the President, with provision for a runoff election between the top two candidates in the event no candidate received at least 40 percent of the popular vote. This recommendation was passed by the House in 1969, came close to passage in the Senate in 1970, and is now once again upon us. It is this proposal that has just been endorsed by President Carter and that is being pressed upon Congress under the leadership of Senator Bayh.

The theme of this attack upon the Electoral College is well summarized in a much-quoted sentence from the 1969 ABA Report: "The electoral college method of electing a President of the United States is archaic, undemocratic, complex, ambiguous, indirect, and dangerous." [1] These six charges may seem a bit harsh on a system that has worked well for a very long time, but they do provide a convenient topical outline for a brief defense of the basic principles and procedures of the Electoral College.

AN "ARCHAIC" SYSTEM

The word archaic evokes all those Herblock and other cartoons that portray the Electoral College (or any other feature of the Constitution that is being caricatured) as a deaf, decrepit, old fogey left over from the colonial era. This is the characteristic rhetoric and imagery of contemporary criticism of our now nearly two-centuries old Constitution. But we ought not (and perhaps lawyers, especially, ought not) acquiesce too readily in the prejudice that whatever is old is archaic, in the ABA's pejorative use of that word. On the contrary, it may be argued that the proper political prejudice, if we are to have one, ought to be in favor of the long-persisting, of the tried and true—that our first inclination in constitutional matters ought to be that old is good and older is better. We should remind ourselves of some Aristotelian wisdom reformulated by James Madison in The Federalist, Number 49, when he warned that tinkering with the Constitution would deprive the system of government of "that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability." [2]

In other words, a long-standing constitutional arrangement secures, by its very age, that habitual popular acceptance which is an indispensable ingredient in constitutional legitimacy, that is, in the power of a constitution to be accepted and lived under by free men and women. By this reasoning, we should preserve the Electoral College—barring truly serious harm actually experienced under it—simply on grounds of its nearly two-centuries long history of tranquil popular acceptance. We who have seen so many free constitutions fail because they proved to be mere parchment, unrooted in the hearts and habits of the people, should be responsive to Madison's understated warning; we should readily agree it would not be a "superfluous advantage" even to the most perfectly devised constitution to have the people's habitual acceptance on its side.[3]

But it is not necessary, in defense of the Electoral College, to rely on such sober (but startling nowadays) reasoning as that of Madison, because the Electoral College happens not to be an archaic element of our constitutional system. Not only is it not at all archaic, but one might say that it is the very model of up-to-date constitutional flexibility. Perhaps no other feature of the Constitution has had a greater capacity for dynamic historical adaptiveness. The electors became nullities; presidential elections became dramatic national contests; the federal elements in the process became strengthened by the general-ticket practice (that is, winner-take-all); modern mass political parties evelope; campaigning move from rather rigid sectionalism to the complexities of a modern technological society—and all this occurred tranquilly and legitimately within the original constitutional framework (as modified by the Twelfth Amendment). The Electoral College thus has experienced an immense historical evolution. But the remarkable fact is that while it now operates in historically transformed ways, in ways not at all as the Framers intended, it nonetheless still operates largely to the ends that they intended. What more could one ask of a constitutional provision?

To appreciate why the original electoral provisions proved so adaptable, we have to recollect what the original intention was. To do that, we have first to get something out of our heads, namely, the widespread notion that the intention behind the Electoral College was undemocratic, that the main aim was to remove the election from the people and place it in the hands of wise, autonomous, detached electors who, without reference to the popular will, would choose the man they deemed best for the job. Indeed, that is what the "archaic" charge really comes down to.

What is truly odd about this view is that the Electoral College never functioned in the archaically undemocratic manner we assume had been intended. In the first two elections, every single elector followed the known popular preference and cast a ballot for Washington. In 1796, every single elector cast a basically mandated ballot for either Adams or Jefferson, the two recognized choices of the electorate. And from that time on, electors have functioned for all practical purposes as the mandated agents of popular choice. Now, if the Framers were as smart as they made out to be, how did it happen that their archaically "elitist" instrumentality was so soon, so wholly, perverted? The answer is simple: It was not. The Electoral College never was fundamentally intended to operate in an undemocratic way. Rather, it was from the start thoroughly compatible with the democratic development that immediately ensued.

The device of independent electors as a substitute for direct popular election was hit upon for three reasons, none of which supports the thesis that the intention was fundamentally undemocratic. First, and above all, the electors were not devised as an undemocratic substitute for the popular will, but rather as a nationalizing substitute for the state legislatures. In short, the Electoral College, like so much else in the Constitution, was the product of the give-and-take and the compromises between the large and the small states, or, more precisely, between the confederalists—those who sought to retain much of the Articles of Confederation—and those who advocated a large, primarily national, republic. It will be remembered that there was a great struggle at the Constitutional Convention over this issue, which was the matrix out of which many of the main constitutional provisions emerged. As they did regarding the House of Representatives and the Senate, the confederalists fought hard to have the President selected by the state legislatures or by some means that retained the primacy of the states as states. It was to fend off this confederalizing threat that the leading Framers, Madison, James Wilson, and Gouverneur Morris, hit upon the Electoral College device. As a matter of fact, their own first choice was

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for a straight national popular vote; Wilson introduced that idea, and Madison and Morris endorsed it.[4] But when the "states rights-ers" vehemently rejected it, Wilson, Madison, and Morris settled on the device of popularly elected electors. The Electoral College, thus, in its genesis and inspiration was not an anti-democratic but an anti-states-rights device, a way of keeping the election from the state politicians and giving it to the people.[5]

Second, the system of electors also had to be devised because most of the delegates to the Convention feared, not democracy itself, but only that a straightforward national election was "impracticable" in a country as large as the United States, given the poor internal communications it then had.[6] Many reasonably feared that, in these circumstances, the people simply could not have the national information about available candidates to make any real choice, let alone an intelligent one. And small-state partisant feared that, given this lack of information, ordinary voters would vote for favorite sons, with the result that large-state candidates would always win the presidential pluralities.[7] How seriously concerned the Framers were with this "communications gap" is shown by the famous faulty mechanism in the original provisions (the one that made possible the Jefferson-Burr deadlock in 1801). Each elector was originally to cast two votes, but without specifying which was for President and which for Vice-President. The Constitution required that at least one of these two votes be for a non-home-state candidate, the intention being to force the people and their electors to cast at least one electoral vote for a truly "continental" figure. Clearly, then, what the Framers were seeking was not an undemocratic way to substitute elite electors for the popular will; rather, as they claimed, they were trying to find a practicable way to extract from the popular will a nonparochial choice for the President.

The third reason for the electoral scheme likewise had nothing to do with frustrating democracy, but rather with the wide variety of suffrage practices in the states. Madison dealt with this problem at the Constitutional Convention on July 19, 1787. While election by "the people was in his opinion the fittest in itself," there was a serious circumstantial difficulty. "The right of suffrage was much more diffusive in the Northern than the Southern states; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty."[8] That is, the electoral system would take care of the discrepancies between state voting population and total population of the states until, as Madison hoped and expected, slavery would be eliminated and suffrage discrepancies gradually disappeared. Again the intention was to find the most practical means in the circumstances to secure a popular choice of the President.

These were the main reasons, then, why the leading Framers settled for the electoral system instead of a national popular election, and none may fairly be characterized as undemocratic. But it must be admitted that the electoral device would not occur to us nowadays as a way to solve these practical problems that the founding generation faced, because we insist on more unqualifiedly populistic political instruments than they did. All of the founding generation were far more prepared than we to accept devices and processes that, to use their terms, refined or filtered the popular will; and a few of the founders, Hamilton, for example, did vainly hope that the electors would exercise such a degree of autonomy in choosing the President, as would perhaps exceed any reasonable democratic standard. This is what makes it easy for us to believe that the Electoral College was conceived undemocratically, rather than as a legitimately democratic response in the circumstances. But any fair and full reading of the evidence demands the conclusion suggested here: the majority of the Convention, and especially the leading architects of the Constitution, conceived the Electoral College simply as the most practical means by which to secure a free, democratic choice of an independent and effective chief executive.

Thus the essential spirit of the Electoral College, like that of the Constitution in general, was fundamentally democratic from the outset. That is why its mechanisms were so readily adaptable to the immense democratic developments of the last two centuries, the while preserving on balance certain unique principles of the American idea of democracy. And that is why, in defending the Electoral College, we are not clinging to an archaic eighteenth century institution. Rather, we are defending an electoral system that, because of its dynamic adaptiveness to changing circumstances, remains the most valuable way for us to choose a President.

The ABA's "archaic" charge is in fact an indictment of the electors as undemocratic. In dealing with that indictment, then, we seem to have anticipated the ABA's express charge that the Electoral College is "undemocratic." However, the chief contemporary attack on the Electoral College has little to do with the autonomous elector or, as is said, the "faithless elector." The autonomous elector could be amended out of existence (and without doing violence to the constitutional intention of the Electoral College), but this would not lessen the contemporary hostility to it as undemocratic. It is to the main problem of democracy and the Electoral College that we may now turn. But we may do so, after this historical inquiry into the purpose of the electors, emancipated from the prejudice that regards the Electoral College as having originated in an archaic, undemocratic intention.

AN "UNDEMOCRATIC" SYSTEM?

The gravamen of the "undemocratic" indictment of the Electoral College rests on the possibility that, because votes are aggravated within the states by the general-ticket system, in which the winner takes all, a loser in the national popular vote may nonetheless become President by winning a majority of the electoral votes of the states. This is supposedly the "loaded pistol" to our heads, our quadrennial game of Russian roulette; indeed, no terms seem lurid enough to express the contemporary horror at this possibility. This is what shocks our modern democratic sensibilities and, once the issue is permitted to be stated in this way, it takes a very brave man or woman to defend the Electoral College. But, fortunately, courage is not required; it suffices to reformulate the issue and get it on its proper footing.

In fact, presidential elections are already just about as democratic as they can be. We already have one-man, one-vote—but in the states. Elections are as freely and democratically contested as elections can be—but in the states. Victory always goes democratically to the winner of the raw popular vote—but in the states. The label given to the proposed reform, "direct popular election," is a misnomer; the elections have already become as directly popular as they can be—but in the states. Despite all their democratic rhetoric, the reformers do not propose to make our presidential elections more directly democratic, they only propose to make them more directly national, by entirely removing the states from the electoral process. Democracy thus is not the question regarding the Electoral College, federalism is: should our presidential elections remain in part federally democratic, or should we make them completely nationally democratic?

Whatever we decide, then, democracy itself is not at stake in our decision, only the prudential question of how to channel and organize the popular will. That makes everything easier. When the question is only whether the federally democratic aspect of the Electoral College should be abandoned in order to prevent the remotely possible election of a President who had not won the national popular vote, it does not seem so hard to opt for retaining some federalism in this homogenizing, centralizing age. When federalism has already been weakened, perhaps inevitably in modern circumstances, why further weaken the federal elements in our political system by destroying the informal federal element that has historically evolved in our system of presidential elections? The crucial general-ticket system, adopted in the 1830s for reasons pertinent then, has become in our time a constitutionally unplanned but vital support for federalism. Also called the "unit rule" system, it provides that the state's entire electoral vote goes to the winner of the popular vote in the state. Resting entirely on the voluntary legislative action of each state, this informal historical development, combined with the formal constitutional provision, has generated a federal element in the Electoral College which sends a federalizing impulse throughout our whole political process. It makes the states as states dramatically and pervasively important in the whole presidential selection process, from the earliest strategiec in the nominating campaign through the convention and final election. Defederalize the presidential election—which is what direct popular election boils down to—and a contrary nationalizing impulse will gradually work its way throughout the political process. The nominating process naturally takes its cues from the electing process; were the President to be elected in a single national election, the same cuing process would continue, but in reverse."

It is hard to think of a worse time than the present, when so much already tends toward excessive centralization, to strike an unnecessary blow at the federal quality of our political order. The federal aspect of the electoral controversy has received inadequate attention; indeed, it is regarded by many as irrelevant to it. The argument has been that the President is the representative of "all the people" and, hence, that he should be elected by them in a wholly national way, unimpeded by the interposition of the states. Unfortunately, the prevailing conception of federalism encourages this erroneous view. We tend nowadays to have a narrowed conception of federalism, limiting it to the reserved powers of the states. But by focusing exclusively on the division of power between the states and the central government, we overlook an equally vital aspect of federalism, namely, the federal elements in the central government itself. The Senate (which, after all, helps make laws for all the people) is the most obvious example; it is organized on the federal principle of equal representation of each state. Even the House of Representatives has federal elements in its design and mode of operation. There is no reason, then, why the President, admittedly the representative of all of us, cannot represent us and hence be elected by us in a way corresponding to our compoundly federal and national character. The ABA Report, for example, begs the question when it says that "it seems most appropriate that the election of the nation's only two national officers be by the national referendum."[10] They are our two central officers. But they are not our two national officers; under the Constitution, they are our two partly federal, partly national officers. Why should we wish to change them into our two wholly national officers?

Since democracy as such is not implicated

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in our choice—but only whether to choose our Presidents in a partly federally democratic or a wholly national democratic way—we are perfectly free prudentially to choose the partly federal rather than the wholly national route. We need only strip away from the Electoral College reformers their democratic rhetorical dress in order to make the sensible choice with good conscience.

Our consciences will be further eased when we note that the abhorrence of the federal aspect of the Electoral College—which causes the potential discrepancy between electoral and popular votes—cannot logically be limited to the Electoral College. It rests upon premises that necessitate abhorence of any and all district forms of election. What is complained about in the Electoral College is endemic to all districted electoral systems, whether composed of states, or congressional districts, or parliamentary constituencies. If population is not exactly evenly distributed in all the districts (and it never can be), both in sheer numbers and in their political predispositions, then the possibility cannot be removed that the winner of a majority of the districts may not also be the winner of the raw popular vote. Regarding the British Parliament and the American Congress, for example, this is not merely a speculative matter or something that has not happened since 1888 (when Cleveland narrowly won the popular vote but lost the electoral vote, and thus the presidency, to Harrison), as in the case of the American presidency. It has happened more often and more recently in England, where popular-minority governments are as possible as popular-minority Presidents are here.[11] It is a source of wonder that Electoral College critics, who are often partisans of the parliamentary system, regard with equanimity in that system what they cannot abide in the American case. There the whole power of government, both legislative and executive, is at stake in an election, while here only the executive power is involved.

And not only can and does the national popular-vote/district-vote discrepancy occur in England, it can and does occur here regarding control of both the House and the Senate. Why is it not a loaded pistol to our democratic heads when control over our lawmaking bodies can fall, and has fallen, into the hands of the party that lost in the national popular vote?[12] Have we come to view control of the presidency as so much more important than control of the House or Senate that we regard the discrepancy with horrow in the one case and practically ignore it in the other? Granting the differences between electing a single executive and a numerous legislature, still the logic of the attack on the Electoral College also impugns the districted basis of both houses of Congress. The Senate has in fact been attacked on just that basis. Not only are popular votes for the Senate federally aggregated on a state basis, but also each state has an equal number of seats despite population inequalities; therefore, a discrepancy between the national popular vote and control of the Senate is likely to occur more often and more grossly than in the case of the presidency. Now just as the President is the President of all of the people, so too does the Senate make law and policy for the whole people, as we have noted. But we accept the districted basis of the Senate despite its "undemocratic" potential, partly because of its nearly sacrosanct constitutional status, and also because we see the wisdom of departing, in this instance, from strict national majoritarianism.

The House has largely escaped the "undemocratic" charge (especially now, after major reapportionment) despite the fact that its districted basis likewise creates a potential discrepancy between winning a majority of seats and winning the national popular vote for Congress. By the populistic reasoning and rhetoric that attacks the Electoral College, the House also fails the standard of national majoritarianism. But we quite ungrudgingly see the wisdom in departing from that standard in order to secure the many advantages of local districting. To indicate only a few: First, there is democratic responsiveness to local needs, interests, and opinions in general. Americans have always believed that there is more to democracy itself than merely maximizing national majoritarianism; our idea of democracy includes responsiveness to local majorities as well. Further, because of our multiplicity to interests, ethnic groups, religions, and races, we have always believed in local dmocratic responsiveness to geographically based minorities whose intrests may otherwise be utterly neglected; such minorities secure vigorous direct representation, for example, only because of the districted basis of the House of Representatives. The state-by-state responsiveness of the Electoral College is an equally legitimate form of districted, local democratic responsiveness. There is also the security to liberty that results from the districted decentralization of the political basis of the legislature; and we cherish also the multiplication of opportunities for voluntary political participation that likewise results frcm that districted decentralization. Finally, we cherish the guarantee that districting provides, that power in the legislature will be nationally distributed, rather than concentrated in regional majorities, as would be possible in a nondistricted election of the House. In short, in the case of both the House and the Senate, we accept the risk (and the occasional reality) of the national popular-vote/district-vote discrepancy because the advantages to be gained are great and because the House and Senate remain nationally democratic enough to satisfy any reasonable standard of democracy.

This kind of complex reasoning is the hallmark of the American idea of democracy: a taking into account of local as well as national democratic considerations and, even more importantly, blending democratic considerations with all the other things that contribute to political well-being. What is so disturbing about the attack on the Electoral College is the way the reasoning and the rhetoric of the reformers depart from this traditional American posture toward democracy. They scant or simply ignore all the other considerations and put the presidential election process to the single test of national democratic numbers. In contrast, the fundamental premise of the traditional American idea of democracy is that democracy, like all other forms of government, cannot be the be-all and end-all, the political summum bonum; rather, the political system must be made democratic enough and then structured, channeled, and moderated, so that on a democratic basis all the democratic considerations (in addition to the purely numerical) and all the other vital political considerations can be attended to.

The issue regarding the Electoral College, then, is not democratic reform versus the retention of an undemocratic system but rather a matter of which kind of democratic reasoning is to prevail in presidential elections—the traditional American idea that channels and constrains democracy or a rival idea that wishes democracy to be its entirely untrammeled and undifferentiated national self.

One more point may usefully be made regarding the charge that the Electoral College is undemocratic. I have already argued that our presidential elections under the Electoral College are thoroughly democratic, albeit partly federally democratic, and that democracy may profitably be blended with the advantages of districting. But even on the basis of purely national democratic terms, the potential popular-vote/electoral-vote discrepancy of the Electoral College may be tolerated with good democratic conscience.

Not only has the discrepancy not occurred for nearly a century, but no one even suggests that it is ever likely to occur save by a very small margin. The margin in the last actual occurrence, in 1888, was of minute proportions; and the imaginary "near misses"—those horrendous hypotheticals—are always in the range of zero to one-tenth of 1 percent.[13] The great undemocratic threat of the Electoral College, then, is the possibility that, so to speak, of 80 million votes, 50 percent minus one would rule over 50 percent plus one. Now there really is something strange in escalating this popgun possibility into a loaded pistol. For one thing, the statistical margin of error in the vote count (let alone other kinds of errors and chance circumstances) is larger than any anticipated discrepancy; that is to say, the discrepancy might be only apparent and not real. But even granting the possibility that 50 percent minus one might prevail over 50 percent plus one, how undemocratic would that really be? The answer is suggested by the fact that, in the long history of democratic thought, the problem never even arose before the present, let alone troubled anyone. It took us to invent it. When we understand why, we will also see that it is a spurious problem or, at least, a trivial one.

Historically, the problem of democracy was not about minute margins of electoral victory, but about whether, say, 5 percent (the rich and wellborn law), should rule over 95 percent (the poor many), to use the classical terms. That is what the real struggles of democracy were all about. Only a severe case of doctrinaire myopia blinds us to that and makes us see, instead, a crisis in the mathematical niceties of elections where no fundamental democratic issues are involved. Democracy is not at stake in our elections, only the decision as to which shifting portion of an overall democratic electorate will temporarily capture executive office. What serious difference does it make to any fundamental democratic value if, in such elections, 50 percent minus one of the voters might—very infrequently—win the presidency from 50 percent plus one of the voters? Only a country as thoroughly and safely democratic as ours could invent the 50 percent problem and make a tempest in a democratic teapot out of it.

The irrelevance of the potential popular-vote/electoral-vote discrepancy to any important democratic value is illustrated if we consider the following question: Would the Electoral College reformers really regard it as a disaster for democracy if Franklin D. Roosevelt (or any liberal Democrat) had beaten Herbert Hoover (or any conservative Republican) in the electoral vote but had lost by a handful in the national popular vote? The question is not meant, of course, in any spirit of partisan twitting. Rather, it is intended to suggest that no sensible person could seriously regard it as a disaster for democracy if—to use the language of caricature—a coalition of the poor, of labor, of blacks, et al., had thus squeak by a coalition of the rich, the powerful, the privileged, and the like. To point this out is not to depreciate the importance of such an electoral outcome for the course of public policy. It is only to deny that it would threaten or make a mockery of the democratic foundations of our political order. To think that it would is to ignore the relevant socioeconomic requisites of democracy, and to be panicked into wide-reaching constitutional revisions by the bogeyman of the 50 percent minus one possibility. To risk such revision for such a reason is to reduce democracy not only to a matter of mere numbers, but to minute numbers, and to abstract numbers, drained of all socioeconomic significance for democracy.[14]

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A "COMPLEX" SYSTEM?

The ABA Report does not make clear what is "complex" about the Electoral College or why complexity as such is bad. Perhaps the fear is that voters are baffled by the complexity of the Electoral College and that their bafflement violates a democratic norm. It must be admitted that an opinion survey could easily be devised that shows the average voter to be shockingly ignorant of what the Electoral College is and how it operates. But then opinion surveys almost always show the average voter to be shockingly ignorant of whatever a survey happens to be asking him about. It all depends upon what kind of knowledge the voter is expected to have. I would argue that most voters have a solid working knowledge of what a presidential election is all about. They know that they are voting for the candidate of their choice and that the candidate with the most votes wins in their state. And when watching the results on television or reading about them in the papers, they surely discover how the election came out. However ignorant they may be of the details of the Electoral College, their ignorance does not seem to affect at all the intention and meaning of their vote, or their acceptance of the electoral outcome. What more is necessary than that? What is the use of making the process less complex?

However, the animus against the complexity of the Electoral College surely goes deeper than a fear that voters are unable to explain it when asked. There seems to be a hostility to complexity as such. This hostility has a long history. It goes back at least to those French Enlightenment thinkers who scolded John Adams for the unnecessary complexity, for example, of American bicameralism. However such complexity had helped mitigate monarchical severities, of what possible use could bicameralism be, they asked, now that America had established popular government? When the people rule, they insisted, one branch is quite enough; no complexity should stand in the way of straightforwardly recording and carrying out the popular will. The answer to them, and to all like-minded democratic simplifiers ever since, derives from the very essence of American democracy, which is precisely to be complex. The American idea of democracy, as argued above, is to take into account both local and national considerations, and also to moderate democracy and blend it with as many other things as are necessary to the public good. That blending necessitates complexity.

The Electoral College is, of course, only one example of the complexity that characterizes our entire political system. Bicameralism is complex; federalism is complex; judicial review is complex; the suspensory executive veto is a complex arrangement; the Bill of Rights introduces a thousand complexities. Are these also to be faulted on grounds of complexity? If a kind of prissy intelligibility is to be made the standard for deciding what should remain and what should be simplified in American government, how much would be left in place? In all fairness, the question is not whether our political system or any part of it is complex, but whether there is a good reason for any particular complexity. The skeptical, self-doubting American idea of democracy does not assume that the rich complexity of democratic reality is exhausted by mere national majoritarianism, nor does it assume that all good things automatically flow from democracy. It therefore asks of any institution not only whether it is democratic, but also whether, while leaving the system democratic enough, it contributes to fulfilling the complex requirements of democracy and to securing some worthwhile purpose not secured simply by democracy itself. That is the only appropriate question regarding the complexity of the Electoral College.

Some of the affirmative answers to that question as regards our electoral institution—especially the federal element blended into our democracy by the historical development of the Electoral College—have already been suggested. Others will more conveniently come up under two of the remaining headings of the ABA Report's indictment against the Electoral College.[15] To these we may now proceed.

AN "AMBIGUOUS" SYSTEM?

This charge is rather puzzling. It is so far off the mark that a rebuttal is hardly required; rather, it supplies the opportunity to point out a particular advantage of the Electoral College in comparison with its proposed substitute. Far from speaking unclearly or confusingly, the Electoral College has delivered exceptionally prompt and unequivocal electoral pronouncements. This is not to say that there have never been any delays or uncertainties. Whenever an election is closely divided, as ours often have been and are likely to be, no election system can deliver prompt and absolutely certain verdicts, free of the ambiguity that inheres in the electorate's own behavior. But when a realistic rather than an utopian standard is applied, the Electoral College has to be rated an unqualified success. To deny this betrays a reluctance to credit the Electoral College with any merit at all. Or, perhaps, it is another instance of the human propensity, remarked on by Hobbes, to attribute all inconveniences to the particular form of government under which one lives, rather than to recognize that some inconveniences are intrinsic to government as such regardless of its form.[16] This propensity seems to explain the finding of ambiguity in the way the present system works.

To judge fairly the charge of ambiguity, then, the Electoral College must be compared in this regard with other electoral systems and, especially, with the 40 percent plus/runoff system proposed by President Carter and Senator Bayh as its replacement. Under the proposed system, the nation forms a single electoral district; the candidate who gets the most popular votes wins, provided the winning total equals at least 40 percent of the total number of votes cast; failing that, there would be a runoff election between the two candidates who had the most votes. Let us consider the prospects for ambiguity under this proposed system, in comparison with the actual experience under the Electoral College.

The American electorate has a fundamental tendency to divide closely, with "photo finish" elections being almost the rule rather than the exception. The Electoral College almost always announces these close elections outcomes with useful amplification. In purely numerical popular votes, an election outcome might be uncertain and vulnerable to challenge; but the Electoral College replaces the numerical uncertainty with an unambiguously visible constitutional majority that sustains the legitimacy of the electoral result. If this magnifying lens is removed, the "squeaker" aspect of our presidential elections will become more visible and, probably, much more troubling. For example, the problem of error and fraud, no doubt endemic in some degree to all electoral systems, could very well be aggravated under the proposed national system, because every single precinct polling place could come under bitter scrutiny as relevant to a close and disputed national outcome. In contrast, under the Electoral College, ambiguity of outcome sufficient even to warrant challenge is infrequent and is always limited to but a few states. Indeed, the massive and undeniable fact is that, for a whole century, the Electoral College has produced unambiguous outcomes in every single presidential election, accepted by the losing candidate and party and by the whole American people with unfaltering legitimacy.[17]

Not only is it extremely unlikely that the proposed replacement could match this record of unambiguity, but the 40 percent plus plurality provision could very well introduce a different and greater kind of ambiguity into our political system. This would not be uncertainty as to who is the winner, but a profounder uncertainty as to whether the winner is truly the choice of the American people. Under the modern Electoral College, we have elected popular-majority Presidents about half the time, and plurality Presidents with close to 50 percent of the vote the rest of the time, save for three who received less than 45 percent of the popular vote. This is a remarkable record of unambiguity in regard to public support compared with the history of most other democratic systems. But, given the dynamics of American political behavior, the proposed 40 percent plus plurality provision might very well typically produce winners at or just above the 40 percent level.

The Electoral College strongly encourages the two-party system by almost always narrowing the election to a race between the two major-party candidates. Obviously, when there are only two serious competitors, the winner usually has a majority or large plurality of the total vote cast. But, as we shall shortly see, the new system would encourage minor and maverick candidates. This multiplication of competitors would likely reduce the winning margin to the bare 40 percent plurality requirement of the new system. If so, we would have traded in a majority- or high plurality-presidency for one in which nearly 60 percent of the people might often have voted against the incumbent. How ironic it would be if a reform demanded in the name of democracy and majority rule resulted in a permanent minority presidency!

A "DANGEROUS" SYSTEM?

"Dangers" of the Electoral College. It is not possible here to discuss all the dangers that alarm critics of the Electoral College, for example, the faithless electors, or a cabal of them,[18] or the problem of the contingency election in the House of Representatives. Some pose real enough problems and would have to be dealt with in a fuller discussion. But the present remarks are limited to the main danger that the reformers fear, namely, the popular-vote/electoral-vote discrepancy. This is the loaded pistol pointed to our heads, the threat that necessitates radical constitutional revision. Now the funny thing about this loaded pistol is that the last time it went off, in 1888, no one got hurt; no one even hollered. As far as I can tell, there was hardly a ripple of constitutional discontent, not a trace of dangerous delegitimation, and nothing remotely resembling the crisis predicted by present-day critics of the Electoral College. But it must be sadly acknowledged that, the next time it happens, there might well be far greater public distress. It would be due, in large part, to the decades of populistic denunciation of the Electoral College; a kind of self-confirming prophecy would be at work.

All that is needed to defuse this danger is for the undermining of the moral authority of the Electoral College to cease. The American people will not, on their own initiative, react with rage if one of the near-misses actually occurs. As after 1888, they will go about their business and, perhaps, straighten things out in the next election, as when they elected Cleveland in 1892. They will go about their business as they did in a parallel instance, after Vice President Agnew's res-

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ignation and Watergate, when the provisions of the Twenty-fifth Amendment went doubly into effect. The democratic foundations of our political system, and even the vigor of the presidency, were not weakened by the temporary absence of the majority or plurality popular support that normally undergirds the presidency. There need be no dangerous weakening should the Electoral College again produce a temporary shortfall in popular support—if only the reformers cease to cry havoc, and if those who ought to speak up do so and help the American people learn to enjoy the compatibility of the Electoral College with the American idea of democracy.

DANGERS OF DIRECT ELECTION

Not every danger alleged to inhere in our present electoral system could thus be made to evaporate merely by the exercise of our own common sense; like every political institution, the Electoral College contains dangerous possibilities. But this much may be said about them; all the dangers critics claim to see in the Electoral College are entirely matters of speculation. Some have never actually occurred, and others have not occurred for nearly a century. Nothing whatever has actually gone wrong with the Electoral College for a very long time. Experience has demonstrated that the dangers incident to the present system are neither grave nor likely to occur. But what of the dangers incident to the proposed reform? It is as important to speculate about them as to frighten ourselves with imaginary possibilities under the Electoral College. Three dangers seem seriously to threaten under the proposed reform; weakening the two-party system, weakening party politics generally, and further imperializing the presidency.

Many have warned that the 40 percent plus/runoff system would encourage minor parties and in time undermine the two-party system. The encouragement consists in the runoff provision of the proposed reform, that is, in the possibility that minor parties will get enough votes in the first election to force a runoff. Supporters of the proposed change deny this likelihood. For example, the ABA Report argues that a third party is unlikely to get the 20 percent of the popular vote necessary to force a runoff. Perhaps so, and this has been very reassuring to supporters of the reform. But why does it have to be just "a" third party? Why cannot the runoff be forced by the combined votes of a half dozen or more minor parties that enter the first election? Indeed, they are all there waiting in the wings. The most powerful single constraint on minor-party presidential condidacies has always been the "don't throw your vote away" fear that caused their support to melt as election day approached. Norman Thomas, who knew this better than anyone, was certain that a national popular election of the kind now proposed would have immensely improved the Socialist electoral results. Now this is not to say that the Electoral College alone is what prevents ideological parties like that of the Socialists from winning elections in America. Obviously, other and more powerful factors ultimately determine that. But what the electoral machinery can determine is whether such parties remain electorally irrelevant, minuscule failures, or whether they can achieve sufficient electoral success to fragment the present two-party system. The relevant question is not whether the proposed reform of the Electoral College would radically change the ideological complexion of American parties, but whether it would multiply their number.

All this might not happen immediately. The two-party habit is strong among us, and many factors would continue to give it strength. But the proposed reform of the Electoral College would remove or weaken what is generally regarded as the most powerful cause of the two-party system, namely, the presidency as a "single-member district." There would, of course, still be a single office finally to be won or lost, but not in the first election. That is the key. If runoffs become the rule, as is likely, the first election would become in effect a kind of two-member district. There would be two winners in it; we would have created a valuable new electoral prize—a second place finish in the preliminary election. This would be a boon to the strong minor candidacies; needing now only to seem a "viable" alternative for second place, they could more easily make a plausible case to potential supporters. But, more important, there would be something to win for nearly everyone in the first, or preliminary, election. Minor party votes now shrink away as the election nears and practically disappear on election day. As is well known, this is because minor-party supporters desert their preferred candidates to vote for the "lesser evil" of the major candidates. But the proposed reform would remove the reason to do so. On the contrary, as in multiparty parliamentary systems, the voter could vote with his heart because that would in fact also be the calculating thing to do. There would be plenty of time to vote for the lesser evil in the eventual runoff election. The trial heat would be the time to help the preferred minor party show its strength. Even a modest showing would enable the minor party to participate in the frenetic bargaining inevitably incident to runoff elections. And even a modest showing would establish a claim to the newly available public financing that would simultaneously be an inducement to run and a means to strengthen one's candidacy.

Let us examine an illustration of the difference under the two electoral systems. At present, opinion polls teach minor-party supporters to desert come election day; the voter sees that his party has no chance of winning and acts accordingly. Under the proposed system, the polls would give exactly the opposite signal: hold fast. The voter would see his party or candidate making a showing and would see that a runoff was guaranteed; he would have no reason to desert his party. The first election would, thus, cease to have the deterrent effect on minor parties; the prospect of the runoff would change everything. True, in such matters, prediction is difficult. But it is clearly likely that the two-party system would be dangerously weakened by the proposed reform, whereas it is certain that it has been created and strengthened under the Electoral College. Most Americans agree that the two-party system is a valuable way of channelling democracy because that mode of democratic decision produces valuable qualities of moderation, consensus, and stability. It follows then that the proposed reform threatens a serious injury to the American political system.

Not only might the change weaken the two-party system, but it might well also have an enfeebling effect on party politics generally. The regular party politicians, which is to say, the state and local politicians, would become less important to presidential candidates. This tendency is already evident in the effect the presidential primaries are having; regular party machinery is becoming less important in the nominating process, and the individual apparatus of the candidates more important. The defederalizing of the presidential election seems likely to strengthen this tendency. No longer needing to carry states, the presidential candidates would find the regular politicians, who are most valuable for tipping the balance in a state, of diminishing importance for their free-wheeling search for popular votes. They probably would rely more and more on direct-mail and media experts, and on purely personal coteries, in conducting campaigns that would rely primarily on the mass media. The consequence would seem to be to disengage the presidential campaign from the party machinery and from the states and to isolate the presidency from their moderating effect. If "merchandising" the President has become an increasingly dangerous tendency, nationalizing and plebiscitizing the presidency would seem calculated only to intensify the danger.

Moreover, not only ideological parties would be encouraged by the proposed change, but also minor parties and minor candidacies of all sorts. Sectional third parties would not be weakened by the 40 percent plus/runoff arrangement; they would retain their sectional appeal and pick up additional votes all over the country. The threat that dissident wings might bolt from one of the two major parties would instantly become more credible and thereby more disruptive within them; sooner or later the habit of bolting would probably take hold. Would there not also be an inducement to militant wings of ethnic, racial, and religious groups to abandon the major party framework and go it alone? And, as the recent proliferation of primary candidacies suggests, would-be "charismatics" might frequently take their case to the general electorate, given the inducements of the proposed new machinery.[19]

This raises, finally, the question of the effect of the proposed reform on the presidency as an institution, that is, on the "imperial presidency." The populistic rhetoric that denounces the Electoral College as undemocratic has had, since the time of the New Deal, a corollary inclination to inflate the importance of the presidency. In recent years, however, we have all learned to be cautious about the extent of presidential power. Yet the proposed change could only have an inflating effect on it. The presidency has always derived great moral authority and political power from the claim that the President is the only representative of all the people. Why increase the force of that claim by magnifying the national and plebiscitary foundations of the presidency? This would be to enhance the presidential claims at just the moment when so much fear had been expressed about the "imperial presidency."

Many who deal with the Electoral College are concerned chiefly with its consequences for partisan purposes. They support or oppose it because of its alleged tendency to push the presidency in a liberal direction. As for myself, I am not at all sure what those partisan effects used to be, are now, or will become in the future. Accordingly, it seems a good time to rise above party considerations to the level of constitutional principle. On that level, it seems quite clear to me that the effects of the proposed change are likely to be quite bad. And it likewise seems quite clear to me that the Electoral College is easy to defend, once one gets the hang of it. It is a paradigm of the American idea of democracy. Thus to defend it is not only to help retain a valuable part of our political sysem, but also to help rediscover what the American idea of democracy is.

FOOTNOTES

[1] *Electing the President: A Report of the Commission on Electoral College Reform* (Chicago: American Bar Association, 1967), p. 3.

[2] *The Federalist Papers*, ed. C. Rossiter (New York: Mentor Books, 1961), p. 314.

[3] Ibid., p. 315.

[4] See *The Records of the Federal Convention of 1787*, ed. Max Farrand (New Haven: Yale University Press, 1966), vol. 1, pp. 68-69, 80, and vol. 2, pp. 29-31, 56-57, and 111.

[5] The "confederalists" won a temporary and partial victory at the Convention when the express provision for popular election of

the electors was barely defeated. (See *The Records of the Federal Convention of 1787*, vol. 2, p. 404.) The Constitution finally provided that electors be elected "in such manner" as the state legislatures might decide. During the first three elections, electors were typically chosen by the state legislatures. By 1824, in all but six of the then twenty-four states, electors were being popularly elected. Ever since 1832, popular election has been the universal rule with negligible exceptions.

[6] For example, see James Wilson's explanation of the electoral device to the Pennsylvania ratifying convention. (*The Records of the Federal Convention of 1787*, vol. 3, p. 167.)

[7] See remarks of Madison and Oliver Ellsworth (Ibid., vol. 2, p. 111).

[8] Ibid., vol. 2, p. 57.

[9] Alexander Bickel wisely stressed the importance of the Electoral College to federalism in *Reform and Continuity: The Electoral College, the Convention, and the Party System* (New York: Harper Colophon Books, 1971). See also excellent discussions in Judith Best, *The Case against the Direct Election of the President: A Defense of the Electoral College* (Ithaca: Cornell University Press, 1975), pp. 119 ff and 133 ff; and in Wallace S. Sayre and Judith H. Parris, *Voting for President: The Electoral College in the American Political System* (Washington, D.C.: The Brookings Institution, 1970), pp. 51 ff.

[10] *Electing the President*, p. 37.

[11] In February 1974, although the Conservatives led Labour in the popular vote by 1 percentage point, Labour won three seats more than the Conservatives and was thereby enabled to form the government. See *Britain at the Polls: The Parliamentary Elections of 1974*, ed. Howard R. Penniman (Washington, D.C.: The American Enterprise Institute for Public Policy Research, 1975), p. 243.

[12] Since 1900, control of the House has gone four times (1910, 1916, 1938, 1942) to the party that lost the national popular vote. And, counting only the seats contested in any given election, the party that lost the national popular vote won the majority of Senate seats four times (1914, 1918, 1922, 1940) since the passage of the Sixteenth (direct popular election) Amendment in 1913.

[13] For an astute discussion of the way such mathematical masochism "abstracts from political realities," see Judith Best, *The Case against Direct Election of the President*, pp. 78 ff.

[14] Not everything can be dealt with here, but a footnote excursion on one more staple charge against the Electoral College as undemocratic is irresistible. This concerns the alleged disenfranchisement of those who vote for the loser in each state; their votes are "wasted" because they drop out at the state level from further national calculations. Or even worse, as Senator Thomas Hart Benton long ago complained, popular votes for the loser are in effect added to those of the winner, because he gets the state's whole electoral vote. Those who are horrified by this may take some comfort in one interesting fact. Although such disenfrancisement does indeed occur in every state in every election, it has had absolutely no significance since 1888. A moment's reflection should make this clear. The disenfrancised who vote for the ultimate electoral winner in states where he loses have no complaint; their candidate wins anyway. But how about the disenfrancised who vote for the ultimate electoral loser in states where he loses? Would it make any difference if their votes, instead of dropping out of further calculation, were added to their candidates' national popular vote total, and if popular votes determined the election? The answer is obvious: only when their candidate, although the electoral vote loser, happens to be the popular vote winner. And that has not happened since 1888. Like the popular-vote/electoral-vote discrepancy, of which it is a rhetorically resonant echo, the disenfrancisement problem has been absolutely immaterial for nearly a century.

[15] One of the three remaining charges—that the Electoral College mode of electing the President is "indirect"—we may pass over. The ABA Report does not make much of the charge; and what it makes of it, we have already dealt with in discussing the status of the electors as originally intended and the federal mode of counting the presidential vote.

[16] See Chapter 18 of Hobbes' *Leviathan* (Oxford: The Clarendon Press, 1909), p. 141.

[17] The last seriously disputed presidential result occurred after the Hayes-Tilden election of 1876. And even then, the dispute had nothing to do with any defects in the electoral system, but rather resulted from irrepressible conflicts in the tragic aftermath of the Civil War.

[18] There have only been about ten of these (the exact number is in doubt) out of about twenty thousand electoral ballots cast—a tiny handful, hardly even a statistical trace. And never once has a "faithless" ballot been cast with the intention of influencing the outcome of an election. They have all been cast for symbolic purposes only, and, ironically enough, usually as a symbolic response to majority opinion in the aberrant elector's home constituency. In short, it is about as likely that "faithless electors" will usurp an election as it is that the English Crown will reassume the regal power of, say, Henry VIII. Neither likelihood seems great enough to warrant the constitutional transformation of either system.

[19] See Nelson W. Polsby, *Political Promises* (New York: Oxford University Press, 1974), p. 161.

The temptation under a direct election system would be strong for all manner of demagogues and statesmen—whoever can raise the money—to run, whether sectional candidates or movie idols with widely scattered following, to appeal directly to the people. So there would be a high probability that under the [direct election plan] . . . the run-off would be the true election, and the initial election would look a bit like the start of the Boston Marathon with its motley crowd of contestants.

TESTIMONY BEFORE SENATE JUDICIARY SUBCOMMITTEE ON CONSTITUTION, 1970, ON ELECTORAL REFORM

Senator ERVIN. Professor Charles Black.

I want to welcome you to the committee and express to you the deep appreciation of the committee and the Senate for your willingness to come before us and give us the benefit of your observations on this very important question.

I would like to take this occasion to say that I have read a great many things of yours, read articles of yours and in the past, and I have found most of them stimulating.

STATEMENT OF PROF. CHARLES BLACK

Mr. BLACK. I deeply appreciate that remark, Senator, and also let me say I am very happy indeed to be here and honored to be invited to come. It seems to me that the only sadness about my position is having to follow such a wonderful statement and so obviously deeply studied a statement as that of Professor Brown. I do not think I have lived with this problem as closely as he has and I have no hope of being more than corroborative of some of the things that he and my colleague, Alexander Bickel, and others have said.

But if I may be permitted a reminiscence which, though personal, I believe is entirely to the point on the present issue, I spent last summer instructing foreign law graduate students in the Constitution of the United States, teaching a course in constitutional law to young people already lawyers in their own countries, who were to go out after the summer to the many different American law schools and pursue their studies of American law and reside for the year in the United States. I told them, at the beginning of the course, "We have nothing to show you here in the way of antiquities. We will show you a house that was built in 1810 and you will laugh when we tell you it is an old house, you will laugh behind your hands, because you look at the Arch of Titus every morning when you walk to work. We have in fact only one antiquity that is worth your attention. That is the Constitution of the United States."

"It was put into effect when Napoleon Bonaparte was a young comer. And as the other countries of the world, almost without exception, have rolled through one constitutional revolution after another, this thing has stood there in substantially its present form, has accommodated a whole continent and now reached out to the islands of the Pacific and brought them into a political structure of obvious solidity and strength. It is our antiquity. It is what we have to show you instead of the cathedral at Chartres," I told them, "so let's get to work studying it."

I approach this question with that kind of bias. I approach this question with the feeling, which I believe to be validated historically as well as any can be, that the Constitution of the United States is an almost miraculously successful document, and that any change in its structure is to be approached with every presumption against it. It is often said that the electoral college system is antiquated. This is used as a sort of prerogative term for it. "Antiquated" means that it has lasted a long, long time. I do not find that an epithet of opprobrium at all. I like antiquated constitutions. They are the best kind.

So I want to approach this from that point of view. I think that none of the difficulties that I or Mr. Bickel or Mr. Brown or others see in these proposed changes can be proved up to the hilt. These are prophecies. These are suggestions of possible trouble. Some of them seem very convincing. Some of them seem almost inevitable to me.

But I do not think that it is up to the opposition to this proposal to establish beyond a doubt what will happen in the future. We are dealing with a system which has been brilliantly successful, the whole solar system, as the late President, then Senator, Kennedy, called it, of the allocation of power in the United States. It is up to those who would effect a major and radical change in it to dispel very positively the doubts as to the wisdom of that change.

And it is with that conception of where the burden of argumentation lies that I proceed to say what I have to say.

Senator ERVIN. If I might interject myself, I am glad to find another person like myself, because I think that a thing which has endured is something to its credit, because it takes a good deal to endure.

Mr. BLACK. Sure.

Senator ERVIN. I remember we were debating something on the floor of the Senate one time and somebody suggested that the Senate rules were written by the hands of dead men. Well, so were the Ten Commandments and so was the Declaration of Independence and so was the Constitution of the United States.

Mr. BLACK. Certainly. When one considers its history, one has a feeling of caution about tampering with it.

I think a case can be made for the proposition that this amendment, if it passes, will be the most deeply radical amendment which has ever entered the Constitution of the United States, looking on that Constitution in its bare bones aspect. A constitution,

primarily, is that which constitutes the government, which creates offices, assigns the powers to the offices, and states the manner in which the officers shall be selected. That is the essence, the center, of a constitution, and I do not think we have ever made a change in this one anything like this deep.

The 12th amendment was comparatively a housekeeping amendment. The 17th amendment committing the election of Senators to popular vote, ratified in part what was already being done one way or another in the States. And in any case, neither of those things struck at what to me is the most conspicuous characteristic of the manner in which the American national government is constituted.

We do not know why this constitution has lasted so well. We do not know for sure wherein the strength lies, what it is that has given it such durability through so many troubles. But I think all of us have—and here I have to be somewhat vague because I do not think precision is possible—I think all of us have a hunch that this strength is somehow connected with the Federal system—that is, with the fact that we have divided power between the National Government and the States. And I would go further and say that in constituting the Government and selecting both the legislative and the executive branch, we have hitherto dealt with the States one by one as independent entities—weighted in various ways, to be sure, but each one contributing to the result as a State, as a separate entity.

Now, this seems to me to have a lot of symbolic significance and practical significance. What it means now is that in a presidential election, the concept exists of carrying Connecticut or of carrying New York. This means that you have to go in there and work with the State people. It is the same constituency as in the statewide senatorial election or the statewide gubernatorial election. I think it very plain that this has a tendency to preserve the conception of the States as semi-independent durable constituent entities in the constitutional plan, both symbolically and practically. It seems to me that an election which pays no regard to State lines, which is simple totally nationwide, something we have never had in our history would tend to obliterate this attention, tend to diminish this attention to the States, one by one, as political entities.

I cannot be sure of that. I cannot pin it down. I cannot read the future in a crystal ball, but it seems to me a very plausible judgment that one of what my former colleague and friend, Herbert Wechsler, has called the political safeguards of federalism in our dealing with the States as entities, one by one, in the electoral college system as we know it.

Professor Brown has just reminded us that changes in this regard will run down into the nominating processes. There is, as he pointed out, no reason to continue the organization of that process on State-by-State lines, with the delegation from New York, the delegation from North Carolina, the delegation from Connecticut, if the vote is not going to be of that type. The nominating process surely must mirror the vote.

Now, a second point that I would make again is necessarily conjectural; it never comes clearly to light. But it has long been as many have pointed out, the assumption of practical people in politics, and has lately received some mathematical corroboration, that the voter in a very populous State, like New York, or my native State of Texas, or California, has more attention paid to him in presidential politics than the voter in a State like the one wherein I now have the happiness to reside, Connecticut. One feels this. I have lived 10 years in New York and 15 years in Connecticut, and when you lived in New York, you felt that you were being attended to more in a presidential campaign than you do when you live in Connecticut. This is seemingly a natural practical consequence of the enormous importance of swinging this large electoral vote.

Now, if this existed alone in the constitutional system, then it would be unfair. But the fact of the matter is that it does not. It can be viewed, as many people have pointed out—and here I am simply corroborating others—as a compensation for what is first of all the evident disproportion, the intended disproportion to which no one, least of all I objects, in the Senate of the United States, where the opposite situation prevails.

This compensation is, incidentally, not carried through dogmatically, all the way, because when you get down to the other end of the scale, there is another thing that comes into the picture.

That is the fact that, under the electoral college system, the whole great area of the sparsely populated West, so important to the future of the country, is, by the present system, somewhat more heavily weighted, I think substantially more heavily weighted, than it would be in a straight popular election, and hence presumably has some greater influence in presidential politics.

This is about the degree of complexity, seeming contradiction, that I expect in a healthy political system. I do not think one looks for absolute dogmatic consistency in such a system. This kind of epicycle upon epicycle of compensation, it seems to me, is just the way things run when they run well. And looking on the inquiry in realistic terms, as the search for an answer to the question, "Why has this system worked so beautifully?" I would be inclined to guess that some of these things have had much to do with it.

Well, now, when I turn to the popular election plan, I find in it—and I do not desire to take up the Senator's time with the purely corroboratory—I find pretty much the difficulties that others have found in it.

The radical reorganization of party structures and politics, the pretty certain disappearance or weakening of the two-party system seems to me an extremely likely consequence of such reform. Like Professor Brown, I would deplore that. I think these two parties, as organs of accommodation, are important, and that their existence and functioning must be close to the physiological center of health of the United States, for reasons that have already been spread here. I think we would lose that, lose most of it, under a new system.

I would deplore the arising of little parties, and do not know that there would be just five. Why not 10 or 20, each, as in France, with a special mission, a special issue, instead of the situation we have now, where a reasonable accommodation can be made within a party frame?

I should say parenthetically there that if what we want is a more effective participation, it is to be sought in the process of nomination, I should think, and in the party convention system, which I believe has become somewhat outmoded and not entirely responsive to need. That kind of reform should be looked for, and not this fundamental constitutional change.

I am appalled, as Professor Brown is, by the prospect of recounts. We have now a compartmentalization of the recount problem, like the compartmentalization of a ship. If it springs a leak in one part, that part is sealed off from the others. The recount problem is of infrequent incidence, because very often the State in which fraud is charged or error is charged will be one which, on inspection of the electoral totals, does not matter anyway. Sometimes, though there may have been irregularities, though these may be plausibly charged, the vote will be so one sided in a State that a recount could not conceivably change the outcome as to that State, and it would still be carried by the person who seems to carry it. In a close election—and I do not care what you mean by close—if it is the difference between 39.99 percent and 40 percent, which is made so critical in any of these proposals—you have to recount every vote in every precinct, not only for the two leading candidates, but for all the others, and be absolutely certain that it was done right. All sorts of things about the propriety of write-ins would become immensely important.

Senator HRUSKA. Professor, in regard to recounts, it has been testified here that, if any recount is requested, it would tend to trigger and generate and originate additional recounts. After all, if Ohio has a recount, for example, that will lead Illinois to have one. If Illinois asks for a recount, Pennsylvania will do it, and then New York. Do you see any possibility that occurring where there is a close election in which a candidate receives 39.9 percent of the popular vote?

Mr. BLACK. I fail to see how it could not occur. It seems to me it would be virtually the duty of the managers of a campaign to search everywhere in a close election. If a recount occurs in one place, even though, let's say, Texas has been carried two to one by one candidate, the votes in Duval County, Tex., will still be important to set off against the votes in Illinois or Vermont. I would think, for reasons on which, of course, Professor Brown is far more expert than I am, it would be almost inevitable that this would happen. So it would seem to me.

I would think that not only would this happen as a response to recount, but that the losing candidate in a very close election would almost be driven to look for a recount. We know that the counting is not all that accurate. We now concentrate on the areas where it matters, which are likely to be few, maybe none, under the present system.

But if there is a 100,000-vote difference nationwide, or if it should happen under the Tydings proposal, which I have just seen today, that the crucial question was whether the man had 39.99 percent or 40 percent of the votes, then I should think it would be inevitable that a recount would be requested.

Senator HRUSKA. There is a distinction between a recount and a contest. After all, a recount simply is a tabulation of the votes for the several candidates; is it not?

Mr. BLACK. Sure.

Senator HRUSKA. A contest would bring in allegations of fraud, lack of qualifications, lack of residence, lack of citizenship, a disqualification for conviction of felony, and so on.

Is it conceivable, in this age of obstructionism, there might be an attempt to disrupt the proceedings as happened in the Chicago seven trial, for example. Could it be envisioned that those who would be interested in stultifying and frustrating the system would challenge each individual vote and each individual voter? After all, in my State, they have to sign a book each time they come into a polling place. They would take each of those and challenge each one of them and call for proof. In that way, there would be such a complete state of chaos and delay that no one would know when we would ever come to a point of reaching a final count and final decision in such court proceedings.

Then the findings would be subject to appeal.

Mr. BLACK. Senator, even granting good faith, though I agree with you that this possibility of bad faith exists.

Senator HRUSKA. We know that there is such a thing by our judicial history of the past few months.

Mr. BLACK. But even granting good faith, I think it would become the duty of the

manager of anybody's campaign that might be advantaged by a recount to search very carefully, in good faith, for fraud, irregularity, and the sort of technical objections to voting that you refer to, so that even without this willful obstruction element, I should think that in a close election, it would be almost inevitable that the vote everywhere would be scrutinized and contested, and every possible irregularity sought after, whereas, under the present system, it usually does not matter and people just do not bother with it.

Senator HRUSKA. Is it not a fact, however, that under the present system, compartmentalized as it is among the several States, that probability would be reduced and held to a minimum?

Mr. BLACK. It is.

Senator HRUSKA. Certainly, if we judge by past experience, it has been held to a minimum.

Mr. BLACK. It is held to a minimum, I think for the obvious reason that it just really does not matter. In most cases, it will not make a difference whether there are 400 or 500 irregular votes in Austin, Tex. Either the Texas electoral vote will not be needed because it will not make a critical difference, or the 500 votes in Austin will not affect the Texas electoral vote because the popular vote is so lopsided in Texas. In either of those cases, there is no occasion for contest or recount.

Our system does, by this compartmentalization, reduce it to a minimum. Also, when it has to happen, it happens on a much reduced scale.

I tremble to think how hard it would be to decide who won in as close an election as 1960 and 1968. I doubt that anyone will finally be satisfied who the winner was. I doubt that the meter really reads that fine, if you scrutinize carefully every single vote, and I again suggest that, even without bad faith, it would really be the duty of those in charge of a campaign to see that this is done.

Senator ERVIN. In a lot of areas in the country, they still use paper ballots. My county uses paper ballots. And my experience has been that the people who count the ballots are normally the same people who have been there all day conducting the business at the polls and, in several instances, people who have been at the polls and worked around the day. They count these ballots under great disadvantages, because they are fatigued and it is a very difficult thing for the mind to keep running on counting ballots; the most honest men can make mistakes.

Mr. BLACK. Certainly.

Senator ERVIN. When you have 183,000 election precincts in the country and you have a very close election, it would make very little difference in that the 183 differences that you could discover that way might make a very substantial difference in the votes. They would not be able to catch it as long as a party is a part of the electoral college system. But when you take advantage of all the possible errors and all the possible frauds in 183,000 precincts to determine who is elected President in a close election, I think it is something that is beyond comprehension.

Mr. BLACK. I fully agree with that, and entirely agree with Professor Brown's testimony. But I would suggest that even in an ideal imagined world, where there are no recount problems, a change of this kind in the structure of the Government, with its repercussions in the party system, judged against the presumptions created by the history of success of this Constitution as a whole, simply fails to make a case.

I would make one further observation and then just perhaps say briefly what I would favor—I am not against all change on this—but the goal is never stated, but perhaps there is behind the present proposals a kind of inchoate idea that it is possible to elect as President of the United States the man that most people want as a first choice. I would suggest that that is not attained by any of these proposals.

Let us say you win if you get 40 percent of the vote. It may well happen that the other 60 percent of the voters would have you as their last choice. I think that was probably the case with Abraham Lincoln, that he got about 40 percent—not quite 40, I believe—and that is among the other three candidates, the supporters of any one of them would have voted for any one of the three rather than for Lincoln.

So by such a system, you are not insuring that people get their first choice. The run-off system does not assure it. My earliest political experience, as a boy in Texas was in the run-off between Ma Ferguson and Felix Robinson—I very much doubt that either one of them was the first choice of a majority of the people in Texas.

Senator ERVIN. I think there is another consideration that bolsters your position in respect of that point. That is the fact that you have a State in what you might call a one-party State, or one-party area. The local election is all decided in the primary. There is no incentive for those people to come out and vote in the general election.

Mr. BLACK. Yes.

Senator ERVIN. Plus the fact that in some States, sometimes, people come out to vote in large numbers, not because of the candidates for President but because of some acute local issue, some statewide issue, in that particular State. So the fact that a man gets the majority of the popular vote in a given election does not demonstrate that he is really the choice of the majority of all of the voters that had gone out to the polls.

Mr. BLACK. That is certainly true. That leaves the question of intensities.

I am simply pointing out that the goal of a President who is the first choice of voters, or of those who might vote, either one, is not anything attainable by these proposals necessarily, or perhaps by any proposal. I am just not sure that it is a feasible goal, possibly because such a person will never exist.

We have a way of accommodating and getting candidates in front of the people that pretty well recognizes this.

Senator ERVIN. I had a good friend in North Carolina in 1948, when we had President Truman running on the Democratic ticket and Governor Dewey on the Republican ticket, and Sharon Thurmond on the State's Rights ticket, and Henry Wallace. I had a friend who said, I am just going to form me a political party of my own and I am not going to let anybody else join it, because, he said, I do not like dissension.

Would not a party tend to proliferate or form splinter parties and some of these parties would be concerned with only one or two issues?

Mr. BLACK. It seems to me that that is a very good forecast. It has been made in such detail and with such plausibility by my colleague, Bickel, that I have not really taken it up here. It is in his book, "New Age of Political Reform." I am wholly convinced by what he has to say and what Professor Brown has said on that. We are, of course, prophesying or forecasting, and we cannot be absolutely sure.

But again, I emphasize that we are dealing with a system which has, up to now, been quite successful. And when we see the possibility, the good, solid possibility of these kinds of shoals and rocks in another system that is untested and may develop worse defects than even those that Bickel and I and Professor Brown are able to think of in advance, is put us on a kind of chartless ocean in a new kind of presidential politics that we ought to be very, very careful of.

If I may presume just a moment more on the committee's time, I would say that it does seem to me that there are a few problems which I think could be agreed upon as right for solution. None of us, I think, hesitates very much over the case of the faithless elector, whether he would be dealt with by binding him or by simply abolishing the office of elector and substituting a count; that is immaterial. For my part, I like conservatism in style, and I do not see anything particularly damaging about having people assemble in a State capitol. It is a ceremonial act that is harmless.

But I think they should be bound by the vote of the people, by the expectation of the people who voted for them.

A great deal of the dissatisfaction with the present system stems from the mode of voting in the House of Representatives. That is where the real trouble is. It seems to me that the House of Representatives is an excellent place—a fresh House of Representatives with a new mandate from the people is an excellent place for resolving a deadlocked election. But I do think that a man-by-man vote is needed. To me, there would be hardly a whisper of preference between that and the system of assembling both branches of the Congress in a manner which duplicates the numbers in representation of the electoral college itself, for purposes of resolving a deadlocked election.

It seems to me that those reforms would take care pretty much of everything that is really to be feared in the present system, and that the sensible and sound thing to do would be to go about that far from now and see how it works out.

I think that another minor change that might be well would be to have the House of Representatives vote on the first two names in electoral college votes rather than the first three. It seems unthinkable that the House would elect No. 3 in such a vote, and I would look on this as a step strengthening the two-party system and guarding against some possible anomaly that might come up.

Senator ERVIN. I share that view. That is one thing that prompted me to introduce what Attorney General Katzenbach had recommended, because I think it would be quite a shock to the country if you elected a President in the House, or any of them, the House or the Senate, if either of them voted to elect a third man.

Mr. BLACK. Yes, I was not aware that that proposal had been entered. There have been so many proposals, it is hard to keep them straight.

That is all I have to say.

Senator ERVIN. Do you have any choice between these—in other words, as I see it, you think we should get rid of the possibility of having a faithless elector?

Mr. BLACK. I think so. I think that so far violates what is now the expectation of the country and of all the people connected with this that it would be a real shock if an election ever were decided in that way, and I do not think legitimacy would attach to the Office of the President who was chosen in that manner, or whose choice was produced by a defection of an elector after he had been elected on the present assumptions.

Senator ERVIN. Do you think, with the elimination of the possibility of having a faithless elector, and with the change in the method of requiring the States to vote in case of a deadlock that most of the difficulties would be obliterated?

Mr. BLACK. I think if I had my choice, that is what I would do: the minimal possible change consistent with what seems to be an apprehension of general difficulties that one can put one's finger on and say, you can foresee that this really would work very well.

Senator ERVIN. Mr. Katzenbach's proposal, which I have introduced, provides that in the event no candidate received the majority of the electoral vote, the House and Senate

sitting together, with each Senator and each Congressman having a vote, would select a President from among the top two candidates.

Mr. BLACK. Yes.

Senator ERVIN. You see no great difference between that method and allowing the House to do it?

Mr. BLACK. I see no great difference, and I think the choice between those two things is a very close one. I do not think either one of them would work out badly.

Senator ERVIN. Really, the only difference between this and letting the House of Representatives elect him would be on the basis of population, and the other would be more on the basis of an electoral college.

Mr. BLACK. The situation of the joint session would exactly duplicate the electoral college, with the exception of the District of Columbia electors.

Senator ERVIN. I used to be much concerned about the fact that in the State, the man who voted for the second candidate or third, fourth, or fifth, his vote was not counted. But sort of mediating on the federal system, I feel as you stated a while ago, that there are some things you cannot explain why it works or why we get this strength in the Constitution. Reflecting on that, I do not think that is too bad.

Mr. BLACK. I do not, either, because if Mr. Bahnzaf's mathematics are right, if the calculations of practical people in politics for decades have been right, the man in the large State who has relatively less representation in the Senate will at least be attended to with respect to the next election elsewhere, and this effect of which I spoke, this compensating effect, would work out as to him.

Another thing, of course: Somebody always loses his vote, somebody wins. You could argue that the man who votes for a loser in a congressional race loses his vote. The winner takes all in that case.

Senator ERVIN. Yes.

Mr. BLACK. I think the concept of your vote being lost has been insufficiently thought to the depths, perhaps, because if you lose, you always lose your vote in a sense, but you have had a chance to win it.

Senator ERVIN. I am glad you made that observation, because I think it is a sound observation, and does away with the conclusion that it is a great tragedy, because he certainly loses if he votes for the losing candidate for Governor or for any other office.

Mr. BLACK. Right, and you have to decide whether this compensating effect is, which prevails with the winner take all system, is enough to justify this. My conclusion would be that it is.

As I say, it is a conclusion I make against the background of the demonstrated success of this whole constitutional system.

Senator ERVIN. I would infer, and if I am wrong in this, perhaps you will correct me, I would infer from your testimony that you would come to the conclusion that the Katzenbach proposal which I have introduced substantially meets what you think should be done in this case?

Mr. BLACK. I believe, as I understand it; yes, Senator. I think that is correct.

Senator ERVIN. I would like to ask you this question. You may answer if you wish to, and need not if you do not.

My proposal essentially is that we retain the electoral vote, we abolish electors. We keep the principle of winner take all. We abolish electors and do away with the possibility of faithless electors. Then provide that in the event no candidate gets the majority of the electoral vote, the Senate and the House, sitting together, each Congressman and each Senator having a vote, would elect the President out of the top two candidates. The Bayh proposal provides for a runoff—for a popular election, with a runoff in the event no candidate get the top 10 percent of the popular vote.

Senator Tydings' proposal provides that we keep the popular election principle, that provides that should we have a runoff, we then provide for an electoral vote in case the candidate does not receive the majority of the votes.

Which of those is preferable?

Mr. BLACK. You mean of the latter two?

Senator ERVIN. Yes.

Mr. BLACK. I would say yours is greatly preferable to any of them. But of the latter two, I think the Tydings proposal, because it avoids the terrible runoff business and avoids this fractionating.

Senator ERVIN. Do you agree with me that the Bayh amendment, amended by the Tydings amendment, still leaves the problems that arise out of the dangers of a recount or a contested election based on fraud?

Mr. BLACK. Yes, sir; I do.

As to your proposal, I would only note one possible disagreement. That is that at the present time, the custom of "winner-take-all" is decided upon by each State. The mandate is that the elector shall be decided upon in such manner as the legislature of the State shall direct. I do not know why that should not be maintained so that in the future, if a State conceives it to be to its advantage to elect by district or any other way, it can do so. I do not know just what function that might serve at some future time, but I see no need in changing that and completely constitutionalizing the winner-take-all rule.

THE CASE FOR THE ELECTORAL COLLEGE

(By Judith A. Best)

The case for the electoral college system is that it is compatible with and supportive of the American idea of democracy, and that it is an integral part of our "solar system of governmental power." The distinctive element of the electoral college system is the federal unit rule principle not the office of presidential elector. This system emerged in 1832 at the same time as the national party nominating convention system.

The American idea of democracy is complex not simple, federal not all-national, consensual not strictly majoritarian. It was designed to balance two frequently incompatible things: liberty and equality. The organizing principle of the American system of government is the principle of the concurrent majority under which coalition-building and compromise create broad cross-sectional majorities that provide moderate government and are resistant to tyranny.

The electoral college system has a bias in favor of: (1) the winner of a cross-sectional popular plurality, (2) a single election, (3) the two-party system, (4) large, competitive two-party states and well organized or self-conscious minorities in urban-suburban areas within such states, (5) ideologically moderate candidates and parties, and (6) electoral certainty. It has a bias against: (1) sectional candidacies, (2) contingency elections, (3) third parties, (4) homogeneous regions and one-party states, (5) ideologically extremist candidates and parties, and (6) the premium on fraud. These biases of the electoral college flow directly from the federal unit rule principle.

Critics of this system are too prone to indulge in games of mathematical speculation and to ignore the political and historical realities. They have yet to make the case against federalism and the principle of the concurrent majority. If and when they do, we must consider a complete revision in our system of government, including the Senate, the Supreme Court, the Amending Procedure and, indeed, the Constitution itself.

The following case for the electoral college system is not a case for the system established by the Founders in the Constitution. Contrary to the usual understanding, the date of the emergence of our current presidential election system is approximately 1832 not 1789. The original system devised by the Founders not only did not work as they had intended but was a mere embryo of the system as we know it today. The distinctive element of the electoral college system is the unit rule, according to which the popular votes for President are aggregated under a federal principle that awards all of a state's electoral votes to the candidate who wins a statewide popular plurality.

The Constitution left it to the states to decide how their presidential electors would be selected. As a result, a diversity of methods were employed during the first eleven presidential elections.[1] As late as 1828, one-fourth of the states did not use the unit rule. In 1828, Maine, Maryland, New York and Tennessee used the district method of aggregating popular votes and in Delaware and South Carolina the electors were chosen by the state legislature. By 1832, all but two states had adopted the unit rule; Maryland used the district system and in South Carolina the electors were chosen by the legislature; 1832 was the year when the system assumed its peculiar, characteristic form.

The essential component of the electoral college system is the unit rule and not the office of presidential elector. Faithless electors make headlines and arouse our moral indignation, but they have had no practical effect on any election. More than 17,000 electoral votes have been cast since the founding, and less than 10 of them can be called faithless or miscast. If the office of elector alone were abolished, the system as we know it would not be altered. Whether there remains some potential utility in this office or not, whether the benefits of eliminating the office of elector justify the effort to pass a constitutional amendment are minor, indeed, side issues.[2] The intrinsic character of the electoral college system is derived from the unit rule and not from the theoretical independence of electors. The actual, the paramount question about the electoral college system is whether the popular vote for President should be aggregated under the federal unit rule principle.

No electoral system is neutral. Every electoral system, as a practical matter, favors certain groups and interests and discriminates against others. Therefore, the issue is not whether the electoral college has biases, but rather whether the biases of the electoral college are compatible with and supportive of the American idea of democracy, whether the electoral college is an integral part of our system of government. As Senator John Kennedy put it, when he and Senator Paul Douglas led the fight against a proposal to change the system, "it is not only the unit vote for the Presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider the others."[3]

What, then, is this "solar system", what is the American idea of democracy? It is, has been, and was intended to be a system of concurrent majorities designed to balance two very high but frequently incompatible things—liberty and equality. We are not, have never been and were not intended to be a simple majoritarian democracy, the regime whose dedication to equality is so singleminded that it will readily sacrifice liberty to achieve its goal. No attentive reader of the Constitution or of the Federalist Papers can fail to recognize the Founder's overwhelming fear of majority faction, of majority tyranny.

Their fear, however, was moderated by hope, the hope that a solution had been found, a remedy discovered that would allow

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men to enjoy both liberty and equality. That solution was a large heterogeneous society governed by majorities created by coalition-building within the framework of a federal system. The solution was a system that divided and redivided power, that set interest against interest, ambition against ambition; a system that could operate only through compromise, negotiation, bargaining and accommodation. Diversity and division of power would safeguard liberty in a democratic regime. Coalition-building and compromise would create cross-sectional moderate majorities that can satisfy the egalitarian principle of democratic regimes as well as govern.

The American idea of democracy is not the populistic principle of the unlimited sovereignty of the majority, and particularly not of the unlimited sovereignty of all-national majorities. The unlimited, unrestrained, unqualified exercise of power by the one, or the few, and yes even by the many is, according to the American principle of democracy, the very essence of tyranny.

Our "solar system of governmental power" is filled with devices or intermediary institutions to protect minorities, to prevent the formation of all-national majorities and to limit the power of ordinary majorities. To mention just five of the most obvious and important ones, there are the Constitution itself, the amendment procedure, the Supreme Court of the United States, the United States Senate, and of course, the electoral college system. All of these directly or indirectly incorporate the federal principle, impose a federal-geographic limitation on the exercise of governmental power.

None of these institutions and procedures operates simply under the principle of one citizen, one equally weighted direct vote. One third of the power of the national government, that lodged in the most powerful court of law the world has ever known, is exercised by nine men who are neither selected by nor subject to removal by the direct popular votes of the people. One half of the legislative power of the national government is exercised by one hundred men who are selected by the people under the constitutional principle of the constant two. This principle means that the voters in the least populous state have the same number of Senators as the voters in the most populous state. If equity lies in numbers alone, the Senate is a severe anomaly in a democratic republic.

But the American idea of democracy is not the idea of a simple doctrinaire majoritarianism. It is not government by adding machine. And this, because the size of the popular vote, whether a plurality or a simple majority, does not suffice to maintain free government, because the distribution of the popular vote is an essential support for moderate and free government, because the intensity of preferences must be considered along with the number of preferences, because equality is not the only goal of the regime.

If, then, the principle of the concurrent majority is the organizing principles of our solar system of governmental power and if the American idea of democracy is a balancing of liberty and equality, are the biases of the electoral college system compatible with and supportive of this system, this idea?

As it actually operates, the electoral college system has a significant number of biases. It has a bias in favor of: 1) the winner of a cross-sectional popular plurality, 2) a single election, 3) the two-party system, 4) large, competitive two-party states and well organized or self-conscious minorities in urban-suburban areas in such states, 5) ideologically moderate candidates and parties, and 6) electoral certainty. It has a bias against: 1) sectional candidacies, 2) contingency elections, 3) third parties, 4) homogeneous regions and one-party states, 5) ideologically extremist candidates and parties, and 6) the premium on fraud. These biases must be closely examined to determine how they operate and interact.

The presidential election system is a two stage election in which popular votes are converted into electoral votes under a federal principle. In the 1976 general election, Jimmy Carter won with 50.5 percent of the vote for a margin of 2.1 percent over Gerald Ford. When these votes were aggregated in the second stage under the federal unit rule principle, Carter won 297 electoral votes or 55 percent of the total. Thus, Carter won a higher percentage of the electoral vote than of the popular vote. There was nothing unusual about this disparity. It occurs time and again. Its political significance is that it reinforces the plurality penchant of the college.

The system is essentially a plurality system that magnifies the national plurality winner's margin of victory in the electoral vote. Because the unit rule awards 100 percent of a state's electoral vote to the candidate who achieves a statewide plurality, the President-Elect will receive a higher percentage of the electoral vote than he has won in the popular vote. In the thirty-six elections held since 1832, the average increase in the national plurality winner's margin in the electoral votes is 19.3 percent. In every election but one, the multiplier effect of the unit rule worked to the advantage of the undisputed winner of the popular plurality.

This does not mean that the multiplier effect gives the plurality candidate a greater mandate. The electorate largely misses the fact of the electoral college, and election analysts know full well that the multiplier effect is artificial, that the real mandate is derived from the popular vote. What this multiplier effect does mean is that the system is biased in favor of the winner of the national popular plurality, and that it makes a contingency election highly improbable.

There is but one addendum to this bias of the electoral college system, but one exception to the advantage given to the plurality winner: the bias against a purely or predominantly sectional candidacy. A candidate whose appeal is sectional and not cross-sectional, a candidate whose popular vote support is geographically narrow and deep loses the advantage of the multiplier effect. There are no electoral vote bonuses for candidates who win a state by a landslide. The top prize is 100 percent of a state's electoral votes whether a candidate polls a simple plurality or 85 percent of the statewide popular vote.

This bias against sectional candidacies is clearly illustrated by the election of 1888, when Grover Cleveland, who had a narrow popular plurality, lost to Benjamin Harrison, after running a sectional campaign. Cleveland emphasized the sectional tariffs issues and increased the Democratic party's margins in the already solid South by 5 to 17 percent over the election of 1884. The average increase in the Southern states was 9 percent. To put it mildly, this strategy was dysfunctional since the unit rule gives greater rewards to candidates who muster a statewide plurality than to candidates who win a state by a landslide, such as Cleveland's 83 percent in South Carolina. Any votes a candidate gathers in excess of a statewide plurality are "wasted" because they do not yield electoral votes. In a closely contested election, geographic concentration of the popular votes is as strategically undesirable as it is politically undesirable.

Furthermore, the multiplier effect works well, produces a plurality President, even in the closest elections, and it will continue to work well as long as our power oriented parties give as much concern to the distribution of their popular votes as to the number of their popular votes. In the closest election in our history, the election of 1880, when Garfield led Hancock by a miniscule 0.1 percent of the popular votes, Garfield won 57.9 percent of the electoral votes for a magnification of 9.6 percent over his popular vote.

In 1960, the second closest election, when Kennedy apparently led Nixon by less than 0.2 percent of the popular vote, it increased Kennedy's electoral vote percentage by 6.7 percent. In 1884, when Cleveland led Blaine by a mere 0.2 percent of the popular vote, it worked again exaggerating Cleveland's electoral vote percentage by 6 percent. In 1968, when Nixon led Humphrey by 0.7 percent of the popular vote, it expanded Nixon's electoral vote percentage by 12.5 percent. Under the unit rule the distribution of the popular votes may be as important as the number. Not every sectional dispute can be moderated by an election system, but the antisectional bias of an electoral system in a country that has already suffered one civil war too many should be prized.

A word must be said about the shift-in-votes argument used by several analysts to suggest that the system is not a reliable plurality system.[5] In large part this argument is a parlor game of speculation in which numbers are moved from one column to another in a political vacuum and often without regard to the election laws.[6] Several analysts have argued that a switch of less than 1 percent of the votes in New York in the 1844 election would have made Henry Clay a runner-up President. As a simple mathematical proposition, it is true. But it abstracts from the political world where such shifts would have to occur. What would produce such a shift? Is it likely that whatever produced such a shift would have no effects in any other state? If the cause of such a shift is some political act, (and if it is not, does this mean that votes are cast randomly and arbitrarily?) then the effect would not be isolated to one state but could change or reverse the results in other closely contested states.

In games of speculation, all kinds of fancies may be entertained. Let us suppose, to take an obvious example, that Clay had held firm to his preconvention opposition to the salient issue of the annexation of Texas. This might have provided him with the votes he needed to win New York. But we cannot conclude that this would have made him a runner-up President since this same political act would probably have cost him votes in Tennessee where he had a margin of but 113 popular votes. Without Tennessee, Clay would not have been elected even if he did win New York.

Unless the proposed shifts occur in and are limited to the states selected in our game of speculation, the predicted result will not obtain. Numbers are easier to manipulate and control than voters, and it is fun to create a parade of horribles in a conjectural world over which we have complete control. Evaluations of basic political institutions, however, are more reliably derived from practical effects than games of speculation. What experience has demonstrated is that the electoral college system is a system strongly biased in favor of the winner of a cross-sectional popular plurality.

Is this bias functional given the American idea of democracy? Plurality systems are an aberration of majoritarian theory which requires that elected officials have the support of a majority of all citizens. Jimmy Carter is a majority President, that is he received a majority of the popular votes, but he was not the choice of a majority of the people. Only

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53 percent of the electorate bothered to vote, and Carter was the choice of merely 50.5 percent of that 53 percent. Thus, he was the choice of approximately 27 percent of the people. Despite this deviation from strict majoritarian theory, the people are not disturbed, and give every appearance of accepting the Carter Presidency with good heart and hope.

In practice the majority requirement is too stringent. It would necessitate compulsory voting. Run-off elections with all their attendant cost, confusing, intrigue and delay would become the rule if the majority requirement were strictly enforced. We are a pragmatic people, and though a plurality system does not satisfy doctrinarie majoritarians, it has satisfied us.

Indeed, our plurality Presidencies compare quite favorably with our majority Presidencies. For fifteen presidential terms we have been governed by a minority President, one who received a plurality rather than a majority of the popular vote. Among these terms are seven that have been rated among the best in our history: those of Polk, Lincoln, Cleveland twice, Wilson twice and Truman. When we recall that Richard Nixon, the President who won the highest popular vote majority in the history of the Presidency, resigned the office in disgrace under the threat of impeachment, or when we recall that Lyndon Johnson, the Persident with the second highest popular vote majority, could not seek a second nomination while engaging in the most unpopular war in the nation's history, we may begin to perceive that the majority principle is not a panacea. We may begin to understand why a pragmatic people does not worship at its altar. In the interval of merely eight years, from 1964 to 1972, the people have witnessed two record book presidential popular victories turn into national disasters. Strict adherence to majoritarian theory is no guarantee of good government.

Nor are we fastidious about even the popular plurality principle. We have just calmly weathered the Presidency of Gerald Ford, a man for whom not a single popular presidential ballot was cast before he attained the office. There are situations when the uninterrupted flow of government is of higher priority than theoretical purity. The lessons of the past decade indicate that the people are quite tolerant of practical and prudential compromises of majoritarian theory. What the people really will not tolerate is a President whose policies or whose advisors are thought to be immoral, even if he has been selected by an overwhelming popular majority.

Even if a plurality system is sufficiently equitable, this plurality system is unusual because of its bias against sectional candidacies. A candidate can win a sectionally based popular plurality and lose the election. The system demands cross-sectional support. It demands a broadly based victory. It demands political and not simply arithmetical pluralities. It is a system that finds numbers to be necessary but not enough. It is a system that recognizes the difference between a People and a mass.

We have good reason to know that sectional candidacies breed civil strife and civil war. We are a continental nation; we are a heterogeneous people with a wide variety of religious, racial, ethnic, economic and ideological interests that must be consulted and considered. The electoral college bias in favor of broad cross-sectional candidacies is highly functional in such a nation.

The federal-geographic rider works in the electoral college the same way that it does for the Congress. It incorporates the Presidency into the system of concurrent majorities. It forces candidates to create broad coalitions. It provides the incentive to our national parties, as James MacGregor Burns pointed out, "to widen and 'flatten out' their vote." In fact, Burns has concluded that this is "the historic achievement of the presidential party", the party whose strategy is shaped by the electoral college.[7]

Our deep and legitimate concern about sectional candidacies was recently reflected in the 1976 election. As the election night vigil wore on and one by one the states fell to Carter or Ford, the maps of the United States, used by the media to graphically illustrate the election returns, began to show a disturbing pattern, a sectional pattern, an apparent East-West split, an apparent division of the country into two opposing if not hostile camps. The only state that Carter won in the West was Hawaii. The commentators in the television media began to remark about it. The next day newspaper stories focused on it. Finally, President-Elect Carter was asked about it in a press conference in Plains, Georgia. Given the East-West split of the states, did the President-Elect believe he had a mandate to govern? Could he effectively lead the whole country?

The pattern, of course, was inaccurate, which is why the issue quickly disappeared. Carter was not merely a sectional candidate, and he knew he could not be if he were to be victorious. He had worked diligently to overcome Eastern, Midwestern and Western voter perceptions of him as a Southern candidate. Some of his campaign errors, such as the Playboy interview, may be attributed to his zeal to overcome the taint of sectionalism. His efforts were moderately successful. He did have significant support in the West. He was very close in California and Oregon and reasonably close in New Mexico, Washington, North Dakota and South Dakota. Even so, the Harris poll indicates that his entire margin of victory came from the South. Outside of the South, Ford had a 0.3 percent margin over Carter. Thus, while sectionalism was a factor in the 1976 election, it might have been a bigger factor if the electoral college system had not been there to provide the incentive to "widen and flatten out" the vote.

The multiplier effect of the unit rule not only favors the plurality candidate, it produces a single election. Once the electoral college system had fully evolved, the likelihood of contingency elections became remote. We have not had one since the unit rule was adopted by almost all of the states. And, in light of recent history, it seems more probable that the Twenty-fifth Amendment, dealing with vice-presidential vacancies and presidential disabilities, will be far more important to the institution of the Presidency than the contingency election procedures established by the Founders.

The contingency procedure is utilized only if no candidate receives a majority of the electoral votes. This could occur in an election with more than two serious candidates. The electoral college, however, discriminates against both sectional and national third parties, and the multiplier effect continues to magnify the plurality winner's margin of victory in the electoral vote. In years when more than two candidates won electoral votes, the average increase in the plurality candidate's electoral vote over his popular vote was 17.1 percent, only 2.2 percent less than the average for all elections.[8]

The college's strongest bias is against national third parties with no sectional base. Such national third parties, like sectional third parties, may act as spoilers and change the balance of power between the two major parties, but unlike sectional third parties they cannot win electoral votes, and therefore cannot deadlock the college. An excellent illustration of this is the 1948 election when Henry Wallace, the candidate of a national third party, and Strom Thurmond, the candidate of a sectional third party won 2.38 and 2.40 percent respectively of the popular vote. Thurmond won 39 electoral votes and Wallace none.

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The college's bias against national third parties is widely recognized, but its bias against sectional third parties is not as clearly understood. A sectional candidate is under a severe handicap because the unit rule favors a cross-sectional vote distribution pattern. Many of the popular votes for a sectional candidate are "wasted" because of their narrow and deep distribution.

Despite the sectional third party candidate's apparent advantage over a national third party candidate, he cannot win the election. It is feared, however, that he could deadlock the college and provoke a contingency election. This would be a marvelous feat, something akin to walking a bouncing tightrope while simultaneously being pelted by competitors and buffeted by spectators. To deadlock the college, a candidate would have to win some electoral votes. Then he would have to accurately guage the strength of each of the major party candidates in each of the fifty states and the District of Columbia. He would have to take votes away from both of the major parties, and these votes must be strategically placed in specific states. Too much here or too little there not only will mean failure to deadlock but also could produce a electoral vote landslide for one of the two major party candidates. While such a candidate is raiding the major parties, they are not complacent and indulgent. They rush out to secure their followers and to recapture those who have strayed. The efforts of the major parties and the prospect of casting a wasted vote in a close election create strong counter-pressures on the voters to whom the third party candidate must appeal.

The third party candidacy of George Wallace in 1968 is a classic example of the single election bias of the college. Wallace was a sectional candidate who ran a national campaign and amassed 4,100,000 votes outside the South for which he received no electoral votes. Although he won 13.5 percent of the popular vote, he won only 8 percent of the electoral vote, less than half of the average distortion of the multiplier effect in three-way electoral vote contests. His attempt to deadlock the college was a dismal failure.

By focusing on what could happen in a theoretical mathematical world rather than on what does happen in the actual political world, critics of the electoral college system attempt to convert the system's successes into failures. They are so intent upon mathematical possibilities that they forget about such political factors as voter psychology and most especially the role of our power oriented political parties.

Despite the fact that the 1968 popular vote contest was the fourth closest in our history, it was not a close electoral vote contest. With the unit rule magnifying his margin of victory by 12.5 percent, Nixon won 56 percent of the electoral vote as compared to Truman's 57 percent in 1948 or Carter's 55 percent in 1976. There was little danger of a deadlock in 1968. For all his effort, George Wallace won only six more electoral votes than Strom Thurmond, and reduced Nixon's electoral vote percentage over Truman's by a mere 1 percent.

The result of the 1968 Wallace deadlock strategy is merely a part of a larger pattern, a pattern of defeat for third party strategies. There have been eleven presidential elections in which a third party candidate won electoral votes. In none of these elections were we close to a deadlock, and in five of them the victor's percentage of the electoral vote surpassed sixty percent. Several of these third party candidates polled high percentages of the popular vote: Millard Fillmore received 21 perecnt in 1856. Breckenridge and Bell had a combined total of 31 percent in 1860. Robert La Follette received 17 percent in 1924. None of these prodigious efforts were any match for the multiplier effect of the unit

rule. In 1856, Buchanan won with an electoral vote of 58.7 percent for an increase of 13 percent over his popular vote. In 1860, Lincoln jumped from a popular vote of merely 38.7 percent to an electoral vote of 59.4 percent, an increase of 19.7 percent. In 1924, Coolidge won an electoral vote landslide with 71.7 percent for an increase of 17.7 percent over his popular vote.

As it actually operates, the college has a bias in favor of a single election. Is this functional, is this congenial with our governmental system? Yes, it is because it makes for stability, reduces uncertainty, prevents intrigue, shortens the period of interregnum, and allows time for the smooth transition of power. Over and above these things, the single election bias of the college supports the two-party system, the system that, in the words of Austin Renney and Willmore Kendall, "more than any other American Institution, consciously, actively and directly nurtures consensus." [9]

The college's bias in favor of the two-party system is sustained not only by its bias against sectional and national third parties, but also by its bias in favor of a single election. Frequent contingency elections of any kind would weaken or destroy the two-party system whose vitality may depend, as Schattschneider argued, upon its control over nominations.[10] If, as is the case under the current system, a contingency election is highly unlikely, disenchanted partisan factions have little to gain and a great deal to lose by bucking the party nomination procedure. But if the electoral system has no bias toward a single election, if a contingency election is probable, then the second-chance psychology will spread. The parties could fragment as factional leaders scramble to enter the contest. The parties having lost control over the crucial nominating function would cease to be parties at all.

In this continental, heterogenous nation, the two-party system has developed as an extra-constitutional institution to perform a critically necessary function, a coalition-building, unifying function. Madison's idea was to divide and diversify, to encourage the development of numerous contending minority factions rather than a monolithic majority faction. That could be a sound plan if and only if something would serve to create coalitions, concurrent majorities, that could govern. Majorities of some kind are a democratic requirement, and we were, after all, to be a democratic regime. Thus, a major problem posed by the Madisonian system of a large heterogeneous federal republic, with its cultural pluralism and its separation of powers, was to provide some unity and coherence, to provide political majorities.

The two-party system arose in response to this necessity for coalition-building. Not surprisingly, our national party nominating convention system arose at the same time that the unit rule reached full development, 1832–1836. The two-party system is an integral part of the American idea of democracy, and the electoral college's bias in its favor is highly desirable. It is especially desirable at this moment in our history when the two-party system is somewhat indisposed, when the other non-institutional supports for two-partyism have decayed, when politics is individualized and the number of Independents is rising.

The college's partiality is not simply for two-partyism; it prefers moderate candidates and parties. The federal-geographic dispersion requirement quells tendencies to organize parties on class, racial, religious, ethnic, economic or ideological lines. Such factions cannot readily combine their votes across state lines. Even if the two-party system were to survive the abandonment of the unit rule, the parties could be drastically changed becoming highly ideological and dysfunctionally immoderate. Absent the unit rule, factionalism could run wild as candidates would be relieved of the necessity to create broad coalitions. Now, a victorious strategy cannot be based on narrow appeals and extravagant promises to popular majorities in one section of the country such as the populous Eastern megalopolis, or to a dominant racial group, the whites, or to a dominant religious group, the Christians, or to a single-interest constituency such as the anti-forced-busing faction.

Factionalism unleashed is the fatal disease of democracy. The electoral college system is a key institution, one that has harnessed this turbulent force and made it work for rather than against the regime. Now, we are not likely to see a presidential election contest in which Jimmy Carter runs as the Southern Baptist candidate against Jesse Jackson as the black candidate, and Ted Kennedy as the Catholic candidate, and General Brown as the military candidate, and George Meany as the labor candidate, and Earl Butz as the farm candidate. Our long experience under the electoral college system makes such a scenario seem absurd. But it may not be as absurd as it appears when we consider what has happened in Italy, France and Germany, when we remember that to change the rules is to change the game and to change the character, the skills and the strategies of the successful players.

The system also has a bias in favor of large competitive, two-party states and of urban and suburban voters in such states. Again it is the unit rule that accounts for this partiality. The most populous states have large blocs of electoral votes at their disposal, and if they are competitive, if each of the two major parties has a real chance of victory in such states, they will become the major battlegrounds. Since these states are much more representative of the diversity of the nation as a whole than the homogeneous one-party states, these are the most appropriate and functional battlegrounds. The kinds of coalitions that can win in such states are the kinds of coalitions that can win a cross-sectional victory and therefore can govern. Within such states urban-suburban voters have an apparent advantage. A number of election analysts have reached this conclusion along with Yunker and Longley who stated that the data "confirm the urban-ethnic hypothesis at least in the aggregate sense." [11] Again, this urban-suburban advantage is suitable in a nation that becomes more urban-suburban each year. But beyond suitability, it is complementary because it balances the rural-small-town bias of the Congress.

Although no election system can completely prevent fraud, the current system does have a bias against fraud because of the unit rule. Under any system, the closer the election the greater the inducement to cheat. But when, as now, each state is a separate electoral arena, the state boundaries quarantine the disease. Irregularities within a state can contaminate only the electoral votes of that particular state. A few states have a less than sterling reputation for electoral honesty, but in many close elections the results would not be reversed unless the irregularities occurred in from five to eight states and those states are not necessarily the states whose honesty is suspect. Furthermore, because of the multiplier effect, close popular vote contests are not always close electoral vote contests, and the point of the fraudulent activity is to affect the electoral votes through the popular votes. The two stage factor in the election complicates the situation and impedes the activity of the dishonest.

As a result of this bias, few elections are likely to be contested by the loser even when he has good reason to suspect fraud in some states because the fraudulent activity does not always determine the victory. The candidate who demands a recount in the hope of reversing the results must not only pick up votes and/or invalidate some of the votes for his opponent, but he must do so in particular states. A bias against fraud is desirable in any election system, and a bias in favor of electoral certainty is especially advantageous in the American democracy where public sentiment is of such overwhelming importance. Disputes, delay, uncertainty and suspicion could cripple the ultimate winner before he takes the oath of office.

The biases of the electoral college flow directly from the federal unit rule principle. The real questions about the electoral college system are whether the federal unit rule principle should be utilized in selecting the President, whether factionalism is still dangerous to democracy, and whether this principle is an important check on factional tendencies.

If federalism is an anachronism, if cross-sectional, concurrent majorities are no longer necessary to maintain liberty, then perhaps we should abandon federalism for the national legislature as well as for the executive. To do one without the other, particularly to make the President the recipient of the only all-national mandate could change our governmental solar system, could change the balance in executive-legislative relationships to the advantage of the President. The authenticity of the voice of the Congress, speaking for a concurrent majority, could be seriously undermined by a truly plebicitary President claiming to speak most directly and clearly for the general will. The sobering experience of the Watergate era should make us reluctant to further aggrandize the Presidency.

Is the electoral college system compatible with and supportive of the American idea of democracy? The answer, I believe, is yes. The electoral college system is an integral part of our governmental solar system. It exists in a symbiotic relationship with our two-party system. It corresponds to and complements the organizing principles of the Congress. The system is complicated, but we are a complex not a simple democracy. The system is federal, but we are a federal republic. The system is pluralistic, but ours is not a strictly majoritarian regime. The system is resistant to ideological extremists, but we are not an ideological people. The system is predisposed toward two-partyism, but multiparty systems are notoriously unstable, and one-party systems are undemocratic. The system looks to the formation of concurrent rather than simple arithmetical majorities, but the organizing principle of the whole governmental system is the concurrent majority. But above all else, the system balances the principles of liberty and equality because it at once utilizes the numerical votes of factions while restraining their destructive potential.

FOOTNOTES

[1] Neal R. Peirce, *The People's President: The Electoral College in American History and the Direct Vote Alternative* (New York, 1968), pp. 310-311.

[2] For comment regarding elector utility see: Wallace S. Sayre and Judith H. Parris, *Voting For President: The Electoral College and the American Political System* (Washington, 1972), p. 149; and Judith Best, *The Case Against Direct Election of the President: A Defense of the Electoral College* (Ithaca, N.Y., 1975), pp. 188-190.

[3] *Congressional Record*, Vol. 102, Pt. 4, 84th Congress, 2d session (1956), p. 5150.

[4] For a complete picture of the distortion between popular and electoral vote percentages see Best, *Case Against Direct Election*, pp. 56, 59, 62.

[5] For this argument see: Peirce, *People's President;* and Harvey Zeidenstein, *Direct Election of the President* (Lexington, Mass., 1973).

[6] For a fuller analysis of this argument see Best, *Case Against Direct Election*, pp. 72-79.

[7] James MacGregor Burns, *The Deadlock Democracy* (Englewood Cliffs, N.J., 1965), p. 251.

[8] Best, *Case Against Direct Election*, p. 91.

[9] *Democracy and the American Party System* (New York, 1956), p. 508.

[10] E. E. Schattschneider, *Party Government* (New York, 1967), p. 83.

[11] "The Biases of the Electoral College," in Donald R. Matthews, ed., *Perspectives on Presidential Selection* (Washington, 1973), p. 193.

APPENDIX: MINORITY VIEWS, SENATE REPORT ON S.J. RES. 28

BRIEF ANALYSIS OF THE PRESIDENTIAL ELECTIONS OF 1824, 1876, AND 1888

One of the most frequent cited arguments in support of S.J. Res. 28 is the danger of a runner-up President. Proponents of direct election cite three instances where the electoral college has permitted a President to be elected even though he was second in the polling of popular votes. Indeed, in 1824, John Quincy Adams polled 38,149 fewer popular votes than Andrew Jackson but became President; in 1876, Samuel J. Tilden lost the election although he received 254,235 more popular votes than Rutherford B. Hayes; and, in 1888 the incumbent Grover Cleveland was defeated by Benjamin Harrison although Cleveland was a 95,096 winner at the ballot box.

A close analysis of these elections illustrates that in each instance significant and clearly unusual events transpired to effect the final popular vote total. While it cannot be asserted that it is impossible for a candidate in any instance to win the popular vote and lose the Presidency, the elections of 1824, 1876 and 1888 are not good examples of that possibility.

1824 ELECTION

In 1824, our country was approaching its first half century of independence. Many of the concepts in the still new Constitution were being developed. That year saw the first strong contest for the Presidency since 1800, with four candidates, all within the same party, vying for the honor. It must be remembered that our national convention system had not yet evolved and so the candidates all placed their names on the ballot for election day.

When the popular vote was tabulated it revealed that Andrew Jackson had outpolled his nearest contender, John Quincy Adams, by 38,194 votes. However, Jackson's 99 electoral votes were 32 short of a majority and therefore the election was decided by the House of Representatives. In the House, the third place finisher, Henry Clay, threw his support behind Adams and he emerged victorious.

Several things must be considered in this election. As mentioned earlier all candidates were members of the same party, the Democratic-Republicans. This election was a good example of the need for a national convention system. In addition, 6 states were operating on a district system of electoral vote allocation. Most importantly, however, is the fact that 6 states also were still choosing their electors through the state legislature. Therefore, although Adams carried the overwhelming electoral vote in New York and Vermont, he had no popular votes to show for it. Consequently, in the election of 1824, it is highly speculative as to who the actual popular vote winner would have been had there been a system of popular selection of presidential electors as exists today.

1876 ELECTION

In 1876, Republicans were facing a strong challenge from the Democrats to regain the White House, Samuel J. Tilden of New York was given a good chance of being the first Democratic President since before the Civil War. Republican Rutherford B. Hayes promised to end reconstruction in the South if elected, in hope of holding some of the white Southern vote.

After the election, nearly every newspaper announced that Tilden had won a majority of the popular and electoral votes. Republicans, however, concedeing the popular vote loss, declared Hayes to be the electoral winner by one vote. This position was based on double returns from three Southern States, South Carolina, Louisiana and Florida, and Oregon. An electoral commission was established by Cogress to certify the returns of these States. The Commission, composed of eight Republicans and seven Democrats, certified the electoral returns for Hayes, as Tilden went down to a one vote electoral loss, 185 to 184.

While the partisan politics of the electoral commission set off the unusual happenings of this election, there is still another factor that had a significant impact on the outcome. There was widespread fraud practiced, by both sides in garnering popular vote in this election. There were riots, assassinations, murder, and midnight raids in the South to keep Republicans from the polls. Prof. Judith Best, in a study of this election, stated:

"In our centennial year, the electoral process was so debased and dishonored by fraud and intimidation that only an eccentric majoritarian would single out the technical runner-up Presidency of Hayes as a matter for criticism and concerns."

It would be inaccurate to cite the election of 1876 as an example of the people's choice being denied the presidency.

1888 ELECTION

Many opponents of the electoral college agree that the elections of 1824 and 1876 are not good illustrations of a runner-up presidency. However, the election of 1888 is cited as a clear case in which the popular vote winner was denied the White House by the operation of the electoral machinery.

In that year, Grover Cleveland was completing his first term, after succeeding, where Tilden had failed, in regaining the White House for the Democrats after a long absence. Benjamin Harrison was offering a strong challenge from the Republicans aided by a series of ill-advised actions by Cleveland. When the votes were tabulated, Cleveland had seven-tenths of 1 percent more popular votes than Harrison, yet Harrison was the winner by polling 233 electoral votes to Cleveland's 168. Thus occurred what has been termed the "misfire" of the electoral college.

Political analysts have commented that Cleveland's electoral loss occurred mainly because he became a sectionalist candidate. He openly angered the industrial North by pushing tariff revision in 1887 without regard for the political consequences. Prof. Judith Best, commenting on this election, stated:

"The republic's only undisputed runner-up President, Benjamin Harrison, won because his opponent, Grover Cleveland, ran a sectional campaign. The electoral count system discriminates against candidates who rely too heavily on a sectional base. Consequently, it is the electoral count system that provides the presidential parties with the incentive 'to widen and flatten out' their vote."

In addition to the proposition that Cleveland lost because of his sectional emphasis, there are the results of a recent study from the Library of Congress examining the declining role of Blacks in the electoral process of the South immediately after Reconstruction. In reviewing the voting in 11 Southern states, the report cites the anomalous facts of the rise of Black population, with the corresponding drastic reduction in votes of Black majority counties from 1870 through 1890. Explanations for this are cited as fraud and intimidation by a resurgent white population seeking to solidify the political control recently regained after Reconstruction. On June 27, 1890, Representative Robert P. Kennedy of Ohio stated:

"The bald pretense that Grover Cleveland was elected President of the United States by a majority of the people of the United States is subject to the further statement that at this same election a large number of the qualified voters who would have registered their votes against him were not permitted to do so, and hence, by reason of intimidation and outrage, one who would of necessity have been defeated in a fair contest is declared to have been the choice of a majority."

The Library of Congress study concludes:

"The evidence seems overwhelming that not only was the electoral college 'misfire' of 1888 created by intimidation and fraud against black/Republican voters in the South but that the majority of the Nation recognized that this was the case. Thus, to contemporary America, the election of 1888 demonstrated the need to retain the electorial college rather than illustrating how it could be used to thwart the will of the people. . . .

"A summary of the estimate of the shortfalls in the Republican vote in the eleven Southern States suggests a minimum of over 300,000. three times the number to offset Cleveland's reported plurality."

CONCLUSION

As stated above, it is theoretically possible for a candidate in an election with no unusual happenings to win the popular vote but lose the electoral college. However, the elections of 1824, 1876, and 1888 illustrate that this has occurred only under unique conditions not likely to occur under our present system. In the Adams-Jackson contest, the actual popular support of either candidate cannot be tabulated due to the method of selecting electors in a number of states. In the Hayes-Tilden contest, both partisan politics and fraud have obscured our view of the true winner. The election of Harrison over Cleveland may actually have represented the popular will despite the officially reported totals. It is difficult, if not inaccurate, therefore, to conclude that any of these elections constituted a "misfire" of the Presidential electoral process.

Mr. HUDDLESTON was recognized.

Mr. BAYH. Will the Senator yield?

Mr. HUDDLESTON. I am glad to yield.

Mr. BAYH. Mr. President, I do not want to interrupt the Senator from Kentucky's remarks, because I know the Senate is anxious to hear what he has to say, but I want to express the deep feeling of gratitude of all of us who have been trying to do something about this electoral college and its possibility of malfunctioning, the deep debt of gratitude we owe the Senator from Kentucky for his leadership and his willingness to be a part of this program for a long period of time.

Now that the debate is here, I think it is fitting that he is one of the first to participate in the debate.

Also, if I might, I just make the same observation about our distinguished Presiding Officer, the distinguished Senator from Hawaii, who also has been one of the strong supporters of the direct popular vote effort.

I think that shows us the kind of broad cross-section of support we have. It is truly an intranational, from ocean to ocean and beyond, effort to try to do something about this system that threatens, really, to shake the credibility

and the stability of our governmental process.

I appreciate the efforts of the Senators.

Mr. HUDDLESTON. I thank the Senator from Indiana.

Of course, we are all aware of the leadership he has given to this effort, the persistence that he has demonstrated time and again, focusing the attention of not only the Senate of the United States, but the people throughout the land to this problem, and offering the solution that we are now confronting here on the floor of the Senate.

Mr. President, I am pleased to be a cosponsor of Senate Joint Resolution 1 and I ask that I be added as a cosponsor of an identical resolution, Senate Joint Resolution 28. The proposed constitutional amendment contained in these resolutions would change our electoral process by providing for the direct election of the President and Vice President of the United States.

Since the founding of the United States over 200 years ago, we have gradually improved upon our democratic system of government. Through the process of deliberation and compromise we have eliminated weaknesses in the system and made it more responsive to the needs and desires of the people. I believe that Senate Joint Resolution 28 will eliminate an aspect of our system of government which is archaic and contrary to the fundamentals of a democracy.

A democracy is defined as a government which is characterized by formal equality of rights and privileges. From this, one would assume that every citizen should be treated equally in the exercise of one of the most important political rights we have—the election of the President. Unfortunately, this is not the case.

The procedure we presently have for electing the Chief Executive is built around the electoral college. To completely understand and comprehend the concern generated by this procedure and the potential problems posed by it, it is necessary to understand exactly how it operates.

Article II, section 1, of the Constitution provides that—

> Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State is entitled.

To carry out this provision the political parties of the various States nominate by convention, primary or other means a group of Presidential electors. Through direct elections the voters of each State appoint a group of electors by a simple plurality. Most of the States do not even list the names of the electors on the ballot, using instead the "short ballot" which merely names the Presidential and Vice Presidential candidates in lieu of the names of the electors.

In every State but one, the electors are chosen on a winner-take-all basis. This means that the group of electors with a simple plurality, no matter how small, will cast their electoral votes for every voter in the State. No provision is made for dividing the electoral votes on a proportional basis according to the percentage of votes cast for each candidate.

The chosen electors meet on the Monday following the second Wednesday in December in their respective State capitals to cast their votes for President and Vice President. It is these votes and not those of the people which actually choose the two men who will hold the highest elected offices in this country. Not only are the people excluded from directly participating in the election, they are also unable to insure that the electors will vote in a particular way. The electors are constitutionally free agents who may vote as their conscience or interests dictate.

It is not until January that the Congress counts these votes and officially announces the winner of the Presidential election. Should the electors fail to elect a President by a majority vote the matter is then thrown into the House of Representatives, which may elect the President by a complicated procedure. I say "may" because it is possible that a candidate will not get the required majority vote.

In the House each State has one vote, that one vote being determined by the Representatives of each State polling its Members. The candidate who receives the majority of the votes gets the one full vote of the State. However, if the votes are evenly divided or no candidate receives a majority, the State loses its one vote, thereby disfranchising thousands of voters in that particular State.

If after going through this ritual of polls and votes, the House is unable to elect a President by January 20, the Vice President-elect will act as President until a President can qualify. However, the selection of the Vice President may also add to this bewildering assortment of uncertainties. Should the electoral college be unable to select a Vice President by a majority vote, the duty falls to the Senate, which must also choose one by a majority vote.

If both the President and the Vice President fail to qualify by January 20, the Speaker of the House would act as President until either qualifies.

The electoral college system may be criticized on two primary points. First, it is inequitable. Second, it is fraught with potential pitfalls which could cause serious political disruption under certain conditions.

The electoral college was originally devised to meet a unique set of circumstances which no longer exist. The people of the Nation at that time were scattered in remote areas and the communication systems, which could inform them about national issues and political figures, were extremely limited. Furthermore, the concept of electing an executive was in itself new and revolutionary and there was a need to compromise on the issue in order to allay certain concerns.

However, since the inauguration of our democratic form of government, there have been substantial changes which negate the need for the outmoded system we now have imposed upon us. Our sophisticated communication systems insure that every citizen has the opportunity to be fully and completely informed on every issue. In addition, the concept of an executive who truly represents the needs and interests of the Nation as a whole has become firmly established in our political process.

The disfranchisement of hundreds of thousands of voters is one of the most appalling aspects of the present procedure for electing the President. Under the general ticket method of selecting electors, the group of electors with a plurality of votes will be appointed and they will not represent any of the voters who supported other candidates. In other words, the winner takes all. What does this do to the principle of one person, one vote which was so strongly reaffirmed by the Supreme Court in the case of Gray against Sanders? Therein the court held that "The concept of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the 15th, 17th and 19th amendments can mean only one thing—"one person, one vote." Can we as legislators do less than correct a procedure which is so totally opposed to this concept?

Our history contains illuminating examples of the undemocratic results of the electoral college system. The United States has had three Presidents who were elected to the Presidency even though they received a smaller number of popular votes than their closest opponents. Even more disturbing is the fact that in one instance the defeated candidate actually had a majority of the popular vote. Should this happen again I would certainly be hard-pressed to explain to my constituents the justification for it. We do not allow it to happen at any other level of government and we cannot continue to permit it with the highest office in the country.

Under the present system the key States with large numbers of electoral votes have an advantage over the smaller States. These pivotal States usually receive preference in the selection of Presidential candidates because they have large blocks of electoral votes. As a result, these States will usually receive more than their share of the campaign effort. Under a direct election system the large States with high population density would still receive substantial attention. However, this system would be more just because each vote would be equally weighted. Knowing that every vote is equal will force candidates to pursue them with this in mind.

A complex procedure for electing the President which is not completely understood by the average citizen could conceivably lead to extreme feelings of suspicion and distrust in the event a controversial election were thrown into the House of Representatives. This would be even more likely if the person chosen to be President had fewer popular votes than his opponent. The procedure we have now leaves open the possibility of certain groups conspiring to manipulate the system to their own advantage. Even if the system were not abused, the appearance of abuse could have the same adverse effect upon the confidence the

average American citizen has in his Government. A democratic system of government which lacks the confidence of the people will soon find it is totally ineffective in accomplishing its goals.

Faith in our democratic form of government and politicians in general has been severely shaken in the last few years due to several well-publicized scandals, and another serious blow could do irreparable harm. Previous elections also indicate that we may well be flirting with disaster. Presidents Truman, Kennedy, and Nixon received less than a majority of the popular votes cast. While President Carter won a popular vote margin of 1.7 million, the switch of a very small percentage of the vote in Ohio or Hawaii could have given the election to the loser of the popular vote.

The direct election of the President would not lead to the destruction of the two-party system as many would have us believe. The two-party system has not suffered because of the direct election of Senators, Representatives, and State officials and there is no logical reason that it would deteriorate because of this change. It is highly probable that such a change would stimulate the revival of the two-party system in those areas where one party has virtually stopped trying as a result of the winner-take-all policy.

Others would have us retain this antiquated procedure because they believe that it has been the most successful method for electing the national leadership and there is no indication that a new system can work as well. To these doubters we point out that many of these same arguments were used when it was proposed that Senators be elected by the people rather than the State legislatures. In 1913, the 17th amendment made this change and I do not believe that the Senate has suffered adversely because of it. On the contrary, the Senate serves the people more responsibly now that we answer directly to the voters.

Senate Joint Resolution 28, which Senator BAYH has introduced, will correct the weaknesses and inequities in the electoral college. The amendment would provide that the Presidential and Vice Presidential candidates from each party join together as one candidate and be eligible for election by direct popular vote. The joint candidacy receiving the greatest number of votes would win provided they amassed at least 40 percent of the vote. If none of the joint candidacies received 40 percent of the popular vote, they would be elected in a runoff election between the two pairs of candidates receiving the highest number of votes. The advantages to this procedure are obvious. It is simple, devoid of hidden pitfalls, easy to understand, fair, and democratic.

The proposal to reform the electoral college has received support from almost every quarter. In virtually every Congress since the early 1800's there has been a call for changing the electoral college; the American Bar Association has called the present system "archaic, undemocratic, complex ambiguous, indirect, and dangerous"; public opinion polls show that a substantial majority of the people want to directly elect the President; and both the Democratic and Republican Party platforms have called for the reform.

In the Declaration of Independence, Mr. Jefferson noted that—

> Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

I do not suggest that we change a long established form of government for a light or transient cause. This body has studied this matter for many years and the possibility of electing a President who has not received the proper mandate of the electorate is a matter of most serious consequences. I further believe that our constituents will no longer tolerate us to suffer the evil rather than abolish the form. We must act now to rid ourselves of the danger before an electoral disaster overtakes us.

As our Nation and form of government have aged and matured, we have made many changes. We have outgrown many of the latent fears of the 18th century. We are now, as then, the leading democracy in the world. We should no longer hesitate to amend our Constitution to rectify this lingering blemish to our democratic form of government.

Mr. PRYOR. Mr. President, will the Senator from Kentucky yield to me?

Mr. HUDDLESTON. I yield to the Senator from Arkansas.

Mr. PRYOR. Mr. President, I congratulate the Senator from Kentucky for his most eloquent statement.

Not only is this a firm statement in support of abolition of the electoral college, it is also a statement by an extremely solid Senator who has both feet on the ground and who never makes a statement in this Chamber until it has been well thought out, well reasoned, and certainly well researched.

To have his voice become heard in this great debate relative to how we elect a President and a Vice President in this country is, I think, of immeasurable value.

Also, I thank the distinguished Senator from Indiana for his longtime support of this constitutional amendment and for once again bringing this issue to the forefront in this country.

Mr. President, I am very happy that debate on the issue of the direct election of the President and Vice President is beginning in the Senate. I hold very strongly to the argument that those who wish to change the Constitution have the burden of proving that that change indeed needs to be made.

I feel that in the coming days and perhaps even the coming weeks of this debate on direct election it will be proven beyond a reasonable doubt by the proponents that this is a very necessary and very needed change.

Mr. President, a few moments ago in presiding over this body I was listening to the distinguished Senator from the State of Utah talking about the possibility of this change and the potential of whom it might hurt. Would it hurt the large States? He argued that it might. Would it help the small States? He argued that it might. Would it hurt the minorities? He argued that it might.

I say, Mr. President, that this is what I call "nickel and diming" this argument. I say that what we must do is look at this question in the larger context, not just what is good for one small State or one large State or one particular minority. We certainly do not want to hurt anyone in America with this vote or with this change in our Constitution.

Mr. President, when we examine this issue fully, I believe we can and will demonstrate that to abolish the electoral college and to elect our President and Vice President directly by the people of this country, rather than going through a confusing and dangerous method known as the electoral college system, will help this Nation. I think that we will be strengthening our basic system and that we will be encouraging once again a fuller participation by more people within our democratic system.

We talk, Mr. President, about the electoral system that the Founding Fathers established some 200 years ago. We talk about how in their wisdom they established this system for a reason. My research reveals that the only reason we have the electoral college is very simple.

At that time our Founding Fathers adopted this system, we had no way of communicating to the people of this Nation information regarding the identity of candidates for the Presidency and their positions on the issues. Candidates had no way to travel about this country and present their views to the people. Therefore, they had to have someone cast the votes of the American people for them in something known as the electoral college. That is why the electoral college exists. Today, some 200 years later, it is now time for us to recognize the simple fact that America has matured to the extent and to the degree than our citizens can make independent, informed judgments and that it is time for a change.

It is time for every vote in this country to count equally. It is time for every vote in the State of Arkansas to count just as much as it does in the State of Arizona or in the State of New York or in the State of Utah or in the State of Virginia.

This, Mr. President, I think is the consequence of adopting a system of direct popular election of the President and Vice President. It is not grave. It is not going to be dangerous. There is not going to be a sudden and unalterable change that the people cannot digest. But I rather think that the consequence of our sending out to the State legislatures this prospective change in the way we elect our President is that we are going to be giving the people for the first time an opportunity to have a clear, well understood, and fair system where every vote in this country counts equally.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. PRYOR. I am happy to yield to the Senator from Indiana.

Mr. BAYH. Mr. President, I could not

agree more with what our distinguished friend and colleague from Arkansas has said about the mission that we are about here. I wish to say for the benefit of some of our other colleagues who have other business and have not been as intimately involved in this as the Senator from Indiana has, that I think we all owe a debt of gratitude to our distinguished colleague from Arkansas. He is a relative newcomer to this body, but his interest in this particular problem goes back a good many years.

I remember, when he was a distinguished member of the other body the leadership he provided on this issue. He became aware of the problem and was actively interested long before he even came to the House of Representatives.

So, with the kind of study that the Senator from Arkansas gives to any subject before he declares his support, I think those who are still making up their mind can be comforted to see an ally like Dave Pryor on the line for this kind of an approach to let the people of this country choose their President.

I just wish to say to him how much I think we all owe him a debt of gratitude for what he has done and is doing.

Mr. PRYOR. Mr. President, the Senator from Indiana is very kind and overly generous, but his remarks are appreciated.

I might add that in reference to the other body, as the Senator from Indiana well knows, on September 18, 1969, the House of Representatives supported the direct election of the President by a vote of 339 to 70. Hopefully as this debate continues and as the arguments are put forth, we will once again, in the wisdom of the Senate and the House of Representatives, refer to the 50 State legislatures of this great Nation this very vital and crucial question and that we will allow them to debate this question, to air it fully, and hopefully to give an affirmative verdict.

(Mr. BAYH assumed the chair.)

Mr. PRYOR. Mr. President, I yield to the Senator from Virginia.

AMENDMENT NO. 280

(Purpose: To amend the Constitution of the United States to provide for balanced budgets and a limitation upon the outlays of the Government)

Mr. HARRY F. BYRD, JR. Mr. President, I send an amendment to the desk on Senate Joint Resolution 28 and ask that it be printed and I ask also that it be printed at this point in the RECORD.

The PRESIDING OFFICER. The amendment will be received and printed, and will be printed in the RECORD.

The text of the amendment follows:

Beginning with the word "That" in line 1, page 2, strike out all to and including the colon in line 6, page 2, and insert in lieu thereof the following: "That the following articles are hereby proposed as amendments to the Constitution of the United States, any one of which shall be valid to all intents and purposes as part of the Constitution only if ratified separately by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:".

On page 4, after line 9, insert the following:

"ARTICLE —

"SECTION 1. Beginning with the first fiscal year after the ratification of this article, the Congress shall assure that the total outlays of the Government during any fiscal year, not including any outlays for the redemption of bonds, notes, or other obligations of the United States, shall not exceed the total receipts, not including receipts derived from the issuance of bonds, notes, or other obligations of the United States.

"SEC. 2. Beginning with the first fiscal year after the ratification of this article, the Congress shall assure that the total outlays of the Government during any fiscal year shall not exceed 20 per centum of the gross national product during the calendar year immediately preceding the beginning of such fiscal year.

"SEC. 3. In the case of a national emergency, Congress may determine by a concurrent resolution agreed to by a rollcall vote of two-thirds of all the Members of each House of Congress, that either section 1 or section 2 of this article may be set aside for the fiscal year designated in such concurrent resolution. Both section 1 and section 2 may be set aside for the specified fiscal year: *Provided*, That a separate concurrent resolution setting aside each section is agreed to by a rollcall vote of two-thirds of all the Members of each House of Congress.

"SEC. 4. The Congress shall have power to enforce this article by appropriate legislation.".

Amend the title so as to read: "Joint resolution proposing amendments to the Constitution to provide for the direct popular election of the President and Vice President of the United States and to provide for balanced budgets and a limitation upon the outlays of the Government.".

Mr. MATSUNAGA. Mr. President, I rise in support of Senate Joint Resolution 28, the resolution introduced by the distinguished Senator from Indiana (Mr. BAYH), now presiding, designed to amend the Constitution to require the direct popular election of the President and Vice President of the United States and thereby abolish the electoral college system.

I ask unanimous consent at this time that since I was a cosponsor of Senate Joint Resolution 1 that I be recorded as a cosponsor of Senate Joint Resolution 28.

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

Mr. MATSUNAGA. For nearly a century and a half, Mr. President, Americans of every State and of every political, economic, and social background, have criticized the electoral college system—and for good reason. Three times in this country's history, in 1824, 1876, and 1888, the Presidential candidate who won the popular vote was kept from office because of the strange arithmetic of the electoral college system. Furthermore, in the past two decades, we have been through three closely contested Presidential elections in which the shift of a very, very small percentage of votes in a couple of States could have given the winning number of electoral votes to the candidate who did not receive the majority of the total votes cast nationwide.

More specifically, in the last election, a shift of only 8,354 votes—4,667 in Ohio, and a mere 3,687 in my home State of Hawaii—would have delivered, under the "winner-take-all" rule employed by the States, the electoral college votes of those two States to Gerald Ford. Thus, by a vote of 270 to 268, the electoral college would have declared Gerald Ford, who polled 1.7 million votes less than Jimmy Carter, to be President of the United States. A shift of only one-hundredth of a percent of the 79.8 million votes cast would have been all that was necessary to elect the people's second choice in 1976.

Statistical studies of Presidential elections held over the past 50 years have revealed that in any close Presidential contest, the electoral college system offers only a 50–50 chance that the election results from the electoral college will coincide with the popular vote. And in the 1968 election, where some 500,000 popular votes separated the candidates, there was one chance in three that the electoral college vote winner would not have been the popular vote winner as well.

It cannot be denied, Mr. President, that under existing law the possibility that the electoral college will award the Presidency to the candidate who is not the popular winner is ever present, and, indeed, the inconsistency with our concept of democracy posed by the present system of electing our Nation's Chief Executive. Many experts have speculated that such a contingency could percipitate a serious political and constitutional crisis in the United States. I agree wholeheartedly with that disturbing forecast. While I believe it is impossible for one to predict what the reaction of the American people would be to the election of a President who was not the first choice of the national electorate, it is safe to assume that the confidence of the people in their Government and, most importantly, their President, would be eroded, to say the least.

It is clear to me that we cannot and should not continue to tolerate an electoral system which poses such a threat to our Nation. The confidence of our people in the American political process has already been deeply shaken in the past decade. That our Nation survived the revelations of Watergate and the resignation of a President under the threat of certain impeachment, is certainly a tribute to the resiliency and strength of our people and our democratic institutions. However, I do not believe that we can rely on the strength of the American people to carry us through another crisis—one caused this time by the failure of the electoral college system.

The electoral college is, without a doubt, an archaic and outmoded institution and the history of the system strongly supports this indictment. At the Constitutional Convention of 1787, the delegates were deeply divided over how the President and Vice President were to be selected. While some favored direct popular election, others, including Alexander Hamilton, believed that the people of the young Republic were incapable of choosing the best candidate for the Nation's highest office. Many were convinced, as they had cause to be, that no national leader would be found when

interests and loyalties were divided among the several States and regions of the country. Moreover, many of the delegates, conscious of the fact that the public at large would have little or no access to the kind of information upon which an intelligent choice for President could be made, agreed with Alexander Hamilton that it was in the best interest of the Nation to permit the citizenry to vote for a group of men in their own State who were educated and experienced, and thus capable of choosing wisely the Nation's Chief Executive.

Consequently, the delegates agreed upon a compromise establishing the electoral college as the constitutional method of selecting the President. This method, the delegates hoped, would tend to diminish local prejudices and, in doing so, assure that the President and Vice President would be elected by the ablest and most respectable men of each State. This elite group of citizens, according to Hamilton in the Federalist No. 68; "will be the most likely to possess the information and discernment requisite to so complicated an investigation."

Indeed, Hamilton and the other framers of the Constitution had the best interest of our young Nation in mind when they devised the concept of the electoral college. However, history reveals that within a decade after its embodiment in the Constitution, Hamilton's concept of a "select assembly" of independent electors and an apolitical Presidency, had lost its meaning and purpose. The rapid rise and growth of political parties which sought to establish political machinery within each State and formal alliances between State party organizations in order to obtain the Presidency, presupposed the need for the electoral college, as the framers had devised it. No longer would the electoral college carry out its original function, which was to screen the field of Presidential contenders. In its place, the two major parties, by means of State primaries and political conventions, would choose prospective Presidential candidates. It was soon realized that the newly evolved American political parties more accurately reflected the desires of the electorate than did the electoral college.

Today, Mr. President, the motivations behind the creation of the electoral college by the framers have little relevance to the nature of our present-day society and our modern Nation.

No longer is the United States a collection of widely diverse interests and conflicting loyalties. We are a nation and a people with a common identity, interdependent and inseparably bound by common problems, common needs, and common goals. The people of my home State of Hawaii, for instance, separated from the continental United States by literally thousands of miles of ocean, struggle every day to overcome many of the same problems that confront their fellow Americans in California and Oregon, in Kansas and Nebraska, and in New York and Washington, D.C. The dangers of regionalism and parochialism which were so very real to the Founding Fathers and helped give birth to the electoral college, simply do not exist in 20th century America.

Moreover, the enormous advances made by our Nation in communications, transportation, education, civil rights, and equal suffrage, have rendered irrelevant the Hamiltonian notion, upon which the electoral college was based, that the people are not capable of transcending local prejudices and gathering and discerning information necessary to make an intelligent choice of a President. Needless to say, Americans today are widely educated and, due largely to the advent of mass media circulation and electronic communications, they are generally well informed on the issues that confront our society and the persons who seek to lead it.

Mr. President, there are simply no convincing arguments, in my opinion, to support the continued existence of the electoral college. It is clearly deficient, and has surely outlived its original purpose and function. It is an ever-present danger built into our Constitution that threatens the very stability and integrity of this country's political system. We must no longer wait to replace the electoral college with the best of all possible methods of choosing our President—the system of direct popular election.

Direct popular election offers the most direct and democratic way of electing a President and will more accurately reflect the will of the majority of the American people. Unlike the electoral college system, under which one American's vote for President is not equal to another's, simply on the basis of where he happens to live, direct election will insure, for the first time in our history, that every citizen's Presidential ballot is of equal weight. The elimination of the electoral college and its winner-take-all rule will end the disenfranchisement of millions of voters who cast their ballots for the losing Presidential candidate for their State. Every American will finally be guaranteed a full and equal voice in the selection of their President. And no longer will each citizen's vote represent only an expression of preference relayed to an elector by means of the ballot box. The direct election system is based on every voter's direct legal voice for President with no middle layer—however innocent it may seem—between the individual's vote and the final election result.

Mr. President, as a former Member of the House of Representatives, I took part in the floor debate on the direct election resolution which took place during the 91st Congress. I am proud to say that I voted "aye" on final passage of the resolution. At that time, a colleague of mine from another small State asked me how I could so strongly support the elimination of the electoral college system, which, he said, serves to protect small States such as Hawaii. He argued that under the present electoral formula, small States have an important and necessary advantage in that each State is entitled to have as many electoral votes as it has Senators and Representatives, thus inflating the voting power of the citizens of the small States. He felt very strongly that the electoral college was a necessary protection accorded to small States against certain domination by the large, heavily populated industrial States.

My answer to his question, Mr. President, posed 10 years ago, has not changed. It was my position then, and it is my position today that the electoral college does not truly provide an advantage to the small States. While the ratio of electoral votes to population does indicate that the smaller States have a mathematical voting advantage under the present voting formula, this theoretical advantage is, however, more than offset by the effects of the unit rule. Under the unit rule, all of the State's electoral votes are awarded to the candidate who wins a popular vote plurality—regardless of whether that plurality is one vote or a million votes. The practical result of the "winner-take-all" system is that Presidential campaigns and political power are concentrated in the large, closely contested urban States, where entire State blocs of electoral votes can be won by the narrowest of margins. Political party strategists are keenly aware that carrying these States and their large blocs of electoral votes is the key to getting their candidate elected. They can easily afford to ignore the small States, and there is statistical evidence to show that they do this to an alarming extent. According to the findings of a study which appeared in last year's Judiciary Committee report on Senate Joint Resolution 1, four States, including my home State of Hawaii, were not visited by a Presidential candidate or Vice Presidential candidate at any time during the 1976 campaign. Moreover, the other States with less than six electoral votes each were visited very infrequently by the Presidential contestants. In my view, these statistics clearly demonstrate the greater role played in Presidential elections by the larger States as compared to the smaller States.

This is not to say that under direct election, candidates will not continue to travel more often to the heavily populated States, rather than the sparsely populated ones. Indeed, there can be no denying that a State such as New York, with large numbers of residents, would have greater political impact under a popular plan than tiny Hawaii. However, under the direct election system, each individual vote would count the same, no matter where it was cast. And communities like Honolulu would have the same effect on the national outcome of the election as a community of the same size in a large State.

In the final analysis, Mr. President, small States stand to gain rather than lose under the system of direct popular election proposed in Senate Joint Resolution 28, since the votes of all American citizens will, for the first time, have an equal weight in the election of the President.

Mr. President, since 1966, in the Judiciary Committee and on the Senate floor, Senators have studied and debated the deficiencies of the electoral college and considered the strengths of direct election and the other alternative methods

of electing our Chief Executive. In hearing after hearing, and debate after debate, the preponderance of evidence has demonstrated, beyond a reasonable doubt, that the present system of electing the President is not only outmoded, but also represents a real and present danger to the stability of our political system. At the same time, it has also been demonstrated—I believe to the satisfaction of a majority of Senators—that direct popular election is the best possible alternative method of electing the President.

As the Senator from Indiana has often said, the direct election amendment must very well stand as the longest considered and most carefully debated constitutional amendment in the history of our country. In the interest of the American people and their confidence in our elective processes, I urge the Senate to vote, without further delay, to send Senate Joint Resolution 28 to the States for ratification.

I thank the Senator from Indiana for presiding while I delivered my statement.

(Mr. MATSUNAGA assumed the chair.)

Mr. BAYH. Mr. President, I appreciated the opportunity to preside over the Senate and to listen to the perceptive remarks of our distinguished colleague and friend from Hawaii. I think most of us who have had the good fortune to serve in the Senate—and some of our colleagues here who have had the opportunity to serve in the House of Representatives—with our distinguished colleague from Hawaii, SPARKY MATSUNAGA, are familiar with him as an individual. They know of his courage and his tenacity in pursuing the course that he feels is right.

With that background, I think it is particularly appropriate for us to listen to what the Senator from Hawaii has to say about this measure.

It is not the easiest thing in the world to do, considering traditional wisdom—and I emphasize traditional wisdom—for a Senator from a relatively small State like Hawaii to take a leadership role in an effort like this, and I would call to the attention of my colleagues from other small States the detailed analysis of how the electoral college system actually works that has been so eloquently presented to us by the Senator from Hawaii. We are in his debt, and I want to say to him personally how much I appreciate his efforts in behalf of trying to put the Presidential election system of this country on the same basis that all other elections are run and governed—on the basis of the equitable principles of the winner being the one who gets the most votes, of everybody's vote counting the same, and incidentally being counted for the candidate of his choice; and, of course, of letting the people actively participate in the election and making the decision themselves, instead of the way the matter now resides in the hands of electors, most of whom are faithful but a few of whom are not.

The PRESIDING OFFICER (Mr. MATSUNAGA). The Chair acknowledges with appreciation the remarks of the Senator from Indiana.

Mr. BAYH. Mr. President, I understand that one other Senator is en route. I respectfully suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, the direct election of the President and the Vice President of the United States is an electorial reform which is long overdue. It is long overdue because of its basic fairness, democratic nature, and its inherent simplicity. There is no principle which is more basic to our concept of democracy than equal treatment under the law. And yet when this Nation goes to the polls every 4 years in the only truly national election that we have, that principle is abrogated. The effect of the electoral college system on our Presidential election is often drastically unequal treatment of individual voters and their votes. The discrepancies are real and widespread, and they defy our basic sense of fairness. They will be specified as this debate progresses in the days ahead.

Mr. President, we ask the wrong question when we ask, who gains and who loses under the electoral college, and how will this group lose its advantage under direct election? The function of the President is to serve the interests of all persons, all citizens of this country, and, therefore, all citizens should have an equal say as to who the President will be. In the debate over who will gain and who will lose, there is only one real winner in implementing direct election, and that is the American people who will finally be able to participate in a democratic and fair national election where each vote counts for as much as every other vote.

The American people will also win because we will have eliminated the threat which the electoral college has always posed—that is the possibility that a candidate who has not won the popular vote will, through the mechanisms of the electoral college, be elevated to the Presidency. The majesty of the electoral process in this country is no more evident than in the way we accept the results of an election. No matter how bitterly fought it is, on the day after the votes are counted we join together as a people and announce our support for the candidate we may have opposed just days ago. We have such faith in the system that we accept its verdict, no matter how much we may disagree with it.

But what the electoral college contains is the potential for eliminating that acceptance of results. Imagine the attitude of people who see their candidate, winner of the popular vote, denied office. I do not think they would willingly accept the results in modern day America. I do not think they would freely give their consent to be governed by a minority President. Therefore, I am afraid that such a President would not have the ability to govern, so vital in these times. He would not have the mandate that an election normally gives a leader.

The potential for a minority President is too great and the consequences for such a President and our Government too frightening to allow us to continue to play electoral roulette with a system that was conceived in a different time and that does not relate to the reality of the current role we play as a nation in the world.

The social and political fabric of this country can be torn apart by the election of a minority President.

Opponents argue that earlier 19th century examples should vitiate these fears since the electoral process survived these occasions. But the state of our country today, in 1979, is far different from the 1800's. The tremendous power of the President, mass communication, instant communication, the rise of the global community, have all changed the complexion of our society to such an extent that were we to have a minority President, our political vitality would suffer and what credibility we have left in Government further sapped.

In another vein, I have repeatedly heard opponents argue the alleged detrimental impact of direct election to small States. There is as much compelling reasoning to the contrary. We must remember, however, that our approval here is not the end of the enactment process; it only allows the matter to go to the States where it must receive the support of three-quarters of those States. As a matter of fact, Mr. President, 17 States in this Union have less than 2 million people. Five of those States would be needed for this resolution to be made a part of the Constitution. Twenty-six States in this Union have under 3 million people. Twelve of those States would be needed for this to become a part of the Constitution.

Finally, Mr. President, I would like to refer my colleagues to the statement of the late Hubert Humphrey, who said:

> The political conduct of a democracy is what is important here above all else, and to take away or to cheapen the vote of any individual citizen in this country is grossly wrong. It is really a violation of a fundamental, basic principle of democracy.

I commend the Senator from Indiana for his commitment, his energy, his idealism, his perseverance in this issue. I am proud to be able to support his resolution and to work with him for its final passage. Thank you, Mr. President.

Mr. BAYH. Mr. President, I appreciate the thoughtful compliment of our distinguished colleague, my friend from Michigan. I would like to say that I believe the Senate is indebted to him for his perceptive analysis of this problem. I personally appreciate the amount of time, study, and effort he has lent to our efforts. To have him with us in this effort to try to reform our electoral system I believe is a significant step toward reaching our goal. I want to say how very much I appreciate having a chance to

hear his analysis. I think all the Senators who have had the chance to listen and to read what he has said will be equally benefited.

Mr. LEVIN. I thank my colleague. In the annals of this Senate when this resolution is finally adopted his efforts and those who have worked with him for so long will receive high praise.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BELLMON. Mr. President, I would like to say to my friend from Indiana that the Senator from Oklahoma has been almost totally involved today in other matters, including appropriations matters, and I have not been able to participate so far in the debate. I intend to be here Monday to join in the support of this resolution. I commend him for having brought it to the floor at this time. I hope it will be fully supported next week. I apologize for not having been present here earlier today.

Mr. BAYH. Mr. President, if there is anybody who need not apologize to this body, it is the Senator from Oklahoma. He is one of our busiest Members. I believe the Senate is anxious to hear what he has to say on this.

I will say without stating his opinion, and I do not take his name in vain I hope, that if anyone wanted to dig into how this system works and differentiate how it works from some of the misconceptions presented, they should have the chance to listen to the experiences of the Senator from Oklahoma. It has been the kind of experience that I believe we have all gone through. To sort out fact from fiction, it is going to be important to us to have his words next week. I appreciate his making the extra effort to be here this evening.

O Mr. MAGNUSON. Mr. President, the electoral college system with its weighted counting mechanics encourages speculations of advantage and disadvantage. Direct popular election, on the contrary, erases considerations of special selfinterest and establishes the American principle of equal treatment under law as part of the selection of the President and Vice President. My distinguished colleague from Ohio, Congressman LOUIS STOKES, sees the proposed amendment in just such terms—testifying before the Subcommittee on the Constitution on March 30 of this year, he asserted that "the present system for choosing our Presidents is outdated, unsafe, and undemocratic, and that the only truly just alternative is direct election." Congressman STOKES is well qualified to speak on the question of electoral reform having served on the Judiciary Committee during the term in which the House of Representatives studied this matter at considerable length and passed it by a sizable 339–70 vote.

Mr. President, I call to the attention of my colleagues the Congressman's concluding remarks—

On an issue of such vast political importance and historical magnitude, is difficult to totally base my opinion on what I perceive as "advantages" or "disadvantages" to a particular philosophy. We are here deciding how several generations of future American voters will go about performing their single most important task—selecting the leader of this country. It would seem that if ever a question called for the setting aside of partisan thoughts and for statesmanship of the first order, this would be the one.

And ask that the remainder of his testimony be printed in the RECORD.

The testimony follows:

TESTIMONY OF HON. LOUIS STOKES, REPRESENTATIVE IN CONGRESS FROM OHIO

Mr. STOKES. Mr. Chairman, I appreciate the opportunity to be here today to testify for the constitutional amendment to establish direct popular election of the President of the United States. This is an amendment which I have supported ever since I first came to the Congress. I voted for its passage in the House in 1969, and have cosponsored the measure since. I have done so, fully mindful of the awesome historical ramifications of such a decision. The present method of selecting our Chief Executive has been an important part of our Constitution for 190 years. Any changes which the Congress and various State legislatures now choose to make are likely, God willing, to prevail an equal number of years. The more the evidence I have examined, the more my original determination has been reinforced—that the present system for choosing our Presidents is outdated, unsafe, and undemocratic, and that the only truly just alternative is direct election.

The defects of the electoral college system are numerous and grave. Mr. Chairman, I will not go into those dangers at any length now, since they are well known to this subcommittee. I will say that the problems of the faithless elector, of the unnatural and unfair disparities in both individual voting power and election results, and of the contingency procedures in the House of Representatives in the event that no candidate receives a majority in the electoral college, are not to be taken lightly.

Another flaw in the present method is that it continuously creates the possibility of a President who has received less than a majority of the popular vote. Three times this has happened—in 1824, 1876, and 1888. There is nothing to prevent it from happening again. The problems which such a result would raise are only too apparent. A President elected by a slight majority is always faced with immense difficulties in harnessing the energies of the Congress and the voters. These would likely be multiplied tenfold. In addition, no one can safely project how our politically active, late 20th century society would react to such an outcome. At best, it would instill a pernicious mistrust of the democratic system. At worst, it would precipitate a first-rate constitutional crisis.

And there is a final defect in the present system, one which might be of less practical import, but which may, nevertheless, be the most serious of all. The electoral college was based on a premise which has long since outlived its validity—that is, that the task of selecting our country's Chief Executive is too important a matter to be left to "commoners". In no other facet of our democratic voting system does this anachronism remain. We now recognize, at least legally, that the very foundation of our democracy is equal voting rights for all Americans. Exclusive voting by the "landed gentry" is long since gone. Women are now afforded full and equal voting rights. And continued efforts are being made to insure those same rights to the nonwhite minority groups of this Nation. Thus, the very existence of this idea in the Constitution is out of step with the trend of our history. For that reason alone, it should be removed.

Once one realizes and accepts the inadequacies of the present way we choose our President, the logical leap to direct election is less difficult to make—for no possible alternative plan eliminates all of the fallacies of the electoral college except direct election.

Direct election would not only eliminate all of the problems of the present system, but it also has several redeeming merits in its own right. By insuring that one's vote would never be "wasted", it would encourage full election participation in traditional one-party States. The fear of facing a runoff, and the requirement that any candidate must obtain at least 40 percent of the popular vote to be elected, will force the major parties to devote more attention to their noncentrist wings—thereby both making the parties more responsive to their memberships and also giving the voters a more meaningful choice at the polls. Finally, by eliminating the winner-take-all aspects of the present selection method, direct election should remove the permanent temptation of ballot stuffing and other forms of corruption. As the system works now, a few well-placed fraudulent votes can change one-tenth of the vote—effectively a 20-percent shift. Under direct election, however, the same number of "stuffs" would be virtually innocuous.

To those who favor retention of the present system because it is advantageous to urban and minority voters, I would note several points.

First, there is a distinct split of opinion as to whether this is truly the situation. Many liberal politicians and political scientists believe that in any given election the natural, built-in advantages of the electoral college system which accrue to the smaller States far outweigh any theoretical advantages to the larger ones. Ten years ago a valid argument could be made that direct election should not become a part of our Constitution until all Americans were granted complete and equal voting rights. After great efforts in passing the Voting Rights Act and its extensions, that time is almost entirely here, and that argument is now out of date.

Second, that theory assumes that progressive voting blocs, like minority groups and labor unions, are the only such blocs extant in urban areas. My observations of recent Presidential and mayoral elections would cast serious doubt on that premise.

Third, the theory assumes that these voting blocs can be used as bargaining tools and political levers, and then herded to the voting booths like great masses of cattle to do their leaders' bidding. Do we not wish it were so easy? It would seem to be obvious from the difficulties encountered by the unions along these lines during past elections that the day of the "deliverable" votes are numbered.

Similarly, the "advantage" theory seems to assume that black voting strength would not be transferable to a national level. I find this quite difficult to believe. For example, if all eligible black voters in New York, Pennsylvania, Ohio, and so forth, could join hands with those in Alabama, Mississippi, Louisiana, and so on, they would form a solid national phalanx of almost 16 million voters. That number of potential votes—approximately 21 percent of those needed for election—would be extremely dangerous for any candidate to ignore.

As for the argument that black voters need an advantage in Presidential elections, I maintain that with the Voting Rights Act, all citizens are now protected in their right to vote, and there's no excuse for giving a voting advantage to some people and handicapping others. That's what we fought against in the reapportionment battles in the 1960's.

Yet, I am equally concerned that once all citizens have the right to vote, that they also have the incentive to do so. There have been hundreds of thousands of black people registered in the South since the passage of the Voting Rights Act. But very, very few of these have ever cast a vote for President

of the United States. It is a well-known fact that an overwhelming majority of these voters favored Mr. Humphrey in the 1968 election. But since Mr. Humphrey did not carry a single State covered by the act, those black votes were not only never counted, but were actually represented by a substantial number of electoral votes for George Wallace.

The same thing happened in 1972 when 92 percent of the black vote was Democratic, but all the Southern States and their electoral votes went Republican. How much more effective the people's votes would have been if all popular votes had counted. I think direct election is essential to insure both that the blacks have reason to go to the polls and that their votes do become a part of the national tally.

Is the voting power of this large group of people to be saddled with an outmoded outdated, antiquated electoral college system which will still systematically invalidate their vote, State by State; or will their collective voting power be of more significance when measured, vote by vote, in a national tally? I choose to believe the latter.

As a legislator I have the responsibility to analyze not only the position of black people in America today—but for generations to come. It seems to me that I will do an injustice to future generations if I do not today provide them with the wherewithal to not only enjoy the incentive to vote—but to give them the satisfaction of knowing that their vote counted.

In any event, though, on an issue of such vast political importance and historical magnitude, is difficult to totally base my opinion on what I preceive as "advantages" or "disadvantages" to a particular philosophy. We are here deciding how several generations of future American voters will go about performing their single most important task—selecting the leader of this country. It would seem that if ever a question called for the setting aside of partisan thoughts and for statesmanship of the first order, this would be the one.

This is a vitally important issue—one of the most essential of the decade. It is not a time to cover before the unknown. It is time for strong and determined leadership—leadership from both the President and the Members of Congress.

The test of time has demonstrated to the American people that this constitutional measure is needed in order to respond to change and to bring this Nation into the 20th century. As representatives of the people, we have a responsibility to give them nothing less.●

ROUTINE MORNING BUSINESS

HARASSMENT OF CHARTER 77 LEADERS

Mr. PERCY. Mr. President, news reports indicate an intensification of harassment against leaders of the Charter 77 movement in Czechoslovakia. This has included many arrests and at least one assault. Some Charter 77 signers have been charged with carrying out "dangerous activities" against the interests of the state, according to Reuter news agency. Agence-France-Presse reported that they have been charged with "suspicion of grave actions against the interests of the Czechoslovak State."

According to the Associated Press, police alleged that Charter 77 publications were designed to undermine the confidence of the people in the State and to create a hostile attitude toward the socialist system.

It would appear that the Czechoslovak Government cannot tolerate dissenting views, that all citizens of that nation are expected to think only official thoughts passed down from the governing authorities. It is apparent that human rights advocacy is considered a crime by the authorities. It is apparent that the Prague government has no intention of honoring its obligations made at the 1975 Helsinki Conference on Security and Cooperation in Europe.

While the world holds the leaders of the Charter 77 movement in the highest regard for their courageous campaign for human rights and justice, the Czechoslovak Government treats them as criminals. I think that history will set the record straight, and that by the standards of truly free people, the criminals will be properly identified by many as those who sought to silence the people of Czechoslovakia, not those who spoke out for human decency.

THE DEATH OF BILL STEWART

Mr. BOSCHWITZ. Mr. President, I wish today to express my grief over the tragic and senseless death of television reporter Bill Stewart in Nicaragua.

Of the many fine newspeople who have left my home State of Minnesota to work for the national media, Bill was one of the best. A graduate of Ohio State University and the holder of a master's degree from Columbia, Bill consistently practiced the highest standards of journalism during employment at stations in Philadelphia, New York, and Minneapolis and with ABC where he brought us high-level coverage from Iran, Lebanon, and, finally from Nicaragua where he died yesterday.

The circumstances of his death at the hands of a Nicaraguan national guardsman totally defy all conventions of the civilized world. The calculated brutality of the Somoza regime is deplored and abhorred by all throughout the world who desire man to be governed by just and peaceful men.

Bill Stewart spent his adult life serving as another set of eyes for all of us as we seek to understand our world. It is chillingly ironic that in his last act, he may have done more to bring our attention to a situation than he could have in life.

We owe Bill Stewart and his counterparts throughout the world a continuing debt.

S. 25—THE CREDIT CONTROL ACT OF 1969

Mr. HATCH. Mr. President, recently the Senate Banking Committee held hearings on S. 35, a bill sponsored by Senator JESSE HELMS to repeal the Credit Control Act of 1969.

Senator HELMS' bill, which I am proud to cosponsor, would repeal a bill that has no place in the laws of the United States of America. The Credit Control Act would, in the words of Dr. Arthur Burns, allow the Federal Reserve to "exercise dictatorial powers over the economy."

Senator HELMS, in his testimony before the Senate Banking Committee pointed out the fact that no bureaucracy should be given such sweeping powers. Mr. President, I ask unanimous consent that his testimony be printed in the RECORD at this point.

There being no obligation, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF SENATOR JESSE HELMS ON S. 35, TO REPEAL THE CREDIT CONTROL ACT OF 1969

Mr. Chairman, I appreciate the opportunity to make some brief comments. I will skip much of what I believe other witnesses will discuss—the great scope of the powers granted by the Credit Control Act, and the economics of credit controls themselves. In reviewing a wealth of material on the subject, it seems to me that the economic rationale for controls is so twisted and so wrongheaded, that I think the case for my proposed legislation—from the economic standpoint—is quite obvious. I have discussed some of the economic points in a more detailed formal statement which I hope can be included in the Committee record.

What I want to touch upon are aspects of the Credit Control Act that should particularly concern Congress—aspects from the perspective of good law and good government.

Controls of a limited nature are necessary to bring order out of anarchy, but controls are also a form of coercion. Regimentation—even "selective" regimentation—is government saying to you and me that we must do or must not do something. Massive controls are alien to this nation and our form of government, and absurd when such controls are self-defeating.

I say parenthetically that I have been asked why I propose to repeal the Credit Control Act of 1969. The answer is simple, Mr. Chairman: A law like this one should never have been part of the U.S. Code.

I have no particular ax to grind on this bill, except that dictatorial control over any aspect of our society is inherently without equity—without justice. Credit control can result only in arbitrary rules and regulations resulting in decisions, allocations and actions that would not have taken place if people were allowed to act with freedom.

I'm reminded, Mr. Chairman, of a story that came to my attention concerning the founding of the Senate Budget Committee in 1975. Some Committee staff at that time were expressing concern that they might not be able to find an economist that would advocate a planned economy. Someone jested at that time that the best such "expert" might be Albert Speer, Adolph Hitler's economic potentate.

There is a degree of comfort to be found in the fact that there are very few credible economists who advocate centrally planned economies, but Albert Speer probably would feel at home with the Credit Control Act of 1969. It is that kind of authoritarian legislation.

The next issue is one that fits under the heading of "public policy."

Dr. C. Northcote Parkinson has said in his laws of bureaucracy, that work expands to fill the time available, and that expenditures grow to meet (or exceed) revenues. We see this in this city every day.

But, is there not another Parkinsonian law with regard to the exercise of power? Is it not fair to say that the exercise of power grows to the limits of authority?

The exercise of power grows to the limits of authority?

Isn't that what the founding fathers understood? Shouldn't we in Congress be very much concerned about the availability of power—dictatorial power over the financial system—in the hands of the Executive?

It is illustrative, I believe, to note that the Treasury Department and the Federal Reserve are in near-complete agreement with me concerning the economics of credit control.

Yet, in predictable fashion, they seek to maintain the power granted. Heaven forbid that a bureaucrat willingly gives up authority. Any authority.

The reason that the Federal Reserve wants to keep the Act is in case of some (and I quote) "exigent emergency." Treasury opposes repeal because it doesn't want (and I quote) its "legitimate economic options foreclosed." If I may borrow a word from our Chief Executive: Baloney!

But even if there is some justification for some kind of emergency power like this—in case of war or in some other real, drastic emergency, then let the Treasury Department come forth with specifics. I frankly believe that there is sufficient authority on the books already. But even in time of war, credit controls will probably do more harm than good—all studies related to World War II controls indicate this. This blanket authority is an invitation to abuse.

Mr. Chairman, the former Chairman of the Federal Reserve Board, Dr. Arthur Burns, put it this way, "As I read the Act, the Federal Reserve could have virtually unlimited authority over private credit transactions under it. If, therefore, this or a later President chose to invoke the Act, the Federal Reserve could exercise dictatorial power over the economy. I know of no agency that would be less likely to abuse its authority than the Federal Reserve. Even so, I doubt the wisdom of permitted the Credit Control Act to remain on the statute books." Dr. Burns continued:

"Since the Federal Reserve is entirely capable of exercising a healthy influence over monetary and credit developments without this legislation, my advice to your Committee would be to rescind it, or if there is a strong interest in some stand-by legislation, to recast the Act so as to limit the Federal Reserve's authority over private credit transactions."

Thank you for your consideration and attention.

QUESTIONS POSED TO AGRICULTURE DEPARTMENT

Mr. HATCH. Mr. President, rarely have I been so offended by the arrogance of a Federal agency as I was last week after receiving "answers" to several questions I posed to the Agriculture Department about the food stamp program. Not only did the Department fail to respond to most of my questions, they took 3 months to fail to respond, despite several attempts by my office to expedite their response. I would like to share this experience with my colleagues so that they may be aware of the arrogance that exists at the Food and Nutrition Service of the Department of Agriculture when it comes time to consider the Department's request for a $1.3 billion supplemental to their fiscal year 1979 authorization for food stamps.

On March 9, Secretary Bergland testified before the Senate Budget Committee about agricultural programs and food stamps. Since I was unable to attend that hearing, I sent Secretary Bergland several questions and solicited his response for the hearing record. My questions were mailed on March 15, 1979. Because the administration was advocating the abolition of the authorization cap on the food stamp program in fiscal year 1980, I was interested in finding ways to save money in the program through better administration, more realistic definitions of income, asset limitations, and eligibility requirements designed to eliminate from the roles high income recipients who do not deserve food stamps benefits at the expense of the working taxpayers.

I hoped to receive this information in time for the Senate's consideration of the first budget resolution when we would make a preliminary decision about the fiscal year 1980 food stamp program level. But, although my office made several inquiries about the status of the responses, and although time after time we were assured that the responses would arrive in a few days, it took the Department 3 months to respond to my letter. The response arrived two months after consideration of the budget resolution and just before the consideration in the Agriculture Committee of the fiscal year 1979 supplemental authorization for food stamps.

After 3 months delay, I find that the Department of Agriculture did not really answer my questions at all. Most of the answers are nothing more than political rhetoric offered as criticism of the opinions for which cost estimates were solicited.

I believe that the responses to my questions are a further indication of the bureaucratic mismanagement and incompetence in the food stamp program which has resulted in the large cost overruns predicted by the Department. The Department seems unable to provide cost estimates for any options that might save money in the food stamp program, but it is very adept at projecting its increased funding needs for the program. It seems that the Department can be of no assistance to those who wish to consider options for change in the food stamp program that would result in cost savings.

I think it would be beneficial for my colleagues to review my questions and the "non-answers" I received from the Department of Agriculture. I am not necessarily recommending that the Senate adopt any of the changes to the food stamp program that I pursued in my questions, although none of these options would reduce benefits for or eliminate truly needy recipients. It is difficult to consider any of these options until we know their cost saving potential. But certainly the Congress should have the right to consider these options, and the Department of Agriculture should be run in such a way as to effectively and efficiently provide the information we need to consider these options.

I would suggest to Secretary Bergland that he get his house in order at the Food and Nutrition Service before he asks the Congress to fund exorbitant cost overruns in the food stamp program. I would suggest that he bring in some professional managers who could get this program under control and remove the political hacks like Carol Foreman who have no respect for the taxpayers' money.

I, as one Senator, do not feel comfortable considering a request from the Department to take another $1.3 billion from the American taxpayers to run the food stamp in fiscal year 1979. I will not feel comfortable doing so until the Department can provide us with the information we need to consider changes in this program that would help us control its costs. I will not be satisfied when I receive answers to my questions like that to question 5, where the Department says:

It is not possible to project even maximum savings associated with counting benefits received under the Child Care Food Program and Summer Food Service Program as Food Stamp Program income, since there is no reliable data to show the number of people participating in either of these programs and the Food Stamp Program.

I suggest that they find out this information. I do not think my constituents will settle for answers like this, and neither will I.

Mr. President, I hope that the Department of Agriculture will take the time to respond fully to my questions. I am resubmitting them today to the Department. I will not accept the kind of shoddy treatment I received the first time I made these inquiries in an effort to save the precious tax dollars of my constituents. And to add insult to injury, not only did the Department fail to respond to the questions, but they made me wait 3 months for them to respond. I can consider this as nothing less than an intential insult, and will not accept it. I am asking the Department to make another attempt to answer my questions.

I ask unanimous consent that my correspondence with Secretary Bergland be printed in the RECORD.

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

MARCH 15, 1979.

Hon. BOB BERGLAND,
Secretary of Agriculture, Department of Agriculture, Washington, D.C.

DEAR MR. SECRETARY: I regret that other committee conflicts prevented me from attending the March 9 Budget Committee hearing with you. I was especially interested in discussing the food stamp program with you.

I would be very grateful if you would answer the following questions in writing for the hearing record:

Question 1. The Administration's estimate for the food stamp program for FY 1980, removing the cap on the program, is about $6.9 billion. With their more realistic economic assumptions, the CBO estimates that the program would cost $7.5 billion in FY 1980 without the cap. If you adopted CEO's economic assumptions, how much would you estimate the food stamp program would cost in FY 1980 without the cap? In a time of fiscal austerity, why should the Congress go along with the Administration's proposal to lift the cap and spend at least $1.3 billion more than required under current law?

Question 2. You stated at the hearing that if the cap on the food stamp program were not removed, you would have to reduce benefits on a pro rata basis. On what do you base this legal decision that you could not reduce high income recipients' benefits more than low income recipients' benefits?

Question 3. How much money could be saved in FY 1980 if the purchase requirement, eliminated only a few months ago, were to be reinstituted immediately?

Question 4. We now have three deductions in the food stamp program: 1) a $65 monthly standard deduction; 2) a monthly deduction of 20 percent of earned income; and 3) an

excess shelter-dependent care deduction to a maximum of $80 monthly. How much would the food stamp program cost in FY 1980 if 1) were eliminated, if 2) were eliminated, or if 3) were eliminated?

Question 5. With the present three deductions, how much would the program cost in FY 1980 if "income" were redefined to include the value of other nutritional assistance received by participants in the food stamp program, i.e., school breakfasts, school lunches, summer feeding programs, the WIC program, etc?

Question 6. With the present three deductions, how much would the program cost in FY 1980 if "income" were redefined to include the value of subsidized housing?

Question 7. With the present three deductions, how much would the program cost in FY 1980 if "income" were redefined to include *both* the value of other nutritional assistance *and* the value of subsidized housing?

Question 8. How much would the program cost in FY 1980 if 1) "income" were redefined to include the value of other nutritional assistance and the value of subsidized housing and 2) deductions were limited to a work-incentive of 20 percent of earned income?

Question 9. How much would the program cost in FY 1980 if 1) "income" were redefined to include the value of other nutritional assistance and the value of subsidized housing, and 2) deductions were limited to a work-incentive of 20 percent of earned income and $65 monthly standard deduction?

Question 10. Currently the value of a food stamp user's car over $4,500 is counted as an asset for purposes of meeting the asset limitation. How much would be saved from the program in FY 1980, for re-targeting at low income families, if we count as an asset the value of a car over $2,000?

Question 11. The present asset limit in the program is $1,750 ($3,000 if a multi-member family includes a person over the age of 60). But those assets do not include jewelry, household appliances of a recreational or unnecessary nature, ostentatious wardrobes, the value of a home, or insurance policies. This results in taxpayers who do not own a home subsidizing those who do. How many food stamp recipients have more than $5,000 equity in a house? If they were eliminated from the program, how much would be saved in FY 1980?

Question 12. A USDA representative stated in testimony before the Senate Agriculture Committee that the Department has not yet begun to implement the allegedly tighter work requirements of the Farm Bill of 1977. So we do not know how much would be saved in FY 1980 if USDA were enforcing the law as it was written in 1977. It is therefore premature for the Budget Committee to assume that the cap on the food stamp program will be lifted by Congress—or even that the cap would otherwise be broken—until we see how much USDA can save the taxpayers by doing its job as Congress spelled it out in the Farm Bill of 1977. When will the Department have statistical evidence for us of the percentage of food stamp recipients who are put to work through USDA's work registration requirements?

Question 13. The program's current work registration requirement does not apply to persons who care for children under the age of 12. But in the AFDC program, it does not apply to persons whose children are under the age of 6, i.e. pre-school. Is this reasonable, in the Department's view? How much would be saved by having a uniform welfare work registration requirement, exempting persons caring for pre-school children?

Question 14. There has been a tendency to bring older workers into the lab or force and to keep older workers active longer. But the Farm Bill of 1977 lowered the age of exemption from work requirement from 65 to 80. Does the Department consider that reasonable? How much would be saved in FY 1980 if food stamp recipients were expected to work until they reach 65?

Question 15. How much does the Department project spending for food stamps for strikers (not idle because of a lockout) during FY 1980?

Question 16. The Farm Bill of 1977 contained a work registration requirement highly preferential to college students and graduate students. How much would be saved by ending that preferential treatment and applying to students over the age of 18 the same work requirements applied to welfare mothers and others?

Question 17. What would be the cost of the food stamp program in FY 1980 if one-quarter of the recipients were transferred to a commodity distribution program?

Question 18. The argument has always been made that an increase in food stamp spending results in an increase in agricultural purchases. That was probably true when there was a purchase requirement, because it compelled recipients to commit part of their income, along with their stamp bonus, to groceries. Now that the purchase price has been eliminated, and recipients are free to use their own resources as they like inasmuch as they no longer are tied up in the purchase of stamps, is USDA monitoring in any way to see if the program results in *less* agricultural buying?

Question 19. USDA has been terribly slow in implementing the pilot projects mandated by the Farm Bill of 1977. They included 14 work-fare projects. These were not optional on the part of USDA. They held out the prospect of saving tremendous amounts of the taxpayers' money, which would have kept the program well under its cap for FY 1980. But they have not even begun. Why should the Budget Committee recommend $1.3 billion in additional spending when it might not be necessary if USDA obeys the law?

Thank you for taking the time to respond to this request. Please submit your answers as soon as possible so the committee can move ahead with its normal schedule of printing hearing records.

Sincerely yours,

ORRIN G. HATCH,
U.S. Senator.

U.S. SENATE,
Washington, D.C., June 13, 1979.

Hon. ROBERT BERGLAND,
Department of Agriculture,
Washington, D.C.

DEAR MR. SECRETARY: On March 15 I sent you a letter (copy enclosed) in regard to your testimony before the Senate Budget Committee on March 9. My letter contained several questions about the food stamp program to which I was soliciting answers for the Budget Committee hearing record. To date I have received no reply to my letter and the hearing record has already been published.

My staff has made more than a dozen inquiries to your Congressional Affairs Office about the status of my letter. We were at first assured that we would receive a response in time for the markup on the budget in early April. We were then assured that we would receive the information in time for consideration of the first budget resolution on the Senate floor. We did not receive it. For weeks, time and time again, we have been assured that the letter would be delivered within a few days. After almost three months, I am wondering how much longer I will have to wait for this information.

I was very disappointed that the Senate had to make its decisions about the food stamp program in the budget resolution without the benefit of this information. Shortly the Senate Agriculture Committee is expected to report a bill making substantial changes in the food stamp program. I understand that the Administration is urging quick consideration of this legislation. However, I do not see how I or my colleagues can make a final determination about this legislation without the answers to my questions. I am therefore taking steps to ensure that this legislation be delayed from final action on the Senate floor until the information is forthcoming.

I hope we can resolve this matter before such a problem arises. I have no wish to obstruct the Senate's consideration of this important legislation. I trust that your department is doing everything in its power to expeditiously respond to my request. But I felt it was important to let you know personally how interested I am in receiving this information. I know you will appreciate my concerns and do everything you can to resolve this matter.

Very sincerely yours,

ORRIN G. HATCH,
U.S. Senator.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 12, 1979.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HATCH: Thank you for your letter of March 15 in which you requested answers to questions about the Food Stamp Program. The Department's answers to each of your nineteen questions are enclosed for your consideration.

We apologize for the delay in responding to your letter, but I am sure you can appreciate the amount of work required to answer your very detailed questions.

Sincerely,

BOB BERGLAND,
Secretary.

Enclosures.

Question 1.—The Administration's estimate for the Food Stamp Program for FY 1980, removing the cap on the program, is about $6.9 billion. With their more realistic economic assumptions, the CBO estimates that the program would cost $7.5 billion in FY 1980 without the cap. If you adopted CBO's economic assumptions, how much would you estimate the Food Stamp Program would cost in FY 1980 without the cap? In a time of fiscal austerity, why should the Congress go along with the Administration's proposal to lift the cap and spend at least $1.3 billion more than required under current law?

Answer—Using Congressional Budget Office's economic assumptions rather than OMB's assumptions in estimating FY 1980 Food Stamp Program costs would increase the Administration's estimate from $6.927 billion to approximately $7.147 billion. The difference between this $7.147 billion estimate and CBO's $7.5 billion based on the economic assumptions is attributable to three factors. First, the Administration's estimate reflects a $152 million savings associated with proposed management improvements which is not included in the CBO estimate. Second, the Administration's estimation procedures, which are based on data current through the end of 1978, anticipate slightly different effects of inflation and unemployment than CBO's procedures, which have not been updated completely since 1976. Third, and least important, the two sets of estimates expect slightly different effects of program changes that were yet to be implemented at the time these estimates were produced.

The increased funding requirement stems in significant part from economic factors which were not anticipated entirely at the time the cap was determined. The FY 1980 authorization ceiling was based on the House Agriculture Committee estimate of FY 1980

Food Stamp Program costs. This estimate reflected 1977 CBO assumptions concerning the level of food prices in 1980. Increases in food prices directly affect program costs by increasing the money value of program benefits. This is required to maintain the food purchasing power of the bonus stamps received by participants. Any reduction in food purchasing power would be expected to reduce the nutritional benefits of program participation.

In February 1977, the CBO was projecting that the value of the Thrifty Food Plan, which is the basis for determining benefits, would increase from an average of $166 in FY 1977 to an average of $182 in FY 1980. Estimates used in the Administration's budget submission indicated that the value of the Thrifty Food Plan would be $209 in 1980 rather than $182 due to higher than anticipated rates of food price inflation. This represented a 14.8 percent higher cost for the Thrifty Food Plan than originally anticipated. Recent analysis indicates that a one percent increase in the cost of food results in increased Food Stamp Program costs of approximately $58 million. Thus, changes in assumption about food prices already have caused increases in the Food Stamp Program costs for FY 1980 of about $858 million. More recent forcasts suggest that the value of the Thrifty Food Plan may rise even beyond $209 in FY 1980.

In addition to unanticipated food price increases, economic assumptions concerning the rate of unemployment have caused estimates of FY 1980 Food Stamp Program costs to be revised upward. At the time the 1977 law was developed it was assumed that the 1980 unemployment rate would average 5.7 percent. More recent estimates, reflected in the Administration's budget submission, indicate that unemployment will average 6.2 percent in FY 1980. Increases in unemployment result in greater numbers of people in need of Food Stamp Program services and directly affects participation and program costs.

The fact that earlier economic assumptions proved considerably too optimistic, or that a significant number of poor families who previously could not afford food stamps are now entering the Food Stamp Program, does not justify reducing food stamp benefits for the millions of elderly, disabled, children, unemployed, and working poor who depend on them.

Question 2.—You stated at the hearing that if the cap on the Food Stamp Program were not removed, you would have to reduce benefits on a pro rata basis. On what do you base this legal decision that you could not reduce high income recipients' benefits more than low income recipients' benefits?

Answer—The Office of General Counsel of USDA, the Counsel of the Senate Agriculture Committee, and the General Accounting Office have all ruled that reductions must be on a pro rata basis, and that reducing high income recipients' benefits more than low income recipients' benefits is not legal.

Question 3.—How much money could be saved in FY 1980 if the purchase requirement, eliminated only a few months ago, were to be reinstituted immediately?

Answer—It is very questionable how much could be saved in FY 1980. The purchase requirement entailed a complex system of cash monitoring and tracking systems, which have now been dismantled. A number of States have dispensed with the services of many private vendors who formerly sold stamps. It would, therefore, not be possible administratively to restore the purchase requirement immediately, or in time to have an impact on all of FY 1980. The impact would cover only part of the year. In addition, we do not know whether all the new families who have entered the program since the purchase requirement was eliminated would leave the program. Now that they have signed up for food stamps, a significant number might remain on the program. For these reasons, plus the fact that the full impact of EPR is not yet precisely known, we cannot estimate the FY 1980 impact at this time of restoring the purchasing requirement.

Question 4.—We now have three deductions in the food stamp program: (1) a $65 monthly standard deduction; (2) a monthly deduction of 20 percent of earned income; and (3) an excess shelter-dependent care deduction to a maximum of $80 monthly. How much would the food stamp program cost in FY 1980 if (1) were eliminated, if (2) were eliminated, or if (3) were eliminated?

Answer.—If the standard deduction were eliminated, Food Stamp Program bonus costs would be expected to decline by nearly 25 percent. Elimination of the 20 percent earned income deduction would reduce bonus costs by about 9 percent. If the excess shelter-dependent child care deduction were eliminated, bonus costs would be expected to decline by approximately 13 percent.

Elimination of any of these deductions would result in loss of eligibility for substantial numbers of participants and substantial benefit reductions for many of those remaining in the program. Further, the food stamp bonus relates to income available for consumption and each of these deductions is an important adjustment to gross income to reflect available income more accurately.

STANDARD DEDUCTION

The standard deduction was placed in the food stamp program to partially compensate for the loss of most of the itemized deductions participants had formerly been entitled to. Before the Food Stamp Act of 1977 was enacted, food stamp households could deduct from their income: payroll taxes, Social Security Taxes, union dues, work-related child care costs, medical costs if they exceed $10 per month, shelter costs in excess of 30 percent of net income, tuition and required educational fees, casualty losses, alimony paid, and a specified amount for boarders and for attendant care. The average amount of all deductions was $95 in 1976 for those households who claimed deductions.

20 PERCENT OF EARNED INCOME

In addition to partially compensating for the loss of a number of work-related deductions in the Food Stamp Act of 1977, the 20 percent of earnings deductions equalizes food stamp net income between earners and non-earners and thus prevents a work disincentive. Households with earned income must pay Social Security taxes, Federal income taxes, and usually State and local income taxes on their earnings, and also incur work-related expenses. Households with non-earned income such as AFDC or SSI payments do not pay such taxes. Therefore, households with earnings must have a higher gross income to have the same disposable income as a household whose income is not from earnings. The purpose of the deduction for 20 percent of earnings is to offset the effect of mandatory tax withholdings and to base food stamp benefits on net disposable income for both earners and non-earners.

SHELTER AND CHILD CARE

In the original food stamp legislation passed by the Senate in 1977 separate deductions were allowed for shelter costs and for child care expenses. In an effort to further tighten up the program, these two deductions were combined into one in conference.

The purpose of the shelter cost deduction is to allow some variation in the food stamp program for areas where housing and utility expenses are very high, especially in major urban areas and in the Northeast as a whole. A household is only allowed to deduct that part of its shelter costs which exceed 50 percent of net income. In addition, this deduction is limited to $80 to prevent households from deducting the cost of luxury or extravagant housing. Even with this deduction, implementation of the Food Stamp Act of 1977 has severely reduced benefits to many persons in urban areas and in the Northeast. Preliminary reports indicate that 75 percent of participating households in Maine and 80 percent of households in New Hampshire have been adversely affected by the 1977 Act.

Those households who do not have the full $80 in shelter costs are allowed a deduction for the remainder for the cost of child care which permits a household member to work. The majority of the households who take this deduction are single-parent, female-headed families. This deduction serves as an incentive to encourage these workers to continue to earn income, and was proposed by Senator Robert Dole in 1977 specifically as a work incentive.

Question 5.—With the present three deductions, how much would the program cost in FY 1980 if "income" were redefined to include the value of other nutritional assistance received by participants in the Food Stamp Program; i.e., school breakfasts, school lunches, summer feeding programs, the WIC Program, etc.?

Answer.—Of the food assistance programs administered by the Food and Nutrition Service (FNS), the National School Lunch Program (NSLP) is by far the largest (after Food Stamps) in terms of participation and annual expenditures. The NSLP includes more participants whose families also receive Food Stamps than any other program. The School Breakfast Program also includes participants whose families receive food stamps. Food stamp participants can also receive benefits under the Special Supplemental Food Program for Women, Infants and Children.

In computing the savings which could be gained by counting the benefits received in these other nutritional assistance programs as income in the Food Stamp Program, a number of variables must be taken into account. The Federal contribution varies from meal to meal depending on whether the meal is served free, at a reduced price, or at the full price. Even "full price" meals receive a Federal subsidy. In addition, the Federal contribution includes not only the cost of the food, but also labor costs, administrative costs, and overhead.

Taking these factors into account, the savings from counting school lunch benefits as income would be between $106 million and $150 million in FY 1980. Counting school breakfasts would save between $13 million and $19 million. If the value of WIC benefits were counted, FY 1980 savings would amount to $72 million.

However, this potential savings is for benefits only. Some of the savings would be offset by increased administrative costs.

It is not possible to project even maximum savings associated with counting benefits received under the Child Care Food Program and Summer Food Service Program as Food Stamp Program income, since there is no reliable data to show the number of people participating in either of these programs and the Food Stamp Program. Also, participation in both of these programs is often quite sporadic and would be most difficult to assess for purposes of computing an addition to household income.

Question 6.—With the present three deductions, how much would the program cost in FY 1980 if "income" were redefined to include the value of subsidized housing?

Answer.—Using simulation modeling techniques, using data from the 1976 Survey of Income and education, we project that approximately 10.7 percent of all households in the food stamp caseload are in public

housing and that approximately 2.5 percent of households are in subsidized housing. However, there are no existing data which enable us to project program costs if the value of public and subsidized housing were included as included in the defintion of income used in the Food Stamp Program.

In 1974 USDA attempted to require states to count the value of HUD rent supplemental programs as income for food stamp households. This provision proved extremely difficult for the States to administer. Counting the value of all subsidized housing would be even more cumbersome, requiring state food stamp agencies to determine the rental value of individual public housing units. Also, housing subsidies, either in the form of public housing or rent paid directly to private landlords, are different from other income since they are not available to the household to spend on food.

Question 7.—With the present three deductions, how much would the program cost in FY 1980 if "income" were redefined to include both the value of other nutritional assistance and the value of subsidized housing?

Question 8.—How much would the program cost in FY 1980 if (1) "income" were redefined to include the value of other nutritional assistance and the value of subsidized housing and (2) deductions were limited to a work-incentive of 20 percent of earned income?

Question 9.—How much would the program cost in FY 1980 if (1) "income" were redefined to include the value of other nutritional assistance and the value of subsidized housing and (2) deductions were limited to a work-incentive of 20 percent of earned income and $65 monthly standard deduction?

Answer—We do not have sufficient information available to project the separate cost impacts of the changes in the definition of income (see answer to Question 6), so we cannot project their combined impact.

Question 10.—Currently the value of a food stamp user's car over $4,500 is counted as an asset for purposes of meeting the asset limitation. How much would be saved from the program in FY 1980, for retargeting at low-income families, if we count as an asset the value of a car over $2,000.

Answer.—The limited data which are available on the assets of food stamp households indicate that only about one-third of them own cars. The nationwide Consumer Expenditure Survey, conducted by the Bureau of Labor Statistics, found that nearly two-thirds (64%) of food stamp households reported owning no car or other vehicle. Twenty-seven percent owned one vehicle and only nine percent owned more than one.

The data do not indicate the value of vehicles, so we cannot estimate savings from decreasing this asset limitation from $4,500 to $2,000.

With respect to the value of vehicles it is important to bear two facts in mind. First, today most cars, including most used cars, exceed the $2,000 limit. Used car prices have been rising faster than the overall cost of living for the last five years. Since 1974, used car prices have risen over 50% compared to about 30% for the overall cost of living. Based on the above, we do not think that a reduction in the maximum value of a car, not counted as an asset, is advisable. Second, for many food stamp households, ownership of a private vehicle allows one or more members of the household to hold jobs.

Question 11.—The present asset limit in the program is $1,750 ($3,000 if a multi-member family includes a person over the age of 60). But those assets do not include jewelry, household appliances of a recreational or unnecessary nature, ostentatious wardrobes, the value of a home, or insurance policies. This results in taxpayers who do not own a home subsidizing those who do. How many food stamp recipients have more than $5,000 equity in a house? If they were eliminated from the program in FY 1980, how much would be saved.

Answer—The most recent data on home ownership among food stamp households comes from the 1976 Survey of Income and Education based on 1975 incomes. This survey found that only 15% of food stamp households had equity in a home of more than $5,000. We are not able to estimate precisely how much would be saved by eliminating these households for the Food Stamp Program, but it could be considerably less than 15 percent of program costs. Households with asset holdings in this range tend to have higher incomes and, as a consequence, lower bonuses than households with lower asset holdings.

The households with home equity of more than $5,000 tended to be households headed by an older person. Of food stamp households headed by someone aged 60 or over, 21% had equity in a home of more than $5,000. Placing such a low limit on food stamp households' equity in a home would result in some low-income households being forced to sell their homes in order to get food stamp benefits. In addition, some households in need of food assistance may live in neighborhoods where property values are rapidly rising. Thus, a home which they bought for a relatively low price some time ago may now be valued at considerably more, although the house itself has not been improved. This is particularly true for elderly households who may have purchased their home thirty or more years ago.

Question 12.—A U.S.D.A. representative stated in testimony before the Senate Agriculture Committee that the Department has not yet begun to implement the allegedly tighter work requirements of the Farm Bill of 1977. So we do not know how much would be saved in FY 1980 if U.S.D.A. were enforcing the law as it was written in 1977. It is therefore premature for the Budget Committee to assume that the cap on the food stamp program will be lifted by Congress—or even that the cap would otherwise be broken—until we see how much U.S.D.A. can save the taxpayers by doing its job as Congress spelled it out in the Farm Bill of 1977. When will the Department have statistical evidence for us of the percentage of food stamp recipients who are put to work through U.S.D.A.'s work registration requirements?

Answer.—The testimony given before the Senate Agriculture Committee on February 27, 1979, was in reference only to one part of the work registration requirements of the Food Stamp Act of 1977; namely, the voluntary quit provision. Final regulations on this provision have been published by the Department and are being implemented by the States. Under the provision primary wage earners who quit their jobs and then apply for food stamps will have their households barred from the program for two months.

We do believe that work requirements are important and necessary to the integrity of the program. However, available studies conducted by CBO and USDA suggest of work requirements in the Food Stamp Program that the savings in benefits may be offset by costs in administering work requirements. In 1978, 250,000 food stamp recipients were placed in jobs under the program's work requirements.

Question 13.—The program's current work registration requirement does not apply to persons who care for children under the age of 12. But in the AFDC program, it does not apply to persons whose children are under the age of 6, i.e. pre-school. Is this reasonable, in the Department's view? How much would be saved by having a uniform welfare work registration requirement, exempting persons caring for pre-school children?

Answer.—Under AFDC work registration requirements, persons caring for children under the age of 6 do not have to register work. In addition, persons caring for children over 6 cannot be required to accept work unless daycare services are available. Approximately $125 million is included in the AFDC budget to pay for social services, including child care, which must be provided before a person can be required to work.

To reduce the age of the child to 6 and to provide child care services in order to make the food stamp requirement uniform with the requirement under AFDC would greatly increase the costs of work registration. A 1977 CBQ study suggests that increasing the work registration budget by the amount necessary to cover these increased costs would not be cost effective.

While the Food Stamp Act of 1977 does allow for a child care deduction of up to $80 per month, the program does not guarantee that child care services will be available to persons needing such services in order to hold a job. Also the $80 deduction is a combination excess shelter/child care deduction and in no case can a person claim more than $80 for excess shelter and child care combined. In the old food stamp program there was no dollar limit on either shelter or child care costs.

Question 14.—There has been a tendency to bring older workers into the labor force and to keep older workers active longer. But the Farm bill of 1977 lowered the age of exemption from work requirement from 65 to 60. Does the Department consider that reasonable? How much would be saved in FY 1980 if food stamp recipients were expected to work until they reach 65?

Answer.—State employment services find it extremely difficult to place low-skilled workers over the age of 60 in jobs. Yet the cost of registering and maintaining records on these workers is the same as that for younger registrants. In fact, the cost of registering these persons may likely exceed the savings realized from the few who are able to find jobs. Registering these older individuals also takes the time of employment service personnel away from more employable workers, and therefore could actually hinder activities that would result in cost savings.

Question 15.—How much does the Department project spending for food stamp for strikers (not idle because of a lockout) during FY 1980?

Answer.—We estimate that in FY 1980 less than $18 million will be received by households containing a striker.

Based on our latest survey, conducted in September 1976, only about 0.34 percent of all participating households contained a member on strike. In an earlier study conducted by the House Committee on Agriculture, based on April 1975 food stamp quality control reports of non-public assistance households, striker participation was determined to be 0.2 percent. Information from the October 1975 quality control sample indicated that 0.3 percent of households contained a striker, while the August 1975 Current Population Survey showed participation in the program to be 0.2 percent.

Households containing a striker must meet the same income and asset tests as other households applying for food stamps, and like other households, strikers must register to work. In addition, the Food Stamp Act of 1977 provides that the fair market value over $4,500 of any car not used to produce income be counted as an asset. This provision undoubtedly will have the effect of lowering even further participation by strikers.

Question 16.—The Farm Bill of 1977 contained a work registration requirement highly preferential to college students and

graduate students. How much would be saved by ending that preferential treatment and applying to students over the age of 18 the same work requirements applied to welfare mothers and others?

Answer.—The Food Stamp Act of 1977 provides a rather stringent work requirement for college students. For the first time the law requires that students must work, or be registered to work, half-time during the school year and full time during breaks of more than 30 days. This means that a full-time student can also be required to work half-time in order to qualify for stamps. Students are also ineligible to participate if they are or could be claimed as tax dependents of households which are ineligible for the Food Stamp Program.

Data show that even before the implementation of these new requirements, participation in the Food Stamp Program by students was declining. Based on the latest available data of September 1976, less than 1 percent of food stamp participants (127,000) persons were students in college or postsecondary training. This was a considerable drop from the September 1975 participation level of 200,000. And the number is expected to drop still further, probably to below 0.5 percent of food stamp participation, under the new provision of the 1977 Food Stamp Act that recently went into effect.

We cannot predict how much would be saved by applying the same work requirements to college students as to other households. It seems likely that some students already fulfill the more stringent requirements and others would begin to do so. As an example, if one-half of the projected number of FY 1980 college students participants were eliminated, the savings might be on the order of $15 million.

Question 17.—What would be the cost of the Food Stamp Program in FY 1980 if one-quarter of the recipients were transferred to a commodity distribution program?

Answer.—The savings to the Food Stamp Program in FY 1980 from transferring one-quarter of the recipients to a commodity distribution program would be on the order of 25 percent of program costs, but the actual amount of the savings would depend on the size of the bonuses to which those households were entitled. If they tended to be extremely low net income households their bonuses could be relatively high and the savings could be greater than 25 percent of food stamp costs. Conversely, if they tended to be households with relatively high net incomes, the savings could be less than 25 percent of food stamp costs.

It is important to note that while the costs of the Food Stamp Program would decrease under such a plan, the cost of the food distribution program would substantially increase. While the average benefit per person is higher under the Food Stamp Program than under the commodity program, the per person Federal administrative costs for commodity distribution are approximately twice that for food stamps, as warehouses and trucks must be purchased or leased in order to store and distribute food.

Question 18.—The argument has always been made that an increase in food stamp spending results in an increase in agricultural purchases. That was probably true when there was a purchase requirement, because it compelled recipients to commit part of their income, along with their stamp bonus, to groceries. Now that the purchase price has been eliminated, and recipients are free to use their own resources as they like inasmuch as they no longer are tied up in the purchase of stamps, is U.S.D.A. monitoring in any way to see if the program results in less agricultural buying?

Answer.—Within the next year the Department will conduct a study of consumption expenditures of food stamp households, in order to assess the impact of the elimination of the purchase requirement on the purchase and consumption of agricultural products. Data from this study will be compared with similar data from a 1977 pre-EPR study of food stamp households.

Question 19.—USDA has been terribly slow in implementing the pilot projects mandated by the Farm Bill of 1977. They included 14 workfare projects. These were not optional on the part of USDA. They held out the prospect of saving tremendous amounts of the taxpayers' money, which would have kept the program well under its cap for FY 1980. But they have not even begun. Why should the Budget Committee recommend $1.3 billion in additional spending when it might not be necessary if USDA obeys the law?

Answer.—The USDA is obeying the law. The workfare pilot project sites have now been selected, and the projects will begin operation within the next few months. The pilot projects were not designed to reduce program outlays for FY 1980, but to test, in a relatively small number of pilot areas, the overall effect of workfare in the Food Stamp Program. Moreover, since persons who get workfare slots do not have food stamp benefits reduced because the workfare job pays no wages (unlike persons who get wage-paying jobs and do, then, have their benefits reduced or terminated), workfare may not have a significant impact on program outlays even in the pilot areas.

SOUND ECONOMIC POLICY

Mr. HATCH. Mr. President, two articles in yesterday's Washington Post concerning economics caught my eye. The first is one of the finest examples of sound economic thinking I have read in a long time. The second was pure economic lunacy.

The economic wisdom emanated from a column written by Congressman DAVE STOCKMAN, of Michigan, about the current gasoline shortages being experienced in some of our larger metropolitan areas. Congressman STOCKMAN has demonstrated his wisdom on economic matters time and time again in the short time he has been in Congress. He has demonstrated impressive leadership on the energy issue and his column should be read very carefully by all who are seriously concerned about our present energy problems.

Congressman STOCKMAN patiently explains in his column how the current gasoline shortages in Los Angeles and Washington, D.C., are being created by the misguided allocation policies of the Department of Energy. He explains how the Department's allocation system, based on last year's allocations, misallocates this year's gasoline supplies away from those areas with greatest demand. He then goes on to explain how a free market allocation of gasoline supplies would alleviate the problem, with not too drastic increases in the price of gasoline. This column should be required reading for every bureaucrat at the Department of Energy.

I ask unanimous consent that it be printed in the RECORD at this point.

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

[From the Washington Post, June 20, 1979]

WHO'S TILTING THE GASOLINE MACHINE?

(By DAVID A. STOCKMAN)

The U.S. gasoline market is beginning to resemble a giant pinball machine. Some inept player is recklessly jiggling the board, causing it to go "tilt." But in a highly curious manner. The bells and lights of shortage—station closings, long lines and tank-topping—are not tripping off in a generalized, nationwide pattern, but sporadically, locally, almost randomly—one city at a time.

This hit-and-run pattern is the key to fingering the culprit. Thus, despite all its imperfections, the "invisible" hand of the marketplace automatically gets exonerated because it is inherently incapable of dispensing injustice so capriciously. Faced with an estimated 9 percent gap nationally between apparent demand and available supplies, the marketplace would close this gap by substituting higher prices for long lines. That would mean a market-clearing (line-eliminating) price in the range of $1.20 to $1.30 per gallon. Nor would price rationing dump the entire shortage burden on one or a few localities. The price would not be $1.50 per gallon in Washington where there are currently massive lines and only 85 cents per gallon in Albuquerque where there are no lines and half the stations are open 24 hours a day.

Instead—in response to opportunities to buy lower and sell higher—brokers, jobbers and speculators would move available supplies around in a hurry so that the price would equilibriate somewhere in between. The burden of shortage would be shared equally by all geographic areas and end-use sectors, as occurred when the nation's foreign coffee supplies precipitately dropped by 25 percent two years ago.

But something is at work in the internal marketplace, transforming the present 9 percent shortage in the national gasoline pool into a far more severe problem in a selective set of local retail markets. What is it?

In this instance, the major oil companies are not a plausible villain. While not noted for their political acumen, even they are not stupid enough to pick two of the nation's major political hot buttons—Washington, D.C., and Los Angeles—for a demonstration strike. The same reasoning holds for the greedy, panic-stricken consumer explanation. The aggregate 9 percent gasoline shortfall has not elicited a run on the retail gasoline bank in 90 percent of the country. While motorists in Washington and Southern California are admittedly unique in their political and cultural propensities, there is no evidence that they are any more irrational than average in their gas-buying habits.

The fact is, the fingerprints that appear on literally every barrel of gasoline that moves outward from the nation's 200 refineries, through 12,000 wholesalers and 200,000 retail outlets, for ultimate deposit in 120 million thirsty vehicle tanks, are those of the Department of Energy. Like the fabled handiwork of the Lilliputians, 3,000 pages of regulations and interpretive opinions rigidly bind the exact price and volume of each transaction through the marketing chain, and ultimately determine the precise street-corner destination of each of the 300 million gallons that move through the system daily.

The first thing to note about this massive pile of regulations is that it is stacked *against* the retail market, motorists, cities and growth areas—and *toward* farmers, nonmetropolitan areas, gasoline marketers and hoarders.

This month available supplies nationwide amount to 92 percent of the June 1978 base period. But most D.C. area retail stations are getting only 75 to 85 percent of last year's volume, at best. Why? Because 15 percent of the total supply is being skimmed off the top of the national pool for the state set-aside and so-called high priority users. The retail network gets an allocation fraction based on the diminished residual supply.

State capitol bureaucrats are supposed to distribute part of this—the 5 percent state

set-aside—to areas of greatest need. But evidence from the 1973–74 experience suggests a good portion is going to pals, politically connected marketers and squeaky wheels in the commercial sector.

Similarly, in the last four months the share going to the other top-of-the-pool category—high-priority users—has more than doubled.

Moreover, these high-priority users—especially farmers—are entitled to 100 percent of their "current needs," which is defined as whatever they say it is. For all practical purposes, this means unlimited entitlement to scarce supplies for priority claimants who are self-certified from the bottom of the marketing chain up. The fact that delivery times for 1,000 to 10,000 gallon steel tanks have ballooned dramatically in recent months suggests that "current needs" include the right to hoard for future use.

Overall, a substantial share of available supplies is being diverted out of the retail market to various categories of legally privileged and politically connected users who face absolutely no incentive to conserve, a wide-open opportunity to hoard, and an artificially low, controlled price to boot.

The second major distortion stems from the fact that the price-control regulations encourage dealers to respond to the present "sellers market" in a perverse way. While the retail price ceilings are leaky and ill-enforced, they most definitely do restrain the rate of price increase relative to what would otherwise occur in a supply-short market. This is supposed to protect the consumer, but what it actually does is encourage the dealer to take his sellers'-market profits in an alternative way: Instead of raising prices, he reduces hours and operating costs, thereby widening his actual margin.

Thus, facing an already artificially low allocation fraction, retailers find it possible to move a fixed monthly gallonage by cutting out their highest cost hours—weekends and evenings. This in turn induces motorists to line up on Monday and Friday, which permits a further compression of sales hours. Soon there are Tuesday and Thursday lines, even fewer sales hours, still lower operating costs and even higher profits over a price-controlled but constant volume of sales. Fed by a spiral of consumer panic, the ultimate outcome is obvious. Your friendly gas-and-go operator, who normally moves 25,000 gallons to 3,000 customers over the course of a week stretching upwards of 90 hours, arrives at the crack of dawn on Wednesday to find a week's worth of customers neatly queued in a two-mile line—whence he laughts all the way to the bank or his favorite fishing hole by noon.

In the absence of the DOE ceilings, of course, some operators would sell higher and stay open longer; others would sell higher and stay open different hours; and the most enterprising dealers and jobbers would be out scrounging the regional and national market for additional, higher-priced supplies that will always gravitate toward the strongest local seller's market.

Yet under DOE rules, in which every gallon is earmarked, there are no free supplies and nothing for local jobbers to bid for in order to shift the short-run allocation. Necessarily then, motorists work harder and longer, marketers work less and more profitably, and eventually the system tilts. That this DOE-designed *market-clogging* outcome is of any more benefit to the consumer than the market-clearing outcome is by no means apparent.

Finally, the Lilliputian regulators are now applying a special supply noose to the cities. During the recreation season, the big cities are heavy exporters of weekend traffic, which creates seasonal bulges in gasoline demand along the interstates and in the beach, resort and vacation receiving areas. The allocation system is now perfectly reflecting this normal distribution of sales by allocating to each station an equal fraction of last year's base.

But worried motorists don't behave normally—and *aren't* reflecting last year's pattern. Exhausted from hustling for gas or apprehensive about being stranded, a significant fraction are staying inside the beltway on weekends. Last Friday, for instance, traffic across the Bay Bridge was down a full 20 percent from the same week last year. Unfortunately, when the traffic stops flowing down Route 50, the gasoline delivery trucks don't. The allocation system thus drains the cities and floods the highways and countryside.

Unless total supplies improve substantially in next six weeks, the tilt lights will start popping in most major cities in the East and elsewhere. The administration can avoid this unhappy outcome instantly by pulling the rip cord on the Lilliputian regulators now knotting up the gasoline market. But Congress would have 15 days to veto such a decontrol plan. Undoubtedly it would do so. Better to risk massive dislocation, push public tempers to the flash point and beat the drums harder against scapegoats than to tell the public the truth: Gasoline is no longer cheap. Ironically, however, the present regulatory camouflage will ultimately prove even more costly.

Mr. HATCH. Mr. President, the best example of economic lunacy I have seen in a long time appeared in an article in the Post's business section concerning remarks made by Mr. Barry Bosworth, the Director of the Council on Wage and Price Stability. Mr. Bosworth, who will shortly be leaving the Council, blames the U.S. inflation problem on the average American. The Post article quotes extensively from Mr. Bosworth's remarks before a meeting of Women in Housing and Finance. In effect, he blames inflation on workers trying to increase their real standards of living.

Mr. Bosworth's attack on the "selfishness" of the average American in trying to increase his real standard of living is typical of the economic thinking of the Carter administration. And although Mr. Bosworth quite correctly points out that the U.S. record of productivity growth over the last several years has exacerbated the inflation problem, he fails to explain that the Government, through its economic and regulatory policies, has destroyed almost all incentive for workers to increase their productivity.

The fact is that few Americans have been able to increase their real standard of living over the past few years, even if they have managed to secure wage increases that exceeded the rate of inflation. Mr. Bosworth fails to point out that, because of our progressive income tax structure, a worker cannot maintain his real standard of living by receiving a wage increase that merely compensates him for inflation. Because this wage increase would push him into a higher tax bracket, increasing wages only at the rate of inflation will cause the worker a real decline in his aftertax income. He must try to get wage increases greater than inflation to maintain his standard of living.

However, the big winner in this game is the Federal Government. For every 1 percentage point of inflation, the Federal Government increases its tax revenues by 1.6 percent. Because of this automatic inflation bonus that is built into the tax structure, the Federal Government has been able to increase the share of GNP that it consumes over the past few years from 18.8 percent in 1972 to 19.9 percent in 1979. Mr. Bosworth tells us:

> Any attempt by the individual to increase his own standard of living has to come at the expense of somebody else. Every American catches up (on inflation) by taking it out of the hide of someone else.

Mr. Bosworth did not have the courage to tell us that it has really been the Federal Government taking it out of the hides of the American taxpayers that has caused our economic problems. So long as the Carter administration follows this kind of "uneconomic" thinking, they will never be able to get control of the inflation problem. The average American can do nothing to solve our inflation problem. The Federal Government must accept complete responsibility for our inflation problem and recognize that the only way to bring inflation under control is to reduce the rate of increase in Federal spending and to quit printing money to pay for its budget deficits.

I ask unanimous consent that the Post article be printed in the RECORD at this point.

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

[From the Washington Post, June 20, 1979]

BOSWORTH BLAMES CITIZENS FOR U.S. INFLATION PROBLEM

(By Frank Swoboda)

One of President Carter's top economic advisers yesterday blamed the "average American," not corporate profits, for much of the nation's inflation problem.

Barry Bosworth, outgoing director of the Council on Wage and Price Stability, warned that despite soaring prices for food, fuel and housing, the average worker should not expect any real increase in wages.

"I think the problem is the average American, and it's not a pleasant fact," Bosworth told a meeting of Women in Housing and Finance. But unless the average worker changes his ways, he predicted, the United States may be headed down the same economic road as Great Britain.

Bosworth said that in the absence of any real growth in productivity, there could be no real wage increases without adding to the inflation problem. "Unless we do more work (this year) than we did last year, then there can be no (wage) increase," he said.

Therefore, Bosworth said, "Any attempt by the individual to increase his own standard of living has to come at the expense of somebody else. Every American catches up (on inflation) by taking it out of the hide of someone else."

Bosworth pointed to the current fuel demands of farmers and independent truckers as an example of the type of self-interest that adds to inflationary pressures.

"One of the reasons that the energy crisis is so severe . . . is that one group after another has come in for special allocations," Bosworth said.

Singling out the farmers' request for 100 percent of last year's fuel allocation to harvest this year's crops, Bosworth said "if they use it all for the harvest we ought to have the most fantastic harvest in history. Everyone wanted a little more than needed and then sold the excess to someone else."

He added that the nation would also be in trouble "if everyone acts like the truckers."

Bosworth, who will be leaving COWPS this summer, said the current inflation outlook calls for "further blows" to the government effort to moderate inflation. "Energy has now replaced food as the major inflation problem," Bosworth said, "and people are going to be shocked when they see what utility prices are going to be."

Bosworth also warned that "no matter what energy solution (the nation decides on), energy costs are going to go up much more rapidly than other costs." In general, he said, "housing, food and energy prices will be going up much more rapidly than anything else even if there are zero wage increases."

Bosworth insisted that wage and price controls were not a viable option for curbing inflation. Not only was there no sentiment in the White House or Congress for controls, he said, the key elements of the current inflation would not be affected by controls.

He said food costs are controlled by market forces. For example, he said, "the current rise in beef prices will only come to an end when people quit buying beef." And, he said, neither OPEC nor productivity are touched by a controls program.

Bosworth conceded that the current wage price situation was "unfair," but said the alternative was a recession which would throw millions of workers out of their jobs. "It is unfair . . . but it is a fact of life," he said. "The question is whether we can accept it or repeat what happened in 1973–74" when the recession left 9 million out of work.

Mr. HATCH. Mr. President, the American people are fortunate that Mr. Bosworth is leaving the Carter administration. We hope he takes the bankrupt thinking of the Carter administration with him. At the same time, the American people are fortunate to have a representative like Congressman DAVE STOCKMAN. Perhaps it is indicative of some hope for the future that Mr. Bosworth is leaving and that Congressman STOCKMAN will probably be around for a long time. I would hope that President Carter would recognize this and send the rest of his economic advisers up to Capitol Hill for a few lessons in economics from Congressman STOCKMAN.

SALT II

Mr. BELLMON. Mr. President, President Carter sent the SALT treaty text to the Senate and addressed the Congress on June 18. We now will proceed through hearings to a final vote in the fall. We may proceed from the premise that the technical details of SALT II—in terms of both military equality and verification—will be discussed during the Senate ratification hearings sufficiently to provide each Senator with the basic facts of the issue. However, the process of using these technical facts to arrive at a judgment concerning the suitability of SALT II for serving U.S. interests will require a broader political context within which SALT may be evaluated.

Mr. President, I should like to attempt to set this context as I see it and briefly outline a number of considerations of a broader political nature. Specifically, I should like to identify major issues whose discussion might be expected to place SALT in its appropriate, broad perspective. In doing this, we may provide an integrated context for helping make this final decision on advice and consent by the Senate.

Prior to stating central questions related to the broader context of SALT II, we should be explicit about certain current realities that are not likely to change in the near term: First, the United States is not the single preeminent power of the immediate post World War II years; second, the Soviet Union has now become a global power, especially in military and political terms; third, new economic superpowers, such as Japan and the Federal Republic of Germany, have entered the world arena; and fourth, the post colonial period now means that changes in the third world will take on a new and different character from the past.

Mr. President, a series of central questions and subsidiary queries may be listed as a framework for assessing the rationale to be followed in ratification or rejection of SALT II:

First, is it possible for the United States and the Soviet Union to negotiate arms agreements that will result in significant advances to our mutual national security?

What political/military factors must the United States control to insure the success of its long-term policy objectives? What are the Soviet threats to U.S. long-term policy objectives? What means of competition does the Soviet Union possess? Are other means of competition likely to provide more or less national security? Is SALT II a good basis for proceeding to SALT III?

Second. Will a SALT agreement improve regional stability and enhance U.S. interests in various regions of the world?

Are bilateral negotiations also helpful for strengthening progress on multilateral negotiations, such as MBFR? Will NATO and Western Europe be more secure? Will the Middle East region be more stable and less likely to interrupt oil supplies to the West? Will Asia be more politically stable? Will the progress of change in Africa and Latin America be left to indigenous forces or, will the Soviet Union or its allies interject arms, instability, and change adverse to local and U.S. interests into the various regions? What are the implications of the SALT process for our allies? What meanings and lessons will our allies and our adversaries draw from our SALT conduct?

Third. In the SALT process part of a global process of change that is compatible with our interests and objectives?

What is our perspective of optimal change in the world arena? How do we relate SALT objectives to our global aims and objectives? To what extent should or can the supermilitary powers—the U.S. and the U.S.S.R.—influence or control global events?

Fourth. How does the SALT and other arms negotiations of the current time period relate to earlier historical arms limitation or competition analogies? Can we learn something from reviewing the history of the following:

Post World War I naval limitations;

West European democratic nation reactions to Nazi power;

Soviet-Nazi pact relations of the prewar period;

Soviet-American confrontations, such as Berlin airlift; Khrushchev-Eisenhower/Kennedy relations, including U-2, Cuban missile crises; the lessons of SALT I.

Fifth. How well prepared is this administration to develop a global, regional, or arms-negotiation strategy to maximize our bargaining positions and effectively utilize our gains in negotiation?

We have seen an alternating view from confrontation to cooperation in the Carter administration that can best be described as uncertain and confusing. In assessing the current arguments for SALT II, we should look to the record of this administration for some sense of purpose and consistency. Failing to find a clear policy in the Carter record may well be rather critical in an assessment of the future utility of any SALT agreement under this administration. Is this lack of clarity and uncertainty a result of the objective environment or a characteristic of this administration? What steps might a new administration take to improve the effectiveness of the conduct of our foreign policy, especially as it relates to relations with the Soviet Union.

Mr. President, in our debate on SALT, we must raise our heads and broaden our vision to ask what the role of the United States is now and what it should become in the world and its various regions and what our responsibilities are in a changing world. We must also relate this global vision to our domestic objectives and aims. How can we maximize our effective influence toward reaching global goals while assuring our national security and holding the costs of arms to tolerable levels?

In this context we may ask, what are the realistic implications of SALT rejection or ratification. Let us objectively and rationally approach the ratification question on both its technical and broader macropolitical bases and make our own best judgment.

In future weeks during the course of our debate, I shall draw on various sources of expertise to elaborate on the above questions to assist in deciding whether to vote for or against SALT II. I am certain other Members will do the same.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are

printed at the end of the Senate proceedings.)

TRUCKING COMPETITION AND SAFETY ACT OF 1979—MESSAGE FROM THE PRESIDENT—PM 83

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers, which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

I am today transmitting to the Congress legislation to reduce substantially Federal economic regulation over the trucking industry.

The trucking industry today is subject to perhaps more complex, detailed, and burdensome Federal regulation than any other industry in our Nation.

Not only does the Interstate Commerce Commission control who may enter the trucking industry, the ICC must also approve the application of an existing carrier seeking to offer new services or improve its old ones.

But ICC regulation merely begins when a certificate is awarded. The ICC, not the trucking company, decides what cities and towns a carrier may serve. The ICC, not the trucking company, decides in detail what commodities the carrier may haul—and whether any commodities can be carried on the return trip. The ICC, not the trucking company, often decides the actual highway the trucker must use, whether stops may be made to serve points along the way, and whether the trucker may take the most direct route to its destination.

This system of detailed regulation was imposed in 1935 when the trucking industry was in its infancy, and when the Nation was in the midst of its most serious depression. At that time, competition was blamed for the Nation's economic woes. Many believed that extensive government control was needed to protect the newly developing trucking industry.

In the 44 years since regulation was first imposed, conditions have changed dramatically. The trucking industry has matured and prospered, and our economy has become strong. But our system of regulation has remained basically the same.

ICC-regulated carriers are also sheltered from price competition. In 1948, Congress overrode President Truman's veto and enacted a special immunity from the antitrust laws that permits regulated trucking companies to meet together and decide upon rates. This conduct, which would be a felony in nearly every other industry, stifles competition, discourages innovative pricing, and forces the prices of consumer products higher than they otherwise would be.

Our current regulatory system contributes to three of our Nation's most pressing problems—inflation, excessive government regulation and the shortage of energy. Since regulation permits price-fixing and stifles price competition, consumers are unnecessarily paying billions of dollars a year in higher transportation prices. During these inflationary times, government policies that needlessly raise costs cannot be tolerated.

Regulation also subjects one of our Nation's most important industries to a mindless scheme of unnecessary government interference and control. Rather than putting their talents and energies to the task of providing the price and services customers want, trucking companies are forced to concentrate on proposing measures that government regulators will permit.

Finally, regulation needlessly wastes our Nation's precious fuel by preventing carriers from making the most productive use of their equipment, and by requiring empty backhauls and circuitous routings.

The legislation I am proposing will restore the competitive spirit to the trucking industry, reduce inflation, minimize government regulation and save energy.

The major provisions in the legislation are summarized below.

NEW, COMPETITIVE POLICY STATEMENT

The bill I propose establishes a new policy statement to govern all aspects of ICC regulation of the trucking industry. The policy statement emphasizes reliance on competition rather than government regulation to the maximum extent possible to reduce rates, improve service, attract capital, increase efficiency and offer the opportunity to earn fair profits.

The policy statement also emphasizes the need to reduce existing regulations which contribute to concentration of market power, waste energy, restrict entry and services to smaller and other communities, protect larger carriers at the expense of smaller carriers, and adversely affect the long-term maintenance of fair wages and working conditions.

The policy statement also emphasizes the need for fairer and more expeditious regulatory procedures and the need for more effective safety regulation.

REMOVAL OF CERTIFICATE RESTRICTIONS

ICC certificates today are subject to a variety of restrictions that control every aspect of a motor carrier's operations. For example:

Backhaul Restrictions. Many certificates award only one-way authority, or specify that a carrier may haul commodities to a point, but with "no transportation for compensation upon return unless otherwise authorized." As recently as 1975, only half the operating certificates awarded contained authority to haul goods on a return trip.

Prohibition on Intermediate Stops. Many certificates prohibit carriers from making intermediate stops between authorized points. This prevents carriers from maximizing their loads, increases costs, and keeps many towns, especially smaller ones, from receiving the best possible service.

Route Restrictions. Most certificates authorizing the carriage of general commodities specify the actual highway the truck must use.

In addition to restricting operating flexibility, these restrictions harm service to small towns. A carrier cannot leave the highway to serve a town off the beaten track without violating the law.

Circuitous Routings. In some instances, carriers are required to take an indirect route or travel through a designated "gateway city" to reach their destination. For example:

—Denver, Colorado and Albuquerque, New Mexico, are connected to each other via Interstate 25, a distance of 442 miles. Garrett Freight Lines is permitted to haul freight from Denver to Albuquerque—but only if it goes by way of Salt Lake City, a distance of 730 miles.

—In 1974, during the height of the energy crisis, Consolidated Freightways was denied a request to travel directly between Minneapolis-St. Paul and Dallas. The carrier's route authority required it to travel 37% extra miles on trips between the two points. Despite the company's desire to eliminate excessive mileage and save fuel, the ICC denied the request because the new service would harm carriers already serving the route.

Circuitous routings, like regulations which require trucks to travel empty, waste precious fuel and increase costs and prices.

Commodity Restrictions. ICC certificates specify in detail the commodities a carrier is authorized to haul. These restrictions often follow no logical pattern and serve no apparent purpose. Some certificates, for example, authorize the carrier to haul crated, but not uncrated machinery; or allow paint hauled in 2-gallon cans, but not paint in 5-gallon cans. One recent certificate permits a carrier to haul bananas. The carrier may also haul pineapples, but only if mixed with loads of bananas.

In another case, a regulated trucker whose certificate authorizes him to haul "foodstuffs" recently wanted to haul beer. Permission was denied by the ICC. Although "wine" falls into the category of "foodstuffs," "beer" does not. If this trucker persists in his desire to haul beer, he must go through the burdensome, costly and time-consuming process of obtaining a certificate to haul "malt beverages."

As a result of backhaul and other regulatory restrictions, enormous amounts of fuel are wasted each year. This waste needlessly raises prices and significantly aggravates the energy shortage.

The legislation I am proposing provides that:

—All backhaul restrictions are removed immediately.

—All prohibitions on making intermediate stops between authorized points are removed immediately.

—All route restrictions, including requirements that a carrier take a circuitous route or pass through a designated gateway city, must be removed no later than December 31, 1981.

—All restrictions limiting the types of commodities a carrier may haul must be removed no later than December 31, 1982.

—All other restrictions must be re-

moved no later than December 31, 1983.

—The ICC is directed to adopt liberal standards and expedited procedures for carrier petitions for removal of individual restrictions prior to the statutory deadlines. Opponents to carriers' petitions have the burden of proof to show why a restriction should not be removed.

—The ICC is directed to develop a program allowing existing carriers to increase each year their operating authority by a limited amount without ICC approval. The ICC program shall emphasize increased opportunities to serve small towns.

ENTRY AND PROCEDURAL REFORM

Before a carrier can haul regulated commodities, and before an existing carrier can expand or rationalize its operations, it must obtain authority from the ICC. Obtaining new authority has been difficult. The applicant has the burden of proving that the new competition is "required" by the public convenience and necessity. Carriers already serving the route have been able to block new entry if they could provide the service themselves, or if the new competition might impair their profitability. Although the ICC has begun to grant a larger percentage of these applications, the existing statute still requires carriers to meet an excessive burden. The ICC needs new statutory authority to carry forward the liberalization that it has begun.

This regulatory maze is particularly burdensome to small businesses. Large businesses may be able to afford experts to go through complicated regulations and wait the long months or years to obtain decisions, but this is not true for the small entrepreneur.

The legislation I propose liberalizes these restrictive entry standards. The bill substantially reduces regulation over time, and places increasing reliance upon the competitive marketplace. The bill:

—Retains the requirement that the applicant prove it meets financial, safety and insurance requirements (i.e., that it is "fit, willing, and able").

—Reverses the burden of proof and requires *opponents* of new competition to show that the transportation applied for would be inconsistent with the public convenience and necessity.

—Applies new standards for the "public convenience and necessity" test. The ICC must give substantial weight in favor of the application where it finds that the service would lower operating costs, improve fuel efficiency, meet consumer or user preference for service or lower rates, improve service to small communities; or generally improve the competitive climate. The ICC shall not consider possible diversion of revenues or traffic from other carriers.

—Requires the ICC to make a final decision on entry applications within 90 days.

—Grants the application of any fit, willing and able carrier to enter a point which an authorized carrier does not serve, or which a railroad has abandoned.

EXEMPTIONS FROM ICC REGULATION

From the start, major farm organizations opposed Federal economic regulation of the trucking industry. Farmers believed regulation would raise prices and limit the operating flexibility needed for distribution of agricultural products, many of which are perishable. Congress responded in 1935 by granting an exemption from ICC regulation for unprocessed agricultural commodities.

The agricultural exemption has served our Nation's farmers and consumers well. The exemption is too restrictive, however, and should be expanded. For example:

—raisins are exempt, if they are coated with honey, cinnamon, or sugar but not if they are coated with chocolate;

—wood chips for making wood pulp are not exempt, but wood cut into short crosswise lengths for firewood (not sawed lengthwise) are;

—frozen dinners are exempt, unless they are frozen chicken or seafood dinners;

—crab shells are exempt, but oyster shells are not;

—an owner-operator has stated, "I carry all the ingredients to the cannery to make the soup, but I cannot carry the canned soup back."

These narrow restrictions have resulted in significantly more empty backhauls for exempt truckers than for regulated truckers. The transportation costs for food, and hence food prices to consumers, are consequently higher.

The bill I propose expands the agricultural exemption to include livestock; agricultural, horticultural or aquacultural commodities; food and any edible products; and farm implements and supplies, including seed, fertilizer, and chemicals.

These provisions will allow better utilization of trucks and fewer empty backhauls. The result will be better trucking services and, most important, lower rates for farmers and lower food prices for consumers.

The bill also gives the ICC authority to grant exemptions from regulation, and expands the authority of agricultural cooperatives to haul regulated commodities for non-farmers.

CONTRACT CARRIERS AND FREIGHT FORWARDERS

CONTRACT CARRIERS

Contract carriers are ICC-regulated carriers who give specialized service to a limited number of shippers. They differ from common carriers in that they do not hold themselves out as serving the general public.

Although regulation of contract carriers has been less severe, this segment of the industry has been subject to two major restrictions: (1) they have been prohibited from applying for common carrier authority; and (2) they have been prohibited from entering into contracts to serve more than eight shippers. This second restriction has been particularly harmful to small shippers because contract carriers naturally arrange to serve only the eight largest shippers they can find.

Although the ICC has recently decided to reverse these two restrictions, their decision is being challenged in the courts by the trucking industry, and the outcome remains uncertain.

The bill I propose permits contract carriers to hold common carrier authority, and states that the ICC may not limit the number of shippers that a contract carrier may serve.

FREIGHT FORWARDERS

Freight forwarders are regulated companies who consolidate small shipments, pay a common carrier (railroad, motor carrier or airline) to transport the shipments to the forwarder's terminal in another area, and then deliver the shipments to their ultimate destination.

The bill removes unnecessary restrictions on freight forwarders. Freight forwarders will be permitted to negotiate rates and enter into contracts with rail and motor carriers. The removal of these restrictions will enable freight forwarders to compete more effectively, and will afford shippers of small shipments a greater variety of price and service options.

RATES AND RATE BUREAUS

Collective ratemaking, commonly known as price fixing, is normally a felony, punishable by fines up to $100,000 and 3 years imprisonment for individuals, and up to $1 million for corporations.

Since 1948, however, the regulated trucking industry has enjoyed a special exemption from the antitrust laws. This immunity allows trucking companies to meet in secret and decide the prices they will charge for truck transportation. Although rate agreements are theoretically subject to ICC review, the ICC has been inclined to rubber stamp rate agreements rather than subject them to an independent and thorough review. This lack of effective oversight is due in part to the sheer volume of processing, some 5,000 pages of rate tariffs are filed before the ICC each day.

Legalized price fixing and the lack of rate flexibility have cost consumers billions of dollars in higher prices. There is considerable evidence that rates are significantly higher today than they would be if set by the competitive marketplace.

—The Director of the Council on Wage and Price Stability has stated that consumers pay some $5 billion a year in extra costs because of the current regulatory system.

—Rates for the transportation of exempt agricultural commodities are lower than they would be under regulation. A representative of the American Farm Bureau Federation has estimated that:

". . . if agriculture had been saddled with a totally regulated motor carrier and barge transportation system for the past 35 years, the cost of transportation, which now accounts for nearly 10% of the nation's food bill, *would be a third greater*."

—In the mid-1950's, fresh and frozen dressed poultry and frozen fruits and vegetables were declared exempt from ICC regulation. The U.S. Department of Agriculture estimates that as a result of deregulation, trucking rates dropped substantially for those commodities.

—A recent study concludes that unregulated household mover rates within Maryland are 27–87 percent lower than rates for comparable interstate shipments.

—The trucking industry is highly profitable. Last year the largest eight trucking companies earned an average return on equity of 28.8 percent. These returns far exceed the average 14 percent return on equity earned by unregulated manufacturing companies, as well as the return on equity for the top firms in any other major industry.

Because regulation permits such high profits and makes operating certificates so scarce, ICC certificates are bought and sold for enormous sums. When Associated Transport went bankrupt in 1976, the operating rights carried on its balance sheet at $976,000 sold for over $20 million. Eastern Freightway, Inc., recently sold rights for about $3.8 million. Ultimately, of course, the buyer must recover the certificate's price from its customers in the form of higher prices.

The bill I propose:

—repeals the special antitrust immunity, making the trucking industry subject to the same antitrust laws that govern most other industries. Although carriers would be prohibited from discussing and voting on rates, rate bureaus may continue to publish rates. Carriers may also continue to interline and set joint line rates so that a shipper can pay one rate even though more than one carrier hauls the shipment to its final destination;

—encourages price competition by preventing the ICC from disapproving rates within a zone. For the first two years, carriers may lower their rates 20%, or raise their rates 5% per year, without ICC interference. At the end of two years, the ICC may not disapprove a rate reduction unless the rate would be predatory, and carriers may raise their rates 7% per year.

MERGERS

The bill requires the ICC to weigh possible anticompetitive effects of the proposed mergers.

The ICC may not approve or authorize any merger or acquisition if there is likely to be a substantial lessening of competition, creation of a monopoly, or a restraint of trade—unless the ICC finds that the anticompetitive effects of the transaction are outweighed by significant needs that could not be satisfied by a reasonably available alternative having materially less anticompetitive effects.

After five years, the ICC's authority over mergers is eliminated, and jurisdiction is transferred to the FTC and the Department of Justice.

PRIVATE CARRIAGE

Under existing law, non-transportation companies (such as Montgomery Ward and Pet Milk) may transport their own goods free from ICC regulation. Although these "private carriers" are not directly regulated by the ICC, their operations have been severely restricted. As a result, private carriers are plagued with an unusually high rate of empty backhauls. The bill I propose would allow private carriers to apply for authority to carry non-company commodities, to provide transportation for corporate subsidiaries, and to permit private carriers to "trip-lease" with certificated carriers for single trips.

TRUCKLOAD TRANSPORTATION

"Truckload" motor carriers of property, who concentrate on hauling specialized commodities in full truckload lots, are already a relatively competitive sector of the trucking industry. The ICC has been more liberal in granting entry, and rates are often negotiated between the shipper and carrier. Truckload carriers compete with railroads and with private carriers. The Commission has recently announced plans to deregulate several types of these "special commodity" carriers of truckload traffic.

The bill builds on this trend toward less regulation of this segment of the industry. After two years, entry and rate controls over truckload transportation are removed.

After two years, any trucking company that meets safety, financial, and insurance requirements may haul truckload lots to any point. Rates are subject only to the antitrust law's prohibition on predatory pricing. "Truckload" transportation is defined as carriage (a) by specialized commodity carriers, as categorized by the Commission; (b) in lots over 10,000 pounds; or (c) in lots under a single bill of lading.

PROPOSALS FOR FURTHER CHANGE

The legislative changes I am proposing in this bill will make the trucking industry substantially more efficient, competitive, and responsive to consumers. It will also greatly reduce government interference with the economic decisions of trucking companies. However, there will remain a greater degree of regulation over trucking than exists for any industry of comparable size and competitive potential. After increased competition in this industry has had a chance to take hold, we should consider whether ICC regulation over the trucking industry should continue.

The bill requires the Secretary of Transportation, in cooperation with the ICC and the Department of Justice, to report to the Congress by January 1, 1983, on the effects of this legislation, and whether ICC regulation over the trucking industry should be continued.

Finally, I will soon send to Congress proposals which assure that consumers receive increased protection in the household moving industry.

IMPROVEMENT OF SERVICE TO SMALL COMMUNITIES

The bill I propose contains the following provisions that will improve trucking service to small communities:

1. The general policy statement that governs ICC decisions specifically directs the ICC to improve small town service. There is no such provision in existing law.

2. In determining whether applications for entry meet the "public convenience and necessity" standard, the ICC is directed to emphasize increased service to small communities. There is no such requirement in existing law.

3. Certificate restrictions are liberalized to improve service to small communities. For example, many certificates today specify the actual highway a trucking company must use. If a truck leaves the designated highway to serve a town off the beaten track, it is violating the law. The proposed legislation liberalizes these certificate restrictions, and makes it easier for trucking companies to obtain authority to serve small towns.

Many existing certificates do not allow trucks to make intermediate stops and serve towns between authorized points. These restrictions are particularly harmful to towns that are so small that trucking companies are unwilling to undergo the costly and often unsuccessful process of obtaining authority to serve them. The proposed legislation would remove these restrictions and permit carriers to stop at intermediate points immediately.

4. The program for phased route expansion without ICC approval will emphasize increased service to small communities. There is no such program under existing law.

5. The agricultural commodity and agricultural co-op exemptions are substantially broadened. This will give carriers serving small towns increased opportunities to fill their trucks with commodities they cannot now carry.

6. Increased pricing flexibility will allow lower backhaul rates to small communities.

7. Any carrier that meets financial, safety, and insurance requirements (a "fit, willing, and able" carrier) may enter a point which an authorized carrier no longer serves, or which a railroad abandons. There is no such provision in existing law.

SAFETY

Reforms in safety enforcement are necessary because present levels of safety are unsatisfactory, and because authority to monitor safety practices and to sanction safety violations should be strengthened. These provisions are distinct from the economic reforms and are not made necessary by them.

The bill I propose places new emphasis on the existing fitness test which guarantees that all new entrants into the industry are safe. It also consolidates the safety authority in the Department of Transportation, and gives the Secretary of Transportation broader and more effective authority to deal with safety violations.

These reform proposals for the truck-

ing industry, together with airline deregulation and my recently proposed rail reforms, fundamentally reshape Federal regulatory policies toward the transportation industries. These new policies recognize that our national interest in a more productive, fuel-efficient and responsive transportation system can be best achieved with less Federal regulation and more reliance on private initiative.

JIMMY CARTER.

THE WHITE HOUSE, *June 21, 1979.*

REPORT OF THE FEDERAL PREVAILING RATE ADVISORY COMMITTEE—MESSAGE FROM THE PRESIDENT—PM 84

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, transmitting the 1978 annual report of the Federal Prevailing Rate Advisory Committee, together with an accompanying report; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

In accordance with Section 547(e) of Title V of the United States Code, I hereby transmit to you the 1978 Annual Report of the Federal Prevailing Rate Advisory Committee.

JIMMY CARTER.

THE WHITE HOUSE, *June 21, 1979.*

MESSAGES FROM THE HOUSE

At 12:25 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4387. An act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1980, and for other purposes.

At 5:32 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 429) to authorize appropriations for fiscal year 1979, in addition to amounts previously authorized for procurement of aircraft, missiles, naval vessels, and other weapons, and for research, development, test, and evaluation for the Armed Forces, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to H.R. 3173, an act to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize international security assistance programs for fiscal years 1980 and 1981, and for other purposes; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ZABLOCKI, Mr. FOUNTAIN, Mr. FASCELL, Mr. ROSENTHAL, Mr. HAMILTON, Mr. WOLFF, Mr. BINGHAM, Mr. SOLARZ, Mr. BROOMFIELD, Mr. DERWINSKI, Mr. GUYER, and Mr. QUAYLE were appointed managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendment of the Senate to H.R. 2774, an act to authorize appropriations for fiscal years 1980 and 1981 under the Arms Control and Disarmament Act, and for other purposes; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ZABLOCKI, Mr. FOUNTAIN, Mr. WOLFF, Mr. YATRON, Mr. STUDDS, Mr. HALL of Ohio, Mr. WOLPE, Mr. BROOMFIELD, Mr. DERWINSKI, and Mr. WINN were appointed managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 3324, an act to authorize appropriations for fiscal year 1980 for international development and economic assistance programs and for the Peace Corps, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ZABLOCKI, Mr. FASCELL, Mr. DIGGS, Mr. HAMILTON, Mrs. COLLINS of Illinois, Mr. BINGHAM, Mr. BONKER, Mr. PEASE, Mr. BROOMFIELD, Mr. FINDLEY, Mr. BUCHANAN, and Mr. WINN were appointed managers of the conference on the part of the House.

HOUSE BILL REFERRED

The following bill was read twice by its title and referred as indicated:

H.R. 4387. An act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1980, and for other purposes; to the Committee on Appropriations.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC-1635. A communication from the Secretary of Agriculture, transmitting, pursuant to law, an annual report on Public Law 480 activities for fiscal year 1978; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1636. A communication from the Acting Secretary of the Navy, transmitting a draft of proposed legislation to amend chapter 5, title 37, United States Code, to restructure the rates of special pay for sea duty; to the Committee on Armed Services.

EC-1637. A communication from the Deputy Assistant Secretary of Defense (Military Personnel Policy), transmitting, pursuant to law, reports for FY 1978 submitted by present and former officers or employees relating to DOD and Defense related employment; to the Committee on Armed Services.

EC-1638. A communication from the Superintendent, National Park Service, Department of the Interior, transmitting, for the information of the Senate, a document entitled "The Most Splendid Carpet," relating to the 15-year research project on the Senate Chamber carpet for Congress Hall, Philadelphia; to the Committee on Energy and Natural Resources.

EC-1639. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, a report entitled "Protection of High-Priority Natural Gas Consumers," June 1979; to the Committee on Energy and Natural Resources.

EC-1640. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report of the Chief of Engineers, dated 31 May 1979, entitled "Projects Recommended for Deauthorization—4th Annual Report"; to the Committee on Environment and Public Works.

EC-1641. A communication from the Deputy Director, Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, that in order to maintain in the second quarter of fiscal year 1979 the budgeted level of operation for Radio Free Europe/Radio Liberty, Inc., $1,726,062 is needed because of the downward fluctuations in foreign currency exchange rates; to the Committee on Foreign Relations.

EC-1642. A communication from the Secretary of State, transmitting a draft of proposed legislation to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes; to the Committee on Foreign Relations.

EC-1643. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, 1,459 reports concerning visa petitions which the Service has approved according the beneficiaries of such petitions third and sixth preference classification under the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

EC-1644. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the Five-Year Plan for Family Planning Services and Population Research; to the Committee on Labor and Human Resources.

EC-1645. A communication from the Secretary of Labor, transmitting, pursuant to law, a Status Report on the Youth Incentive Entitlement Pilot Projects, dated March 15, 1979; to the Committee on Labor and Human Resources.

E-1646. A communication from the Assistant Attorney General, Antitrust Division, Department of Justice, transmitting, pursuant to law, a report entitled "Conglomerate Mergers, Small Business, and the Scope of Existing Anti-Merger Statutes," June 20, 1979; to the Select Committee on Small Business.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM-309. A concurrent resolution adopted by the Legislature of the State of Michigan; to the Committee on Foreign Relations:

"HOUSE CONCURRENT RESOLUTION No. 236

"Whereas, The President of the United States has expressed deep concern for human rights in the world and has recently been successful in negotiating the release of five political prisoners from the Soviet Union. In addition, the President and the Congress of the United States have intervened in several other cases on behalf of individuals deprived of their human rights in the Soviet Union; and

"Whereas, Yuriy Shukhevych, a Ukrainian, has been incarcerated in Soviet prisons for almost thirty years. He was initially imprisoned at the age of fifteen, simply because he was the son of a General in the Ukrainian Insurgent Army, and later received an additional sentence for refusing to denounce his father and the cause of Ukranian nationalism; and

"Whereas, Upon his release in 1968, Yuriy Shukhevych was banished from the Ukraine and sent into exile in Siberia. In 1972, he was rearrest d on charges fabricated by the KGB and sentenced to another ten years of imprisonment. The alleged "crimes" committed by Mr. Shukhevych cannot be considered crimes in any civilized society. Moreover, his wife, whom he met during his brief time of freedom, and son have suffered enormous hardships as the family of a Ukrainian political prisoner; and

"Whereas, The treatment of individuals such as Yuriy Shukhevych by the Soviet government is indicative of a system of repression and terror. The people of the State of Michigan are gravely concerned over the inhumane treatment of Mr. Shukhevych and his family and condemn the policies of the Soviet government in dealing with political dissidents; now, therefore, be it

"Resolved by the House of Representatives (the Senate concurring), That the President and the Congress of the United States be memorialized to immediately open negotiations with the Soviet Union to seek the release of Yuriy Shukhevych from imprisonment and to request an exit visa for him and his family and to extend to them political asylum in the United States; and be it further

"Resolved, That these negotiations with the Soviet government include, if necessary, an exchange similar to the numerous exchanges consummated to secure freedom for victims of the Soviet Union's unjust penal system; and be it further

"Resolved, That a copy of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the Michigan Congressional Delegation."

POM-310. A concurrent resolution adopted by the Legislature of the State of Michigan; to the Select Committee on Indian Affairs:

"HOUSE CONCURRENT RESOLUTION No. 76

"Whereas, The Potawatomi Indians living on the Pine Creek Reservation near Athens, Michigan, lack all necessary services to maintain their health and safety. All of the twelve housing units are substandard according to a Calhoun County housing inspector. The stove-heated shacks are in desperate need of winterization, lacking insulation, storm doors and windows, and running water. In addition, the absence of police and fire protection along with the abject isolation of the reservation have created precarious living conditions; and

"Whereas, The Pine Creek Reservation has nearly exhausted all sources of funds available to it, with maintenance money having already run its course during a particularly discomforting winter. The lack of career opportunities has driven the young Potawatomi Indians away long ago, leaving the overage age of residents on the reservation at fifty-seven years. The typical resident is compelled to exist well below the poverty level, subsisting on Social Security with an annual income below $2,000; and

"Whereas, Due to legal complications concerning the ownership of Pine Creek Reservation land, the Potawatomis have been unable to procure funds that they are in desperate need of and entitled to. A recent application for a $300,000 federal grant was denied because the United States Department of Housing and Urban Development cannot act until the ownership controversy has been resolved. Moreover, at stake is $1,000,000 earmarked for the Huron Potawatomi Indians, as part of a recent $6,000,000 grant to the Potawatomi Nation by the U.S. Congress; and

"Whereas, Despite wide-spread news coverage and piles of correspondence, the Pine Creek Reservation has received virtually no assistance from anyone. Due to this lack of recognition by the Federal government, the reservation has steadily deteriorated since the early 1930's. Surely, the Potawatomi deserve at least equal treatment with the five federally-run reservations in the State of Michigan; now, therefore, be it

"*Resolved* by the House of Representatives (the Senate concurring), That the United States Bureau of Indian Affairs be urged to give expeditious consideration to the Huron Potawatomi Indians' request for federal recognition so that the funds they deserve can be allocated and put to immediate use; and be it further

"*Resolved*, That a copy of this resolution be transmitted to the United States Bureau of Indian Affairs, the Speaker of the United States House of Representatives, the President of the United States Senate, and to the Michigan Delegation of the Congress of the United States."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DECONCINI, from the Committee on the Judiciary, with amendments:

H.R. 2807. A bill to amend the Bankrupcy Act to provide for the nondischargeability of certain student loan debts guaranteed or insured by the United States (Rept. No. 96-230).

By Mr. CANNON, from the Committee on Commerce:

Special Report pursuant to Section 302(b) of the Congressional Budget Act of 1974 (Rept. No. 96-231).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. CHURCH, from the Committee on Foreign Relations:

The following-named persons to be Members of the U.S. Advisory Commission on International Communication, Cultural and Educational Affairs:

Leonard L. Silverstein, of Maryland;
John Hope Franklin, of Illinois;
Neil C. Sherburne, of Minnesota;
Lewis Manilow, of Illinois;
Mae Sue Talley, of Arizona;
Jean McKee, of New York; and
Olin C. Robinson, of Vermont.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. RANDOLPH, from the Committee on Environment and Public Works:

Victor Gilinsky, of Maryland, to be a Member of the Nuclear Regulatory Commission.

(The above nomination from the Committee on Environment and Public Works was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. LONG, from the Committee on Finance:

Walter J. McDonald, of the District of Columbia, to be an Assistant Secretary of the Treasury.

Richard I. Beattie, of the District of Columbia, to be General Counsel of the Department of Health, Education, and Welfare.

(The above nominations from the Committee on Finance were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry:

Daniel Marcus, of Maryland, to be General Counsel of the Department of Agriculture.

(The above nominations from the Committee on Agriculture, Nutrition, and Forestry was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

ORDER FOR JOINT REFERRAL—S. 730

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 730, the Regional Energy Development Act of 1979, which was earlier referred only to the Committee on Energy and Natural Resources now be referred jointly to the Committee on Energy and Natural Resources, the Committee on Banking, Housing and Urban Affairs, and the Committee on Government Affairs. This arrangement is agreeable with the respective chairman of the Committee on Banking, Housing, and Urban Affairs and is consistent with the referral of similar legislation, S. 2161, in the 95th Congress.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATFIELD (for himself, Mr. STEWART, Mr. ARMSTRONG, Mr. MELCHER, Mr. NUNN, Mr. STEVENS, and Mr. MCGOVERN):

S. 1384. A bill to amend the Internal Revenue Code of 1954 to allow a credit against tax for contributions of certain crops by farmers to certain tax-exempt organizations; to the Committee on Finance.

By Mr. JEPSEN:

S. 1385. A bill to amend title 28 of the United States Code to provide for the payment of reasonable attorney's fees and other costs in certain civil actions; to the Committee on the Judiciary.

By Mr. PELL:

S. 1386. A bill to amend and extend the National Foundation on the Arts and the Humanities Act of 1965, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. COHEN:

S. 1387. A bill to amend title XVIII of the Social Security Act to update the life safety requirements applicable to nursing homes under such title and under title XIX of such act; to the Committee on Finance.

By Mr. CHURCH (for himself and Mr. DURKIN):

S. 1388. A bill to establish a forgivable loan program for geothermal reservoir confirmation, to amend existing geothermal leasing and permitting laws, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. JACKSON (by request):

S. 1389. A bill to add clarifying amendments to the Uranium Mill Tailings Radiation Control Act of 1978, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. PERCY (for himself, Mr. KENNEDY, Mr. PACKWOOD, and Mr. MAGNUSON):

S. 1390. A bill to promote commercial motor vehicle safety, to prevent injury to commercial motor vehicle operators, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CANNON (by request):

S. 1391. A bill to amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981 and 1982; to the Committee on Commerce, Science, and Transportation.

S. 1392. A bill to extend the appropriations authorization for reporting of weather modification activities; to the Committee on Commerce, Science, and Transportation.

S. 1393. A bill to amend section 7 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704) to extend authorizations for appropriations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DURENBERGER:

S.J. Res. 90. A joint resolution to provide for the designation of a week as "National Recreation and Parks Week"; to the Committee on the Judiciary.

By Mr. MATHIAS:

S.J. Res. 91. A joint resolution to authorize and request the President to issue a proclamation designating May 18, 1980, as "Law Enforcement Officers Memorial Sunday"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATFIELD (for himself, Mr. STEWART, Mr. ARMSTRONG, Mr. MELCHER, Mr. NUNN, Mr. STEVENS, and Mr. MCGOVERN):

S. 1384. A bill to amend the Internal Revenue Code of 1954 to allow a credit against tax for contributions of certain crops by farmers to certain tax-exempt organizations; to the Committee on Finance.

Mr. HATFIELD. Mr. President, today, Senator STEWART and I, along with Senators ARMSTRONG, MELCHER, NUNN, and STEVENS, are introducing legislation to amend the Internal Revenue Code to provide our Nation's farmers a tax incentive to donate surplus, unharvested, damaged, or otherwise wasted food commodities to various nonprofit, charitable organizations for distribution to the poor and needy. The legislation shall be known as the national gleaning bill.

To those of my colleagues unfamiliar with the term "gleaning," it is—strictly defined—the process of gathering grain or produce following a commercial harvest. In ancient societies, gleaning was usually a matter of course, and indeed, in Biblical times, the Israelites were required by law to open up their land to the poor to enable them to glean. Gleaning is also quite common today in less-developed agrarian societies, and the practice has even been revived in many parts of our own country in recent years. Our bill, very simply, would build on this experience and encourage the further expansion of gleaning throughout the United States by offering our farmers a 10-percent tax credit based on the greater of the wholesale market value or the most recent sale price for the crops contributed to qualified charitable organizations.

As certain tax advantages already accrue to corporate farmers under the Tax-Reform Act of 1976 for the donation of agricultural commodities to nonprofit, charitable organizations, our bill would merely allow the small farmer similar tax benefits to those that his corporate counterpart already enjoys.

The Treasury Department has estimated a revenue loss to the Federal Government of less than $5 million annually based on the House version of our bill. It is presently undertaking a similar analysis of the legislation we are introducing today, but early indications are that the revenue loss will, like the House counterpart, be very small.

The "national gleaning" bill approach to providing food assistance is an effort designed specifically to reach the poor through the private sector. Because of the severity and the dimensions of both the national and international hunger problem, Federal food assistance programs will necessarily be required if we are to be successful in meeting the challenge before us. Yet, it seems only prudent in these times of budget constraints and appeals for reduced Federal spending that alternatives to meeting the basic food requirements of our citizens—and millions of others in foreign lands—simply through more Government spending be found. The gleaning approach offers one such alternative.

In Oregon, the State legislature approved a few years ago legislation similar to the gleaning bill we are introducing today, including the 10-percent tax credit on State income tax. In 1977 alone, gleaning programs resulted in the distribution of over 125 tons of produce to more than 1,100 households at a revenue loss to the State treasury of only $1,500—the estimated revenue loss had been $10,000 annually. California has also provided tax incentives to farmers to participate with local gleaning and food bank operations. Of course, gleaning programs do not exist only in States providing tax incentives; but from all available information, it is apparent that such incentives are important factors in gaining farmer participation. In spite of the fact that many of these programs are relatively new, the work that has already been done in Oregon, California, and other States throughout the country offers profound evidence that relief efforts in the critical area of food sustenance can be accomplished at the local level, with minimal Federal Government involvement.

The need for this legislation is underscored by one of the major paradoxes of our time. On the one hand, millions of Americans in 1979 continue to suffer from the debilitating effects of hunger and malnutrition, and yet, on the other hand, the General Accounting Office estimated in 1977 that about 20 percent of all food produced in the United States is lost or wasted in 1 year—some 137 million tons, valued at $31 billion. Of this total, loss during harvesting—as opposed to such other categories as storage, transportation, processing, wholesale/retail, and consumer—was approximately 60 million tons of food valued at $5 billion. Based on the average daily caloric intake of a U.S. citizen, GAO estimated that the combined loss of U.S.-produced food grains, meat, sugar, oilseeds, vegetables, fruits, and nuts in 1974 could have fed an estimated 49 million people. The dimensions of this problem are truly staggering, especially when one considers the responsibility we have as the wealthiest Nation on Earth with the capabilities to feed our own people and millions of others around the world.

According to a report recently released by the Field Foundation entitled, "Hunger in America: The Federal Response," we have made great gains in providing nutritional foods to our poor as the result of such Federal initiatives as: The food stamp program, the nutritional component of Head Start, school lunch and breakfast programs, and the women-infant-children feeding programs. In fact, the Field study reports that our food aid programs may represent "one of the unsung yet most effective anti-poverty efforts of the last 15 years." It goes on to say that the food stamp program is "the most valuable health dollar spent by the Federal Government."

Yet, in spite of these impressive gains, the Field Foundation's report concluded that while Federal food assistance has made a difference, it is still far from adequate. According to one of the study's researchers, Dr. Gordon Harper, speaking in relation to the food stamp program:

> We are not dealing with an ineffective tool of public policy, but with an inadequately used one. Congress, the President, and the public should know that the very effectiveness of such programs, where they do work makes it a greater national tragedy that many people remain unreached.

More specifically, statistics show that the food stamp program reaches only about one-half of the eligible recipients, and that the percentage of participants falls much lower in many rural areas, and among the elderly. In addition, it should be pointed out that the food stamp program cannot possibly be considered, in and of itself, as a "cure-all" for the hunger and nutritional needs of our Nation's poor. The program is designed to provide only what the Agriculture Department calls the thrifty food plan, a diet with which a skilled homemaker can supposedly sustain her family for brief periods of time. This diet is less adequate than USDA's "low cost" food plan, a diet typical of what is consumed by most working class families. The fact is, we need something more, but we are hard pressed to find the necessary Federal resources to significantly expand our present food assistance programs. This is precisely why the gleaning concept is so appealing. It seeks to bring to the poor, especially—though not exclusively—those not presently reached by the food stamp program, an adequate supply of nutritional food which is presently going to waste at the harvest level, at no significant cost to the Federal Government.

Mr. President, before continuing on to other aspects of our gleaning legislation, I feel it necessary, and very timely, to

point out an additional implication of the food wasted annually in the United States—energy loss. According to GAO, in crop year 1974, U.S. farmers planted 331 million acres of land to produce food. They used 45 million tons of fertilizer as well as a total of 2.3 billion equivalent barrels of oil, considerable amounts of water, and other inputs in the process. Relating all food loss to the farm resources allocated to producing food, the General Accounting Office estimated that 461 million equivalent barrels of oil were consumed on food ultimately lost. In addition, it is estimated that 66 million acres of land and 9 milion tons of fertilizer were used to produce food that was ultimately lost. Proper stewardship of our national resources demands that we make every effort possible to eliminate food waste. We can begin at the harvest level by allowing our poor to glean or receive the benefits of food gleaned on their behalf.

As I alluded to earlier in my remarks, legislation has already been introduced in the House of Representatives by Congressman LES AUCOIN, Democrat of Oregon, which would also provide a tax incentive to our Nation's farmers to participate in gleaning programs. It presently has 33 cosponsors. It differs from our bill in two major respects. First, the House legislation would offer a simple tax reduction for crops contributed to qualified nonprofit, charitable organizations, while our bill provides a 10-percent tax credit. Second, Congressman AUCOIN's bill provides that for the purposes of the tax deduction, the food donated must be "uneconomical" for the farmer to harvest. In other words, only those crops which would otherwise be left in the fields following a commercial harvest would constitute a "qualified crop donation."

While this is in a technical sense the true meaning of gleaning, and while it is this otherwise unharvested food we primarily seek to secure for the poor, we have chosen to remove the "uneconomical for harvest" provision from the bill so as not to prevent the envisioned tax benefits from accruing to the farmer who desires to contribute from his food stocks to meet a given need at a given time—the idea being that already harvested food was at one time, anyway, "economical" to harvest.

Because, almost by definition, gleaned food consists of perishable commodities, the gleaning concept—in its strictest sense—could not be practical for the provision of food to the poor in other lands. However, in removing the "uneconomical for harvest" provision, we open up the opportunity for gleaned food to be used to meet the hunger needs of our fellow human beings in impoverished areas of the world because "stored" food is in most cases nonperishable—the major exception being frozen food—and able to be transported over long distances. As some of my colleagues may be aware, just such an international relief effort was undertaken in 1978 when a ship load of wheat was sent by Church World Service to meet the needs of Vietnamese citizens who were dying from starvation. The food was in part donated by farmers who arose to meet the very specific need at the time. Whether or not one agrees with the particular merits of this individual relief operation, it does show that certain limited efforts can be accomplished in the private sector to assist in the alleviation of human suffering throughout the world.

Mr. President, the national gleaning bill would not only provide an effective complement to our present food assistance programs, but also would encourage private initiative where previously some government programs have led to passivity. The problem of poverty and hunger is everyone's, but many have lost a personal sense of commitment to the alleviation of such poverty and hunger because the Government has assumed the primary responsibility for carrying on the work. The responsibility for the relief of human suffering must originate at the grassroots level if our governmental efforts are to be successful and maintained over the long term.

The gleaning legislation will provide much needed assistance to the farmer at a time when he is being asked to grow more for a hungry world, but can only do so at the risk of reducing the price he receives for his crops. In addition, the gleaning bill will enable a number of eligible charitable organizations to be more responsive to the needs they seek to alleviate in this country and potentially around the world. At a time when millions are struggling to maintain an adequate diet, it behooves us to consider positive and innovative means of reconciling the needs of both the producer of food, and those who are truly destitute. We believe strongly that the gleaning concept offers one such option. I urge my colleagues to give this gleaning bill their careful attention and active support.

The text of the bill follows:

S. 1384

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 44C the following new section:

"SEC. 44D. CREDIT FOR CONTRIBUTION OF GLEANED CROPS.

"(a) GENERAL RULE.—In the case of a taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the qualified crop contribuion of the taxpayer for the taxable year.

"(b) LIMITATIONS.—

"(1) AMOUNT.—The amount of qualified crop contributions taken into account under this section for any taxable year shall not exceed an amount equal to, at the election of the taxpayer, either—

"(A) the wholesale market price for the crops so contributed; or

"(B) the most recent sale price for the crop so contributed.

"(2) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CROP CONTRIBUTION.—The term 'qualified crop contribution' means any charitable contribution (within the meaning of section 170(C)) by a taxpayer who is engaged in the trade or business of farming of a crop grown in connection with such trade or business to an organization described in section 501(c)(3) and exempt from tax under section 501(a), but only if—

"(A) the crop is harvested by, or on behalf of, the donee,

"(B) the crop is fit for human or animal consumption,

"(C) the use of the crop by the donee is related to the purpose or function constituting the basis for its exemption under section 501,

"(D) the crop is not transferred by the donee in exchange for money, other property (other than other crops the use of which by the donee is related to such purpose or function), or services, and

"(E) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of subparagraphs (C) and (D),

"(2) WHOLESALE MARKET PRICE.—The term 'wholesale market price' means, with respect to any crop, the lowest wholesale market price for such crop in the nearest regional market during the month in which the contribution is made, determined—

"(A) without consideration of grade or quality of the crop, and

"(B) as if the quantity of the crop contributed were marketable.

"(3) MOST RECENT SALE PRICE.—The term 'most recent sale price' means with respect to any crop, an amount equal to the price which the taxpayer would have received for the crop so contributed if he had sold such crop—

"(A) on the date of the most recent sale by the taxpayer of such a crop, and

"(B) at the same price per unit as the crop sold on such date.

"(d) CREDIT IN LIEU OF DEDUCTION.—No credit shall be allowed under subsection (a) with respect to any amount for which a deduction is allowed under this chapter for the taxable year.

"(e) TERMINATION.—This section shall not apply to any qualified crop contribution made after December 31, 1982.".

(b)(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such code is amended by inserting after the item relating to section 44C the following new item:

"Sec. 44D. Credit for contribution of gleaned crops.".

(2) Subsection (b) of section 6096 (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44C" and inserting in lieu thereof "44C, and 44D".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified crop contributions made in taxable years beginning after December 31, 1979.

Mr. STEWART. Mr. President, will the Senator yield at this time?

Mr. HATFIELD. I am very happy to yield to my colleague, Senator STEWART.

Mr. STEWART. Mr. President, I rise today to commend the Senator from Oregon (Mr. HATFIELD) for the work he has done on this bill and for other work he has done previously in the Senate in connection with bringing the attention of the Senate to problems of the disadvantaged. This is not the first time he has done that, and I commend him for it and I am proud to join with him in this legislation.

I commend the Senator from Oregon (Mr. HATFIELD) not only on this fine bill but also on the leadership he has provided both to this body and to the coun-

try. I have—as I am sure many of my colleagues—have often looked upon Senator HATFIELD as the conscience of the Senate. Time and time again, he has turned our attention to the people that perhaps deserve it the most, the disadvantaged; those folks who too often are swept aside in the daily rush of events.

The bill offered here today embodies Senator HATFIELD's concern for the poor and the disadvantaged. But equally as important, it is a demonstration of his innovative and practical approach toward dealing with the problems confronting these people. The concept of providing farmers with tax credits for food they donate to folks who are less fortunate is simple, though incredibly effective.

Too often, it seems, the unfeeling bureaucracy devises master plans aimed at addressing the problems of the poor and the disadvantaged, only to discover that—in the end—those plans have become part of the problem. Inevitably, a huge new bureaucracy—characterized by its complexity and the confusion that complexity invariably causes—is created, spending millions or even billions of dollars, only to have the problem remain.

This bill, I believe, avoids those pitfalls. No new bureaucracy is created. Nor are billions of dollars taken from the Federal Treasury. What this proposal does accomplish, however, is to provide good, wholesome food to the people who need it most.

The program would not be carried out by a faceless, self-appointed Washington bureaucrat. On the contrary, it would be developed and administered by community-based and nonprofit organizations working in conjunction with the participating farmers. It could be geared toward the specific needs of specific communities, so that local people would be dealing with local problems.

While no new tax dollars would be appropriated, there would be a slight loss in tax revenues. But if experience is any indicator, Mr. President, it is well worth the risk.

In Senator HATFIELD's home State of Oregon, a similar program allowed 125 tons of food to be distributed to more than 1,100 needy households in 1977, at a tax loss of a mere $1,500. This is nothing short of astounding, 125 tons of nutritious food was made available to thousands of disadvantaged folks for $1,500. While such a plan could eventually lead to a significant reduction in demand for food stamps if applied at the Federal level, the potential savings to the American taxpayer is in the billions of dollars.

And, of course, we cannot overlook the benefits this bill affords to the American agricultural community. By providing a tax credit for food donated solely to alleviate hunger, farmers could produce as they desire, not facing ridiculous penalties for exceeding some Government-imposed quotas on production or acreage use. With this bill, farmers would be allowed to do what they do best: grow food and fiber for folks who need it the most.

The measure offered here today represents a bold imaginative approach to a very real problem. I am proud to be associated with Senator HATFIELD, and I hope that my colleagues in the Senate will give this bill the consideration it deserves.

By Mr. JEPSEN:

S. 1385. A bill to amend title 28 of the United States Code to provide for the payment of reasonable attorney's fees and other costs in certain civil actions; to the Committee on the Judiciary.

SMALL BUSINESS AND INDIVIDUAL REGULATORY RELIEF ACT

Mr. JEPSEN. Mr. President, today I am introducing a bill which provides for the compensation of successful dependents in civil suits filed by the Justice Department or any other agency of the Federal Government having the power to file suit. The compensation involved would be for a reasonable attorney's fees and other reasonable litigation costs; and it would be mandatory. However, the court would have the discretion in awarding the compensation to determine what is reasonable in the way of fees and costs.

Also I have inserted language to include cases brought in connection with the collection or recovery of any Internal Revenue tax or any penalty or other sum under the Internal Revenue laws. This is necessary I believe, because while for all practical purposes a successful taxpayer is in the same boat as a successful defendant in a civil action, under the law he is not. In most tax-related cases the IRS and not the taxpayer becomes the defendant.

The scope of my proposal is somewhat limited. While it makes compensation mandatory in certain instances, it only applies to defendants, not plaintiffs. And its provisions apply only to individuals with net assets of less than $1 million and to small business concerns that employ less than 100 people.

The basic purpose behind this legislation is to remove the burden of a financial penalty from those who prove themselves innocent of charges brought by the Federal Government. It seeks to redress a development that could not have been foreseen by either our Founding Fathers or the builders of our system of jurisprudence—the rise of a powerful fourth branch of Government, the bureaucracy.

I have only been in the Senate for a few months but in that time I have already received hundreds of letters and telephone calls from constituents seeking my help in dealing with bureaucrats from various Federal agencies whom nobody elected and whom neither the executive branch nor the Congress has been able to control. Common to all these complaints is the clearly recognizable fact that the scales of justice are weighted heavily against those who run afoul of the Federal Government.

Mr. President, the dictates of the Federal bureaucracy are becoming intolerable; it is a juggernaut out of control, and my legislation provides a sorely needed check upon its growing arrogance and power.

National regulatory agencies have developed a seemingly limitless capacity to harass private citizens and small businesses. They are also staffed by tax paid attorneys. A private citizen or small business, however, is not quite so fortunate. Each must consider the legal costs of contesting Federal edicts.

In too many cases, businessmen cited by Federal agencies for some alleged violation are sure they are innocent but prefer to give in rather than shoulder the heavier cost of contesting the agency in court.

Still others head off the possibility of citations and heavy legal costs by taking action which even the agency would find unnecessary. Compliance by coercion and intimidation, rather than justice and due process, are quickly becoming the rule rather than the exception.

There is plenty of evidence to support this conclusion. An Interstate Commerce Commission's staff study found that ICC investigators spend most of their time tracking down insignificant violations by small truckers because such cases are more easily won than actions against major companies prepared to do battle in court. The National Federation of Independent Business reported that Federal health and safety inspectors concentrated on small firms that could not afford to hire attorneys and travel to far off hearings. Typically, an Iowa businessman will ask, "What is my choice; pay a $200 fine for something I didn't do, or spend many times that in legal fees to get justice?" It is also not too difficult to find examples illustrating the legal imbalance resulting from the action of the Federal agency against private parties.

The Labor Department took a food service firm to Federal court in New Mexico, charging that it wrongfully interpreted the overtime and coverage provisions of the Fair Labor Standards Act. The Department lost this case, yet it continued to sue other companies on the same grounds, losing in seven Federal district courts and two appellate courts. After all, it cost the Federal agency nothing to lose a case in court. Meanwhile, it cost the food service companies nearly $100,000 in legal fees to "win."

I could go on and on but, rather than doing so, let me just mention one slightly different example—contested in the U.S. Tax Court. Here, a man and wife contested an IRS finding that they owed $55,000 in taxes and ultimately they were judged to owe only $169.88. Nevertheless, they were still out their attorney's fees and other costs—just for having been right.

The need for regulatory reform is obvious. Bipartisan legislative efforts must be made to limit the authority of Federal agencies which have become law unto themselves. Ironically, liberals and conservatives, Republicans and Democrats, often agree that the Federal Government is too involved in regulating the lives of its citizens. The problem has been that just as often they cannot agree on the areas in which the regulation has been excessive or the remedy to use.

My bill, however, avoids this problem. It simply offers to those who believe that overregulation poses a danger, a way to effect a workable remedy. Moreover, that remedy is self-enforcing inasmuch as it does not require the repeal or reform of a single regulatory agency to become effective. Finally, the only way my bill could be costly to the Government is if

the Government is too often guilty of overzealousness or overreaching in applying or interpreting the law.

The prospect of accountability inherent in my proposal would encourage Federal departments, agencies, and commissions to simplify their rules and regulations and to drop those which are unreasonable or unnecessary. It would also encourage individuals and businesses to challenge Federal civil suits and IRS claims that they believe to be unjustified.

By virtue of the fact that the amount of compensation would become public knowledge, my proposal would give the American people a quantitative measure of agency error. Having created such a yardstick, it would also reduce the incidence of compliance by coercion and would go a long way to restore people's faith in our system of justice by restoring the balance between the powers of government and the rights of the individual.

I welcome and encourage the support of my colleagues on this proposed legislation.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at this point.

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

S. 1385

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2412 of title 28, United States Code, is amended to read as follows:

"§ 2412. Costs and attorney's fees.

"(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States in any court having jurisdiction of such action.

"(b) In addition to the costs which may be awarded pursuant to subsection (a) and except as otherwise specifically provided by statute, a court may award reasonable attorney fees to the prevailing party in a civil action brought by or against the United States in those circumstances in which the court may award such fees in such actions involving private parties.

"(c)(1) A judgment for reasonable attorney's fees and costs shall be awarded to—

"(A) any defendant who is the prevailing party in any civil action in which the United States is a plaintiff, and

"(B) the prevailing party, other than the United States, in any civil action which is brought against the United States in connection with the collection or recovery of any internal revenue tax or of any penalty or other sum under the internal revenue laws.

"(2) In awarding fees and other costs under this subsection to a prevailing party in any action for judicial review of an agency adjudication conducted pursuant to section 554 of title 5, the court shall include in that award, the fees and other costs for services performed during that agency adjudication.

"(3) Fees and other costs awarded under this subsection shall be paid by the particular agency over which the party prevails from any sums appropriated to such agency, except that no sums may be appropriated to any such agency specifically for the purpose of paying fees and other costs awarded under this subsection.

"(4) The Director of the Administrative Office of the United States Courts shall include in its annual report prepared pursuant to section 604 of this title, the amount of fees and other costs awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards.

"(5) For the purposes of this subsection, the term—

"(A) 'costs' includes those costs enumerated in section 1920 of this title and the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case; and

"(B) 'party' means any individual who had at the time the civil action was filed, net assets less than $1,000,000, and any partnership, corporation, association, or organization that employed, at the time the civil action was filed, not more than 100 persons.

"(d)(1) Except as provided in subsection (c), a judgment for fees or costs under this section when taxed against the United States shall, in an amount established by statute or court rule or order, be limited to reimbursing in whole or in part, as appropriate, the prevailing party for the fees and costs incurred by him during the course of the litigation.

"(2) The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished. Except as provided in subsection (c)(3), payment of a judgment for fees and costs under this section shall be as provided in sections 2414 and 2517 of this title for the payment of judgments against the United States.

"(e) For the purposes of this section, the term 'United States' includes any agency and any official of the United States acting in his official capacity.".

(b) The table of sections for chapter 161 of title 28, United States Code, is amended by striking out the item relating to section 2412 and inserting in lieu thereof the following new item:

"§ 2412. Costs and attorney's fees.".

(c) The amendments made by this Act apply only with respect to civil actions commenced after the date of the enactment of this Act.

(d) Effective three years after the date of enactment of this Act, subsection (c) of section 2412, as added by subsection (a) of this section, is repealed.

By Mr. PELL:

S. 1386. A bill to amend and extend the National Foundation on the Arts and the Humanities Act of 1965, and for other purposes; to the Committee on Labor and Human Resources.

ARTS, HUMANITIES, AND MUSEUM SERVICES ACT OF 1979

● Mr. PELL. Mr. President, I am introducing today a bill to amend and extend the National Foundation on the Arts and Humanities Act of 1965. The current legislation expires as of October 1, 1980, and I propose to extend the legislation for a 5-year period or until the fiscal year ending October 1, 1985.

I am introducing this bill for the purpose of discussion prior to a series of public hearings to discuss the reauthorization legislation for the National Foundation on the Arts and Humanities. The hearings are to be held before the Subcommittee on Education, Arts, and Humanities on June 26, 27, and 28. Discussion will focus on the National Endowment for the Arts on June 26, the National Endowment for the Humanities on June 27, and the Institute of Museum Services on June 28.

It is my hope that the administration's proposals for these agencies will be available in time to be considered and discussed by the subcommittee members at these hearings.

The bill which I am introducing today is essentially a straight extension of existing programs except for an important provision that has been a priority of mine since the humanities program was established in 1965. And, that is a section which will insure the existence of a full-fledged humanities agency as a legal entity of each State.

The 1976 reauthorizing legislation, which I sponsored, accomplished a great deal in bringing the programs of the humanities committees in each State to a broader and, what has proven to be, a very receptive public. This increased participation in an ever-widening variety of humanities programs is tremendously encouraging to me.

The impact of the 1976 legislation has indeed been positive. New constituencies are being reached, committee membership is more broadly representative of each State's population and new lines of communication between scholars and the public are being tested and used for the benefit of all. The world of the university and that of the general community are being successfully blended. I should add here that I am especially pleased with the commitment of the National Endowment for the Humanities to encourage and nurture these programs.

The aspects of this program that continue to concern me have to do with the critical need for increasing the accountability and, at the same time, the visibility of these "public" programs.

The spending of public tax dollars has always implied fair and efficient handling of these funds. Regardless of whether they are municipal, State, or Federal funds, the implications are the same. The responsibility for their use in the public interest goes far beyond the compliance with specific provisions and regulations—it goes to the basic ethical and moral principles of stewardship and public trusteeship. The word currently used for this principle is "accountability." It is a principle which applies to the programs and administration of the State humanities programs as much as any other federally funded activity.

"Accountability" assumes that there is a "public" and a "constituency" or an auditing mechanism of some kind. Accountability also means more than a mere financial disclosure and a record-keeping system as to the proper expenditure of public funds. My definition of accountability also includes the directions and the decisions that determine the expenditure of these funds.

At present, the humanities programs in each State exist in an anomalous situation, suspended halfway between a Federal agency and the public in each State. The only mechanisms of control and counsel are the National Endowment for the Humanities staff on the one hand and the volunteer citizens committees on the other. The membership of these committees has little formal provision for external, broad public influence.

I believe the humanities committees in the States should move to become a full partner in State government, to a status comparable to that of the State arts councils.

It is my firm belief that under a true Federal-State partnership system, with each State having complete freedom to design its own agenda, the current programs will thrive as they become ever more visible and more accessible. A program of this quality and potential belongs fully in the public sector.

One other amendment included in the bill I am introducing today would make it clear that the National Endowment for the Arts should fund programs for the arts at the local level, as part of its basic program for the support of the arts. While the Endowment currently has general authority to support community-based arts programs, it is my hope that this amendment will encourage additional attention by the Endowment to the promise of arts activities conducted at the local level.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1386

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Arts, Humanities, and Museum Services Act of 1979".

STATE HUMANITIES COUNCILS

SEC. 2. (a) Section 7(f)(2) of the National Foundation on the Arts and the Humanities Act of 1965 is amended to read as follows:

"(2) In order to receive assistance under this subsection in any fiscal year, a State shall submit an application for such grants at such time as shall be specified by the Chairman and accompany such applications with a plan which the Chairman finds—

"(A) designates or provides for the establishment of a State agency (hereafter in this section referred to as the State agency) as the sole agency for the administration of the State plan;

"(B) provides that funds paid to the State under this subsection will be expended solely on programs approved by the State agency which carry out any of the objectives of subsection (c); and

"(C) provides that the State agency will make such reports, in such form, and containing such information, as the Chairman may require.".

(b)(1) Section 7(f)(3) of each Act is repealed.

(2) Paragraphs (4), (5), (6) and (7) of such section 7(f) are redesignated as paragraphs (3), (4), (5), and (6), respectively.

(3) Paragraph (8) of such section 7(f) is repealed.

(c)(1) Section 7(f)(3) of such Act (as redesignated by subsection (b)) is amended—

(A) by striking out "grant recipient" each time it appears and inserting in lieu thereof "State";

(B) by striking out "grant recipients" each time it appears and inserting in lieu thereof "States";

(C) by striking out "entitles" and inserting in lieu thereof "States and regional groups".

(2) Section 7(f)(4)(B) of such Act (as redesignated by subsection (b)) is amended by striking out "grant recipient" and inserting in lieu thereof "State agency".

(3) Section 7(f)(5) of such Act (as redesignated by subsection (b)) is amended by striking out "any entity" and inserting in lieu thereof "a State".

(4) Section 7(f)(6) of such Act (as redesignated by subsection (b)) is amended—

(A) by striking out "grant recipient" in clause (A) and inserting in lieu thereof "group";

(B) by striking out "grant recipient" in clause (B) and inserting in lieu thereof "State agency";

(C) by inserting "State" before "plan" in clause (B);

(D) by striking out "grant recipient" in clause (C) and inserting in lieu thereof "group or State agency"; and

(E) by striking out "grant recipient" each time it appears in the matter following clause (C) and inserting in lieu thereof "group or State agency".

(5) Section 7(g) of such Act is amended by striking out "entity" and inserting in lieu thereof "agency".

AUTHORIZATION OF APPROPRIATIONS

SEC. 3. (a)(1) Section 11(a)(1)(A) of the National Foundation on the Arts and the Humanities Act of 1965 is amended by striking out "years" and inserting in lieu thereof "year" and by striking out "and 1980" and inserting in lieu thereof "and for each fiscal year ending prior to October 1, 1985".

(2) Section 11(a)(1)(B) of such Act is amended by striking out "years" and inserting in lieu thereof "year" and by striking out "and 1980" and inserting in lieu thereof "and for each fiscal year ending prior to October 1, 1985".

(b) Section 11(a)(2) of such Act is amended by striking out "October 1, 1980" and inserting in lieu thereof "October 1, 1985", by striking out "years" and inserting in lieu thereof "year", and by striking out "and 1980" and inserting in lieu thereof "and for each fiscal year ending prior to October 1, 1985".

(c)(1)(A) The first sentence of section 11(a)(3)(A) of such Act is amended by striking out "October 1, 1980" and inserting in lieu thereof "October 1, 1985".

(B) The second sentence of such section is amended by striking out "years" and inserting in lieu thereof "year", and by striking out "and 1980" and inserting in lieu thereof "and for each fiscal year ending prior to October 1, 1985".

(2)(A) The first sentence of section 11(a)(3)(B) of such Act is amended by striking out "October 1, 1980" and inserting in lieu thereof "October 1, 1985".

(B) The second sentence of such section is amended by striking out "years" and inserting in lieu thereof "year", and by striking out "and 1980" and inserting in lieu thereof "and for each fiscal year ending prior to October 1, 1985".

(d)(1) Section 209(a) of the Museum Services Act is amended by striking out "fiscal years 1979 and 1980" and inserting in lieu thereof "the fiscal year 1979 and for each of the succeeding fiscal years ending prior to October 1, 1985".

(2) Section 209(d) of such Act is amended by striking out "1980" and inserting in lieu thereof "1985".●

By Mr. CHURCH (for himself and Mr. DURKIN):

S. 1388. A bill to establish a forgivable loan program for geothermal reservoir confirmation, to amend existing geothermal leasing and permitting laws, and for other purposes; to the Committee on Energy and Natural Resources.

OMNIBUS GEOTHERMAL ENERGY COMMERCIALIZATION ACT OF 1979

● Mr. CHURCH. Mr. President, today I am introducing legislaton which removes impediments to the rapid commercialization of geothermal energy.

For 16 years, Congress has debated legislation providing incentives to developers in an attempt to accelerate the commercialization of this vastly underutilized resource. Two major acts, the Geothermal Steam Act of 1970 and the Geothermal Research, Development and Demonstration Act of 1974, form the basis for all existing Federal geothermal policy. It is important to note that even our limited progress in the utilization of geothermal energy shows clearly that even the title, "Geothermal Steam," is outdated, since most of our geothermal energy will come from hot water and perhaps even hot dry rock resources. Like its title, many provisions in the Geothermal Steam Act are outdated and work to slow development rather than to accelerate it. This bill addresses these shortcomings by significantly restricting existing leasing and other policies.

Mr. President, the central force slowing geothermal development is found in the high economic risk perceived by drillers who explore for and confirm geothermal reservoirs. Statistics on drilling and leasing show that less than one-half of 1 percent of potential geothermal resource lands have been leased and only a small percent of leased lands have been drilled. It is thus not surprising that commercialization has not progressed since the most fundamental step, drilling, has not been taken.

The risk to the driller of successfully finding a commercial geothermal resource is indeed great. Often surface characteristics, chemical analyses, and shallow wells will suggest a viable reservoir. Confirming any reservior, however, requires drilling many capital-intensive deep wells. Many drillers cannot afford the risk of drilling deep wells which prove to be unproductive. These unfavorable conditions have precluded the massive drilling effort needed to establish the true dimensions and locations of our most promising reservoirs.

After 8 months of discussion with industry, State and local energy officials and the Department of Energy, it has become clear to me that drilling risks would be substantially and sufficiently lowered if forgivable loans for drilling exploration and confirmation wells were made available at reasonable terms to the drilling industry.

Title I of my bill establishes such a loan program. Loans available under this program would cover up to 50 percent of the costs of drilling exploration and confirmation wells with an upper limit of $3 million per loan. Loans made specifically for confirming reservoirs for space heating may cover up to 90 percent of project costs. If drilling confirms that a reservoir is not economically viable, then the loan is forgiven.

My intention in establishing this loan program is not to remove all risk. Clearly, geothermal developers stand to gain much by finding a viable reservoir, and they should be expected to share significantly the risk. On the other hand, the very low number of wells drilled to date clearly demonstrates the need for the Government to also share the risk. I have, therefore, set the loans at 50 percent of project costs. I believe that this

percentage is sufficiently low to stop wildcat drilling which would waste the taxpayer's money and most likely would not lead to the confirmation of major new reservoirs, and yet it is sufficiently high to entice a rapid expansion in much needed drilling activity.

One year ago, the Congressional Research Service of the Library of Congress prepared a comprehensive review called, "Energy From Geothermal Resources," which concluded, in part, that the "domestic geothermal industry appears to be currently impeded by institutional barriers such as leasing arrangements * * * and long delays in obtaining governmental permits at all levels." These barriers and delays have been investigated in detail by the streamlining task force of the Interagency Geothermal Coordinating Council. Their recommendations, which have been incorporated into title II and title III of my bill, restructure many leasing provisions in the Geothermal Steam Act and modify the geothermal loan guarantee program in the Geothermal Research, Development and Demonstration Act.

Obtaining leases and permits has taken an exceptionally long time. Unfortunately, no deadlines for issuing leases and permits were set in the Geothermal Steam Act and, consequently, the bureaucracy felt no pressure to proceed quickly.

My bill improves the leasing process by establishing three basic types of leases which depend on the extent to which the geothermal resource will be developed. A no surface occupancy type of lease would allow only shallow drilling and no permanent damage to the land. This type of lease must be issued within 180 days of application. Second, a conditioned development lease is established for deep drilling, and it must be issued within 270 days of application. Finally, a full rights lease is created which allows full development and must be issued, in most cases, within 2 years of application. The time for issuing development permits is restricted to 1 year.

The House Subcommittee on Mines and Mining has recently held hearings on the acreage limitation which now restricts a developer from leasing over 20,480 acres in any one State. Their recommendation to increase the acreage limitation to 51,200 acres, although a move in the right direction, is insufficient. A single utility could require 20,000 acres of confirmed resource before proceeding with construction of one powerplant. Thus, geothermal developers could be restricted to just two development sites per State under the House proposal. In a State like Idaho, where the potential for geothermal is high, that would be an unfortunate restriction.

This bill sets the acreage limitation at the levels now available for oil and gas development. Developers could, under these expanded limitations, explore and develop up to 12 development sites in each State. Even this proposal may be too restrictive, if we take seriously the administrations projection of 40,000 megawatts of geothermal powered electric capacity by the year 2000.

Mr. President, I have summarized for you the major provisions of the Omnibus Geothermal Energy Commercialization Act. This legislation lowers development risks and removes the bureaucratic forces retarding the development of this major domestic supply option at a time when burgeoning demands for energy have overrun our limited conventional supplies, making our society and economy increasingly insecure and unsuitable. This legislation will move this Nation significantly closer to the widespread use of a valuable and needed domestic energy resource. I urge my colleagues to join me in this effort.

I ask unanimous consent that the text of this bill and an accompanying section-by-section analysis be printed in the RECORD at this point.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 1388

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Omnibus Geothermal Commercialization Act of 1979."

SEC. 101. Loans for Geothermal Reservoir Confirmation.

(a) The Secretary is authorized to make a loan from funds available in the Geothermal Resources Development Fund established under P.L. 93-410 to any municipality, electric cooperative, industrial development agency, non-profit organization, or person for the purpose of exploring for or confirming the economic viability of a geothermal energy reservoir.

(b) Any such loan shall be repayable out of revenue from production of the geothermal energy reservoir for whose confirmation the well is drilled, at a rate not to exceed 20 percent of the annual gross revenue from the reservoir, except that if any disposition of the geothermal rights to that reservoir is made by the borrower, the full amount of the loan balance outstanding or the full amount of compensation received, whichever is less, shall be paid immediately. If the reservoir is confirmed, the Secretary may impute a reasonable revenue for purposes of determining repayment a) if reasonable efforts are not made to put such reservoir in commercial operation, b) if the borrower or other person utilizes the resources without a sale of energy, or c) if a sale of energy resources is made for an unreasonably low price. No such imputation of revenue shall be made for a period of three years following reservoir confirmation. In the event of failure to begin production of revenue within five years of drilling, the Secretary may take action to recover the value of any assets of the project in question, including resource rights.

(c) The Secretary may cancel the unpaid balance and any accrued interest on any loan granted if he determines on the basis of evidence presented by the loan recipient that the geothermal energy reservoir, with regard to which the loan was made, contains insufficient heat energy or has other characteristics which, make that reservoir economically or technically unacceptable for commercial development.

SEC. 102. Loan Size Limitation.

The amount of any loan shall not exceed 50 percent of the cost of a project consisting of surface exploration and drilling of one or more exploratory wells, except that if the loan is to a person, municipality, non-profit organization, corporation, or Indian Tribe proposing to make application of the resource for space heating or cooling or process heat for one or more structures or facilities existing or under construction, the amount may be 90 percent of project costs. No loan shall be made in excess of $3,000,000.

SEC. 103. Loan Rate: and Repayment.

(a) Each loan made pursuant to Sec. 101 shall bear interest at the discount or interest rate used at the time the loan is made for water resources planning projects under Section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962-17 (a)).

(b) Each loan shall be for a term which the Secretary deems appropriate, but no loan term shall exceed 20 years from the date production begins. If revenues are inadequate to fully repay the principal and accrued interest within 20 years after production begins, any remaining unpaid amounts shall be forgiven.

SEC. 104. Program termination.

No new loans shall be made under this authority after September 30, 1986. Amounts repaid prior to September 30, 1986 on loans made pursuant to Sec. 101 shall be deposited into the Geothermal Resources Development Fund. Amounts repaid after that date and amounts remaining in the fund on or after that date and not required to secure outstanding obligations shall be deposited into the United States Treasury as miscellaneous receipts.

SEC. 105. Regulations.

All regulations made with respect to this Title shall be promulgated no later than one year after the date of enactment of this Act.

SEC. 106. Authorizations.

There are hereby authorized to be appropriated for each of the five fiscal years beginning with fiscal year 1981, not to exceed $150,000,000 for loans to be made pursuant to Sec. 101. Amounts appropriated shall be deposited in the Geothermal Resources Development Fund and shall remain available until expended.

SEC. 107. Definitions.

For the purposes of this Title, the terms:

(1) "Secretary" means the Secretary of the Department of Energy;

(2) "Electric cooperative" means any cooperative association eligible to receive loans under Section 4 of the Rural Electrification Act of 1936 (7 U.S.C. 904);

(3) "Industrial development agency" means any agency which is permitted to issue obligations, the interest on which is excludable from gross income under Section 103 of the Internal Revenue Code of 1954;

(4) "Non-profit organization" means any organization described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1952 and exempt from tax under Section 501 (a) of such Code (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business. determined by applying Section 513(a) to such organization);

(5) "Municipality" has the meaning provided in Section 3 of the Federal Power Act;

(6) "Person" has the meaning provided in Section 3 of the Federal Power Act; and

(7) "Geothermal energy reservoir" means any producible natural accumulation of heat energy confined by natural barriers and characterized by a single natural temperature system.

TITLE II.—TECHNICAL AMENDMENTS TO PUBLIC LAW 93-410

SEC. 201. The Geothermal Energy Research, Development and Demonstration Act of 1974 (P.L. 93-410) is amended—

(1) by transferring to, and vesting in, the Interagency Geothermal Coordinating Council all of the functions vested by law in the Geothermal Energy Coordination and Management Project;

(2) such that any reference in that Act, as amended, to the "Project" and to the "Chairman" thereof, shall hereafter be deemed to refer to the Interagency Geothermal Council and the Chairman thereof, respectively;

(3) by adding to Section 2(1) following the words "hot water" in the first instance in which appears the phrase, "brines, geopressured water, magma, and hot rock formation", and

(4) by deleting in Section 3(2) the words "steam and associated geothermal".

SEC. 202. Subsection 101(a) of the Geothermal Energy Research, Development, and Demonstration Act of 1974 is amended—

(1) by deleting Sec. 101(b)(1)(A) and inserting in lieu thereof "(A) an Assistant Secretary of the Department of Energy";

(2) by deleting Sec. 101(b)(1)(D), (E), and (F) and inserting in lieu thereof "(D) an Assistant Secretary of the Department of Commerce";

"(E) An Assistant Secretary of the Department of Housing and Urban Development"; and

"(F) an Assistant Secretary of the Department of Defense" and

(3) by deleting the phrase "the Assistant Administrator of the ERDA for Solar, Geothermal, and Advanced Energy Systems" in Sec. 101(b)(2) and inserting in lieu thereof "the member representing the Department of Energy."

SEC. 203. Section 101(d)(1) is amended to read as follows:

"The Council shall carry out its responsibilities under this Section acting through the following Federal agencies:

"(A) The Department of Energy, the responsibilities of which shall include the development of technologies, the administration of the geothermal reservoir confirmation loan program and the loan guaranty program, development of suitable energy regulatory policy, the timely administration of responsibilities related to administration of the geothermal leasing program, as assigned by P.L. 95-91, monitoring of the status of private sector geothermal development activity, basic and applied research, and commercialization activities";

"(B) The National Science Foundation, the responsibilities of which shall include basic and applied research and scientific and technical education";

"(C) The Department of the Interior, the responsibilities of which shall include development of exploration technologies and the timely issuance of leases and permits for geothermal resource exploration and development";

"(D) The Department of Commerce, the responsibilities of which shall include the support of geothermal development activities through the Economic Development Administration and other programs, as appropriate;

"(E) The Department of Housing and Urban Development, the responsibilities of which shall include the support of geothermal projects through its grant, loan guaranty and other programs, as appropriate;

"(F) The Department of Defense, the responsibilities of which shall include the utilization, where feasible, of geothermal energy resources, for Department of Defense facilities;

"(G) The Environmental Protection Agency, the responsibilities of which shall include the timely development of standards and guidelines for environmental impacts of geothermal resource utilization;

"(H) The Treasury Department, the responsibilities of which shall include consultation with regard to credit policy and impacts for the Geothermal Loan Guaranty Program; and

"(I) The Department of Agriculture, the responsibilities of which shall include timely administration of leasing and permitting responsibilities for United States Forest Service Lands and support of geothermal development through its programs including those of the Agricultural Extension Service, the Farmers Home Administration, and the Rural Electrification Administration.

SEC. 204. Title II of the Geothermal Research, Development and Demonstration Act of 1974 is amended—

(a) by adding at the end of Section 201(c):

"except that any guarantee made for a loan to an electric, housing, or other cooperative, or to a municipality, as defined in Section 3(7), Part I, of the Federal Power Act, may apply to so much of the principal amount as does not exceed 90 percent of the aggregate costs of the project."

(b) by changing all references to the Administrator such that those references refer to the Secretary of Energy.

TITLE III

SEC. 301. As used in this title, "Act" means the Geothermal Steam Act of 1970 (P.L. 91-581).

SEC. 302. Subsection 2(c) of the Act is amended by deleting therefrom the words "steam and associated geothermal", and adding thereto after the word "brines" in the first instance in which it appears, the phrase "geopressured water, magma, and hot rock formations."

SEC. 303. Subsection 2(d) of the Act is amended by deleting therefrom the word "steam" in both instances in which it appears, and substituting therefor the word "resources" in each instance.

SEC. 304. Subsection 2(e) of the Act, is amended to read as follows: "Known geothermal resources area" means an area designated by the Secretary as a known geothermal resource area prior to October 1, 1979, under this Act, or an area in which a well has been drilled and demonstrated to be capable of producing geothermal resources suitable for the production of electric power in commercial quantities.

Any such area which is offered for sale and for which no bids are received shall be reclassified and shall thereafter be available for leasing under Subsection 4(b) of this Act."

SEC. 305. Section 3 of the Act is amended by deleting therefrom the words "steam and associated geothermal", by adding before the figure "(2)" the words "including submerged lands on the Outer Continental Shelf, by deleting the words "and (3)," and by adding in their place the following: "(3) in any lands withdrawn or acquired in aid of the functions of any department or agency of the Federal Government, including the Department of Defense, and (4)".

SEC. 306(a) Section 4 of the Act is amended (1) by deleting the first two sentences thereof and replacing them with the following: "Lands subject to leasing under this Act shall be leased or offered for lease in the manner described in this Section.

(a) If the lands are within a known geothermal resource area, they shall be leased to the highest responsible qualified bidder by competitive sale within two years after nomination in writing from any qualified bidder, except that for good cause and with the approval in writing of the Leasing Liaison Committee established by Section 210 of P.L. 95-91 (42 USC 7140) such sale may be extended for one additional year.

No person may submit in any calendar year nominations for lands exceeding 51,200 acres in any state. At least 10 percent of all lands offered for sale in any year shall be offered for sale on the basis other than cash bonus bidding.

(b) Any qualified person may apply for a lease on lands not within a known geothermal resource area. The Secretary shall make public notice of any such application within 45 days after the application is received. If within 60 days of such notice no other person files an expression of interest in such lands, a lease shall be offered to the applicant within three years of initial application except as provided below. If any other person shall file an expression of interest during the 60 day period, the lands shall be offered for leasing under paragraph (a) of this Section within two years of the filing of the original application. An applicant may request a leasing providing for full exploration and development rights, a no-surface-occupancy lease or a conditioned development lease. A no-surface-occupancy lease shall be offered within 180 days after application is made, and a conditioned development lease shall be offered within 270 days after application is made. If a determination is made that the lands applied for shall not be leased the applicant will be provided with a statement of the reasons for such a determination. A determination on an application to reduce a no-surface-occupancy lease limitation to a conditioned development limitation, or to remove a no-surface-occupancy or a conditioned development limitation, shall be made within one year of application. If such determination is not made within this time, the payment of rentals and the running time of the lease shall be suspended, and a determination on the application at the request of the applicant be reduced by the Leasing Liaison Committee. If an applicant includes with his lease application a performance bond meeting requirements to be established by the Secretary of Interior by regulation, a lease providing for exploration and development rights shall be offered within one year after application."

(b) Section 4 is further amended by deleting in Subsection 4(e) the word "steam" and substituting therefor the word "resources"; and by redesignating Subsections (a), (b), (e), (d), (e), and (f) as Subsections (c), (d), (e), (f), (g), and (h), respectively.

SEC. 307. Subsection 5(a) of the Act is amended by deleting therefrom the words "steam and by-product" and substituting therefor the word "resources."

SEC. 308. Subsection 6(a) of the Act is amended by deleting therefrom the words "steam is" in both instances and by substituting therefor in both instances "resources are".

SEC. 309. Subsection 6(b) of the Act is amended by deleting therefrom the words "steam is" and substituting therefore the words "geothermal resources are."

SEC. 310. Subsection 6(c) of the Act is amended by deleting the words "steam is" in both instances in which they appear, substituting therefor the words "resources are" in the first instance, and substituting therefor the words "geothermal resources are" in the second instance.

SEC. 311. Subsection 6(d) of the Act is amended by adding, after the words "delivery to or utilzation by" the following: ", or in the case of utilization facilities to be owned by the lessee, proof of commitment to construct".

SEC. 312. Subsections 6(d) and 6(e) of the Act are amended by deleting the word "steam" wherever it appears and substituting the word "resources" in each instance.

SEC. 313. Section 6(f) of the Act is amended by deleting therefrom the words "steam and associated geothermal".

SEC. 314. Section 7 of the Geothermal Steam Act of 1970 is amended by striking out the first and second paragraphs thereof, and inserting the following:

"(a) A geothermal lease shall embrace a reasonably compact area of not more than two thousand five hundred and sixty acres, except where a departure therefor is occasioned by an irregular subdivision or subdivisions.

"(b) No person, association, or corporation, or other subsidiary, affiliate, or persons, controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this Act or otherwise, Federal oil, gas and/or geothermal leases which together total no more than two hundred sixty-six thousand, five hundred and sixty acres in any State other than Alaska. In the case of the State of Alaska, the limit shall be three hundred twenty thousand four hundred eighty acres in the southern leasing district and three hundred twenty thousand four hundred eighty acres in the northern leasing district, and the boundary between said two districts shall be the left limit of the Tanana

River from the Border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth: *Provided*, That no such person, association, or corporation or other subsidiary, affiliate, or persons controlled by or under common control with such persons, association, or corporation may hold, own, or control more oil or gas leases than that which is allowed pursuant to Section 184(d) of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 184(d)).

SEC. 315. Section 8 of the Act is amended by deleting therefrom the words "steam is" in both instances in which they appear, and substituting therefor the words "resources are" in both instances; and by deleting the word "ten" in both instances in which it appears and inserting in lieu thereof the word "twenty" in both instances.

SEC. 316. Section 9 of the Act is amended by deleting therefrom the word "steam" and substituting therefor the word "resources".

SEC. 317. Section 15(b) of the Act is amended by adding at the end thereof the paragraph.

"The Secretary shall consult with the head of any other Federal agency or department for whose purposes lands have been withdrawn or acquired to determine appropriate terms or conditions prior to issuing leases for such lands."

SEC. 318. Section 18 of the Act is amended by adding to the last sentence thereof, after the word "thereunder" the words "or under any approved plan of operations for development".

SEC. 319. Section 19 of the Act is amended by deleting therefrom the word "stream" and substituting therefor the word "resources".

SEC. 320. Section 23 of the Act is amended by deleting the words "steam and associated geothermal" in both instances in which they appear, and by adding after Subsection 23(b) the following paragraphs: "(c) Where the Secretary finds it in the public interest, the Secretary is authorized to issue permits for the use of geothermal resources in lands administered by him without requiring a lease or compensation therefor, providing that no such free use permit may be issued for the purpose of generating electricity in any amount, or for any other commercial application.

"(d) The head of each Agency may develop for the use or benefit of his respective Agency any geothermal energy resource within lands under his jurisdiction, provided that the head of such agency shall determine in writing with the concurrence of the Department of Interior and the Department of Energy that such utilization is in the public interest, and will not deter commercial development which might otherwise be conducted for such resource if it were offered for leasing under this Act."

SEC. 321. Section 24 is amended by designating the present provisions as subsection (a) and by adding the following:

"(b) An application for any permit to conduct exploration activities, including the drilling of exploratory wells shall be decided within 180 days after filing such application. An application to conduct development activities shall be decided within one year of application. The Secretary may for good cause and with the approval in writing of the Leasing Liaison Committee extend the period for a decision on an exploratory permit by an additional 90 days, or extend the period for a decision on a development permit by an additional 180 days. In the event of any such extension, the payment of rental and the running time of the lease shall be suspended. Any application not decided upon by the end of such extended period shall be deemd to be approved as submitted.

(c) The Secretary shall establish requirements for diligent operations which shall require that a plan of operations for exploration shall be filed within three years of the issuance of a lease, or in the case of a no-surface-occupancy lease, within three years after removal of the no-surface-occupancy limitation. The diligence requirements shall also provide that drilling shall commence no later than two years after approval of such plan."

SEC. 322. Section 25, 26, and 27 of the Act are amended by deleting therefrom the words "steam and associated geothermal" in each instance in which they appear.

SEC. 323. For the purposes of this Title, the term "conditioned development lease" means a lease providing that no permanent surface facility may be constructed on the lands for which the lease is granted until the completion of an environmental review of the impacts of such facilities. Such leases shall allow exploratory activities including the drilling and testing of deep exploratory wells to establish reservoir extent and other characteristics.

The term "no-surface-occupancy lease" means a conditioned development lease with the further restriction limiting activities to those that do not permanently and significantly impact the surface characteristics of the leased land. Such leases shall allow exploratory activities up to but not including deep exploratory wells.

SECTION-BY-SECTION ANALYSIS

TITLE I: GEOTHERMAL RESERVOIR CONFIRMATION PROGRAM

This Title establishes a forgivable loan to assist the geothermal industry in exploring for and confirming the economic viability of geothermal reservoirs.

Section 101. The Secretary is authorized to make loans from funds available in the Geothermal Resources Development Fund to any person to assist in financing a portion of the costs of exploring for or confirming the economic viability of a geothermal energy reservoir.

Loans are paid back at a rate of not more than 20% of annual gross revenue from the sale of energy from the confirmed reservoir. If the reservoir is confirmed but not used commercially, a revenue may be imputed by the Secretary.

The Secretary may cancel the unpaid balance on any loan if the geothermal reservoir is determined to be technically or economically unacceptable for commercial development.

Section 102. No loan may exceed $3 million or 50% of the drilling costs except that for direct heat applications loans may be 90% of project costs.

Section 103. Loans are made at the same rate as water resources planning projects (6⅞% in 1978) for a term of 20 years.

If revenues are inadequate to repay loan principal and interest within 20 years after production begins, any remaining upaid amounts shall be forgiven.

Section 104. The loan program shall begin in FY 1981 and terminate at the end of FY 1986.

Section 105. Regulations made with respect to this Title are to be promulgated within one year after the date of enactment.

Section 106. Authorization is set at $150 million for each year the loan program exists.

Section 107. Definitions.

TITLE II: AMENDMENTS TO THE GEOTHERMAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1974

The functions of the Geothermal Energy Coordination and Management Project are transferred to the Interagency Geothermal Coordinating Council.

The meaning of geothermal resource is clarified to include brines, geopressured water, magma, and hot rock.

Section 202 and 203. The membership of the Council is expanded to include HUD, DOC, and DOD; and the responsibilities of each member agency are specified.

Section 204. The loan guaranty limit is raised from 75% to 90% of the principal costs of any project if the guarantee is made for a loan to a cooperative or a municipality.

TITLE III: AMENDMENTS TO THE GEOTHERMAL STEAM ACT OF 1970

Section 301. The term "Act" is defined to mean the Geothermal Steam Act of 1970.

Section 302. The term "geothermal steam and associated geothermal resources" is changed to "geothermal resources" and expanded to include geopressured water, magma, and hot rock formations.

Section 303. The term "geothermal steam" is changed to read geothermal resource.

Section 304. The definition of "known geothermal resource area" is amended to include only those areas declared as KGRA's before October 1, 1979 or those areas suitable for the production of a commercial electric power.

Section 305. The term "steam and associated geothermal" is changed to geothermal resources and the Secretary of the Interior is given the authority to issue geothermal leases on the outer continental shelf. Also, the Secretary may issue leases on lands withdrawn or acquired in the aid of the functions of any department or agency of the Federal Government.

Section 306. The existing leasing policy is revised by setting specific time limits on the date of lease application to the date of granting the lease. A distribution is drawn among full leases, conditioned development leases, and no-surface-occupancy leases. The time periods and associated conditions are given in the table below:

Lease	Competitive	Noncompetitive [1]	Maximum time for granting lease	Change on lease limitations
1. Full rights	Yes, if KGRA at least 10 percent not on a cash bonus bidding basis.	Yes, if not KGRA	(a) 2 yr from date of application if on KGRA,[2] (b) 3 yr from date of application if not on KGRA, (c) 1 yr from date of application if accompanied by a performance bond.	NA.
2. Conditioned development	NA	Yes	270 days	Within 1 yr of date of application.
3. No surface occupancy	NA	Yes	180 days	Do.

[1] An applications for a lease on lands not within KGRA may become competitive if more than 1 person files an application within a 60-day period after notice of the 1st applications.
[2] Taxes may be extended 1 yr by Leasing Liaison Committee.

References to "geothermal steam" are changed to "geothermal resource."

Section 311. The definition of "production or utilization of geothermal resource in commercial quantities" is expanded to include the sale of power to facilities not yet constructed but which the geothermal lessee can show proof that construction will occur.

Section 314. This amendment changes the acreage limitation from 20,500 acres to 265,560 acres in all States except Alaska where the limitation is set at 320,480 acres. A new proviso restricts the total leases by any person for oil, gas, and/or geothermal to the acreage limitations given above.

Section 315. Section 8 is amended by increasing the period after which the Secre-

tary may readjust leasing terms and conditions from ten to twenty years.

Section 317. If the Secretary intends to issue a lease on withdrawn or acquired lands, he is required to consult with the appropriate Federal agency or department.

Section 318. This amendment allows leases operated under an approved development plan to be excepted from the acreage limitation.

Section 320. The Secretary is authorized to issue free-use permits for the use of geothermal resources without a lease or compensation provided the resource is not used to produce electricity.

The head of any agency may develop a geothermal resource for that agency's use provided that the Departments of Interior and Energy agree that the development will be in the public interest and will not deter commercial development.

Section 321. Specific deadlines on the time periods to grant permits are set at 180 days for exploration activities and 1 year for development activities. The Secretary with the approval of the Leasing Liaison Committee may extend these deadlines by 90 and 180 days, respectively.

The Secretary must establish requirements for a plan of operation for exploration activities. This plan must be filed within three years of the issuance of a lease. The plan must include a drilling program that commences no later than two years after the approval of the plan.

Section 323. Conditional development lease and no-surface-occupancy lease are defined. Conditional development lease allows deep drilling whereas no-surface-occupancy lease allows only shallow drilling.●

By Mr. JACKSON (by request):

S. 1389. A bill to add clarifying amendments to the Uranium Mill Tailings Radiation Control Act of 1978, and for other purposes; to the Committee on Energy and Natural Resources.

● Mr. JACKSON. Mr. President, by request, I send to the desk for appropriate reference a bill to add clarifying amendments to the Uranium Mill Tailings Radiation Control Act of 1978, and for other purposes.

Mr. President, this draft legislation was submitted and recommended by the Nuclear Regulatory Commission, and I ask unanimous consent that the bill, the executive communication, and the section-by-section analysis which accompanied the proposal from the chairman of the Nuclear Regulatory Commission be printed in the RECORD.

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

S. 1389

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 204(h) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding at the end thereof a new paragraph to read as follows:

"(3) Notwithstanding any other provision of this title, where a State assumes or has assumed, pursuant to an agreement entered into under section 274b of the Atomic Energy Act of 1954, authority over any activity which results in the production of byproduct material as defined in section 11e.(2) of that Act, the Commission shall not, until the date three years after the date of enactment of this Act, have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated. If, upon expiration of the three-year interim, a State has not entered into such an agreement with respect to byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material."

SEC. 2. Section 204(h)(1) of the Uranium Mill Tailings Radiation Control Act is amended to read:

"SEC. 204. (h)(1) On or before the date three years after the date of enactment of this Act, notwithstanding any provision of this title, any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to Section 274 of the Atomic Energy Act of 1954, as amended) respecting (a) byproduct material, as defined in section 11e. (2) of the Atomic Energy Act of 1954, or (b) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the enactment of this Act; provided, however, that nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 as may be necessary to implement title I of this Act."

SEC. 3. The last sentence of section 83a of the Atomic Energy Act of 1954 is amended to read:

"Any license in effect on the effective date of this section and subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

SEC. 4. Section 204(e) is amended by adding at the end thereof a new paragraph to read as follows:

"(2) This subsection shall be effective on the date three years after the date of enactment of this Act."

U.S. NUCLEAR
REGULATORY COMMISSION,
Washington, D.C., May 30, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Nuclear Regulatory Commission would like to request your support for legislation to resolve questions arising from the effective date provisions of the Uranium Mill Tailings Radiation Control Act of 1978 enacted by the last Congress. The Commission received a letter dated April 26, 1979, and signed by the principal authors of this legislation in both the Senate and House of Representatives which expressed the intent of the drafters regarding the date on which licensing authority and procedural requirements under the Act would become effective with respect to the Commission and affected State governments. The letter supports the position that existing authority of Agreement States to license uranium mills and to control mill tailings should not be disrupted during the three-year interim period following enactment and that during this period the NRC should not be required to exert concurrent licensing authority over tailings produced in milling activities regulated by the Agreement States.

The Commission is mindful of and sympathetic with these views. Nonetheless, after a careful analysis of the language of the 1978 Act, a majority of Commissioners have concluded that without amendments to the Act the NRC is required to license tailings at Agreement State-regulated uranium mills during the three-year period before the Act permits renegotiated agreements to become effective. Pursuant to this decision as to the meaning of the Act, implementing regulations and associated arrangements are now being prepared.

Enclosed with this letter is a draft of statutory language and a section-by-section analysis which would accomplish the intent of the principal authors of the legislation, as expressed in the April 26, 1979 letter. All Commissioners agree that such clarifying language is desirable. Some additional clarification which the Commission believes necessary are also included and are described in the section-by-section analysis. The Commission believes that prompt enactment of this legislation is necessary to assure that the intent expressed by the authors of the Act may be carried out during the remainder of the three-year interim period.

Sincerely,

JOSEPH M. HENDRIE.

Enclosures: 1. Draft Legislation; 2. Analysis.

SECTION-BY-SECTION ANALYSIS

A product of the hectic final days of the 95th Congress, the Uranium Mill Tailings Radiation Control Act of 1978 contains certain provisions regarding dates of effectiveness which, if left to stand, may be subject to differing legal interpretation. Specifically, two questions of immediate concern have arisen regarding the timing of State and NRC implementation of title II of the Act:

(1) Do both the States and the Federal Government have authority to license uranium mill tailings (i.e., exercise concurrent licensing jurisdiction) for the three years following enactment of the Uranium Mill Tailings Radiation Control Act?

(2) Are the requirements of new section 274o of the Atomic Energy Act pertaining to procedures to be followed by Agreement States in issuing source material licenses for uranium mills immediately effective?

These questions have arisen because one section of the Uranium Mill Tailings Radiation Control Act (section 208) makes the provisions of the regulatory program in title II of the Act immediately effective unless otherwise specified, and another section of the Act (section 204(h)(1)) delays the effectiveness of certain provisions of the Act regarding State authorities for three years after the date of enactment. Accordingly, the Nuclear Regulatory Commission has proposed amendments to clarify the effective dates of title II.

These amendments generally provide a three-year interim period before the requirements in title II of the Uranium Mill Tailings Radiation Control Act (Mill Tailings Act) apply to milling operations and tailings licensed by Agreement States.

In non-Agreement States, the NRC would have immediate authority to implement the regulatory program in title II. Although section 204(h)(1) preserves prior State authority for three years, in case of conflict between Federal and State law, the Federal would prevail.

One of the provisions in title II (section 206) adds a new section 275 to the Atomic Energy Act of 1954. Section 275 authorizes certain Environmental Protection Agency standards which are, under section 108(a)(2) of the Mill Tailings Act, a prerequisite to the remedial actions authorized in title I. Thus it is stressed that these clarifying amendments are not intended to prevent the Administrator of the Environmental Protection Agency or the Nuclear Regulatory Commission from taking such action under section 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

SEC. 1. During the three years following enactment of the Mill Tailings Act, section 1 prohibits the NRC from exercising duplicative authority over tailings produced in activities licensed by Agreement States unless the agreement is terminated within that period. The EPA and NRC may, however, take such action under 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

SEC. 2. This section makes the provision in section 204(h)(1) of the Mill Tailings Act preserving State authority over tailings and wastes for the three-year interim conform to the new requirements of the Mill Tailings Act which apply to both byproduct material and milling operations that result in the tailings

and wastes now defined as byproduct material. As enacted, section 204(h)(1) mentions only byproduct material specifically, although the regulatory program generally covers both milling and tailings. As amended, this section explicitly covers both byproduct material and milling operations and applies also to States that enter into agreements during the three-year interim.

Further provision is made so that EPA and NRC may take such action under section 275 of the Atomic Energy Act of 1954 (as added by the Mill Tailings Act) as may be necessary to implement the remedial action program in title I of the Mill Tailings Act immediately.

SEC. 3. As originally enacted, section 83 of the Atomic Energy Act of 1954 may be subject to various interpretations regarding its timing. Its provisions are not, under section 202(b) of the Mill Tailings Act, to become effective until three years from their date of enactment. Nonetheless, section 83a (as added by section 202 of the Mill Tailings Act) states that licenses in effect on the date of enactment of this section must comply with 83a (1) and (2) upon their renewal or termination, whichever first occurs. Conceivably this renewal or termination could take place during the three-year period in which section 83 is not supposed to be effective. The sentence as amended applies section 83a only to licenses that are renewed or terminated after the effective date of section 83.

Moreover, it might be argued that a loophole was left for licenses issued after the date of enactment but before the effective date of section 83. It could be argued that such licenses would not be covered by section 83a. As amended, the section applies the requirements of section 83a to any license in effect on the effective date of section 83.

SEC. 4. This section amends section 204(e) of the Mill Tailings Act to make it clear that the new Agreement State responsibilities regarding tailings and milling operations in new section 274o of the Atomic Energy Act are not effective until three years after the enactment of the Mill Tailings Act. The States are, however, encouraged to implement the new standards and requirements of the Mill Tailings Act to the maximum extent practicable.●

By Mr. PERCY (for himself, Mr. KENNEDY, Mr. PACKWOOD, and Mr. MAGNUSON):

S. 1390. A bill to promote commercial motor vehicle safety, to prevent injury to commercial motor vehicle operators, and for other purposes; to the Committee on Commerce, Science, and Transportation.

TRUCK SAFETY ACT

Mr. PERCY. Mr. President, unsafe trucking practices on our Nation's highways have reached epidemic proportions, threatening the health and safety of truck drivers and the American motoring public. Today, I—along with Senator KENNEDY, the distinguished chairman of the Judicary Committee, Senator PACKWOOD, the distinguished ranking Republican on the Commerce Committee, and Senator MAGNUSON, the distinguished chairman of the Appropriations Committee and the ranking Democrat (and former chairman) of the Commerce Committee—am introducing legislation to upgrade substantially Federal truck safety standards and Federal and State enforcement of those standards.

Mr. President, I would like to express my appreciation for the invaluable help which my distinguished colleague, Senator EDWARD KENNEDY, has offered me in developing this important legislation. His support and advice have proved invaluable, and his abiding interest in this vital safety area is well known to all of us.

In the same vein, I would like to offer public commendation for my distinguished colleague, Senator ROBERT PACKWOOD. As ranking minority member of the Committee on Commerce, Science, and Transportation, Senator PACKWOOD over the years has consistently displayed a keen interest in upgrading the safety of transportation in the United States. The thoroughness, imagination, and dedication he brings to his work in this field have been of demonstrable importance.

And key to the movement of this legislation will be Senator WARREN MAGNUSON, who has long demonstrated his overriding concern for safety issues, especially those related to transportation. Over the past decade, he was a pioneer in the regulation of commerce in the name of health and safety. His leadership and activity in this important area remains strong and vital.

Finally, I wish to express my deep appreciation to Senator HOWARD CANNON, the highly respected chairman of the Senate Commerce Committee, for consistently recognizing the safety concerns involved in transportation and for devoting so much of his personal time and energies toward seeking a fair and balanced approach to those concerns. Last year he very promptly conducted hearings on the truck safety legislation we introduced, and patiently addressed all of the complex issues raised. I have discussed this bill with him and I look forward to working closely with him, and to benefiting from his wise counsel as the Truck Safety Act moves forward in this session of the Congress.

Mr. President, improper maintenance, unfit equipment, overloading, and often unreasonable driving schedules have contributed to the creation of severe hazards on the Nation's highways. Truck accidents and fatalities have increased at an alarming rate in recent years.

According to newly compiled figures from the Department of Transportation, of the 50,000 highway fatalities in this country in 1978, 17,578 (or nearly 35 percent) were caused by trucks and buses. Heavy Trucks alone were responsible for 11 percent of these fatal accidents, despite the fact that they account for less than 1 percent of vehicles on the road. This is a significant increase, for in 1975 heavy trucks were involved in only 7.8 percent of fatal accidents. While the number of vehicle miles traveled by heavy trucks rose 14 percent from 1975 to 1977, the number of these trucks involved in fatal accidents increased 29.3 percent.

In 1978, 5,075 Americans were killed in accidents involving heavy trucks, an alarming increase of 53 percent over 1975. During the same period, the number of all highway fatalities increased 12.6 percent, of itself a significant climb.

Likewise, fatalities to occupants of heavy trucks numbered 1,010, an increase of 41 percent from 1975. Fatalities to occupants of passenger cars rose only 7 percent during that period. This shocking mortality rate makes truck driving one of the more dangerous occupations in America.

Heavy trucks pose particularly severe hazards to automobiles and their occupants. In a fatal accident involving a heavy truck and a passenger car, 97 percent of the deaths are to the occupants of the car. Per hundred million miles, the involvement of heavy trucks in fatal accidents is 165 percent greater than the involvement of passenger vehicles.

Accident data compiled by the National Highway Traffic Safety Administration, an agency of the Department of Transportation, includes only those truck accidents which are actually reported by the States. Since many accidents go unreported, and since heavy trucks—those vehicles over 26,000 pounds—constitute a small percentage of the total truck population, it is fair to assume that annual accident figures are significantly higher than reflected here.

Another body of data is compiled by the Bureau of Motor Carrier Safety (BMCS), the arm of the DOT responsible for enforcing trucking safety. The latest data indicate that, in 1978, interstate motor carriers of property and passengers reported approximately 35,000 accidents, which resulted in 3,200 fatalities, 34,000 injuries, and $310 million in property damage. This represents, since 1975, an increase of 43 percent in fatalities, 29 percent in injuries, and a startling 96 percent in property damage. And, according to the Bureau, these figures are understated because a significant number of accidents went unreported.

In a series of Federal roadside spot checks conducted during 1978, over 42 percent of the 26,000 vehicles inspected by the BMCS were deemed "imminently hazardous" and were immediately ordered off the road until repaired. Yet the Bureau was able to inspect less than 1 percent of the 3 million commercial vehicles under its purview. It is reasonable to believe, therefore, that many more unsafe vehicles and conditions go undetected.

I also want to point out that, in my home State of Illinois, truck accident rates have skyrocketed in the last 4 years, according to the Illinois Department of Transportation. For all trucks (including sizes ranging from pickups to combination tractor-semi-trailer rigs), the number of vehicles involved in fatal accidents increased 99 percent from 1975 to 1978. Combination vehicles alone, the so-called "big rigs," were involved in fully 10 percent of fatal highway accidents in the State last year.

In 1978 there was a 47 percent increase in the number of combination vehicle accidents on Illinois highways. The figures for all trucks indicate that there was a distressing 116 percent rise in the number of trucks involved in highway accidents.

A 1977 General Accounting Office (GAO) report entitled "The Federal Motor Carrier Safety Program: Not Yet Achieving What The Congress Wanted," concluded that:

In view of the limited accident data obtained, the continuing infrequency of safety

inspections, and the high rate of trucks taken out of service after inspection, little assurance exists that most motor carriers are complying with Federal safety regulations.

Many trucking firms and drivers are conscientious about highway safety. Yet a regrettable few—an unscrupulous minority—are lax in their commitment to safety. Federal and State vehicle safety programs must be improved to prevent them from posing a danger to both the general public and other truckers.

Truck accidents not only threaten the health and safety of the motoring public, but they hurt American consumers by driving up the costs of transportation. Businesses are hurt as their operating expenses are jacked-up by costly accidents which destroy equipment and freight. Some companies have been forced out of business by high court judgments resulting from motor vehicle accidents which could have been avoided.

The safety of trucking operations in this country clearly has deteriorated dangerously. Safety enforcement has been beleaguered in its attempts to combat this rising problem by shortcomings in current law. This bill would correct these shortcomings.

Civil fines can now only be directed at the failure of truckers to properly maintain a daily log. Civil fines are not applicable to any other violation of safety regulations, such as the failure to keep brakes in good repair or the use of poorly adjusted ventilation systems. In these cases, the BMCS can only bring formal criminal prosecution in court or initiate an administrative hearing.

This has proved to be a time-consuming and difficult process. For instance, in 1978, BMCS detected over 110,000 safety violations during nationwide road checks of 25,695 vehicles and drivers. Yet Bureau investigators were able to develop only 319 cases warranting court or administrative action. The majority of these cases were not accepted by the Department of Justice for criminal prosecution.

The effectiveness of the Bureau's safety program could be greatly enhanced by expanding civil forfeiture authority to include all types of substantial violations of safety regulations.

Moreover, the maximum amount for fines for safety violations has not been revised since 1957. They are now seriously out of line with fines for violation of other Federal regulations. Low penalties, coupled with the lengthy process of criminal enforcement, do little to discourage future violations. It is imperative that we raise these fines and set realistic time limits for the prosecution of cases and processing of fines.

Another factor working against greater safety is that the Interstate Commerce Act provides no restraints upon employers for possible reprisals against employees who report safety violations. There have been many instances where drivers have been fired for refusing to operate vehicles in violation of Federal truck safety laws. The unfortunate result has been to dissuade employees from directing Government officials to what are at times flagrant abuses of safety regulations. As a result, the Government has lost a prime ally in its effort to protect truckers and the public.

Through the years, Congress has enacted legislation that makes it unlawful for an employer to discriminate against or discharge employees for seeking enforcement of legislation or for cooperating with the Government. One of these laws, the Occupational Safety and Health Act, protects nearly every worker in America except those of the trucking industry. It was not applied to truckers because, it was argued, the Department of Transportation already had authority to regulate trucking industry safety practices. As a result, drivers were denied the OSHA protections against employer recrimination for their attempts to secure safe working conditions.

In other areas, the BMCS has only 158 inspectors for the over 3 million trucks on the road today. Obviously safety depends, therefore, on the effective operation of motor carrier safety programs by individual States. The States are in the best position to detect and prevent safety violations due to their greater personnel and resources. Yet, the 1977 GAO report found that:

Since the Federal motor carrier safety program does not provide funding to the States, no effective incentives to promote increased cooperation from the States exist.

If States were given an incentive—for example, reimbursement for a percentage of the cost of operating adequate truck safety programs—much could be done to prevent speeding, tailgating, and the overloading of trucks. With this incentive, States could operate both more permanent and portable scales to prevent loads which make vehicles dangerous to drive, and which destroy our roadways. Increased enforcement personnel on the roads would not only slow trucks down, but automobiles as well. A recent report by the NHTSA proves that adherence to the 55-mile-per-hour speed limit would greatly reduce traffic fatalities.

Mr. President, legislation to enhance the effectiveness of truck safety has been introduced in the last four Congresses. Without legislative action, the situation on the highway is steadily worsening, and we simply cannot afford to wait any longer. We have built upon past legislation and expanded it to create, what we consider to be, a truly effective truck safety program. In drafting this legislation, we have sought to reduce the load on our already overburdened courts. We have tried to alleviate the unnecessary delay that so often plagues our regulatory process. And, we have sought ways to encourage compliance that will not plunge industry neck deep in excess paperwork.

This legislation builds upon and focuses the general authority given the Department of Transportation to regulate safety. It directs the DOT's safety function toward those areas which have caused the most serious safety problems in the 11-year period since DOT was created.

The legislation we introduced today seeks to correct the shortcomings outlined above. Specifically, it:

Raises civil fines from $500 to $2,500 maximum for each substantial violation and to $10,000 for serious safety violations.

Authorizes the Secretary of Transportation to regulate the health and safety of working conditions for truck drivers and to insure that trucks are safely maintained and operated.

Provides for 1 year imprisonment and/or a maximum $25,000 fine for knowing and willful criminal violations.

Expands Federal truck safety jurisdiction to include all commercial motor vehicles, both interstate and intrastate, over 10,000 pounds.

Authorizes the Secretary to conduct on-the-job inspections and investigations.

Protects trucking employees from discipline, discharge, or discrimination for refusing to drive an unsafe vehicle or for reporting safety violations.

Authorizes a uniform reporting system to eliminate excessive paperwork required of trucking firms and truckers.

Encourages States to assist in the enforcement of truck safety by offering them financial incentives with funds appropriated from the Highway Trust Fund.

Allows States to apply for exemptions from particular Federal regulations if their proposed regulations do not diminish safety.

Requires the Secretary to report yearly to Congress concerning his efforts to improve truck safety, and assessing the advisability of establishing a national commercial driver register.

Mr. President, the provisions of this bill would greatly enhance the effectiveness and efficiency of DOT in regulating and enforcing truck safety. Abuse of present regulations has resulted in countless deaths, injuries, and loss of property. This situation will not improve itself. The time to crack down is now. The Highway Users Foundation predicts that, during the next 15 years, the number of trucks on the roads will double. Our highways should not be death traps—they were built for the safe enjoyment and use of all Americans.

This legislation has been greatly enhanced by the diligence and concern of various drivers' representatives. From the start, by providing keen insights and original ideas to protect the health and safety of their members and the motoring public, their input and scrutiny have been of inestimable importance. This legislation would not have been possible without the outstanding contributions, time and again, of these conscientious advocates who have represented their member-employees in the highest possible tradition.

Likewise, the American Trucking Associations has displayed a sincere commitment to upgrading the safety of their industry. The Executive and SCORE Committees of ATA, consisting of many highly dedicated, safety-conscious trucking executives, devoted hundreds of hours to poring over the provisions of this bill. Subsequent ATA endorsement of this Truck Safety Act—by a vote taken just 2 days ago—is the result of an immense amount of interchange, consultation, and informed debate. It is a trib-

ute to the ATA to have taken such a bold position on this key issue. At the conclusion of my remarks, I will ask to have printed in the RECORD the ATA statement in support of the measure, which spells out a very few areas of continuing concern—areas that I am certain will be resolved in the course of hearings on the legislation.

Congress must act decisively to bring about an increase in truck safety today. Passage of this legislation will help to assure that the law and related safety regulations are strictly enforced. This was the intent of Congress in creating the Department of Transportation in 1968, and this is what all Americans demand and expect.

Finally, in closing, I want to pay particular tribute to the work of two outstanding newspapers, the Chicago Tribune and the St. Louis Globe-Democrat, for their explosive exposés of 2 years ago, and for their continuing monitoring of this area, which has documented meticulously the many reasons why such a startling number of trucks have become, literally, death traps on wheels. The series which both papers ran were directly responsible for generating my own interest in trying to correct the grievous conditions that imperil truck drivers and highway motorists alike. As a Nation, we are indebted to the vigilance of these two publications in exposing this problem and for continuing to remind us of the need for prompt remedial action by the Federal Government and by the States.

Mr. President, I ask unanimous consent that the text of the bill, a section-by-section summary and the ATA statement be printed in the RECORD.

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

S. 1390

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Truck Safety Act."

SEC. 2. The Congress finds that it is in the public interest to enhance commercial motor vehicle safety and to reduce highway fatalities, injuries, and property damage.

SEC. 3. It is declared to be the purpose of this Act to further the safety of commercial motor vehicle operations, to promote safe and healthy working conditions in the motor carrier industry, and to assure compliance by all persons subject to this Act with the Federal commercial motor vehicle safety rules and regulations issued by the Secretary.

SEC. 4. For the purposes of this Act—

(1) the term "Secretary" means the Secretary of Transportation;

(2) the term "commerce" means trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and place outside of such State, or which affects trade, traffic, or transportation between a State and any place outside of such State;

(3) the term "employer" means any person engaged in a business affecting commerce who owns, leases, or operates commercial motor vehicles in connection with that business, or assigns employees to operate them in commerce, but such term does not include the United States, or any State, or political subdivision of a State;

(4) the term "employee" means a driver (including, for purposes of this Act only, independent contractors), mechanic, freight handler, and any other individual whose employment with a commercial motor vehicle carrier directly affects commercial motor vehicle safety;

(5) the term "person" means employers and employees, as well as one or more individuals, partnerships, associations, corporations, business trusts, or any other organized group of individuals who use or operate commercial motor vehicles in commerce;

(6) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam; and

(7) the term "commercial motor vehicle" means any self-propelled or towed vehicle used on the highways in commerce principally to transport people, commodities, or equipment in commerce.

APPLICABILITY

SEC. 5. (a) Except as provided in subsection (b) of this section, this Act shall apply to the safety of operation of all commercial motor vehicles over 10,000 pounds GVWR (gross vehicle weight rating).

(b) Nothing in this Act shall apply to the operation of any vehicles engaged in farming activities or logging operations as defined by the Secretary.

DUTIES

SEC. 6. Each employer shall provide vehicles and working conditions that are safe and healthy, and each employer and each employee shall comply with the safety and health standards and rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

REGULATORY AUTHORITY AND STANDARDS

SEC. 7. (a) In carrying out the provisions of section 1655 (e) and (f) of Title 49, United States Code, in accordance with section 5 of this Act, the Secretary shall establish, maintain, and monitor safety rules and regulations necessary to assure, to the extent practicable, that—

(1) commercial motor vehicles be safety maintained, equipped, loaded, and operated;

(2) the responsibilities imposed upon drivers of commercial motor vehicles do not impair a driver's ability to operate safely; and

(3) the health and physical condition of drivers of commercial motor vehicles be adequate to enable them safely to drive the vehicles they customarily operate.

(b) The Secretary shall regulate the working conditions and operating practices of employees when operating commercial motor vehicles and shall establish, maintain, and monitor safety and health rules and regulations necessary to assure, to the extent technology feasibily permits, that such employees will not suffer injury or material impairment of health or functional capacity due to their exposure to such working conditions.

(c) All rules and regulations issued under this section shall be promulgated in accordance with section 553 of Title 5, United States Code (without regard to sections 556 and 557 of such title), provided that such rules shall be promulgated within 90 days of the expiration of the period provided for submission of written data and comments. Such a rule may contain a provision delaying its effective date for such a period (not to exceed 90 days) as the Secretary determines may be necessary to ensure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence and the requirements of the standard.

(d) In promulgating, modifying, or revoking rules and regulations under this Act, the Secretary shall not in any material way reduce the protections currently afforded the public and employees operating commercial motor vehicles.

(e) The Secretary shall conduct, directly or indirectly, the research, development, demonstrations, and training activities necessary to develop rules and regulations under this section, to design and develop improved enforcement procedures and technologies, and to familiarize all affected persons with such rules, regulations, and orders.

RECORDKEEPING, INSPECTIONS, AND INVESTIGATIONS

SEC. 8. (a) The Secretary is authorized to require, by regulation issued pursuant to section 553 of Title 5, United States Code, that persons subject to this Act establish and maintain such records, and make such reports as are necessary to ensure compliance with this Act so that reliable information can be developed concerning health and safety hazards, vehicle conditions, employee qualifications, vehicle inspection and maintenance practices, and the safe operation of vehicles. In addition, where appropriate, any such regulation may prescribe the manner, type, and frequency of examinations by medical authorities or other tests, and the results thereof, which shall be provided by the employer to employees exposed to such hazards in order to permit the Secretary, employers, employees, and employee representatives to determine most effectively whether the health and safety of such employees is adversely affected by such exposure.

(b) The Secretary is authorized, to the extent necessary to carry out his responsibilities under this Act, to conduct investigations and inspections, compile statistics, make reports, hold hearings, require by subpoena or otherwise the production of documents, records, and property, and take depositions. Investigations and inspections under this subsection may be conducted without advance notice. Enforcement officials may consult with the employers and employees and their duly authorized representatives, and shall offer them a right of accompaniment.

(c) The Secretary shall timely investigate non-frivolous written complaints alleging that a material violation of any safety or health rule or regulation issued under this Act is occurring or has occurred within the preceding 60 days. The Secretary is not required to conduct separate investigations of duplicative complaints. The Secretary shall timely notify the complainant of his findings. The Secretary shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every measure to assure that the complainant is not subject to harassment, intimidation, or financial loss as a result of such disclosure.

NOTICES, ORDERS, AND PENALTIES

SEC. 9. (a) If, upon inspection or investigation, the Secretary finds that a violation affecting health or safety exists or has occurred, he shall timely issue a notice of violation. Each notice shall be in writing and shall describe with reasonable particularity the nature of the violation found and the section of the Act, rule, standard, regulation, or order which has been violated. The notice shall fix a reasonable time for abatement of the violation, and indicate the appropriate civil penalty, if any, pursuant to subsection (b) of this section. The notice shall indicate that any person issued such notice may, within 15 days of service, notify the Secretary of his intention to contest the matter. In the event of a contested notice, the Secretary shall afford such person an opportunity for a hearing pursuant to section 554, Title 5, United States Code, whereupon he shall issue an order affirming, modifying, or vacating the notice of violation.

(b) Any person who is determined by the Secretary to have committed an act which is a violation of this title or a regulation issued under this title, or who causes a violation to be committed, shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense; provided that, if the violation pertains solely to recordkeeping, the violator shall be liable for a civil penalty not to exceed $500 for each offense. If the

Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, he may assess a civil penalty not to exceed $10,000 for each offense. *Provided, however,* that, except for recordkeeping violations, no civil penalty shall be assessed against an employee unless the employee is an operator of a commercial motor vehicle and the Secretary determines that said employee's actions constituted gross negligence or reckless disregard for safety, in which case he shall be liable for a civil penalty not to exceed $500. The amount of any such penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce future compliance.

(c) If, upon inspection or investigation, the Secretary determines that a violation, or combination of violations, poses an imminent hazard to public health and safety, he may place a vehicle or employee operating such vehicle out of service pending abatement of the violation.

(d) Any person who knowingly and willfully violates any standard, rule, regulation, or order under this Act or who knowingly and willfully makes any false statement or representation required under this Act shall, upon conviction, be subject for each offense to a fine not to exceed $25,000, or imprisonment for a term not to exceed one year, or both; *provided, however,* that if such violator is an employee he shall only be subject to penalty if he is an operator of a commercial motor vehicle, in which case he shall be liable, upon conviction, for a fine not to exceed $1,000.

(e) The Secretary shall require any persons served with a notice of violation to post it or notice thereof in such place or places and for such duration as the Secretary may deem appropriate to aid in the enforcement of the Act.

(f) The Secretary shall promulgate regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in notices and orders.

(g) With respect to uncontested actions of the Secretary under this section, all findings of fact, conclusions of law, fines, penalties and orders shall be conclusive and shall not be subject to review.

(h) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section, may within 30 days petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where he has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law. No objection that has not been urged before the Secretary or his designated agent shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(i) The Secretary may obtain enforcement, including injunctive relief, of any penalties or orders issued under this section by applying to the United States district court for the district where the violation occurred or where the cited party has his principal place of business or residence. In addition to granting enforcement, the district court may assess an appropriate penalty for noncompliance and award such further relief as justice and public safety may require.

(j) All penalties and fines imposed under this section shall accrue and be payable to the Highway Trust Fund.

REPRESENTATION BEFORE THE COURTS

SEC. 10. Except as provided in section 518 (a) of Title 28, United States Code, relating to litigation before the Supreme Court, the General Counsel of the Department of Transportation may appear for and represent the Secretary in all proceedings and in any civil litigation brought under this Act but all such litigation shall be subject to consultation with and the occurrence of the Attorney General.

EMPLOYEE SUITS

SEC. 11. (a) No employer shall discharge, discipline, or in any manner discriminate against an employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under, or relating to, any standard, requirement, or regulation issued under this Act, or has testified, or is about to testify, or has participated in any way, in such proceeding.

(b) No employer shall discharge, discipline, or in any manner discriminate against an employee for refusing to operate a vehicle when such operation would materially violate motor carrier safety regulations, or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such equipment. The unsafe conditions causing the employee's apprehension of injury must be of such nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a bona fide danger of an accident, injury, or serious impairment of health resulting from the unsafe condition. In order to qualify for protection under this subsection, the employee must have sought from his employer, and have been unable to obtain, correction of the unsafe condition.

(c) Any employee who is discharged, disciplined, or in any manner discriminated against in violation of this section shall be entitled to (i) reinstatement to his former position and compensatory damages, and (ii) where appropriate under the circumstances, exemplary damages.

(d) Suits to enforce the provisions of this section may be brought in the United States district court in the district in which the employer owns or leases facilities or in the United States district court in the district within which the employee has been disciplined, discriminated against, or has received notice of discharge. No suit may be instituted to enforce such provisions more than six months after written notice of discharge is received by the employee concerned, or more than six months after the discriminatory practices have been discontinued, whichever is later.

(e) Whenever an order is issued under this section, the court may assess costs and expenses, including attorney's fees, reasonably incurred in connection with the institution and prosecution of such proceedings.

STATE ENFORCEMENT

SEC. 12. (a)(1) Any State agreeing to adopt, and to assume responsibility for enforcing, the standards, requirements, and regulations issued under this Act shall submit a plan which shall be approved by the Secretary if, in his judgment, the plan is adequate to promote the objectives of this Act, and the plan—

(i) designates the appropriate State motor vehicle safety agency responsible for administering the plan through the State;

(ii) contains satisfactory assurances that such agency has or will have the legal authority, resources, and qualified personnel necessary for the enforcement of such rules and regulations;

(iii) gives satisfactory assurances that such State will devote adequate funds to the administration of such plan and enforcement of such rules and regulations;

(iv) provides a right of entry and inspection comparable to the Secretary's right under section 8(b) of this Act;

(v) provides civil penalty procedures, rights, and remedies comparable to those set forth in section 9 of this Act;

(vi) requires employers, employees, owners, and lessees of commercial motor vehicles to make all reports pursuant to this Act to the Secretary;

(vii) provides that such State agency will adopt uniform reporting requirements and use uniform forms for recordkeeping, inspections, and investigations as may be established and required by the Secretary; and

(viii) requires registrants of commercial motor vehicles to make a declaration of knowledge of the applicable federal and state safety regulations.

(2) If the Secretary rejects a plan submitted under the foregoing paragraph, he shall provide the State a written explanation of his action and shall permit the State to modify and resubmit its proposed plan for approval.

(b) The Secretary shall, on the basis of reports submitted by the State agency, and on his own inspections, make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for comment, that a State plan previously approved is not being followed, or that it has become inadequate to assure the enforcement of rules and regulations issued under this Act, he shall notify the State of his withdrawal or his approval of such plan and upon receipt of such notice, such plan shall cease to be in effect. The State may, however, retain jurisdiction in any case commenced before the withdrawal of the plan whenever the issues involved do not directly relate to the reasons for the withdrawal of approval of the plan.

(c) There is hereby authorized to be appropriated out of the Highway Trust Fund for the fiscal year beginning October 1, 1980, and each fiscal year thereafter, such sums as are required to provide incentive assistance to States to develop and institute enforcement plans under this section. No State shall receive under this section during any fiscal year grants exceeding 80 per centum of the cost during such year of developing and implementing its plan. The Secretary is authorized to allocate amounts appropriated under this subsection pursuant to an equitable formula to those States administering plans under this section.

SAFETY REPORTS

SEC. 13. (a) The Secretary shall make a comprehensive written report to the Congress by July 1 of each year concerning his efforts during the preceding calendar year and his current plans to upgrade commercial motor vehicle safety and driver safety and health. The report shall include, but not be limited to, an evaluation of the Department of Transportation's commercial motor vehicle safety programs, an outline of problem areas and appropriate steps to alleviate them, and recommendations for closer coordination and cooperation among agencies of the Federal Government and between the Federal Government and the States to enforce the standards, requirements, and regulations issued pursuant to this Act.

(b) Within 12 months of the enactment of this Act, the Secretary shall prepare and transmit to the Congress a written report concerning the advisability of establishing a national commercial driver register, to upgrade commercial motor vehicle safety through improved monitoring of traffic violations and accidents and of multiple State

licensing. In the event the Secretary recommends the establishment of such a register, within 60 days of the submission of his report to Congress he shall publish in the Federal Register a notice of proposed rulemaking describing the operation of a pilot project.

EFFECT ON FEDERAL LAWS

SEC. 14. Nothing in this Act shall be construed to amend or modify the National Labor Relations Act, the Railway Labor Act, the Fair Labor Standards Act, or the Occupational Safety and Health Act.

EFFECT ON INTERSTATE COMMERCE COMMISSION

SEC. 15. Nothing in this Act shall diminish the existing functions, powers, and duties of the Interstate Commerce Commission which shall consider the public safety and a carrier's record of compliance with safety regulations as a principal criterion in determining whether to confer operating authority upon motor carriers pursuant to part II of the Interstate Commerce Act (49 U.S.C. 301, et seq.).

EFFECT ON STATE STANDARDS

SEC. 16 (a) Upon application of a State, the Secretary may by rule, after notice and opportunity for a hearing pursuant to section 553, Title 5, United States Code, exempt from the provisions of this Act (under such conditions as they may impose) a proposed State commercial motor vehicle safety standard or regulation, or a prior existing standard or regulation, described in such application, if such standard or regulation (1) does not materially diminish commercial motor vehicle safety or the health and safety of employees, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce.

(b) Nothing in this Act shall affect existing hours-of-service regulations of any State applying to commercial motor vehicle operations occurring wholly within that State, unless the Secretary affirmatively finds upon review of a State's hours-of-service regulations that such regulations (1) materially diminish commercial motor vehicle safety or the health and safety of employees, (2) are not required by compelling local conditions, or (3) unduly burden interstate commerce. If the Secretary makes such an affirmative determination, he may require such State to adopt Federal hours-of-service regulations.

(c) Nothing in this Act shall prevent any State safety agency or court from asserting jurisdiction under State law over any safety or health issue involving commercial motor vehicles with respect to which standard, rule, or regulation the Secretary has not addressed under this Act. State agencies and courts shall make every reasonable effort to timely apprise the Secretary of their intended actions in this regard, so that the Secretary may determine whether a like Federal standard is warranted.

AUTHORIZATIONS OF APPROPRIATIONS

SEC. 17. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress may deem necessary.

EFFECTIVE DATE

SEC. 18. (a) Except as provided in this section, the provisions of this Act shall take effect immediately on the date of enactment.

(b) The Secretary shall, by regulation promulgated pursuant to section 553 of Title 5, United States Code, take all steps necessary to bring all orders, determinations, rules and regulations into conformity with the purposes and requirements of this Act as soon as practicable.

(c) All orders, determinations, rules, and regulations issued under section 204(a)(1), (2), (3), (3a), (5) of part II of the Interstate Commerce Act shall be continued under this Act until such time as they may be modified by the Secretary.

(d) Judicial proceedings pending upon the date of enactment of this Act shall not be affected by the provisions of this Act.

SECTION-BY-SECTION SUMMARY OF THE TRUCK SAFETY ACT

Section 1. Short title.

Sec. 2. Finds that it is in the public interest to enhance motor vehicle safety and to reduce highway fatalities, injuries, and property damage which may be attributed to the extensive use and substantial size and weight of trucks, to the inadequacy of existing laws pertaining to the safe design and operation of trucks, as well as to the failure of existing laws to protect driver-employees from discrimination arising from their efforts to promote compliance with safe operating procedures.

Sec. 3. States that the purpose of this Act is to protect the public from the hazards of unsafe trucking operations, to provide drivers with healthy, safe working conditions, and to ensure prompt compliance with safety regulations and rules by all persons subject to this Act.

Sec. 4. Definitions section.

Sec. 5. Applies the provisions of the Act to the safe operation of any truck over 10,000 pounds gross vehicle weight rating. The Act also applies to the maximum hours, qualifications, working conditions, and duties and responsibilities of all persons who operate trucks in commerce. Exempts certain farming and logging vehicles from specific Federal regulations.

Sec. 6. General duty clause to require each employer to provide vehicles and working conditions that are safe and healthy, and to require employers and employees to comply with all regulations which are applicable to their conduct.

Sec. 7. Requires the Secretary of Transportation to establish, maintain, and monitor safety regulations to ensure that vehicles be maintained, equipped, and operated safely, that responsibilities imposed upon drivers do not impair the safe operation of their vehicles, and that drivers be physically fit to drive safely.

Sec. 8. Authorizes DOT to require reports and records of employers and employees, to prescribe the type and fequency of medical examinations of employees, to conduct on-the-spot inspections and investigations without advance notice, and to establish uniform reporting requirements and forms for recordkeeping, inspections, and investigations by Federal, State and local jurisdictions. Requires the Secretary to investigate non-frivolous complaints by employees of safety violations.

Sec. 9. Raises the maximum fines from $500 to $2,500 for most substantial safety violations, to $10,000 for very serious violations. Establishes a criminal offense for knowing and willful violations, punishable by a maximum of one year's imprisonment and/or $25,000 fine. Establishes a $500 maximum fine for recordkeeping violations. Limits fines assessed against drivers to $500 for civil violations and $1,000 for criminal violations. Provides an administrative hearing procedure and judicial review to contest actions of the Secretary.

Sec. 10. Permits the General Counsel of the DOT to represent the Secretary.

Sec. 11. Prohibits employers from disciplining, discharging, or discriminating against an employee for reporting a safety violation or for refusing to operate a vehicle in violation of Federal regulations. Entitles the employee to recover damages.

Sec. 12. Provides financial incentives up to 80 percent reimbursement to any State which agrees to aid in the enforcement of Federal truck safety measures. Establishes guidelines for State enforcement plans which must be satisfied for a State to receive funds.

Sec. 13. Requires the Secretary to submit a yearly report concerning his efforts to upgrade trucking safety. Requires the Secretary to report on the advisability of establishing a national commercial driver register, and to establish a pilot program if he so advises.

Sec. 14. Clarifies that this Act shall not affect the union procedures and health and safety protections established in specific acts of Congress.

Sec. 15. States that this Act shall not diminish the authority of the ICC to assess a carrier's safety record in granting it operating authority.

Sec. 16. Establishes Federal preemption for truck safety rules, but allows States to apply for exemptions from specific Federal safety regulations, or to propose alternate regulations, if the exemption does not diminish safety. Preserves existing State hours-of-service regulations pending review by the Secretary. Authorizes States to pass laws and regulations in areas which are not covered by Federal standards.

Sec. 17. Authorizes Congressional appropriations in such sums as the Congress deems necessary.

Sec. 18. Stipulates the effective date of this Act to be the date of enactment.

ADOPTED BY EXECUTIVE COMMITTEE OF THE AMERICAN TRUCKING ASSOCIATIONS (ATA) JUNE 19, 1979

POLICY STATEMENT

The ATA endorses Senator Percy's draft Truck Safety Act as Federal legislation which would improve highway safety, and commends Senator Percy's efforts to develop such legislation while involving all interested parties.

The ATA opposes the mandatory complaint and civil penalty provisions of the bill as difficult to administer fairly and equitably. While there is language in the Percy draft bill designed to ameliorate abuse of those provisions ATA believes the levels of penalty are too high and the standards for application too vague to merit endorsement. As a more practical alternative to the civil penalty we support removal from service of unsafe vehicles and unsafe drivers which will have greater immediate impact for safety and compliance.

ATA also opposes Section 11 of the Percy Act entitled employee suits because it would stimulate unnecessary, costly private litigation.

Specifically, the Percy bill provisions authorizing employee suits for refusal to operate because of alleged safety defects, while well intended, would stimulate a host of unwarranted legal actions throughout the states. ATA believes that the employees' rights would be more fully and efficiently protected by expanding the Percy provisions on employee complaints to DOT to include DOT review of complaints on safety related discipline or discharge which is allegedly discriminatory. With this addition, governmental protection for employee safety complaints will have been extended to every facet of trucking industry operation. The rights referred to in Section 11 will then be fully protected by NLRB, OSHA and DOT. These mechanisms will provide the employee with low-cost governmental protection, and employers an assurance that the governmental units will have the expertise necessary to handle these often complex questions competently.

By Mr. CANNON (by request):

S. 1391. A bill to amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981 and 1982; to the Committee on Commerce, Science, and Transportation.

S. 1392. A bill to extend the appropriations authorization for reporting of weather modification activities; to the

Committee on Commerce, Science, and Transportation.

S. 1393. A bill to amend section 7 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704) to extend authorizations for appropriations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

● Mr. CANNON. Mr. President, I introduce by request three bills:

First, a bill to amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981 and 1982;

Second, a bill to extend the appropriations authorization for reporting of weather modification activities; and

Third, a bill to amend section 7 of the Earthquake Hazards Reduction Act of 1977 to extend authorizations for appropriations, and for other purposes.

Each of these bills would reauthorize existing programs beyond fiscal year 1980. I ask unanimous consent that the bills and the communication forwarding them be printed in the RECORD.

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

S. 1391

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of the National Climate Program Act (15 U.S.C. 2908) is amended by (1) deleting from subsection (a) the word "and" after the date "1979"; and (2) deleting from subsection (a) the period following the year "1980" and inserting in lieu therefor the words "and such sums as may be necessary for fiscal years ending September 30, 1981, and September 30, 1982.".

Washington, D.C., May 31, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed are six copies of a bill "To amend section 9 of the National Climate Program Act to extend the authorization for appropriations for fiscal years 1981 and 1982.", together with a statement of purpose and need in support thereof.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this legislation to the Congress from the standpoint of the Administration's program.

Sincerely,

JUANITA M. KREPS,
Secretary of Commerce.

STATEMENT OF PURPOSE AND NEED

The National Climate Program Act, P.L. 95-367, enacted September 17, 1978, directed the President to establish a National Climate Program. The Secretary of Commerce is to establish a National Climate Program Office to coordinate an interagency Federal program aimed at understanding and responding to natural and man-induced changes in climatic processes. A five-year plan which establishes the goals and priorities for each agency participation in the national program is required to be promulgated by the President. The National Climate Program has been established and is beginning this important project.

This bill would extend the general authorization of appropriations in section 9(a) through fiscal years 1981 and 1982 for the National Climate Program.

No funds have been provided in the President's 1980 budget for section 9(b) of P.L. 95-367 which authorizes funds for an intergovernmental climate program and it is not being proposed to reauthorize section 9(b) for fiscal year 1981 at this time. However, this program will be reviewed later this year by the Administration during the course of the development of the five-year plan and the fiscal year 1981 budget. A determination will be made at that time whether to propose that section 9(b) be reauthorized for 1981 and 1982.

S. 1392

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 6 of the Act entitled "An Act to Provide for the Reporting of Weather Modification Activities to the Federal Government," approved December 18, 1971 (85 Stat. 736; 88 Stat. 1212; 90 Stat. 2362; 15 U.S.C. 330e), is further amended by striking "1980" and inserting in lieu thereof "1980 and such sums as may be necessary in fiscal years 1981, 1982, and 1983."

WASHINGTON, D.C.,
June 5, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed are six copies of a bill "To extend the appropriations authorization for reporting of weather modification activities", together with a statement of purpose and need in support therof.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this legislation to the Congress from the standpoint of the Administration's program.

Sincerely,

JUANITA M. KREPS,
Secretary of Commerce.

STATEMENT OF PURPOSE AND NEED

This legislation would amend section 6 of the Act entitled "An Act to Provide for the Reporting of Weather Modification Activities to the Federal Government," to extend the appropriations authorization through 1983 at such sums as may be necessary.

Under a delegation of authority from the Secretary of Commerce, the National Oceanic and Atmospheric Administration (NOAA) has formulated and administered an effective reporting program pursuant to the Act. The reporting rules require all nonfederal attempts to modify the weather to be reported to NOAA, and, by interagency agreement, Federal agencies also report such activities. Consequently, the reporting program is the only authoritative repository of information on weather modification activities by principals of the United States. The records of these activities are available to the public, and detailed summaries of the reported activities are published periodically both in the United States and abroad.

Continuation of the reporting program is needed to monitor the numerous weather modification projects in the United States, as no other mechanism exists for this purpose. For the past 6 years, the average number of activities per year has been 70, with objectives to enhance precipitation for agricultural and other needs, to suppress hail damage to crops, to reduce the severity of fog at airports, and to carry out research on weather modification concepts and techniques. Timely reporting of weather modification activities provides for checking on duplication of projects and on possible territorial overlappings of operations, and experiments. In addition, the reporting program provides information on the possibility of harm to persons, property, or the environment, or of interference with Federal research projects.

S. 1393

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That section 7 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704), is amended by deleting the periods (.) at the end of subsections 7 (a), (b), and (c) and adding to those subsections the following phrase: "; and, thereafter such sums as may be necessary to carry out the purposes of this Act.".

WASHINGTON, D.C.,
May 25, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is enclosed a draft bill "To amend section 7 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704) to extend authorizations for appropriations, and for other purposes."

We recommend that the bill be referred to the appropriate committee for consideration, and that it be enacted.

The enclosed draft bill would indefinitely extend the authorizations for appropriations due to expire September 30, 1980, contained in section 7 of the Earthquake Hazards Reduction Act.

The effect of this extension would be to allow a continuation of the efforts already begun under the current program.

The objectives of the Earthquake Hazards Reduction Act are long range. This was recognized by the Congress during the passage of the Act and by the Executive Branch in its plan transmitted to Congress in 1978, "The National Earthquake Hazards Reduction Program." This plan outlines a number of extended tasks, including:

Research on the nature of earthquakes, earthquake prediction, hazards evaluation and delineation, and induced seismicity;

Evaluation, with the advice of the National Earthquake Prediction Evaluation Council, of earthquake predictions;

Preparation of national seismic risk maps;

Evaluation and delineation of earthquake hazards on a regional basis; and

Preparation of certain data and information on earthquake occurrences and hazards.

Much will be accomplished before the end of fiscal year 1980 by a number of Federal agencies, including this Department, the National Science Foundation, the Federal Emergency Management Agency, the National Bureau of Standards, and others. Indeed much has been accomplished since the beginning of fiscal year 1978:

Substantial new networks of instrumentation and surveys have been initiated in the most seismically active parts of the United States and selected foreign areas with high seismicity. These networks are gathering information to understand the processes leading to large earthquakes and to search for phenomena that will be useful in predicting earthquakes.

Regional studies for the evaluation and delineation of earthquake hazards are currently underway in the principal urban areas of the country at risk. Intensive studies are well underway in California, but are just beginning to gain momentum in other areas.

A process of reviewing the needs and priorities of a wide variety of users for national seismic risk maps is currently underway. This review will lead to a new draft map (or maps).

An integrated set of investigations of the phenomenon of reservoir induced seismicity near a reservoir in South Carolina has done much to confirm hypotheses about the origin of these man-induced earthquakes.

These accomplishments, however, represent only a beginning; and authority for extension of authorizations for appropriations is necessary to allow the continuation of these efforts.

The Office of Management and Budget has

advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely,

CHARLES P. EDDY,
Acting Assistant Secretary.●

By Mr. DURENBERGER:

S.J. Res. 90. A joint resolution to provide for the designation of a week as "National Recreation and Parks Week"; to the Committee on the Judiciary.

NATIONAL RECREATION AND PARKS WEEK, 1980

Mr. DURENBERGER. Mr. President, I am especially pleased to have the opportunity to sponsor a resolution to recognize the role of recreation and parks in America.

Each year, our national systems of parks, forests, wildlife refuges, and other resources, support millions of recreation visits and our State park and recreation systems annually host over 600 million visits. In my home State of Minnesota, for instance, over 6,680,000 visits to 65 State parks and 11 waysides were recorded in 1978. Our State historical sites and State forests provided still more recreation opportunities. These systems have, over the years, enjoyed the bipartisan political support of the State legislature, and that body has recently mandated an accelerated planning effort to assure that our resources are sufficient to appropriately meet the public's recreation demand.

Local and regional park and recreation systems fill an increasingly important "close to home" niche in the public recreation equation. Thus, we must give increased attention to maintaining and expanding these resources as fuel supplies and costs restrict access to more distant places. The anticipated increased demand for readily accessible recreation opportunities will place tremendous pressure on local officials.

I had the distinct pleasure recently to serve as the chairman of the Hennepin County Park Reserve Board, a 22,000 acre system in the metropolitan Minneapolis area which provides recreation opportunities to nearly 1 million visitors each year. In addition, I chaired a task force which led to the creation of the twin cities metro area open space commission and to an investment of $40 million in our park and open space system. I can assure you how vitally important these recreation resources are to the citizens of that area.

Mr. President, the resolution I introduce today has several distinct purposes:

It reminds the public of park and recreation resources and services available to them; it "launches" the peak park and recreation program season in many regions of the country; it provides opportunities for special events, including dedication of new areas or facilities; and it provides a special opportunity to recognize philanthropic, civic and other contributions to specific projects or public recreation and park objectives in general.

As my colleagues in the Senate know, the rules for this type memorial resolution have changed within recent weeks. The cosponsoring by 12 Members will result in the resolution being automatically referred by committee to the full Senate. Therefore, Mr. President, I invite my fellow Senators to join me in this resolution and urge the Senate expeditiously to consider this timely and important matter.

By Mr. MATHIAS:

S.J. Res. 91. A joint resolution to authorize and request the President to issue a proclamation designating May 18, 1980, as "Law Enforcement Officers Memorial Sunday"; to the Committee on the Judiciary.

● Mr. MATHIAS. Mr. President, I now send to the desk a joint resolution requesting the President to declare May 18, 1980, Law Enforcement Officers Memorial Sunday. This Sunday immediately follows National Police Week.

Law Enforcement Memorial Sunday will allow Americans to recognize and pay tribute to the many law enforcement officers who have given their lives in the service of the people of the United States of America.

During the 10-year period from 1968-77, 1,094 law enforcement officers were killed in the line of duty. In 1977 alone, 49,156 assaults on police were reported, while 93 officers were killed. Ninety-one of the 93 officers slain during 1977 were from 83 different local, county, and State law enforcement agencies in 31 States and the District of Columbia. Eighty-nine percent were victims of firearms. Twenty-one percent had served as law enforcement officers for more than 10 years.

Two years ago, the Congress adopted a resolution designating the third Sunday in May 1978, as National Fallen Heroes Day to recognize the sacrifices of firefighters. I think my colleagues will agree that it is equally fitting to honor law enforcement officers who have served their communities and country with such courage and devotion—too often giving in the words of Abraham Lincoln, "The last full measure of devotion."

I urge Senators to support this resolution to establish May 18, 1980, as Law Enforcement Officers Memorial Sunday in honor of these brave officers to whom we owe so much.●

ADDITIONAL COSPONSORS

S. 25

At the request of Mr. BAYH, the Senator from Tennessee (Mr. BAKER) and the Senator from South Dakota (Mr. MCGOVERN) were added as cosponsors of S. 25, a bill to designate the birthdate of Dr. Martin Luther King, Jr., as a national holiday.

S. 294

At the request of Mr. MATHIAS, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of S. 294, a bill to repeal the social security offset provision.

S. 506

At the request of Mr. MATHIAS, the Senator from Connecticut (Mr. WEICKER) was added as a cosponsor of S. 506, the Fair Housing Amendments Act of 1979.

S. 795

At the request of Mr. HEINZ, the Senator from Maine (Mr. COHEN) was added as a cosponsor of S. 795, the Farmland Protection Act.

S. 961

At the request of Mr. KENNEDY, the Senator from Delaware (Mr. BIDEN) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 961, the Speedy Trail Act Amendments of 1979.

S. 1158

At the request of Mr. GARN, the Senator from Mississippi (Mr. STENNIS), the Senator from Kansas (Mr. DOLE), and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 1158, the Clean Air Act amendment.

S. 1215

At the request of Mr. SCHMITT, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1215, the Science and Technology Research and Development Utilization Policy Act.

S. 1268

At the request of Mr. BAYH, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1268, the Gasohol Marketing Freedom Act.

S. 1305

At the request of Mr. CHILES, the Senator from Arkansas (Mr. BUMPERS) was added as a cosponsor of S. 1305, a bill to require that any train carrying hazardous materials shall be operated with a device which records the speed at which the locomotive is traveling, commonly known as the Hazardous Materials Safety Act of 1979.

S. 1306

At the request of Mr. CHILES, the Senator from Arkansas (Mr. BUMPERS) was added as a cosponsor of S. 1306, a bill to require the National Transportation Safety Board to have priority over investigations.

S. 1349

At the request of Mr. MELCHER, the Senator from Nevada (Mr. LAXALT) was added as a cosponsor of S. 1349, to create an International Council of Oil Importing Nations.

S. 1350

At the request of Mr. PELL, the Senator from South Dakota (Mr. MCGOVERN) and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 1350, a bill to extend certain programs under the Higher Education Act of 1965, for 1 year, and for other purposes.

S. 1358

At the request of Mr. HUDDLESTON, the Senator from Kentucky (Mr. FORD) and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of S. 1358, a bill to provide that major stationary sources complying with all applicable emission limitations and standards of performance established pursuant to the Clean Air Act shall not be subject to any more stringent limitations or standards for a period of 10 years.

S. 1377

At the request of Mr. DOMENICI, the Senator from North Dakota (Mr. YOUNG) the Senator from South Dakota (Mr. PRESSLER), and the Senator from Vermont (Mr. STAFFORD) were added as cosponsors of S. 1377, the Synthetic Fuels Production Act of 1979.

SENATE JOINT RESOLUTION 1

At the request of Mr. HUDDLESTON, he was added as a cosponsor of Senate Joint Resolution 1, a proposed constitutional amendment providing for the direct election of the President and Vice President of the United States.

SENATE JOINT RESOLUTION 28

At the request of Mr. HUDDLESTON, his name was added as a cosponsor of Senate Joint Resolution 28, proposing a constitutional amendment to provide for the direct election of the President and Vice President of the United States.

SENATE JOINT RESOLUTION 60

At the request of Mr. RANDOLPH, the Senator from Georgia (Mr. NUNN) was added as a cosponsor of Senate Joint Resolution 60, to authorize the President to issue annually a proclamation designating the first Sunday of September after Labor Day of each year as "National Grandparents Day."

SENATE RESOLUTION 183

At the request of Mr. SCHMITT, the Senator from Pennsylvania (Mr. HEINZ) and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of Senate Resolution 183, to provide coal mining operations with 100 percent of their diesel fuel requirements.

AMENDMENTS SUBMITTED FOR PRINTING

SUPPLEMENTAL APPROPRIATIONS, 1980—H.R. 4289

AMENDMENT NO. 268

(Ordered to be printed and to lie on the table.)

Mr. STENNIS (for himself, Mr. TOWER, Mr. COCHRAN, and Mr. YOUNG) submitted an amendment intended to be proposed by him to H.R. 4289, an act making supplemental appropriations for the fiscal year ending September 30, 1979, and for other purposes.

Mr. STENNIS. Mr. President, I send to the desk an amendment to H.R. 4289 and ask that the amendment be printed.

That is the supplemental appropriation bill that has already been set for consideration on Monday.

The PRESIDING OFFICER. The amendment will be received and printed and ordered to lie on the table.

Mr. STENNIS. Mr. President, I ask unanimous consent, Mr. President, that my staff member, Mr. James Kendall, be granted privilege of the floor for 15 minutes.

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

Mr. STENNIS. Mr. President, I do not need to have the amendment stated now. It can just be printed and, I believe, ordered to lie on the desk. The bill is not up now.

Mr. President, I want to be fully understood, it is an amendment to an appropriation bill, that will be legislation on an appropriation bill, which if a point of order should be made it would doubtless have to be sustained.

But I present this matter and I will confer with the chairman and ranking member of the Appropriations Committee at the first opportunity, also the Senator from Kentucky (Mr. HUDDLESTON), and whoever has been working on the bill with him.

This relates to the interest rates, Mr. President, on distress loans made to victims of tornadoes and floods and other calamitous happenings and is antedated back to October 1978.

Under current law, those loans would have to carry a rate of interest amounting to 7⅜ percent. This amendment would amend that law to where it would carry for domestic loans, noncommercial loans, a 3-percent rate.

The Senate has already passed on that identical item in the bill that is pending. It is called the Small Business Administration bill. These changes on our distress loan are in that bill. It has gotten delayed in conference in spite of some very fine work being done by the conferees and I do not know when we will get it in the form of being ready to go to the President.

I do know these victims have waited week after week after week and we have not been able to give them this relief.

I know the President is going to be away for some 12 days beginning, I believe, tomorrow or Saturday of this week.

I was hopeful that the appropriation bill would pass very early in the week and be agreed on in conference and could get an early start by courier to President Carter, wherever he is in the Pacific, who I know is interested in it and anxious to sign that bill once it is formalized—the appropriation bill.

So on Monday, with further explanations, I would seek some time to explain that amendment—on Monday, at such time as may be convenient to the Senate.

I know of many other Senators who are interested in it. As I say, I will give an explanation to the men who are going to be in charge of the bill.

I emphasize that I would not put in an amendment such as this except under extreme circumstances. This time, however, I am encouraged that the interest rate, which is all I do include, has been voted on by a rollcall vote some 2 weeks ago in the Senate and even more recently than that in the House of Representatives.

Mr. President, this amendment relates to homeowner disaster loans made by the Small Business Administration and to such homeowner disaster loans only. Under it the interest rate on such homeowner disaster loans would be 3 percent on the first $55,000 of disaster relief assistance retroactive to October 1, 1978. The present rate for such loans is based on the cost of money to the Government and translates to a rate of 7⅜ percent.

Let me give the background and legislative situation which prompts me to offer this amendment. The Senate passed S. 918 on May 16. It provided for an interest rate of 3 percent on the first $55,000 of a Small Business Administration homeowner disaster loan retroactive to October 1, 1978. In other words, as far as disaster homeowner loans are concerned, my amendment is identical with S. 918. The House passed S. 918 on May 22, 1979, with similar provisions in it.

S. 918 is now in conference between the Senate and the House and I understand that full agreement has been reached on the homeowner disaster loan provisions and that the agreement is identical with the amendment which I am offering today. Unfortunately, however, I am advised that final agreement by the conference committee has been delayed by provisions of S. 918 which are wholly unrelated to homeowner disaster loans. There is no indication as to when the deadlock will be broken, and this coupled with the desperate and emergency situation in my State, have motivated me to offer this amendment.

In offering this amendment I want it to be clearly understood that I neither intend nor imply any criticism whatsoever of the Small Business Committee or any of its members. In fact, the opposite is true. That committee is to be commended for the expeditious manner in which it considered and acted upon the disaster loan provisions of S. 918. I want to particularly express my appreciation to the chairman of the Small Business Committee (Senator NELSON) and to the chairman of the subcommittee which handled the disaster loan provisions of S. 918 (Senator HUDDLESTON) for their courtesy, cooperation, and assistance with respect to a problem of major importance to my State and to many other States.

The amendment which I propose, Mr. President, would reduce interest rates on loans made for disaster purposes arising because of recent floods, storms, and natural disasters in Mississippi and elsewhere. As I have stated, under existing law, the interest rate on homeowner disaster loans by the Small Business Administration is 7⅜ percent. My amendment would reduce this interest rate retroactively on homeowner loans for disasters occurring on or after October 1, 1978, to 3 percent of the first $55,000 of assistance. My amendment does not deal with any disaster loans except homeowner loans. The reason I propose this amendment is because of an urgent situation and because of the delay which has resulted, through no fault of anyone, in the conference committee's reaching an agreement on S. 918. Both Houses have already passed upon this matter and agreed upon a 3-percent interest rate for homeowner loans and this is all my amendment would accomplish.

Mr. President, there is an emergency situation here. Mississippi suffered a disaster flood in April of this year. Other major disasters occurred throughout the country, including floods in Alabama, Louisiana, Missouri, Minnesota, and North Dakota and tornadoes in Texas, Arkansas, and Oklahoma. As a result of these disasters, H.R. 4289, the supplemental appropriation bill, proposes to make an additional appropriation of over $1 billion for additional capital to the disaster loan fund.

Speaking only for Mississippi, Mr. President, the damage and destruction from the flood was tremendous. Many residences were severely damaged and some were destroyed. Carpets and furnishings were ruined.

The people who suffered these severe losses are crying out for help and relief. They face harsh financial reality which, in the aftermath of the disaster, adds to

their personal sense of loss, anguish and frustration. They need assistance just as soon as we can give it to them and in view of the delay in reaching agreement on S. 918 we can do this best and most quickly by adopting my amendment.

I urge that the Senate give favorable consideration to the amendment which I have proposed.

AMENDMENTS NOS. 269 THROUGH 278

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted 10 amendments intended to be proposed by him to H.R. 4289, supra.

HOUSING AND COMMUNITY DEVELOPMENT AUTHORIZATIONS OF 1979—S. 1149

AMENDMENT NO. 279

(Ordered to be printed and to lie on the table.)

Mr. BAYH submitted an amendment intended to be proposed by him to S. 1149, a bill to amend and extend certain Federal laws relating to housing, community, and neighborhood development and preservation and related programs, and for other purposes.

Mr. BAYH. Mr. President, there is an important Housing Act amendment that will be before the Senate in the near future. Yesterday, I made some brief remarks relative to my concern that certain arbitrary limits that had been placed on the amount of money that could be invested by owners in mobile homes really served to discriminate against that important part of our home industry because of the inflationary impact that has been felt very heavily by that industry.

I found, on reading yesterday's RECORD, that my distinguished colleague from Indiana shares this concern and is also desirous of it. I am hopeful that, together, we shall be able to persuade the Senate to recognize this critical problem that the mobile home industry throughout the country has. It is one of our most significant industries in Indiana. It has been a privilege to have a chance to work with him and try to represent some of the unique interests in the Senate over a period of time. I hope that the Senate will look kindly upon one of these amendments.

DIRECT ELECTION OF THE PRESIDENT AND VICE PRESIDENT—SENATE JOINT RESOLUTION 28

AMENDMENT NO. 280

(Ordered to be printed and to lie on the table.)

Mr. HARRY F. BYRD, JR. submitted an amendment intended to be proposed by him to Senate Joint Resolution 28, a joint resolution proposing an amendment to the Constitution to provide for the direct popular election of the President and Vice President of the United States.

(The remarks of Mr. HARRY F. BYRD, JR. when he submitted the amendment appear elsewhere in today's proceedings.)

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

○ Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources will hold a hearing on the nomination of John Mark Deutch of Massachusetts to be Under Secretary of the Department of Energy.

The hearing will be held on June 26, at 10 a.m., in room 3110, of the Dirksen Senate Office Building.

Mr. President, I ask unanimous consent that a copy of Mr. Deutch's biographical statement be printed in the RECORD.

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

JOHN M. DEUTCH

Dr. John M. Deutch was named Acting Under Secretary of Energy effective June 1, 1979.

Dr. Deutch, who was nominated to the position May 25, 1979, by President Carter and is awaiting Senate confirmation, had been serving as Director of Energy Research and Acting Assistant Secretary for Energy Technology.

As Acting Assistant Secretary for Energy Technology since January 1979 he directed activities aimed primarily at developing new energy technologies to the point of commercial applications. This included research, development and demonstration programs involving all emerging energy sources.

As Director of the Office of Energy Research, Dr. Deutch oversaw the basic research programs of the department. He held that position since the creation of DOE in October 1977.

Dr. Deutch became an assistant professor of chemistry at Princeton University in 1966, and remained at that institution until 1969. He joined the faculty at MIT in 1970 as associate professor and became chairman of the chemistry department in 1976.

From 1961 to 1965 Dr. Deutch worked on systems analysis in the Office of the Secretary of Defense. In 1965 and 1966 he was a consultant for program analysis in the Bureau of the Budget.

Dr. Deutch was born July 27, 1938, in Brussels, Belgium, and became an American citizen in 1946. He received a B.A. in history and economics from Amherst College and a B.S. in chemical engineering from MIT in 1961 and earned a Ph.D. in physical chemistry from MIT in 1965. He was a postdoctoral fellow at the National Bureau of Standards.

Dr. Deutch serves on the Defense Science Board and the Army Science Advisory Panel. He has also been an editorial board member of the "Annual Review of Physical Chemistry" and "Chemical Physics." He is the author of numerous publications.●

SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION

● Mr. FORD. Mr. President, I wish to announce that the Subcommittee on Energy Resources and Materials Production of the Committee on Energy and Natural Resources will hold a public hearing on June 28 on title V of S. 1308, the proposed Energy Supply Act. Title V proposes a Federal oil shale commercialization test program. The subcommittee has also scheduled a public hearing on title VII of the bill for July 11, 1979. Title VII proposes a 5-year oil and gas leasing program on onshore Federal lands.

Both hearings will begin at 9 a.m. in rooms to be announced later. Questions should be directed to Mr. Tom Laughlin of the subcommittee staff at 224-2565 or Mr. Owen Malone of the full committee staff at 224-7141.●

SUBCOMMITTEE ON RURAL DEVELOPMENT

● Mr. LEAHY. Mr. President, I wish to announce that the Subcommittee on Rural Development of the Senate Agriculture Committee has scheduled an oversight hearing on the credit needs of prospective single family homeowners in rural areas on Tuesday, June 26. The subcommittee is particularly interested in examining the role that tax-exempt mortgage revenue bonds can play in meeting those needs.

The subcommittee will hear first from representatives of the Farmers Home Administration and the Department of Housing and Urban Development. In addition, the subcommittee has invited representatives of banking, home financing, and realty associations to present their views.

The hearing will begin at 1 p.m. in room S-146 in the Capitol. Due to time constraints, the subcommittee will be able to hear only from invited witnesses, but written statements submitted for the RECORD are welcome.

Anyone wishing further information should contact the committee staff at 224-2035.●

IMPACT OF MTN ON AGRICULTURE

● Mr. TALMADGE. Mr. President, I wish to notify the Members of the Senate and the public that the Committee on Agriculture, Nutrition, and Forestry plans to hold hearings on June 27 and 28 regarding the impact of the multilateral trade negotiations on agriculture.

The prime legislative responsibility for the MTN rests with the Finance Committee. However, our committee will want to examine how various agricultural groups view the results of the MTN.

The hearings will begin at 9:30 in room 322 Rayburn Senate Office Building. On the first day administration witnesses will testify, and we will have invited public witnesses on the second day. Anyone needing further information should contact the committee at 224-2035.●

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Housing and Urban Affairs Subcommittee of the Committee on Banking, Housing and Urban Affairs be authorized to meet during the session of the Senate on Thursday, June 28 in order to hold a hearing on condominium-related issues.

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

SUBCOMMITTEE ON HEALTH AND SCIENTIFIC RESEARCH

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Health and Scientific Research Subcommittee of the Committee on Labor and

Human Resources be authorized to meet during the session of the Senate on Monday, June 25, 1979, beginning at 1:30 p.m. to hold a markup session on S. 1075, the drug reform bill.

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

ADDITIONAL STATEMENTS

ADDRESS BY SENATOR RIBICOFF ON AMERICAN TRADE POLICY

• Mr. ROTH. Mr. President, this morning Senator RIBICOFF delivered an important speech before the U.S. Chamber of Commerce entitled "American Trade Policy: MTN and International Trade."

This speech is important not only because of the subject matter, but because Senator RIBICOFF, as chairman of the Senate Subcommittee on International Trade, speaks with great authority and experience of international trade issues.

In his speech, he addresses two issues which Congress will be dealing with in the next few weeks—the MTN implementing legislation and trade reorganization.

These subjects are integrally related. As Senator RIBICOFF has said: "It is essential for the United States to have an agency to vigorously advance our rights under the MTN agreements." This is one of the reasons he and I have joined together in sponsoring legislation to consolidate the international trade and investment functions of the Federal Government and provide a strong, authoritative voice to advance the trade interests of the United States.

I believe Senator RIBICOFF's statement will be very valuable to our colleagues who will be deciding on these issues in the near future, and I ask that it be printed in the RECORD.

The address follows:

AMERICAN TRADE POLICY: MTN AND INTERNATIONAL TRADE

The United States has a vital economic and political interest in world trade. We live in an age of increasing economic interdependence, when ecopolitics has overshadowed geopolitics.

The share of exports in our Gross National Product has doubled during the past decade. One-third of our farmland grows for exports and one in eight American workers produces for export. Exchange rate fluctuations, the comparative growth rates of industrial economies, and the price of crude oil now rank in importance with military and strategic issues. For better or worse, our economic growth is linked to the stability and security of the international economic order.

It is in our continuing national interest to promote the development of a fair and open system of international trade. Since World War II, and the founding of the General Agreement on Tariffs and Trade, the industrialized economies of the West and Japan have moved in this direction. During the past 30 years, the volume of world trade expanded more than sevenfold. Six rounds of international trade negotiations gradually reduced most restrictive tariffs to ten percent or less on dutiable imports.

Our need to market sophisticated electronic and computer technology, aircraft industrial machinery, fertilizers, pharmaceuticals, scientific instruments and hundreds of other goods and services is matched by the need of industrial countries to sell their goods in our market. Our industries require increasingly scarce commodities from developing countries which they must export to finance their economic development.

We must evaluate the current Tokyo Round of Multilateral Trade Negotiations as an effort to bring order to the increasingly complex rules of international trade. Congress is now considering legislation to bring United States law into conformity with the MTN Agreements. Within the MTN, each Code establishes new rules and guidelines to address tariff and non-tariff barriers to trade.

There are individual codes on subsidies and countervailing duties, product standards and technical barriers to trade, government procurement issues, import licensing procedures, and methods for customs valuation. The Department of Commerce estimates that less than one-tenth (25,000) of this country's 300,000 manufacturers export. In fact, a mere 250 industrial giants account for 85 percent of America's merchandise sales abroad. The MTN codes are important to major exporters, and other business enterprises which for the first time, seek to enter the international marketplace. Properly monitored and enforced, the codes will reduce technical, arbitrary and discriminatory barriers to trade.

Successful export programs imply long-term assurances to business of access to foreign markets. Countries subscribing to these codes will not be able to close the door to trade expansion or competition in domestic markets for insignificant, protectionist or capricious reasons.

The five and a half years of the Tokyo Round were politically difficult. The old axiom that the politics of international trade negotiations reflect domestic political considerations was proven over and over again. It must be this way. Otherwise, Congress and the national assemblies of Western Europe and Japan would never ratify the agreements hammered out by the trade negotiators in Geneva.

The Tokyo Round posed a unique problem for Capitol Hill and the White House. The Constitution gives Congress control over international trade. At the same time, it designates the President to negotiate wih foreign governments.

The Trade Act of 1974 bridged these different, yet related, responsibilities. From the beginning of the Tokyo Round, the Trade Act provided for the close involvement of the House Committee on Ways and Means, and the Senate Finance Committee, in the MTN negotiations. It also ensured that Congress would develop the legislation to implement the codes. Last May, an informal House and Senate Conference approved the final form of the MTN bill. Tuesday, the President submitted these same "recommendations" as a bill to Congress.

This unique process guaranteed that the MTN represented American interests and reflected our basic principles of international trade.

Each Code is the product of several distinct stages of trade negotiations. It was necessary to proceed from trade disagreements to trade compromises, and ultimately, to the legal and political structure to institutionalize procedure for settling trade disputes.

If the MTN can prevent problems in world trade from becoming political disputes among trading partners, then this round of trade negotiations will have an impact of lasting economic and political significance.

For these reasons, the United States should work to strengthen the international dispute settlement procedures of each Code within the MTN. A new body of international trade case law would clarify the MTN's new rules for international trade.

As Chairman of the Subcommittee on International Trade, and the Committee on Governmental Affairs, I am convinced that the Congress and the President must establish a department to manage international trade and investment. It is essential for the United States to have an agency to vigorously advance our rights under the MTN Agreements.

We must have an effective department to manage trade policy. The United States suffers from an institutional inability to respond in an organized fashion to changes in the international economic order. Consequently, we are unable to make a successful transition, from defining trade problems and negotiating specific solutions, to developing an overall trade policy of the United States.

To achieve this objective, I have introduced with Senator Roth, Senate Bill 377 to establish a Department of International Trade and Investment. Both the Committee on Finance and Governmental Affairs, which have primary jurisdiction over international trade and government reorganization, are committed to this view. With the Administration's trade proposal due to arrive on July 10th, Governmental Affairs will work toward organizing the trade functions of the Federal government to benefit from the opportunities created by the MTN.

If we are to be successful, there will be a continuing need for a constructive impact by the business sector in developing trade policy. During the years of the Tokyo Round our trade negotiators had the benefit of market and statistical information supplied through the many business advisory committees. In the post-MTN period, private sector advisory groups should be strengthened. The ability to effectively negotiate depends on the quality of accurate and up-to-date information. The European Community is considering the creation of industry advisory groups patterned after the American model which suggests to me that we had the right idea. The Chamber of Commerce will continue to play a constructive role in improving this important communication between government and business.

There is an important political significance in concluding the MTN. It represents a rejection of trade protectionism for the process of trade expansion. Yet, the process of adjusting to new patterns of international trade should not be abrupt or cause significant injury to our basic industries.

The broad support from the business community for the MTN, is an additional confirmation that the Codes reflect a balance between developing new markets and ensuring stability among our basic industries. Implementation of the Agreements will not cause significant dislocations in the U.S. labor market. Yet, there will be a need for trade adjustment assistance, on a case-by-case basis, to adversely affected workers and firms. With or without the MTN, labor-intensive industries, requiring large numbers of semi-skilled and production-line workers, will face increased import competition. Long term benefits will result from effective enforcement of U.S. rights under the MTN and the GATT. Tariff cuts will modestly reduce the U.S. cost-of-living. High technology industries and the agricultural sector will register gains and help reduce our balance of payments deficit.

Economic adjustment in the U.S. to the MTN will be less severe than would be the uncontrolled affects of export subsidies. The MTN Codes on subsidies and countervailing duties prohibit the use of direct export subsidies for primary minerals and industrial products. National plans for industrial economic development which include regional development programs, tax rebates, and other assists which fall under the jurisdiction of the subsidies Code.

The Code permits participating states to

take safeguard action and counter-measures when domestic industries are adversely affected by subsidized imports, or when sales to third world markets are impaired. Before imposing countervailing duties, American law now requires an injury test only for goods entering duty free. The implementing legislation will change current practice. The International Trade Commission will be required to determine that a domestic industry was "materially" injured by reason of dumped or subsidized imports in order to impose duties. The implementing legislation includes a definition of material injury as "not inconsequential, immaterial or unimportant." This will bring the U.S. injury standard into line with the injury test of other industrialized countries. Congress worked hard to shorten the time limits and to restrict executive branch discretion to administer the subsidy and injury tests.

Another area of disagreement between the United States and the European Economic Community was the American Selling Price. Under the ASP, duties were levied according to the current U.S. wholesale price of imports, rather than on the actual export value. This discriminated against exports to the United States. The protection afforded American products by the ASP will be transferred into the Tariff Schedules of the United States. Gradually, these tariffs will be reduced, and U.S. companies will have an opportunity to prepare for a more competitive domestic market.

With this reform, it was logical to tackle the entire issue of customs valuation. The MTN Code on customs valuation was initiated by the United States to establish new international rules to determine the value of imports for customs valuation. Our system involved eight complex formulas which included numerous exceptions. The European system did not follow a predictable set of guidelines, and in practice discriminated against many imports. The Customs Code sets forth five simplified criteria to establish customs duties. It will go a long way toward eliminating a major irritant to world trade.

The trade laws of the United States are the most open in the world. Under these laws foreign sellers can bid for non-strategic U.S. Government contracts. These statutes known as the Buy America laws give to domestic business a 6-12% advantage. The implementing legislation will permit firms in countries signing the Government Procurement Code to bid for federal contracts annually amounting to some $10 billion without the Buy America penalty.

American companies will, for the very first time have, the right to bid for nearly $25 billion of foreign government procurements which were previously inaccessible to American business. The potential gains for the United States under the Code are significant. Only aggressive and competitive offers will capture its benefits.

Suspension of the Buy America Act, for Code-covered agencies, must be met with reciprocity from foreign governments. Should this not be forthcoming, the President can increase the percentage preference for foreign sales to federal agencies not covered by the Code.

The Code on Import Licensing is primarily directed against licensing systems which are designed not to measure, but to restrict imports. The progress achieved toward eliminating non-tariff barriers would be incomplete if exporters continued to confront discriminatory licensing procedures.

The MTN bill, received from the Administration, is the careful product of negotiations with Congress. The bill is not subject to amendment and Congress must vote up or down for acceptance or rejection. It seems that Congress will ratify the MTN Codes, and the implementing legislation. Ratification is necessary if the American government and American business are to confront successfully the trade issues of the 1980's and beyond.

Most developing countries do not have the resources to establish sophisticated codes which define the rules of international trade. In the future there will be a continuing need to develop new rules of trade to bridge the economic and political differences between the West and the Third World.

In the coming years, the multilateral approach to trade negotiations will be challenged by regional blocs and bilateral trade agreements. Already, we do not think of competition with France or Germany, but with the European Economic Community. In addition, we do not derive the benefits of preferential trade arrangements, as do our European trading partners, from free trade zones.

Our desire for uniform quotas and the rejection of selective product retaliation, is undercut by the development of bilateral orderly marketing agreements. These and other questions require our concentrated thought. Neither government nor business can sit back and be smug now that the end of the 7th major round of post-war trade talks is in sight.

MTN has been a long road. Tedious negotiations were mixed with the drama of high political tension and confrontation. The Office of Special Trade Representative has brought to us a new set of international rules to reduce tariffs and to remove non-tariff barriers.

You will have a new road to travel, with fewer restrictions and more opportunities. American business must take advantage of these new opportunities. The people of this country demand no less. I am confident that we will respond to the challenge of competition in the markets of the world.

On the Government side, we have to manage U.S. involvement in international trade and investment more effectively. The new rules of the road must be observed fairly by all nations, and the U.S. should not be at a disadvantage because of official laxity.

Congress now has the responsibility to implement the MTN and to organize the government to develop responsible trade policies and to see they are efficiently managed.

I support passage of the MTN. We have an enlightened self-interest to improve our share of world trade. To make trade work for us, there must be mutual benefits for our trading partners and ourselves.●

H.R. 4289, 1979 SUPPLEMENTAL APPROPRIATIONS BILL

Mr. MUSKIE. Mr. President, it is expected that the Senate will consider H.R. 4289, the Supplemental Appropriations Act for fiscal 1979, on Monday, June 25.

As chairman of the Budget Committee, I would like to bring to the Senate's attention, at this time, the relationship of this bill to the final budget ceilings for fiscal year 1979 which the Congress adopted in the revised second budget resolution in May.

The revised second budget resolution contains aggregate ceilings of $559,200 million in budget authority and $494,450 million in outlays.

The current spending level excluding H.R. 4289 is $546,642 million in budget authority and $486,125 million in outlays. If H.R. 4289 in its present form were enacted into law, it would raise total budget authority for fiscal year 1979 to $559,011 million, a scant $189 million below the revised second budget resolution ceiling. Total outlays for fiscal year 1979 would be $494,450 million, which leaves no outlays remaining under the ceiling. I ask to have printed in the RECORD a table detailing this situation.

The table is as follows:

FISCAL YEAR 1979 BUDGET STATUS

[In millions]

	Budget authority	Outlays
Current level excluding H.R. 4289	$546,642	$486,125
H.R. 4289 as reported by the Senate, net	12,369	8,325
Total	559,011	494,450
Revised second budget resolution	559,200	494,450
Amount remaining	189	--------

Mr. President, the Senate must keep this situation in mind in the event that any floor amendments to the supplemental bill are considered.

Any amendment, combination of amendments or subsequent legislation which results in increasing fiscal 1979 budget authority by more than $189 million or outlays by any amount at all, would not be in order because it would cause the Revised Second Budget Resolution ceilings to be exceeded.

This parliamentary situation does not mean, however, that Senators cannot offer amendments. It simply means that the Senate must first reduce other outlays included in the bill in order for amendments that would increase outlays to be voted upon.

Senators, in fact, have two choices. They may introduce amendments which would only cause the outlay levels in this bill to be reduced. Or they may introduce an amendment which involves outlay increases if proposals involving outlay decreases of at least an equal amount are also included. Such amendments would not be subject to a point of order.

Mr. President, I strongly urge Senators to keep in mind that we have reached the outlay limit the Congress has set for itself and that we are very close to the budget authority limit. Any amendment, however worthy, that increases outlays will be subject to a point of order unless corresponding decreases in other programs can be found.

JAPANESE-AMERICAN MONEY REPARATIONS UNJUSTIFIED

● Mr. GOLDWATER. Mr. President, many of us remember with great regret those days following the Japanese attack on Pearl Harbor in 1941 when President Roosevelt signed an Executive order establishing relocation camps east of the Rockies for all Japanese-Americans living on the west coast.

The United States did not at the time and has never since claimed that the relocation camps were just. They were an absolute violation of civil rights, but at the time their establishment was seen as a wartime necessity. As an aftermath of that action, movement has been underway for some years to have the Federal Government pay $25,000 in reparations

to every Japanese-American who was interned in the relocation camp. In recent weeks, however, the Japanese American Citizens League seems to have backed off from these demands and asked simply for some type of redress.

Mr. President, my esteemed colleague Senator HAYAKAWA of California recently wrote an extremely enlightening article on this whole situation which was published in the Honolulu Advertiser of May 15. Because of its extreme importance, I ask that it be printed in the RECORD.

The article follows:

AJA REDRESS CLAIM PLAYS THE MINORITY-GROUP GAME

(By Senator S. I. HAYAKAWA)

During the days and weeks following the attack on Pearl Harbor on Dec. 7, 1941, anxiety ran high on the West Coast—especially in California. Nearly 40 years later, it is easy to forget those days . . . the blackouts of 1942, the fear of when, and where, the Japanese would drop their bombs or land their troops. The attack on Pearl Harbor, after all, hadn't even been imagined until it became a horrible reality on that calm Sunday morning.

Also easily forgotten is the fear on the part of many of the Japanese-Americans themselves. They knew that many Americans distrusted them, were afraid of them—in short, had long regarded all Orientals as the yellow peril.

We come, therefore, to a fact of our history of that time that is not to be forgotten: President Franklin Delano Roosevelt a few weeks after Pearl Harbor signed an executive order establishing "relocation camps" east of the Rockies for Japanese-Americans living on the West Coast. The relocation was, of course, largely motivated by wartime fears and hatred, aggravated by a long Californian history of racist propaganda. But it cannot be denied that among the reasons for the relocation was the fear of mob action against the Japanese.

The United States did not at the time claim, and has never since claimed, that the relocation camps were just. They were in truth a violation of civil rights, but their establishment seemed at the time a wartime necessity—a view upheld by the U.S. Supreme Court.

Until recently there was a movement to get the federal government to pay $25,000 in "reparations" to each Japanese-American once interned in the relocation camps. The idea was pushed by some Japanese-Americans who actually spent time in camp, but most of the advocates were either children at the time of the internment or had not yet been born.

In the last few weeks, however, the Japanese-American Citizens League's redress committee seems to have backed off. It now asks simply for "redress," without specifying what form such redress should take.

All the arguments in favor of the reparations assume that the United States was motivated solely by racism when it established the camps. This was certainly not the case.

There was a war going on—a war that the Allies in the Pacific were losing badly in the early months. Were the Japanese-Americans loyal to the United States? Who could tell? They were a small and comparatively recent immigrant group. (Germans and Italians had come to the United States three and four generations earlier.) It seemed at the time the essence of prudence to get the Japanese away from the coast so that they could do no harm—and also so that no harm could befall them as a result of wartime hostility.

It's all very well to say after the war that the Japanese-Americans committed no acts of sabotage against the United States, and that their young men fought like heroes and died for America on battlefields and in the Pacific. But how was anyone in February, 1942, to know what lay in the future?

The U.S. government was itself highly ambivalent about the relocation. The proponents of "reparations" neglect to mention (if they are aware of it at all) that, to take care of the Japanese-American internees, the government established the War Relocation Authority, an extraordinarily thoughtful and humane government agency.

The WRA sent representatives all over the United States east of the Rockies, seeking educational opportunities and jobs for internees from the camps. The young people moved to excellent colleges and universities in the Midwest and East. Their elders found jobs in Chicago, Des Moines, Indianapolis, Cincinnati, Cleveland and many other cities, and, of course, thousands of young men went into the armed services.

It is a fact that today Japanese-Americans are among the most successful of immigrant groups. The Census Bureau reports that their incomes are well above the national average, and that their children are more highly educated than most other Americans.

They have become integrated into society faster than any other non-English-speaking ethnic group in our history. The camps, unjust though they were, forced the Japanese-Americans to break out of the West Coast and into the American mainstream.

The injustices done to the Japanese-Americans many years ago cannot be corrected by money payments. The only thing that can be done—and it has been done—is for Japanese-Americans to be given equal rights and the opportunity to win for themselves respect and influence in their communities so that such injustices never happen to them again.

The demand by the Japanese-American Citizens League for "redress" for every man, woman and child living or dead who was interned in a relocation camp during World War II reminds me uncomfortably of a fashionable minority-group game that was all the rage in the 1960s.

First, you claim to be a victim of racial injustices; that makes Whitey feel guilty—and he loves to feel guilty. Then you make him pay and pay. It has been a very profitable hustle.

Japanese-Americans overcame the handicaps they faced—a native Know-Nothingism reinforced by wartime hysteria—by industry, patience, self-dependence and, above all, pride. It is shocking to see how far the leaders of the Japanese-American Citizens League have come from their ancestral traditions.●

JACK ZAIMAN WILL RETIRE AS COURANT'S POLITICAL REPORTER

● Mr. RIBICOFF. Mr. President, one of the finest reporters to cover Connecticut and national politics in my lifetime is retiring. Jack Zaiman is stepping aside after more than 40 years of reporting politics for the Hartford Courant.

Connecticut politics will survive without Jack, and so will the Courant, but neither will be the same. It is difficult, for example, to imagine a Democratic or Republican Party nominating convention without Jack Zaiman hustling around the Bushnell gathering information and facts. And what of the delegates, candidates, and voters who automatically turned to Jack Zaiman's reporting in the next morning's Courant to find out not only all that had happened but why it happened and what it all meant for the following November? Jack Zaiman is one reporter not easy to replace.

It is part of the genius of Jack Zaiman that he seems to have a sixth sense of what to expect in politics. In those same nominating conventions, Jack invariably knew before the conventions were held what the results would be, who would be nominated, who would lose and what the issues would be. Others would be surprised at the results. But not Jack. He had spent endless hours talking to delegates long before the opening gavel. He did his homework—and he was rarely overtaken by the unexpected.

Having read Jack Zaiman's articles and columns for my entire political career, going back 40 years, I can point to certain qualities and virtues that stand out about this truly outstanding man. He is, first and foremost, honest, a reporter who believes in accuracy above all else. Jack is dedicated to making a truthful presentation of the news. He checks and double checks every story he comes across before writing it for the paper.

Jack's obsession with accuracy is reflective of an equally admirable trait for a journalist. He never loses sight of the very likely possibility that his newspaper, and his own reporting in it, will one day be a source for historians. Jack writes for the record—and he writes as if he were writing history. In a real sense, because he has been so accurate in his reporting, Jack, in fact, writes history. Every aspect of Connecticut politics over the last 40 years was covered in the Zaiman style—factual, comprehensive, insightful—and historians will find the pages of the Courant excellent source material when they get around to chronicling the story of which candidates we elected in Connecticut and why.

Jack Zaiman's columns on politics provide insight into the day's news and perspective. He delights in pointing out that much of what we see in current events has happened before. Only the players are different. But, because he has a sound historical perspective, Jack can also tell readers what is new in politics. And there has been plenty of the new to underscore and explain because Jack Zaiman met the challenge of reporting State and National politics during periods of rapid, continuous, and unprecedented change. Jack has always been able to examine the hectic, blurred, complicated and often bizarre events of daily life and distinguish between what is important and lasting and what is of temporary consequence.

Jack's political column did not lead him into the trap of becoming a fulltime pundit who lives in an ivory tower aloof from the real world. On the contrary, Jack never stopped being a reporter. He was never too busy to gather information first hand. Jack knew that talking to political figures—and talking to as many as possible, at every level, in every corner of the State—is the stock and trade of a reporter's craft. Jack is a craftsman in every sense of the word.

National reporters always call on Jack when they are doing stories on Connecticut. He is known for having inside information about both the Democratic and Republican sides. Jack is never mean or vindictive or snide. He reports the news as it is, straight and to the point. Po-

litical people always talk to Jack, even when they are not too happy with the story he is writing, because they trust him to report the news accurately and fairly. In this business, we cannot ask for more. I always returned Jack's calls and would see him whenever he asked. He plays according to the rules.

Now that Jack Zaiman's daily reporting for the Courant is drawing to a close, I would like to suggest that he write a book, or several books, about the last four decades of Connecticut politics. Having been involved in a lot of what went on over those 40 years, I look forward to reading a chronicle of all that transpired. In Jack's hands, the story would be told accurately and interestingly. I know Jack could do that well. Nobody could undertake such an ambitious project better equipped for the task than Jack Zaiman. He was there for all of it. He knew the players. He has the demonstrated ability to write clearly, interestingly, entertainingly and, most important, accurately.

Jack Zaiman has been a reporter's reporter. He has the well-earned respect of his colleagues. One of them, himself a very competent reporter, said of Jack that "he has a tremendous nose for political news" and he has developed a "fantastic network of sources." Anyone who has ever tried to keep a secret in Connecticut politics knows how reliable Jack's sources are, reliable and ubiquitous. With Jack Zaiman around, the best, the only, way to be sure you are keeping a secret is to tell nobody.

Jack's retirement will leave a void in Connecticut political reporting. I am sure, however, that a man as resourceful, as enterprising, as curious and as dedicated to getting the story straight—and into print—will not be retiring for long. Jack Zaiman has much work yet to do and I am looking forward to reading every word of it.

Casey and I wish Jack and his wonderful wife Mildred great and good health and happiness.●

SOLAR ENERGY

● Mr. BRADLEY. Mr. President, a series of articles on solar energy recently appeared in the Newark Star-Ledger. The writer, a national award winning journalist, has done a commendable job of examining the opportunities that solar energy presents for us in the near future. I ask that the series of articles be printed in the RECORD.

The articles follow:

SOLAR POWER STILL A STEPCHILD IN FEDERAL BUDGET FOR ENERGY

(By Gordon Bishop)

Renewable sources of energy can supply the United States with up to 40 percent of its total energy needs over the next 20 years, eliminating imported oil and additional nuclear power plants.

The cost to phase in renewable resources, such as solar energy, would be practically the same price as administering a national gasoline rationing program—about $2 billion a year. But rationing would not provide a single drop of additional fuel to the nation's energy supply.

And the federal government is spending five times as many taxpayers' dollars on nonrenewable sources of energy—fossil and nuclear fuels—than it is on stable, renewable energy supplies that can be tapped today, according to the Solar Lobby, which represents the nation's diverse solar interests.

In fact, renewable resources (solar, water power, wind and bio-mass) already supply more energy to America's homes, businesses and factories than nuclear power—approximately 5 percent.

The nuclear industry, by comparison, presently contributes 4 percent to the nation's total energy needs in the form of electricity.

Petroleum furnishes 45 percent, natural gas, 20 percent, and coal, 17 percent.

The transition to a society energized by renewable resources would cost, in public funds, roughly $50 billion over the next 20 years, based on a comprehensive study just completed by the Solar Lobby, which is recognized by government and industry as the voice of the solar movement.

The proposed federal commitments to renewable resources over the next two decades comes to less than half the amount the government spends on defense in a single year—$125 billion.

But the government's commitment to renewables has fallen far short of President Carter's initial goal, which was announced in 1977 and which included 2.5 million homes supplied with energy by the sun by 1985.

About 50,000 buildings in the United States now have some form of solar heating or cooling. In New Jersey, the number of solar installations exceeds 1,000; most are hot water systems that cost approximately $2,000 each to install.

Instead of moving aggressively on the solar front, the federal government has actually allowed solar funding to be phased out in some areas.

Funds for direct solar applications, for example, will go from $169.5 million this year to $155.6 million next year—a loss of nearly $15 million where solar can do the most good: Collecting sunlight and converting it to heat, which accounts for one-fourth of the nation's total energy requirements.

Meanwhile, the U.S. Department of Energy is warning of heating oil shortages this winter and continuing gasoline disruptions.

Besides spreading shortfalls, the price of finite fuels is getting beyond the reach of most consumers.

Heating oil in the New Jersey-New York metropolitan region has climbed to 65 cents a gallon and is expected to hit 75 cents and more this fall when the crunch comes.

At that price, heating buildings with solar systems is cheaper.

Solar systems now available on the market can deliver heat for half as much as oil costing 60 cents a gallon.

Proven solar models can furnish a million BTUs of energy for $2.50. The equivalent amount of energy from oil at 60 cents a gallon costs a minimum of $4.

A solar hot water/heating system now selling for $7,500 for a typical home can save 100 million BTUs a year, or three billion BTUs over the 30-year lifetime of the system.

Burning oil to produce the same amount of heat would cost two to three times more.

Solar is now competitive with electricity, oil, coal and natural gas for heating buildings, but a barrage of economic and institutional barriers is blocking the widespread use of solar technologies.

They involve government subsidies to fossil and nuclear fuels, an economic system dominated by powerful oil and utility interests, and banks and builders that prefer conventional furnaces costing $6,000 over solar systems costing $7,500.

Vendors of oil, gas, coal and nuclear power, represented in Washington by formidable trade associations, have managed, by influencing legislation, to shape the energy marketplace to serve their interests, the Solar Lobby charges.

"The tax code stands as a monument to the skill of lobbyists in minimizing taxes on the particular form of energy development their clients control," according to the solar group.

In 1977, for example, more than 90 per cent of the federal taxes collected from private utilities were returned directly to the utilities through various loopholes established for their benefit in the tax code, the Solar Lobby reports.

This annual federal subsidy to utilities is three times as large as all the federal benefits received by solar sources in the last three decades.

"Without doubt, the case for a major federal role in promoting rapid solar development rests heavily upon the government's desire to balance a market heavily biased toward encouraging continued investments in conventional energy sources," the Solar Lobby maintains.

For an investment of $2.5 billion a year, the federal government can remove the artificial barriers and establish a solar economy which, within 20 years, can meet from a quarter to one-third of the nation's energy needs.

In fact, solar could meet all of the country's heating and electric needs if government and industry moved aggressively in the manufacturing of solar collector panels and photovoltaic systems that directly convert sunlight into electricity, solar supporters maintain.

The present demand for heat could be met by solar collectors covering about .44 per cent of the U.S. land area, while the demand for electricity could be met by using another .12 per cent for photovoltaic cells operating with an efficiency of only 10 per cent.

By comparison, all of the roadways in the U.S. take up about one per cent of the land area, or almost twice what solar heating and electricity would require.

A "Blueprint for a Solar America" is spelled out in a 39-page booklet issued by the Solar Lobby and presented to Congress and President Carter as the most rational solution to the nation's worsening energy-economic situation.

Under the plan, solar energy technologies can create in the near term the equivalent of 1.5 million barrels of oil a day.

The U.S. currently consumes 18 million barrels of oil a day. There are 42 gallons in a barrel.

Between now and 1985, the most critical supply years, solar systems can pick up the slack of shrinking oil supplies.

The 5 percent shortfalls in oil from Iran, for example, represents 900,000 barrels of oil daily.

Through stepped up solar applications that can begin immediately, more than a million barrels of oil a day can be saved. The savings can be achieved by:

Passive solar installations on residential and commercial buildings—200,000 barrels of oil a day.

Active solar systems—150,000 barrels a day. (An active system uses a tiny motor to circulate solar heated fluids, while a passive system relies on walls, windows and greenhouses facing south.)

Industrial processed heat—250,000 barrels a day.

Renewable electric (wind, low head hydroelectric)—250,000 barrels a day.

Biogas (gas from wastes)—250,000 barrels a day.

Alcohol from wood and grain for use in gasohol, a blend of gasoline and alcohol—150,000 barrels a day.

Miscellaneous solar savings such as wood stoves—100,000 barrels a day.

The success of the solar blueprint depends on the federal government's commitment to renewable resources from the present $560 million a year to $2.5 billion annually until the end of this century.

The shift would be away from nuclear spending—now at $1.9 billion plus billions

for nuclear weapons and defense programs—to available solar supplies within the United States.

The Department of Energy's budget for fossil fuels (oil, gas, coal, tar shale) is $791 million.

New technology needed to convert coal into usable gas and oil, however, will be considerably higher than investing the same amount of money into biomass, a substitute fuel, according to the Solar Lobby.

"The program recommended here does not represent an equivalent of war program," explained Denis Hayes, one of the authors of the solar blueprint.

"If the nation were to respond to the energy crisis as they responded to Pearl Harbor—that is, if people were motivated to defer purchases of automobiles so that assembly lines could be converted to manufacture wind turbines and biogas plants—most of our energy could be derived from renewable sources by the year 2000. Such a course would be technically possible, but it could be enormously expensive."

The program envisioned by the Solar Lobby is both more modest and more manageable than a "moral equivalent of war," the term President Carter used two years ago to describe the kind of action the nation had to take to end the energy crisis.

Hayes finds the solar blueprint a "practical plan for correcting the distortions in the energy marketplace by restructuring the subsidies, regulations and other public policies that bias the market in favor of conventional fuels."

He noted that just four years ago, the government projected that nuclear would provide 40 percent of total U.S. energy by the year 2000. Now it projects 13 percent.

In contrast, assessments of solar energy's projected contribution have increased from 6 to 30 percent.

But the higher solar forecast has been backed up with empty promises, not with funded solar programs, the federal record reveals.

Ignoring the high potential for solar sources, President Carter has alloted only 7 per cent of the 1980 energy budget to solar technologies, while giving 24 per cent to nuclear power, reports Richard Munson, staff coordinator for the Solar Lobby.

"The American public is tired of being dependent on OPEC (Organization of Petroleum Exporting Countries), nuclear power plants and multinational corporations," Munson believes.

He cited an example of bad government leadership and planning: The proposed Energy Security Fund to recycle windfall profits by the oil companies resulting from price deregulation.

The bulk of the money—75 per cent—would go back to the oil companies to develop expensive synthetic fuels (gas and oil from coal).

The next largest slice—15 per cent—would go to low-income people in the form of energy rebates.

The balance would be split 5 per cent each for solar development and mass transit.

"To add insult to injury, the amount of money the President is willing to give the oil companies in unearned windfall profits is enough to finance the solar transition over the next 20 years," Munson asserted.

The Solar Lobby feels if President Carter cared, he would, at the very least, utilize existing legislation to train energy auditors and state energy offices to monitor federal structures, schools, hospitals and residential buildings, and publicize the favorable economics and job impacts of a solar transition.

"And the President would require the installation of solar equipment on federal buildings," Munson added.

By doubling the solar budget, the U.S. more than doubles its indemnity against disruptions it can no longer afford, Munson pointed out.

He looks at economic history to provide a "powerful set of arguments for solar energy."

Two major energy transitions have swept the United States in the last 125 years.

First, coal replaced wood as the dominant source of commercial energy. Then coal was itself displaced by oil and gas.

Both these changeovers occured with breathtaking speed. In 1850, coal contributed 10 per cent of the nation's energy. Just 35 years later, it provided more than half the nation's fuel.

In 1910, less than 10 percent of the United States' energy supply came from oil and gas. By 1945, oil and gas accounted for half the nation's energy.

The U.S. is now entering another transition. The emerging era will be powered mostly by renewable energy sources.

The critical question the Solar Lobby poses is whether the solar transition will proceed fast enough to enable the U.S. to avoid massive economic and social disruptions.

"If the President's program falls short of a comprehensive strategy, we will support the individual proposals that encourage accelerated use of solar energy," the Solar Lobby stresses, adding, "We will also find our own leaders and pass the necessary legislation to implement the blueprint in its entirety."

SOLAR ENERGY BANK PROPOSED AS U.S. "CONDUIT" FOR AID

A federal Solar Energy Bank where consumers can borrow money at low interest rates for solar energy installations is the key to America's transition to a stable solar economy.

Legislation to establish a Solar Energy Bank has been introduced in Congress, but it has been ignored by President Carter and his policymakers.

The U.S. Department of the Treasury and the Office of Management and Budget have dismissed the proposed solar bank as an "unwise investment." Treasury and OMB favor tax credits to consumers who install solar systems.

A solar bank, however, is designed to motivate consumers to install solar heating equipment on 25 per cent of all existing buildings in the United States, according to estimates by the Washington-based Solar Lobby.

A program of low-interest, long-term loans is expected to foster energy independence and boost large segments of U.S. industry, the Solar Lobby predicts.

The proposed solar legislation (Bill HR 605), introduced in April 1978, calls for federal funding of $100 million in the first year of the solar loan program—1980.

Funding would increase to $150 million in the second year, $200 million in the third.

Loan ceilings for recipients would be set at $10,000 for a single family home, $5,000 per unit for residential buildings of two or more units, and $200,000 from commercial buildings.

Government's financial commitment to the solar bank would expire after three years, under the terms of HR 605. In 1982, Congress would vote on whether to extend direct loan funding.

At least 60 per cent of the solar bank funds disbursed each year would be used to improve residential buildings.

Richard Munson, staff coordinator for the Solar Lobby, says solar loans can do for the consumer what the sale of stocks does for the big energy producers.

"When an oil company needs capital to develop additional energy supplies, it sells stocks," Munson explained. "When a homeowner needs money to make a solar investment, he either takes it out of his savings account or borrows from his neighborhood bank."

Many consumers are not in a position to spend $2,000 for a solar hot water unit or $7,500 for a solar hot water/heating system. And banks, according to Munson, are not making it easy for property owners to invest in solar installations.

"Homeowners need a break. Solar heating systems pay for themselves over the life of the system, but few consumers can afford the substantial initial investment in solar equipment," Munson said.

Direct federal loans through the solar bank would be made at 6 percent below the going federal loan rate. The program would be managed by the U.S. Department of Housing and Urban Development (HUD).

Attempts to involve the federal government in a solar loan program began four years ago. Legislation for a solar bank was introduced last year by Rep. Stephen Neal (D-N.C.).

The current version of the bill was approved by the House domestic monetary policy subcommittee over the objections of the Carter Administration.

The Solar Lobby hopes the solar bank bill will be approved by this session of Congress. The bill is now waiting for markups in subcommittee.

Solar advocates are also waiting for President Carter to comment publicly on the "Domestic Policy Review of Solar Energy," a 100-page document completed last December.

Munson says if the President does not take the solar initiative immediately, someone else will.

The policy review paper emphasizes the use of the secondary mortgage market to create a favorable climate for solar financing. But solar supporters are seeking direct federal loans if the benefits of solar energy are to be felt immediately.

"The most visible and effective solar bank might be an independent solar bank," suggests Herb Epstein, a researcher at the Solar Lobby. "It could escape live burial in a cumbersome federal bureaucracy and support both direct loans and secondary market programs."

Another area where homeowners can get direct help is through their gas or electric utility companies.

Last year Congress approved the National Energy Conservation Policy Act that requires utilities to offer their customers energy audits.

The goal of the auditing program is to prompt homeowners and renters to install energy conservation devices on 90 per cent of existing residences.

"No other energy management technique offers such hefty returns on such modest investments," says Joan Shorey of Solar Lobby. "Homeowners who follow an auditor's advice on retrofitting can expect to save up to 50 per cent annually on home fuel."

The residential audit could pave the way for commercial and industrial auditing, increased government purchase of solar equipment, and a change in home mortgage laws that hamper solar development.

The conservation act requires utilities to inspect homes for energy leaks and weigh the advantages of installing insulation, weatherstripping or other energy-saving devices.

The utilities then supply the customer with lists of business that will finance, supply or install the needed equipment. Utilities are prohibited from installing equipment or making direct loans to customers.

One of the most important aspects of the audits program, according to Dr. Henry Kelley of the federal Office of Technology Assessment, is the performance of the auditor.

"The program won't work unless auditors are honest, well-trained and flexible," Kelley says. "Beyond that, they must be good communicators, some of them bilingual."

A spokesman for Public Service Electric & Gas Co., Newark—New Jersey's largest energy producer—said the utility has not yet notified its customers about the energy conservation program.

"We're waiting for the standards to be set by the federal government," said Ed Anderson, information representative for PSE&G.

The standards are being devised by the Department of Energy, which expects to have them ready in a few months.

Kelley thinks a certification program is needed to insure quality control and public confidence in the federal government's commitment to energy conservation.

"A federally conducted, regionally operated program might also temper public cynicism about the operations of utilities," Kelley remarked.

Other problems before the Department of Energy include finding ways to make sure auditors' estimates of fuel savings are tied to fluctuating oil prices and that consumers are presented with a variety of conservation options.

"Consumers need an itemized list of precisely costed and complementary conservation measures," notes Solar Lobbyist Shorey.

"They need to know, for example, whether an awning or a solar greenhouse represents the most cost-effective investment, how much each costs, which to build first, and if the two additions form an effective conservation system."

The cost of the residential energy audit will be set by individual states. They will decide whether utilities will be allowed to make a profit on the service, or to include at least part of the inspection fee in the utility rate base.

SOLAR LOBBY PRODS AGENCY ON ITS PRIORITIES

(By Gordon Bishop)

The U.S. Department of Energy—the federal government's youngest bureaucracy known as DOE—is being attacked by consumers and industry alike for failing to do what it was created for two years ago: Solve the energy crisis.

Established in 1977 to bring order to the energy marketplace, the DOE's future already is in doubt as a result of soaring fuel prices, gasoline shortages and mounting conflicts over nuclear power, coal and the role of solar energy in a democratic society.

Perhaps the most significant challenge being waged against DOE is a complete reorganization of the department in response to demands for greater use of solar energy.

The challenge is being made by the Solar Lobby, a new national movement made up of representatives from such diverse interests as the League of Women Voters, the International Association of Machinists, the Consumer Federation of America, Harvard University, the National Council on Churches and Sheet Metal Workers.

The Solar Lobby is headed by Denis Hayes, a director of Worldwatch Institute, a Washington-based think tank that concerns itself with resources, population, energy, the environment and economics.

Hayes was the founder of Earth Day, the April 22, 1970 event that gave birth to the environmental movement, as well as the leader of Sun Day, the May 3, 1978 observance of solar energy that galvanized public support for renewable resources derived from common sunshine.

As chairman of the Solar Lobby, Hayes—backed by a growing coalition of civic, labor, academic and business interests—has sent an unprecedented challenge to President Carter in the form of a counter-budget on energy, and a new direction for DOE.

The 1980 "Solar Counter-Budget" calls for a doubling of funds for solar energy sources from $647.5 million, as proposed by the Carter Administration, to $1.25 billion—an increase of nearly $603 million.

The largest increases are for commercialization of solar technologies in the marketplace, from $123 million to $339 million; development of photovoltaic technology that converts sunlight into electricity, from $130 million to $250 million; solar and conservation installations on federal buildings, from $23.5 million to $130 million, and solar systems development, from $47 million to $131 million.

The solar counter-budget also contains a reorganization of DOE to assure that any increases in the budget will be administered properly.

Under DOE's current operating budget, solar energy receives $559.4 million, while nuclear fission (uranium-fueled electric power systems) gets $1.5 billion, and nuclear fusion, $350 million.

Fusion is the nuclear reaction that occurs in the sun—the fusing of isotopes which releases great amounts of light energy.

The largest experimental fusion machine in the United States is at Princeton University. The production of electricity from fusion power plants is not expected to begin for at least 20 years.

DOE's energy budget also supports nuclear weapons ($1.4 billion) and defense ($2.6 billion) programs.

Development of new fossil fuel technologies (oil and gas from coal, tar sands and shale) accounts for $791 million of the department's budget.

The Solar Lobby wants an immediate shift of funding into renewable resources, up to $2.5 billion a year over the next 20 years. At that rate of public funding, the U.S. could produce up to one-third of the nation's energy needs through solar technologies by the turn of the century.

Whether government responds to the solar challenge depends on the leadership in the White House and Congress, according to Mark Adams, deputy director of DOE's solar programs.

Adams said U.S. Secretary of Energy James R. Schlesinger and President Carter are responsible for how the public dollars are spent, along with Congress, which funds the programs.

"We are dealing with a fundamental question of energy priorities, and only Secretary Schlesinger and President Carter can change the nation's direction," Adams said.

He suggested the public direct its attention to those leaders in government who decide where the money is spent, and why.

The Solar Lobby has done just that in its counter-budget. It provides a framework of action within which the DOE can make the transition to a solar economy by shifting its dollar priorities and management positions to where they can do the most good.

DOE officials lean toward biomass (liquid or gaseous fuels from plant life and wastes) as a substitute for gasoline and crude oil.

The most frequent complaint against the solar movement is that it ignores one-fourth of the nation's energy needs, the amount used for transportation.

DOE's managers believe biomass can make the greatest contribution in the most critical years ahead.

Yet DOE officials propose only a $58 million biomass program for 1980 versus a $113.5 million commitment proposed by the Solar Lobby.

For the commercialization of biomass fuels in the marketplace, DOE has budgeted a zero amount for 1980, while the Solar Lobby recommends $32.5 million.

"By underfunding solar and giving most of the available public dollars to the controlled conventional energy sources such as oil, coal and nuclear, the Department of Energy appears to be undermining the solar effort in the United States," charged Richard Munson, staff coordinator for the Solar Lobby.

SUPPORTERS OF SOLAR POWER DIFFER ON THE SATELLITE OR TOWER APPROACH; SPACE HOLDS A GREATER POTENTIAL BUT EARTH SITES ARE LIGHTER IN COST

(By Gordon Bishop)

It will cost at least $74 billion to launch the first solar power satellite in space to generate electricity from sunlight.

The amount of electrical energy produced by a solar satellite would be equivalent to the capacity of 10 nuclear power plants, or enough to serve four million people.

Solar satellites are one alternative to finite fuels—coal, oil, gas and nuclear—used to spin out electricity.

Another option is the solar power tower. A collection of mirrors lined up on the ground facing the sun and beaming concentrated light into a tower to make steam for electricity.

Power towers, like solar satellites, are expensive energy technologies designed for centralized electric utilities.

They are costly methods of metering sunshine—an extension of consumer dependency on large, centralized power systems.

For one-third less than the cost of a single solar satellite, the United States can phase in a decentralized solar society in which the consumer can become his own energy producer, according to a plan now under study by the U.S. Department of Energy.

Under the decentralized plan, every rooftop in America capable of collecting sunlight would be covered with solar panels and photovoltaic cells.

The collector panels would furnish a building's heating and cooling requirements.

The photovoltaic cells, similar to solar panels in appearance, would convert available daylight into electricity.

The question now before the public is which approach would yield the greatest amount of energy at a price society can afford.

The U.S. Department of Energy which controls public funds for solar development, is moving on both fronts simultaneously—the large centralized systems and the small decentralized ones.

Under centralization, the power tower momentarily has the edge over the solar satellite simply because it's cheaper to erect a tower on the ground then to build a satellite the size of Manhattan Island in outer space.

The proposed satellite would be over three miles wide and six miles long. Its flat surface would be covered with wafer-thin solar cells that convert light into microwaves that are beamed to antennas on earth.

The reason for orbiting satellites is that four times more solar energy is available in outer space than on the surface of the earth.

The satellite proponents, led by Peter E. Glaser of the Arthur D. Little consulting firm, and Princeton University Aerospace Professor Gerard O'Neill, are seeking $22 million in federal funds for 1980. The money would come from the operating budgets of the Department of Energy and National Aeronautics and Space Administration.

The satellite enthusiasts do not find $7.4 billion an excessive amount of money. They point to investor-owned utilities, which will spend $36 billion by 1983 for construction of new electric-generating plants.

The research and development costs of solar satellites could be $43 billion—on the order of the Apollo moon program.

Building one satellite and ground station is estimated at $12 billion.

The total system cost: Three-quarters of a trillion dollars.

For about one-fifteenth of that amount supporters of decentralized solar systems claim the U.S. could produce more than one third of its energy from millions of little on-the-ground systems—rooftop panels,

windmills, biomass (conversion of wastes into fuel), small hydro-electric turbines, and an assortment of off-the-shelf, do-it-yourself gadgets.

On the other hand, power towers are seen as possible substitutes for electric-generating plants that burn coal, oil or uranium.

They would cost, however, more than conventional nuclear or coal-fired plants—in excess of $1.5 billion for each unit.

Some solar advocates believe the federal government's preoccupation with power towers and solar satellites could undermine the nation's emerging interest in solar energy.

"If the public associates solar energy with complex and costly technologies, they'll be turned off," warns Richard Munson, staff coordinator for the Solar Lobby, the Washington-based national organization that represents the solar interests.

Munson cites the first experimental power tower under construction in Barstow, Cal. When completed in 1981, the cost will exceed $123 million.

That represents one-fourth of the federal government's total solar budget for 1979.

"The ribbon-cutting ceremony for this $12,000-per-installed kilowatt facility may well elicit more 'knowing' sighs from those who claim that affordable solar technologies are decades away," Munson observed.

By comparison, a nuclear power plant has an installed per kilowatt cost of $1,000 to $1,500.

The Solar Lobby admits critics of solar energy are correct when they refer to solar technologies being "exotic" and "decades away," particularly when satellites and towers are used as examples.

"The decentralized approach is the quickest and least expensive solution to the energy-economic-environmental dilemma now upon us," Munson believes. "Practically everyone can do it with a little incentive from the government."

During the past 50 years, the federal government has provided incentives (subsidies) for coal, oil, natural gas and nuclear power at a cost to the taxpayers of more than $200 billion, federal records show.

The incentives or subsidies for a solar-based economy would amount to about $50 billion, according to the Solar Lobby's "Blueprint for a Solar America."

If the goals in the blueprint are realized, by 1985 the average of 80 per cent of all new buildings will have conventional fuel bills 40 per cent lower than the average for similar buildings constructed in 1975–76.

And 85 per cent of all new buildings will be achieving 60 per cent savings by 1990, while 90 per cent of all new buildings will be achieving 80 per cent savings by the year 2,000.

For existing buildings, the Solar Lobby expects that 7 per cent will be deriving 50 per cent of their space heating and water heating needs from renewable sources of energy by 1985.

By 1990, that percentage will have more than doubled; and, within 20 years, 30 per cent of the buildings will have most of their energy supplied with combined active space and hot water systems, if the blueprint is implemented by the federal government at a rate of public funding of $2.5 billion a year.

In the industrial sector, the goal is to have 1 per cent of all new industrial energy derived from renewable sources by 1981. By 1985, it would rise to 6 per cent; in 1990, the figure would be 12 per cent; the 1995 target would be 20 per cent, and by the year 2,000 about 30 per cent of all new energy used by industry would be from renewable sources.

For existing industrial facilities, displacing 1 per cent of conventional fuel consumption with renewables is the 1985 aim. By 1990, the displacement should reach 3 per cent; by 1995, 7 per cent, and by the year 2,000, 15 per cent of conventional fuel use in facilities constructed prior to 1979 would have been displaced by sustainable energy sources.

Energy for transportation can even come from solar sources. The solar strategy is to use less petroleum fuels (gasoline, diesel, and jet fuel) and more combustible fuels made from grain and wood, or ethanol and methanol.

The hope-for pattern of substitution is 5 per cent by 1987, 10 per cent in 1991, 15 per cent in 1995, and 20 per cent by the year 2,000.

If the proposed financial incentives fail to achieve those goals, the timetable should be mandated by law, the Solar Lobby recommends.

Promising sources of electricity include several small-scale, on-site technologies to harness renewable energy sources.

These are expected to comprise a rapidly growing fraction of all new generating capacity, whether to replace worn-out plants or to service growing demands.

The goal is for 2 per cent of all new generating capacity to be renewable sources by 1982, for 10 per cent by 1985; 25 per cent by 1990, 40 per cent by 1995 and 60 per cent by the year 2,000.

PROF SEES SOLAR TRANSITION AS COST-SAVER FOR ALL EXCEPT OIL INDUSTRY

(By Gordon Bishop)

A transition to solar energy would benefit consumers, workers, farmers and production industries by stabilizing the cost of energy for heating, cooling, making electricity and fueling the nation's transportation system.

The immediate benefits of solar energy are analyzed in a new report ("The Politics of Energy," Alfred A. Knopf, Publisher, New York), written by Dr. Barry Commoner, professor of environmental science at Washington University, St. Louis.

Commoner, chairman of the Scientists' Institute for Public Information, finds that solar energy would relieve consumers of the burden of ever-rising utility rates and of the effects of inflation by providing them with more money to spend on other things and improving their standard of living.

Workers, Commoner writes, would have more job opportunities in new industries, and the high levels of unemployment that are now taken for granted could be reduced.

Farmers, Commoner continues, could cut production costs and increase income by producing solar fuels, helping to reverse a 25-year trend which has reduced the farmer's share of the national economy.

Industries in general, Commoner predicts, could break out of the economic grip of the energy industry by producing energy for themselves, or purchasing it from a much wider array of sources at a stable price.

"Everyone would benefit from a sharp reduction in the environmental degradation that has until now accompanied the production and use of energy," Commoner contends. "The country would free itself of the fear of another Harrisburg accident, or worse."

Commoner claims solar energy is being repressed by government and institutions that protect the private interests of the energy industries from the encroachment of the social (public) interests.

"If the nation undertook to develop renewable solar fuels so that fuel prices became stabilized, the oil industry would lose much of the huge profits they are certain to gain if prices continue to escalate," Commoner alleges.

"If photovoltaic cells (conversion of sunlight into electricity) became commercial, the private electric utilities would not long survive the competition," Commoner asserts.

Commoner sees the solar transition as a "great historic passage" which only the people of the United States can decide to undertake.

"What stands in the way of that decision is neither technology nor economics, but politics—politics of evasion, which, by denying the problem exists, deprives the American people of the opportunity to solve it," Commoner charges.

He refers to legislation passed by Congress to massively commercialize photovoltaic technology at a cost of $400 million, which President Carter cut to $98 million, slowing the application of solar electricity by at least three years.

And why, Commoner asks, has the government refused to expand and electrify the nation's rail network and, instead, is proposing to cut Amtrak trackage in half?

"It becomes clear that the nation is not poor, but mismanaged; that energy is not wasted carelessly, but by design; that the energy we need is not running out, but is replenished with every dawn; that by relying on our solar resources we can forswear the suicidal prospect of war that would begin with oil but end with a nuclear holocaust," Commoner explains, alluding to the Mideast and remarks by Defense Secretary Harold Brown that, "We'll take action that's appropriate, including use of military force" to protect the U.S. interests in the Arab oil fields.

Commoner lays out a solar strategy to avoid social and economic disruptions, as well as the possibility of war triggered by politics and petroleum.

The solar system would deliver energy in a variety of available sources:

In forested areas, energy can be produced as a solid fuel (wood), or liquid fuel, ethanol.

In agricultural areas, as a liquid fuel (alcohol made from grain) or a gaseous fuel (methane made from manure or plant residues).

In rainy, mountainous areas such as the Northwest, as hydroelectric power.

In moderately or intensely sunny places, as photovoltaic electricity.

In especially breezy places, as wind generated electricity.

And almost everywhere, as direct heat.

Urban areas can provide up to 10 percent of their total energy needs by converting their wastes (sludge and garbage) into methane gas or fuel to generate electricity.

Commoner also suggests that the "Dead Sea" off the Jersey Shore—the 25 mile area where billions of tons of sludge have been dumped since 1922—be tapped as a source of methane gas.

The Peoples Gas Co. of Chicago last year began to buy methane gas generated from manure obtained from cattle feed lots in Oklahoma.

Each day, about 1.6 million cubic feet of methane gas is pumped into the pipeline that carries natural gas from Oklahoma to Chicago. It is sold to the utility for $1.95 per thousand cubic feet.

The 1979 price of new natural gas is $2.08 per thousand cubic feet. And the price of natural gas is rising at the rate of 10 to 20 per cent a year under the federal government's deregulation program.

Commoner proposes that gas be the transitional fuel replacing imported oil, coal and nuclear power.

According to two recent government studies, from 10 to 20 per cent of the nation's total energy needs could be met from methane gas, which can also be used to power motor vehicles.

The most promising source of gas is artificially grown seaweed called kelp. Gas can be produced from kelp grown on the Pacific coast.

At the same time, farmers, which consume a large portion of the nation's energy budget, can turn to the land for both food and fuel.

Last summer, Archie Zeithamer began to build an alcohol plant on his 500-acre dairy

farm near Alexandria, Minn. With the help of his family and several neighbors, he assembled the plant from two 4,000-gallon steel tanks (purchased secondhand from a departing gasoline dealer), some concrete blocks, and sundry pipes, pumps and motors.

Last October, the first batch was mixed from ground corn. After distilling the fermented liquid (using a wood fire), Zeithamer produced about 300 gallons of 160 proof (80 per cent) ethyl alcohol.

The residue from the grain fermentation was fed to the dairy cows and chickens.

The entire project cost $16,000, of which $8,000 was for the building to house the equipment.

Zeithamer is producing 17,000 gallons of 80 per cent alcohol per year, which, at current prices, would sell for about $13,600. Economists consider that a remarkably good return on a $16,000 investment.

Half of the plant's output is being used on the farm to operate tractors and other agricultural equipment.

Zeithamer is also using his alcohol to operate a cogenerator, which provides heat and electricity.

The Minnesota farmer is now helping other farmers to develop their own alcohol operations.

Commoner considers cogenerators crucial to urban environments like Newark, Paterson, Jersey City and Trenton.

A cogenerator is an electric power plant that is designed to make use of the "waste" heat that a conventionel power plant ejects into the environment.

Installed in a residence, commercial building or factory, a cogenerator powered by renewable resources can efficiently heat it in winter, cool it in summer, and drive its electrically operated appliances throughout the year, according to Commoner.

SOLAR POTENTIAL SHINES BRIGHTEST IN NORTHEAST

(By Gordon Bishop)

The Northeast stands to gain the most from solar energy because the region—which contains one-fourth of the nation's population—pays the highest rate in the country for its oil and electricity.

Finding ways to replace imported oil and reduce electric demand dependent on foreign crude is the responsibility of the Northeast Solar Energy Center in Cambridge, Mass.

The SEC is one of four regional energy centers in the United States, but the one that faces the greatest challenge since it serves more than 25 million people in New Jersey, New York, Pennsylvania and the six New England states—Massachusetts, Connecticut, Vermont, Rhode Island, New Hampshire and Maine.

The Northeast center has launched "Operation Sunpower" and "Save Oil with Solar" as part of its aggressive commercialization program to switch as many buildings on to sunlight as possible.

Operating as a commercialization arm of the U.S. Department of Energy, the Cambridge center works with economists, architects, lawyers, computer scientists, educators, engineers and specialists in marketing, finance and business to spread the solar message.

It was the first solar commercialization center established by the DOE in 1977 and the first to consider utilizing just 2 per cent of the Northeast's vast forested area to produce clean fuels from wood and timber wastes.

"Our crisis is more acute than in any other part of the country," says Lawrence Levy, president of SEC. "Oil is the basis for 80 per cent of our energy supply—double the national average. And more than 80 per cent of our oil is imported."

The price the region pays for its energy is 30 per cent higher than the national average—the reason solar is being taken seriously in the Northeast.

"We export $30 million dollars a day from New England to buy fuel, which comes to $10 billion a year," Levy complained. "Given the proper incentives, solar alternatives can provide 25 percent of our total energy supply over the next two decades."

Sen. Edward Kennedy (D-Mass.) estimates that by 1990, more than three million American jobs could be created in the solar, conservation and alternate energy fields including jobs created when spending on other goods and services is taken into account.

Although the SEC is the federal government's lead institution for the commercialization of solar technologies, the center is "severely underfunded" for the mission it must fulfill, according to Levy.

"We could use $50 million a year to phase in solar systems in the residential, commercial and industrial markets—a small amount considering the number of taxpayers and consumers that would benefit immediately from any energy savings," Levy explained.

The center's budget this year is $3.5 million, of which $1.25 million has been committed to fund solar activities in the nine states. A small portion goes to universities and other private sector institutions, and the balance to education and training programs.

The center has already trained more than 2,000 students, carpenters, plumbers, electricians and general "handymen" to install solar collector panels, piping and storage tanks on rooftops and in basements.

For 1980, the federal government is upping its allocation to the Northeast center by $1 million.

"We have a presence in the region which has already had a positive force in terms of assistance to solar developers, the financial community, inventors and other constituencies," Levy said. "But much more could be done if we could increase the scope of our operations."

A solar blue print drafted by the Solar Lobby in Washington, D.C., would quintuple the government's commitment to renewable resources from $500 million to $2.5 billion a year, beginning next year.

At that rate of public expenditure, the Northeast Solar Energy Center could be funded much more than the $50 million Levy is seeking.

The Department of Energy admits the only way solar will get off the ground is to commercialize it quickly in the marketplace.

That precisely is the task of the solar energy centers, which are trying to do it on budgets of a small business operation instead of a major regional corporation.

One source of renewable energy for the Northeast is water power. There have been many small-scale hydroelectric plants in existence in the Northeast over the past 50 years.

In the early 1900s, much of New England's industry was powered by low-head hydro plants. The rushing water from the little rivers and streams can generate an electric output of about 15,000 kilowatts.

The center is now tracking down some 3,000 abandoned sites in the Northeast that offer the potential of producing a large amount of power.

One site in New Jersey that can be reactivated is the hydropower generator on the Passaic River Falls in Paterson. The abandoned plant could produce enough electric power to serve the immediate industrial firms near the falls.

Wind is also plentiful in the Northeast corridor. A small wind turbine available today for about $20,000 can produce 15 kilowatts of electricity, enough to power a small farm.

Like solar collector panels, windmills can be mass produced, reducing their costs significantly.

Another Northeast energy supply now being neglected is biomass—the term used for wood, vegetation and waste material that can be converted into burnable fuel for heating and cooling buildings, generating electricity and powering motor vehicles.

Burlington Electric in Vermont is powering a 10,000 kilowatt plant on wood chips.

Since the oil embargo six years ago, the number of homes in Vermont that have switched from oil to wood as the sole source for heat has increased dramatically, from 1 to 17 per cent. The ocean's waves and tides also offer a potential for producing electricity. Plans are under way at the center to tap the enormous energy of the tides along the northeast Atlantic coast.

The Cambridge center has four operating divisions to carry out its commercialization effort.

The industrial development division provides technical and marketing assistance to small companies and individual inventors. It also finds ways of bringing venture capital and banking sources together with the developers of solar technology.

The center's staff is working with state and federal legislators to remove legal and regulatory barriers to the utilization of solar systems, such as tax exemptions on all solar installations.

The communications division supplies technical and related information to the developer community as well as to consumers. Public information programs are conducted throughout the region. The center recently participated in an energy fair at Asbury Park.

The planning and assessment division conducts ongoing analyses of the resources of the region that can be brought quickly into the commercialization process in environmentally acceptable ways.

The technology division is structuring a sound technical base for all of the center's activities. Programs are being promoted to support those technologies that deliver the maximum, short-term potential for commercialization and fit into the region's requirements.

The Northern Energy Corp., which runs the center for the Department of Energy, has a 20-member board of trustees. Serving on the board from New Jersey is Martin S. Fox of the Fox & Fox law firm, Newark.

Ten members serve on the regional advisory council to the center. Charles Richman, director of division of energy planning and conservation in the New Jersey Department of Energy, serves on the regional council.

Levy, who once was an aide to President Kennedy, finds the energy challenge the most important issue in the industrialized world.

"The task of bringing about the commercialization of solar energy is indeed a mammoth one," Levy realizes. "It is a marketing problem of the first order that contains technological, economic, political and institutional hurdles at every turn."

But Levy sees solar as the solution to the region—and nation's—energy-economic-environmental conflict.●

HUMAN RIGHTS AT HALF-TIME

● Mr. KENNEDY. Mr. President, the advancement of human rights has properly become a fundamental component of American foreign policy. In an article in the New Republic, David Hawk, the former executive director of Amnesty International in the United States, points out that President Carter's human rights policy has made the world more aware of and sensitive to human rights violations. Mr. Hawk suggests that in 1979 the United States recognize its respon-

sibilities toward the world's refugees, proceed with ratification of pending human rights agreements, and better integrate human rights concerns into its bilateral relationships. I agree with Mr. Hawk that such actions would represent major steps forward in our human rights policies.

Mr. President, I ask that this article be printed in the RECORD.

The article follows:

[From the New Republic, Apr. 7, 1979]

HUMAN RIGHTS AT HALF-TIME; TOTING UP THE SCORE IN PRESIDENT CARTER'S MOST NOBLE ENTERPRISE

(By David Hawk)

Last December on the occasion of the 30th anniversary of the Universal Declaration of Human Rights, Jimmy Carter said it again: "Human rights is the soul of our foreign policy." Zbigniew Brzezinski pronounced human rights to be no less than "the historical inevitability of our time." Carter's reaffirmation was the sort of presidential categorical assertion that drives both foreign policy traditionalists and human rights advocates up the wall. Some rights advocates might worry that if human rights are the soul of United States foreign policy, then America's soul is in mortal danger. And no less a traditionalist than Henry Kissinger warned that making human rights such a vocal objective of foreign policy risks showing impotence and producing revolution in friendly countries.

For all this high-powered rhetoric, what has President Carter's human rights policy accomplished—for human rights or for United States foreign policy? Though the situation of human rights throughout the world is still overwhelmingly depressing, there have been some improvements recently in some countries. A recent State Department report notes trends toward democracy in the Dominican Republic, Bolivia, Ecuador, Ghana, Nigeria, Peru and Thailand. There have been substantial releases of political prisoners in Bangladesh, Bolivia, Sudan, Indonesia, Nepal and Paraguay and other releases in Cuba, Guinea and South Korea. Governments in Bangladesh, Bolivia, Brazil and Thailand have expanded freedom of the press, labor organizations and political parties. Some of these changes are substantial. Others are more superficial.

There have been other improvements not mentioned by the State Department. Indonesia has discarded its forced transmigration scheme for "released" political prisoners; Tanzania and Mali have released prisoners; and torturers have been prosecuted in Egypt and the Philippines.

The administration is careful not to claim credit "for particular instances of human rights progress." But official United States pressure was at least partly responsible for human rights improvements taken in Chile, Haiti and Indonesia. And certainly the restoration of free elections in the Dominican Republic was a direct response to United States pressure.

But no list can be an accurate measure of the impact of Carter's human rights policies. Carter has made the world more aware of human rights. The State Department says the US initiative has "helped create an atmosphere in which improvements are more likely to occur." This is correct even understated. But political atmospherics are transient. The improvements already brought about by the Carter initiatives may prove ephemeral. On the other hand, Carter's human rights policies could lead to permanent changes in the international legal and political framework in ways that promote respect for human rights.

Carter stands in the world's highest bully pulpit. Through his pronouncements, he has improved the international climate of opinion regarding respect for human rights. To be sure, the pope's pronouncements do somewhat the same, but Carter has more divisions. And the Carter administration's actions have not been consistent enough with his words to avoid nullifying the effects of these pronouncements. Anyone who worked in the field of human rights before Carter became president can appreciate the difference he makes. Attention to human rights by the political leader of the world's paramount power sensitizes other governments to human rights issues in general. In particular, it makes them aware that human rights violations may affect their relationship with the United States. Carter's human rights policy has made human rights a front-ranking issue in international affairs. That in itself is Carter's primary contribution to the promotion of international human rights.

Carter has raised the issue of human rights in a way that preserves an international approach to the struggle. He has avoided turning human rights into an American ideological crusade. That would have been disastrous for human rights around the world and deleterious to American foreign policy as well.

An often overlooked factor in making progress in human rights is the strength, tenacity and morale of democratic forces indigenous to violating countries. Courageous dissidents from Siberia to South Africa, the Malacca to the Magellan straits, need recognition. Through pronouncements and symbolic gestures such as meetings with dissidents, Carter has encouraged democratic forces and indigenous human rights advocates abroad even when subsequent United States policy cannot live up to their expectations. This can be tricky; Carter's involvement in the Scharansky case, for example, was maladroit. But official contact and expressed respect for the efforts and safety of local advocates of human rights can be very useful. Official US observers at trials of dissidents in Thailand, South Africa and the Soviet Union have helped in real as well as symbolic ways.

From the outset, the Carter administration has been aware that the promotion of international standards is the key to protection of human rights. Governmental concern for human rights should begin by defining the basic or minimum standards according to which governments should treat their citizens, and should hold each other to these minimum standards. The standards agreed to at the Helsinki Conference and repeated at the Belgrade review are examples. Neither the despicable arrests of the "Helsinki monitors" in Russia nor the Soviet stonewalling at Belgrade negated the positive impact of the Helsinki Accords on the struggle for human rights in Soviet Russia and its Eastern European satellites.

During his first year in office, Carter signed the International Human Rights Covenants and the American Convention on Human Rights, and submitted these to the Senate, along with the Convention on the Elimination of All Forms of Racial Discrimination. These treaties now join the Genocide Convention awaiting Senate ratification. These human rights treaties are not toothless wonders; nor are they abandonments of national sovereignty. They are, in fact, the basis of intergovernmental efforts to promote the protection of human rights.

The Carter administration has reinforced the intergovernmental machinery for protecting human rights. Starting at the 1977 meeting of the OAS, the United States, in conjunction with Venezuela and Costa Rica, increased the authority and staff of the Inter-American Human Rights Commission, enabling it to handle more complaints, undertake more investigations and speak with more, and badly needed, credibility in hemispheric affairs. Paradoxically, by signing the American Convention on Human Rights (though it remains unratified by the Senate) the United States started a trend in Latin American nations to ratify the Convention. In effect this has established an inter-American human rights system, similar to the West European system, providing victims of violations and human rights advocates with another strengthened forum for protesting, and redressing, human rights violations.

Carter has made human rights more of a consideration in day-to-day foreign policy decisions. Congress had already expressed its desire to make human rights more important in U.S. foreign policy; the Carter administration has brought the State Department reluctantly into line. Carter and Secretary of State Vance ended State Department attempts to negate, ignore and evade congressional human rights legislation. Human rights as a factor in U.S. dealings with other states now exists as a matter of law and the *intent of the president*. Obviously, this helps.

Geopoliticoes need not fret. Strategic and economic interests are not taking a back seat to human rights concerns. The Department of Human Rights and Humanitarian Affairs is outweighed bureaucratically and in contacts around the world by the departments of Defense, Commerce, Agriculture and Labor, and the CIA—not to mention State Department personnel who do not always share Carter's, and the American people's, commitment to human rights.

But having human rights as a non-predominant factor in US foreign policy is better than having it as not a factor at all. Great powers tend to export repression as an apparently inevitable byproduct of attempts to establish a stable international environment suited to their security and economic interests. The United States has not been immune to this process. Over the last 30 years of preeminent American power, the impact of United States policies on human rights in many places in the world has not been good. Considering the recent past, Carter has a good record for avoiding the use of American power in ways destructive of human rights. And despite the inconsistencies, gaps and mistakes, there have been many cases where US influence was used positively to promote civil and political rights. The argument that these efforts have damaged US interests is not persuasive.

Carter's most impressive human rights achievements have come from initiatives taken in the earlier days of his presidency. There has not exactly been a slackening of momentum; more like a running out of easy steps to take. Human rights concerns now press more closely against a crowded national agenda. The initial impact will fade unless Carter follows through and follows up on those earlier initiatives.

Three items should be at the top of Carter's 1979 human rights agenda. The most immediate and urgent concerns United States refugee policy. The United States has a special and obvious responsibility to admit more of the Indochinese boat people currently stranded at inhospitable ports and awash on the high seas. Further, some repressive regimes have taken to letting out political prisoners and their families if other countries can be found to take them. Castro, for example, having been challenged to free Cuba's 3000 political prisoners, has called the Carter administration's bluff. The US can now secure the prompt release of these prisoners, some of whom are among the longest detained political prisoners in the world. Exchanging forced exile for incarceration is not the most desirable solution to the problem of political imprisonment, but making the United States a refuge and haven of liberty is a compelling opportunity.

These two measures need not be delayed until a coherent overall refugee and immigra-

tion policy is worked out and shepherded through Congress. For the longer term, the 1952 Nationality Act needs to be replaced by a law recognizing U.S. responsibility to take a share of the thousands of socio-economic-political refugees and migrants who continue to flee and cross national boundaries.

Secondly, the Carter administration should lobby hard for ratification of the human rights treaties now before Congress. The treaties are a key to a United States human rights policy that will continue beyond the next two or six years. They embody the necessary international approach to human rights in general, and will assure sustained and constructive pressure on human rights violations in the Soviet and East European block in particular. Failure to ratify the human rights covenants and conventions would be as disastrous to our human rights policy as failure to ratify the Panama Canal Treaty would have been to our relations with Latin America; or as failure to ratify SALT II will be to strategic arms control.

The third area where the Carter Administration must follow through is in integrating its human rights concerns with its policies toward violating regimes. Congress must hold hearings on violating countries that enjoyed aid, so that the assessments of nongovernmental organizations and academic experts can be added to the information released in the State Department's report. Military aid sales as well as economic assistance should be more contingent on good human rights behavior.

The public supports Carter's human rights policies. Human rights was a strong concern in Congress before the executive branch took up the initiative. The policy follow-through now necessary is not too much to ask from a president who talks of human rights as Carter does—and whose commitment to human rights is worthy of emulation by every president from now on.●

MEMORIAL DAY ADDRESS BY GENE KINN

● Mr. GOLDWATER. Mr. President, unfortunately in recent years we seem to have drifted away from the basic reason for celebrating Memorial Day—that it is a time to remember the great sacrifices that so many of our young men have made in times of war to protect the freedom of us all. Time seems to have dimmed the memory and our observance of this important holiday has become more perfunctory than reflective. It has become just another holiday weekend—a time to get out of town on vacation or go to the beach or pursue our many ways of getting away from work.

I was forcefully reminded of this situation recently when a friend of mine sent me a copy of a very inspiring Memorial Day address delivered in Fostoria, Ohio, on May 28 by Mr. Gene Kinn, a radio station owner in northwest Ohio.

I ask that this inspiring message be printed in the RECORD.

The address follows:

MEMORIAL DAY ADDRESS

(By Gene Kinn)

I have attended most of these annual gatherings in recent years. . . . In one capacity or another . . . as the Speaker . . . the Master of Ceremonies or as a Spectator . . . and Each time I view the small but faithful gathering of Grateful Citizens I am tempted to paraphrase the well known words of Winston Churchill never have so few remembered how much was done by so many.

Memorial Day is . . . in its simplest definition, a time to remember. But . . . unfortunately . . . most of us have memories that are all too short. Oh, the Subconscious remembers . . . but the Conscious mind just doesn't reach back to pull the strings on those forgotten happenings. We are quick to forget our failures, our mistakes, our foolishness, the anguish we have caused others, the missed opportunities and, yes, the sacrifices that others have made for us. Occasionally I see those old newsreels or still pictures of Armistice Day, VE Day or VJ Day. The people back home are overjoyed; there's dancing in the streets . . . Kissing and Shouting . . . Bells are ringing and confetti fills the air. But Oh, how quickly the euphoria fades away. As the days and weeks and months turn into years. . . . We remember less and less the Brave Men who are buried here, in Arlington, or under rows of White Crosses in foreign lands. We remember less those once robust young men who now lie in hospital wards or those with permanent handicaps who now beg for jobs and their rightful place in society. Yes, these thoughts pass all too quickly from the conscious to the subconscious. . . . Dimmed by the passage of time and concern over our own immediate well-being.

Thank God that all have not forgotten. Our service clubs and organizations and their Auxiliaries still remember the sacrifices made by their Buddies, their Relatives and Friends in previous wars, conflicts, police actions or whatever history has chosen to designate them. Yes, it is well that we remember . . . but remembering alone is not enough. Unless We the Living continue to believe in and speak out for what they fought for and died for . . . their sacrifices were in vain. We have had popular wars and unpopular wars, but regardless of the perception back home, our young men in uniform fought for a cause and that cause was the preservation of the American way of life.

Today, however, I think we must really ask ourselves if our way of life is the same as the one they sought to save. Today, the very fibre of our nation seems to be unraveling. We constantly assail those institutions which used to command our highest respect: The Military Establishment, the FBI, the CIA, the Police—Almost everything that represents order and authority. We have abolished the Draft in favor of a Volunteer Army . . . an Army of unmotivated individuals who are enticed and bribed by large bonuses, more comfort and more freedom. And in return . . . we get individuals with less initiative, less concern, less dedication, less respect, less regimen and less capability. And, in addition to a lessening of our Manpower Capability . . . the popular cry in recent years has been: "Cut the Military Budget."

We seem to be in one great rush to embrace our traditional foes including those who have sworn to bury us. We appear most anxious to sign new agreements with nations known for breaking old agreements. . . . We are most willing to advance new loans to those who have failed to repay old debts . . . to share our latest technology with those countries that wish to compete with us in world markets . . . to extend favored trade terms to governments that want to export more to us than they are willing to import from us. And, while all this is going on, we are chastising, angering and losing our traditional friends, such as Taiwan, Iran, Saudi Arabia and South Africa. We have allowed small nations like Panama to threaten us and blackmail us or like Cuba to thumb their noses at us while fomenting trouble for us throughout the world. We continue to provide billions of dollars in foreign aid to countries that openly disdain us and criticize us while our own national debt and balance of payments continue to rise to astronomical proportions. We guarantee oil to other nations while our own lack of it has created a national crisis. We have guaranteed both sides billions of dollars in aid to secure a peace treaty which is in the best interests of the two parties involved.

On the domestic front, we seem to have abandoned those moral principles which made our nation great. The most popular TV sitcoms are rife with bedroom talk and double entendre . . . almost anything goes on TV, and in the movies and magazines.

We spend more money on our prisons than we do on our schools. We have all but destroyed the incentive our lawmen with plea-bargaining, suspensions, shock probations and overwhelming concern for the rights of the criminals.

We have lowered the drinking age, eased restrictions on contraceptives and abortions.

We have shortened the work week and increased the benefits . . . We have increased government controls, government handouts, government subsidies, government interference and government inefficiency.

As a nation, we are deteriorating physically, financially and morally.

But . . . despite this litany of despair . . . the cause is not completely lost. We still have the potential to regain our once and former luster. Carl Schurz once said, "Our country when right to be kept right, when wrong to be put right" and we can still put it right. But to reverse the trend will require the efforts of us all. We cannot continue to be uninformed, uninterested and uninvolved. We must fight our own war Here and Now and here at home . . . not with bullets and bayonets, but with ballots and telephones and letters and phone calls. We must seek out good candidates, know what they stand for, elect them to office and then make them accountable for their actions.

If we truly value the deeds of the dead . . . the Soldiers and Sailors . . . Marines and Airmen . . . whose memory we honor this day . . . We will continue their battle.

America's Answer to "Flanders Field" by R. W. Lilliard:

Rest ye in peace, ye Flanders dead,
The fight that ye so bravely led;
We've taken up . . . and we will keep,
True faith with you, who lie asleep;
With each a cross to mark his bed,
In Flanders Field.

Fear not that ye have died for naught,
The torch ye threw us, we have caught;
Ten million hands will hold it high,
And freedom's light shall never die;
We've learned the lesson that ye taught,
In Flanders Field.●

DOE OFFICIAL SAYS SCHLESINGER'S CREDIBILITY GAP HAS WIDENED

● Mr. METZENBAUM. Mr. President, from week to week I have spoken out about the way in which we are handling, or should I say not handling our current energy problems. I have given numerous examples of how the Department of Energy, under the direction of James Schlesinger, has withheld information, contradicted itself and generally confused not only the Congress, but the American people as well.

The effect this total lack of consistency has had on the faith the American people have in their Government has been disastrous. The fact of the matter is, the American people are losing that faith. I am not the only one saying this Mr. President, but the top consumer affairs official at the DOE is saying the same thing. And, according to an article that appeared in the June 21 edition of the Washington Post, this official says

the public should be wary of what DOE says, based on their poor performance record in the past.

According to the article, entitled "Oil Nationalization Threat," Ms. Tina Hobson stated in an internal memorandum:

> In addition to inaccurately reporting information on imports, the department may not have released accurate information on domestic production.

That, Mr. President, is a damaging blow. Ms. Hobson goes on to say:

> While the department may have confused consumers regarding the demand for oil, it appears that information (also) was incorrectly provided on oil supplies and imports.

In other words, the Department itself is confirming what many of my colleagues and I have been saying for months; that Dr. Schlesinger and the entire Department under his control, has been hiding information, changing information to fit their theories and basically manipulating figures. I ask unanimous consent that the article by Larry Kramer be reprinted in the RECORD in its entirety.

An article that appeared in the Portsmouth, Ohio, Times newspaper on June 6, 1979, gives an excellent example of how the Department and Secretary Schlesinger have misled the Congress and the people. The article, entitled "DOE Does It Again," explains what has happened to the aviation fuel market since the Department of Energy urged us to give them the authority to lift controls. We were told that the price of aviation fuel would only rise by 1 cent per gallon. We were assured that there was enough competition to keep prices down. And, Mr. President, a majority of our colleagues believed Dr. Schlesinger and the DOE. The price controls were lifted and prices have soared from an average of 38 to 40 cents per gallon to 45 to 55 cents. The spot fuel market has climbed to as much as $1.20 per gallon. Where is the competition? Where is the 1-cent increase? Where are Dr. Schlesinger and the DOE now? According to the article, not one person, not one, is tracking aviation fuel prices on a short-term basis. I shall submit the article, which was written by syndicated columnists Robert Walters and Martha Angle, for the RECORD.

The aviation fuel example is but one in a long and sad series of mistakes, misjudgments and misinterpretations by the DOE. The June 18 edition of Fortune magazine may have hit the nail on the head when, in the "Keeping Up" section, they refer to the Department of Energy as the Department of Incoherence. They list several examples of how the DOE has vacillated on serious, key areas. I shall submit this article also for the RECORD.

And just this week, Mr. President, while all of us are waiting in lines for hours to get gasoline at higher and higher prices, we read an article in the Washington Post that tells us that the storage tanks in the Washington area are so full, that gasoline supplies are being rerouted to Philadelphia and New Jersey. This, Mr. President, is nothing less than an outrage. Where is the coherent energy policy DOE is supposed to implement? Where is Dr. Schlesinger? I shall submit for the RECORD the article which appeared in the June 20 edition, entitled "The Great Gas Mystery: With Storage Tanks Here Full, Excess Is Sent to New Jersey."

Mr. President, if this Nation does not come to grips with the energy problems we are facing, our days as a Nation of greatness are numbered. And, it is all too apparent that Dr. Schlesinger is not the one to handle the job. Once again, I ask Secretary Schlesinger to resign, and to let someone else lead the fight. Once again, I ask the President to accept his resignation, and instill new leadership, new ideas, and new policies in the Department of Energy. The times demand it, and so do the American people.

The articles follow:

OIL NATIONALIZATION THREAT

(By Larry Kramer)

The top consumer affairs official of the Department of Energy has warned the oil companies that they are "heading for nationalization" if they don't explain the present crisis soon and stop what she called "manipulative" practices.

The same official, Tina Hobson, director of consumer affairs for the DOE, has warned key DOE officials in a memorandum that there is also little or no reason that "consumers (shouldn't) believe DOE is misleading, misinforming or even lying to them about petroleum data."

"We are heading toward nationalization of the oil companies," Hobson flatly told corporate consumer affairs representatives and government regulators from several areas at a dinner late Tuesday night.

"I don't want to go in that direction, but if the oil industry and the DOE don't come up with better rationing and something better than those gas lines, there won't be a choice in the matter," she added.

Hobson has held a variety of energy-related positions, including jobs in the Federal Energy Office and the Federal Energy Administration before joining the Department of Energy on Oct. 1, 1977, when it was created.

Although she previously criticized her department's handling of information pertaining to the energy crisis in her internal communications with other DOE officials, Tuesday's comments were her strongest public warning to date.

Hobson said she had information that jobbers for the major oil companies were engaging in a "manipulative process of blackmailing gas station dealers" into staying open for only a limited number of hours and using only a limited number of pumps, "or else." She said dealers were being threatened with being cut off by those jobbers—their only suppliers—if they didn't heed the warnings.

"The system is fraught with inequities," she said.

In a recent internal memorandum to Energy Information Administration head Lincoln Moses and several other DOE officials which was obtained by the Washington Post, Hobson warned that "many consumers could reasonably question the department's projected shortfalls." She cited impartial interpretations that differ with DOE conclusions on oil supply problems.

Further, she said, "While the department may have confused consumers regarding the demand for oil, it appears that information (also) was incorrectly provided on oil supplies and imports."

She said alleged manipulation of import figures by the DOE "has raised significant consumer doubt about the department's credibility."

"In addition to inaccurately reporting information on imports, the department may not have released accurate information on domestic production," Hobson added.

Her memo suggested that the department consider releasing significantly more raw information on the oil industry to consumers for their own analysis, as well as the department's interpretation of that data and assumptions behind that interpretation.

At the meeting Tuesday night, Hobson acknowledged that the department long has had a "problem" of sharing considerable information with oil industry representatives or lobbyists while withholding the same information from consumer groups.

"We have a credibility problem with consumers, and we aren't helping it now," she said.

Hobson said she has gone to speak to several groups about the energy crisis lately, but in her most recent speech before consumer leaders, she said she was shouted down and not even allowed to speak. "People are getting impatient with us," she said.

DEPARTMENT OF INCOHERENCE

Friends, there is a reason why we have a Department of Energy. DOE was not just inflicted on us, for our sins, by a wrathful deity. Nor was it created behind our backs by Soviet agents. We have the department because Jimmy Carter said we needed "cohesion" in our energy planning. He kept using that word in his news conferences back in 1977, e.g., when he proclaimed that DOE would make possible "some cohesion in the evolution and the consummation of energy policy."

In the last few months, you may have noticed, the department has had some trouble living up to that billing. Whole weeks go by when nothing much seems to cohere at DOE.

On May 21, the department suddenly reversed course and urged oil refiners to put more of their crude into gasoline and less into heating oil. Until that date, Energy had been trying to ignore all those large headlines about gasoline shortages and to concentrate on next winter's possible problems.

In mid-May, the department suddenly began encouraging U.S. oil companies to buy more crude abroad and pay whatever it cost. Previously, DOE had been urging the companies to stay out of the foreign markets as much as possible (the idea being that their abstention might restrain those soaring prices).

A while before that, there had also been an amazing flip-flop on natural gas. Early this year, the Energy Department suddenly decided that we had an abundance of the stuff and called on industrial users to start burning it as much as possible—precisely the opposite of the advice DOE planners had previously vouchsafed.

At least, you can't accuse them of excessive stubbornness.

THE GREAT GAS MYSTERY: WITH STORAGE TANKS HERE FULL, EXCESS IS SENT TO NEW JERSEY

(By Phil McCombs)

While Washington area motorists continue to sit in long gasoline lines, many of the multimillion-gallon gasoline storage tanks operated by oil companies here are so full that new shipments are being turned away, industry sources said yesterday.

After being refused here, the gasoline is being sent north to Philadelphia and New Jersey in one of two major petroleum pipelines that bring 90 percent of this area's gasoline from Gulf Coast refineries, the sources said.

Spokesmen for the major oil companies say the federal allocation system prevents

them from distributing the additional gasoline in the storage tanks to local service stations.

At the same time, interviews with oil company representatives produced a variety of conflicting explanations for the situation. Several expressed the belief that the current surplus would be temporary.

Government officials trying to grapple with the gasoline situation appeared bewildered by the apparent surplus.

W. L. Nicoll, manager of community relations for Colonial Pipeline Co., which runs the largest petroleum pipeline through this area, confirmed that one major tank farm, in Fairfax City, is so full that gasoline is being sent elsewhere.

Nicoll said the oil companies "send it to other destinations because [they] say their inventories are full at Fairfax. They can't take the product because they don't have the [storage capacity]."

Nicoll said that he was not sure why this was happening and that it might be a "temporary situation, a matter of scheduling."

A spokesman for Amoco said its Fairfax tanks are three-quarters full—fuller than normal.

"We've got a little bit better inventory in our gasoline tanks the last few weeks," said Joseph Golueke, Amoco's distribution manager for the Baltimore region. "The situation is better this year than last in that we don't have any terminal runouts."

A spokesman for Crown Central Petroleum said his company's tanks at another farm at Newington are two-thirds full—also fuller than normal. The spokesman said there had been three recent pipeline deliveries during a four-day period and that normally the deliveries are spaced 10 days apart.

As an example of what can happen when a shipment comes in on the pipeline and there is no room for it, one source said that Cities Service was due to receive a 50,000-barrel shipment of gasoline on May 30 and 31 but did not have room for it in the company's Fairfax tanks.

As a result, the small feeder pipeline that comes to Fairfax from the main Colonial pipeline had to be closed for 24 hours until Cities could find space for the gasoline. During this period, the small pipeline acted as a temporary storage tank for the 50,000 barrels, but no other gasoline could move through the line. A Cities Service Spokesman had no comment on the incident.

The spokesman would not say whether the company's Fairfax tanks were fuller than normal. But he said the product flowing through its system there was up 22 percent over last year. He acknowledged that this might tend to make tank levels higher at Fairfax, even though he said the company's overall national gasoline inventories are lower than last year.

An Exxon spokesman said that levels of some gasoline products at Newington are "fairly high, but in perspective this is not surprising."

The perspective, according to the spokesman, is that these big storage tanks in Washington are just a tiny part of the nationwide and regional storage facilities and pipelines run by the big oil companies.

In this view, one tank farm "doesn't amount to a hill of beans," the spokesman for Exxon said. He said tank farms in Washington could be full to overflowing but this would just be a quirk.

Spokesmen for Shell, Gulf, Texaco and Mobil denied that levels in their tanks here are higher than normal.

Rep. Joseph L. Fisher (D-Va.), who has been active in seeking to end the gasoline lines here, called the full storage tanks and refusals of new supplies "a puzzle."

"I wonder . . . whether to any extent it's a deliberate policy," Fisher said.

"Something smells to high heaven here," said James Flug, director of Energy Action, an organization that is critical of the oil companies.

"There may be some elements of actually hiding stuff in some form by the oil companies or by intermediaries or agents on behalf of the companies," Flug said. "What is needed now is a real detective job to see where the oil is, how much there is and who it really belongs to. The Department of Energy has no idea."

Rep. Herbert E. Harris II (D-Va.), who has led the effort of local politicians to investigate the causes of the long gasoline lines here, said he has asked the Energy Department for a specific audit of bulk tank levels and refusals of shipments at the two storage sites serving the Washington area.

"I haven't got anything back [from the Energy Department] yet," Harris said. "I have got rumors that there is adequate supply in those [tank] farms that is not going out to the [service] stations."

One observer at the tank farms said, "It's common knowledge that the tank levels are higher than normal out here. There's bitterness and resentment among the [oil company] employes here because they stand in [gasoline] lines like everyone else."

Another source with first-hand knowledge said that several weeks ago the oil companies were anxious to get all the gasoline they could for their Washington area bulk tanks, and that this had been the normal state of affairs for years.

"Now they're worrying about what the hell they're going to do with it when it gets here," this source said.

According to these sources, supplies of regular and premium gasoline are higher than normal while supplies of unleaded are normal or somewhat below normal.

"Even so, the no-lead is here, it's not being distributed, it could be distributed, there is plenty of it," one observer said.

The Newington and Fairfax City bulk storage facilities consist of pipeline terminal points where the petroleum products—all grades of gasoline, heating oil, jet fuel and diesel—are tapped off the pipelines and diverted to nearby banks.

Exxon, Shell and Crown have tanks clustered around the Newington terminal point of the Plantation Pipeline—the last point in that pipeline on its journey from refineries in Baton Rouge, La.

Gulf, Texaco, Cities Service and Amoco have tanks at Fairfax City at a tap point of Colonial Pipeline there. These companies tap off what they need at Fairfax from the continuously flowing pipeline, which goes on north to New Jersey.

Mobil has a tank farm in Manassas which also taps from Colonial Pipeline.

Mobil recently had to "downgrade" 10,000 barrels of unleaded premium because its tank at Manassas for this product was too full to take more. Downgrading meant that the gasoline was put into a tank for regular unleaded, a lower cost product with lower octane, according to a Mobil spokesman.

The incident "had nothing to do with our total gallonage" at Manassas, the spokesman said. He said that total gallonage was somewhat lower than it was last year.

Each company has from 3 to 10 or more of the bulk tanks in this area, each of which holds from 30,000 to 200,000 barrels of a petroleum product. A barrel is 42 gallons.

Delivery trucks, carrying about 8,000 gallons apiece, fan out from the Newington and Fairfax City farms, making deliveries to the roughly 1,500 service stations in the Washington area.

Because the constant flow of the pipelines must be in balance with the rate at which the delivery trucks are taking products to customers, the levels in the big tanks rise and fall constantly as the companies perform a continuing juggling act.

Since batches of fuel must be scheduled for movement on the pipeline up to 30 days in advance, the juggling act can get tricky and tanks can easily be fuller than a company might wish at a given time, oil company spokesmen said.

"So while this may appear to be a situation where we have more supply than we need, it is not that," said William R. Snyder, Crown's vice president of administration. "It's just a case that we're getting our supplies back in balance as a result of a foul-up in the scheduling of pipeline shipments."

DOE Does It Again

(By Martha Angle and Robert Walters)

Washington.—Consumers worried about the high cost of petroleum products following the removal of all federal price controls on domestic crude oil ought to take a close look at the current gyrations in the aviation fuel market.

Although aviation fuel is a relatively esoteric petroleum product (it accounts for only about 4½ percent of the nation's oil consumption), an examination of its recent price behavior can be especially instructive.

That's because it is the product whose price controls were most recently lifted by the Department of Energy (DOE) after the agency blithely proclaimed that "competition and market forces should be adequate to protect consumers" from soaring prices.

Those who naively accepted that optimistic prediction probably are also inclined to believe President Carter's current claim that the average American family will pay only an additional $100 for petroleum products in 1982, the first year of full decontrol of domestic crude oil.

Some background on aviation fuel: There are two distinct products, both of which have been subjected to price controls under various federal programs since the summer of 1971.

One is aviation gasoline, refined for use in smaller piston-engine aircraft. The other is kerosene-based jet fuel, commonly known as kerojet fuel, refined for use in larger jet and turboprop aircraft.

When DOE asked Congress earlier this year for authorization to decontrol the prices of both products, it predicted that the action would lead to price increases that "will probably average 1 cent per gallon" for aviation gasoline.

The increase might be "as much as 4 cents per gallon at some airports," but the nationwide average "is forecast to remain at less than 1½ cents per gallon through 1980," said the confident DOE.

For kerojet fuel, said the department, "overall price increases resulting from (price control) exemption are not likely to exceed 1 cent per gallon."

At the time, airlines that held long-term fuel supply contracts with major petroleum corporations (a dozen oil companies produce more than 90 percent of all the nation's aviation fuel) were paying 38 to 40 cents per gallon.

In the three months since decontrol went into effect in late February, contract prices have spiraled upward. The country's major airlines now are paying 45 to 55 cents per gallon.

Aircraft owners whose fuel consumption is too low to justify a long-term contract, including most commuter airlines, must buy their aviation fuel on the open or "spot" market. Prior to decontrol, these prices averaged about 60 cents per gallon.

The "spot" price today ranges from 75 to 95 cents per gallon, with an increasing number of reported cases where the price exceeds $1 per gallon. In some locations, the going rate is approaching $1.20 per gallon.

A futile struggle to avert decontrol was waged on the Senate floor by four Demo-

crats—Sens. Howard M. Metzenbaum of Ohio, Dale Bumpers of Arkansas, John A. Durkin of New Hampshire and Paul Tsongas of Massachusetts.

"We warned against believing the ridiculous projections of DOE," they said later. "We warned that this move would totally violate the nation's inflation guidelines."

After grossly misinforming both Congress and the public, DOE now displays virtually no interest in aviation fuel prices and their impact on the economy.

"We reemphasize that we intend to analyze kerojet fuel and aviation gasoline prices after deregulation," the department promised when seeking deregulation authority from Congress.

But a senior public information officer in DOE recently spent three days searching for someone among his almost 20,000 colleagues who was performing that task. His final report: "I can't find anyone in the department who tracks aviation fuel prices on a short-term basis." ●

CIVIL LIBERTIES BREACHED BY BATF

● Mr. McCLURE. Mr. President, in recent years the Government and people of the United States have focused considerable attention on the cause of civil liberties as guaranteed by our Constitution. Indeed, the activities of many governmental organizations have been closely scrutinized and, in some cases, gross illegalities and injustices were found and subsequently reformed.

This effort in correcting abuses and assuring the liberties of our citizenship, however, is little more than a sham by our Government, as severe injustices not only exist but are apparently actively endorsed and pursued by an arm of the Department of the Treasury: the Bureau of Alcohol, Tobacco and Firearms. Charged with enforcing the Federal laws dealing with these three substances, the BATF has utilized self-made regulations, vague statutes, and a little old-fashioned entrapment in converting law-abiding citizens into criminals.

The evidence in this serious situation is still being compiled. Nevertheless, the ample information which has been made available conclusively illustrates the grave breach of civil liberty which has been—and is still today—being perpetrated on the citizens of this country.

Mr. President, much of the key evidence in this case has been painstakingly uncovered and pieced together by Mr. David T. Hardy, a Tucson, Ariz., attorney. Mr. Hardy has recently written an excellent article exposing this appalling situation, and I ask that it be printed in full in the RECORD so that each of my colleagues can learn for himself how the liberties of American citizens are being sorely depleted by our own Government.

The article follows:

HOW TO MAKE COLLECTORS INTO CRIMINALS

(By David T. Hardy)

If firearm ownership is commonplace in America—and surveys repeatedly indicate that it is—then the firearm collectors comprise the aristocracy amid the popular movement. These collectors are virtually a "nation unto themselves", with their own shows, at which they compete in display of their finest firearms, their own organizations, their own specialties—one may choose British military firearms 1760–1945, another may strive to obtain all calibers and chamberings of the Marlin 1893.

There are also general collectors, and most specialists have a general collection "on the side," which may feature such favored pieces as the exquisitedly crafted Parker shotguns (which begin at about $900), the Winchester Model 21 (the only American shotgun fitted to the individual's dimensions: the "economy" line starts at $3,500), or scarce "presentation pieces," engraved and inlaid pieces given by inventors and companies to both Eastern and Western national leaders. Samuel Colt, in the 1870's, created quite a few of these pieces). Collectors have their own magazine now, independent of all other firearm publications, in which it is not uncommon for a collector to take out a full page, tastefully illustrated advertisement to attract collectors for purchase or exchange of a few unneeded pieces.

Even individuals who support strict firearm regulation might well be tempted to consider these individuals a relatively riskless segment of the population. Persons bent upon robbing a drugstore simply do not seek a Winchester 21; domestic homicides are unlikely to be settled at dawn with a cased pair of Durs Egg flintlock dueling pistols.

Indeed, the federal agency which enforces the firearm laws, the Bureau of Alcohol, Tobacco and Firearms (BATF), has repeatedly claimed that criminals predominantly use cheap handguns—valued under $50, caliber .32 or less, barrel 3 inches or less. No true collector would even use one of these as a paperweight: the risk of being seen with it by other collectors would be too great.

It is therefore surprising to note that federal agencies enforcing firearm laws have often appeared to devote a large amount of their energies to sending such collectors to jail, and confiscating their collections. It is even more surprising to discover that the federal government itself is becoming a large-scale collector—its collection established primarily by choice items appropriated, without compensation, from these collectors.

BATF ENTERS PICTURE

In part, the collector's very law-abiding qualities make them perfect targets for law enforcement. The BATF has been faced with some unique bureaucratic difficulties of late. Since 1972, the skyrocketing prices of sugar, main component of "moonshine", has drastically curtailed illegal brewing. Between 1972 and 1978, the number of "stills" raided by BATF dropped from nearly 3,000 to only 381.

The Bureau suddenly saw itself faced with obsolescence of its traditional area of enforcement, a rather unique experience in law enforcement (one may imagine the consternation at the Drug Enforcement Administration if the entire drug-using populace suddenly turned to meditation or alcohol). Self-preservation dictated a sudden increase in firearm enforcement. But agents seeking to push up their "body counts" of arrests and firearms seized were faced with serious problems. To invade fields where firearms are feloniously used is apt to prove quite dangerous: it also takes time, and this was unavailable when Washington makes it clear that arrests in your district must be doubled within the next year. A safe and easy target had to be located.

Agents therefore quickly evolved a method of entrapping collectors, through a technique which I term the "implied dealership." This depends upon a clause in the 1968 Gun Control Act which provides that "dealers" in firearms must be federally licensed, and makes it a felony to conduct business of a "dealer" in firearms without such. Private sales of one's property by a non-dealer are not subject to federal licensing.

The statute contains no definition of "dealer". Nor do the Bureau regulations, ostensibly promulgated to clarify and enforce the statute, provide such. Since 1972, the Bureau has actively discouraged applications for licensing, in a political move to create an impression of reduction in "firearms traffic." Under its regulations, for example, the applicant must have business premises separate from his residence and must keep regular "business hours." Collectors who reported sales only to other collectors and hours "by appointment" soon found their licenses being revoked. Moreover, a "dealer's" premises are statutorily subject to search, without warrant or probable cause. Collectors who asked whether licenses were needed were usually informed that five to 10 firearms sales per year did not constitute acting as a "dealer".

Actually, while the statute has no definition, federal appelate courts have defined "dealer" very broadly. They have repeatedly noted that there is no minimum number of sales necessary; that no minimum level of profit from sale of firearms is essential, and that the sole question is whether the jury believes the accused citizen to have engaged in "*any* business" of selling firearms. The Bureau has frequently obtained collections on as few as four to six sales per year, and these have been universally upheld.

THE GARDEN PATH

The agents thus can easily lead an individual, who all the while believes he is obeying the law, into a felony indictment. Undercover agents approach the collector at a gun show. Their routine is already choreographed and tested in previous cases. Different agents may make one or two purchases at this gun show, followed by a few more at the next gun show, until four to six sales are obtained. The agents offer a very high price and purchase with little bargaining; thus the collector can easily be shown to have made a profit on their sale. As "icing on the cake," they may lead the collector into stating that he could obtain an additional firearm from a different collector for them: at this point he is acting as a broker for matter not already in his collection.

After the evidence is obtained, the collector is indicted on felony charges. The burden on him is immense. Legal defense costs usually run between $3,000 and $20,000. Conviction on the felony count means total loss of right to possess firearms within the United States. It also carries a penalty of 5 years imprisonment and a $5,000 fine.

BATF CONFISCATIONS COMMON

In an effort to add to these burdens, the Bureau generally confiscates the collector's prize collection. This is done under a provision of the Act which permits confiscation of firearms "involved in or used in or intended to be used in" any violation. The confiscation puts additional financial pressure on a collector who may already be impoverished by the legal costs.

These activities have been frequently reported among collectors, but little work to compile and analyze them has been done. Recently I have had the privilege of serving as project director to a Task Force seeking to compile a comprehensive report on Bureau activities, which report was sponsored by the Second Amendment Foundation. The objective evidence which was compiled on this particular activity proved compelling. My knowledge has since been greatly expanded during the past three months, which I have spent at the headquarters of the NRA-ILA, preparing evidence on BATF practices for congressional hearings.

I could not escape the conclusion that the Bureau had carefully preyed upon misinformation as to the status of the law, some of which had been given out by the Bureau's own agents, in order to entrap law-abiding citizens and confiscate substantial amounts of their private property for the Bureau's own collection!

First, the Bureau seeks to entrap law-abiding individuals who would not disobey

the law if it were not for the agent's activities and deception: it does not aim entrapment at individuals who would violate the law anyway and are but given an opportunity. Many of the individuals contacted, in various parts of the nation, with no opportunity to confer with each other, reported acting on advice of agents that five to ten sales per year of their own firearms did not constitute "dealing". In one especially well documented case, we obtained a government transcript of a recording of the defendant speaking to the agent.

"I don't want to know anybody that does anything wrong with guns. No, I'm serious. I collect, and, to me, there's a lot of fine people collecting. Several chiefs of police, several detectives here, and otherwise . . . I don't want, I would never want to contribute to anything that might make it look bad for all of us . . . There's a few people who are making it look bad for the many."

This individual was enticed into the sale of a sufficient number of firearms, his collection was confiscated at a gun show, and, when he filed suit for their recovery eight months later, an indictment was handed down within ten days. He is today a felon on probation. Given that "the first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite to crime . . . ," the entrapment of an individual of this type, solely for the virtue of increasing a "body count" of convictions and confiscations, is hardly justifiable conduct on the part of a public agency.

VALUABLE GUNS TAKEN

A second reprehensible aspect of the BATF attack on collectors is the tendency to focus on large and expensive collections. Confiscations tend to center upon these collections to the exclusion of the cheap firearms which the Bureau so often claims are the roots of violence. During the course of the study I utilized the Freedom of Information Act to obtain copies of the Bureau's "Reports of Property Subject to Judicial Forfeiture," which gave inventories of seizures by collector name, value, firearms, and ultimate disposal.

A few examples will suffice. In one, the Bureau confiscated 83 firearms from a Pennsylvania collector. The Bureau's own appraisal fixed the value at $18,020. The collection was devoted primarily to antique Marlin rifles, especially the 1883 model, although some 1881 models in .40–.62 caliber and an especially rare .30–.40 "baby carbine" were included. Only five of the 83 were handguns—and the average handgun appraisal was $116.

A second major example also came from Pennsylvania. There, 136 firearms valued at $28,335 were taken. These included five Parker shotguns (one valued at $1,000), a Winchester model 21 (undervalued at $900), and a number of French and German collector shotguns. Private reports have also received (from time frames outside of the period requested from the statute) of numerous confiscations: an Eastern collector reported a seizure of $10,000 worth of items: two years after the confiscation, he has neither been charged with any offense nor has the collection been returned. A South Carolina collector reported seizure of over 100 firearms valued at over $15,000. He was acquitted of charges. Two weeks after the acquittal, the Bureau served him with notice of intent to forfeit his collection, maintaining that the criminal acquittal did not bind them in subsequent "civil" forfeiture proceedings. (Further, three persons, in Connecticut, Arizona, and Nebraska, reported that their automobiles were seized on claims that they had used the vehicles to transport firearms).

BATF'S "REFERENCE COLLECTION"

A third reprehensible aspect lies in the Bureau's use of its powers to furnish its own private collection. The reports obtained through the Freedom of Information Act requests showed that approximately one-third of the collections were being routed back to the BATF with the purpose of acquisition of "reference collection." The two Pennsylvania seizures mentioned earlier alone contributed 75 firearms valued at $18,000 to this Bureau collection.

The collection is not easily filled, obviously, especially with reference to the expensive shotguns: The Bureau apparently needed no less than five Parkers, three of the same gauge. Modern firmarms are also found useful. One report from a Texas case disclosed a seizure of 86 firearms valued at over $20,000. The local Bureau office chose to keep 48 of these firearms for their local arsenal (and, presumably, for issue to the agents who confiscated them). Interest in filling this collection may explain the Bureau's tendency, reported by several collectors, to dismiss charges or permit pleas to a misdemeanor in the event the collector would permit them to keep the collection. These offers were transmitted through the prosecutor's office to the defense attorney's office: in several cases I was able to contact the defense attorney and confirm that such offers had been made.

FIREARMS ABUSED

Finally, some of the seizures appear to display a vindictive intent. In a famous Texas case, the agents seizing an expensive collection were seen to deliberately drop the firearms to the floor before storing them. Several firearms, in "as manufactured" condition and unfired, were "test fired," greatly reducing their collector value. Despite the dealer's acquittal, agents refused to return the firearms. Even after judgment was rendered in his favor on a civil proceeding, they still refused. Only after contempt proceedings were brought against them did they return the collection, then disclosing that it had been stored in a damp warehouse which had seriously rusted many of the finer pieces.

A Colorado defendant reported, and his attorney confirmed, that his collection (including a Parker valued at $10,000) was thrown across the room as each firearm was booked in, and permitted to fall to a concrete floor. A Virginia defendant reported (and, once again, his attorney confirmed) that his firearms were thrown into a 50-gallon drum and wheeled to court in that manner. They were taken out and slammed down in a pile during the trial. When a request was made to treat them more gently, the result was only more violent treatment.

In several cases in addition to the Texas one mentioned above, the Bureau refused to return firearms despite acquittal and then brought civil proceedings against the persons to confiscate the collection. Some collectors reported having to give up their collection because the criminal trial had exhausted their financial resources and the legal expense of the fight would be $2,000 or more. The collector, of course, does not recover his attorney's fees in the event he is acquitted, nor secures the return of the firearms. The Bureau, on the other hand, is served by attorneys paid from tax funds contributed to by the dealer.

WHY THIS PATTERN?

Is this apparent focus on the law-abiding an isolated occurrence, or part of a general pattern? Since the Bureau does not itemize prosecutions by collector status, it is most difficult to tell. One might expect a rational, albeit ruthless, administrator to focus upon these individuals. As noted above, they are generally naive sorts who believe that "since I am law-abiding, I have nothing to fear from the law" are unlikely to shoot informants, are easily arrested without violence, and in short make a perfect target for a quick increase in arrests at minimal risk.

What information we do have suggests that the Bureau has been assessing its probabilities in this manner. During Project CUE, the Bureau published breakdowns of prosecutions in certain cities. In Washington, D.C., for example, out of 1,603 investigations, only 206 dealt with felon in possession of firearms, only 58 with stolen firearms, and only 20 with use of firearms in a felony. Of Chicago's 1,980 investigations, 135 dealt with felony possession, 54 with theft, and only nine with use in felony. Considering that studies have repeatedly documented that approximately 25% of handguns used in crime are stolen, one might expect that more than 3.6% of the Bureau's Washington investigations, for example, would deal with firearms theft. But we must reflect that catching firearms thieves and marketers of stolen firearms may be dangerous and difficult, hardly the type of thing to undertake when large numbers of quick arrests are needed.

In short, it appears that the Bureau of Alcohol, Tobacco and Firearms has devoted a significant portion of its investigative and law enforcement efforts to entrapping naive collectors of firearms, of a type unlikely to be contributing to criminal firearm markets. This campaign has enabled the Bureau to boast of impressive statistics of convictions and firearms seizures, with minimal effort and personal risk. It has also permitted the seizure of significant numbers of appropriated, without compensation, for the Bureau's own collection. The underlying practice of encouraging, rather than avoiding, crime can hardly be justified; its exploitation for Bureau property gains, or as part of a vengeance motive, is even more repugnant to our institutions.●

LEVERETT SALTONSTALL SERVED IN THE SENATE WITH DISTINCTION

● Mr. RIBICOFF. Mr. President, I was very saddened to learn that former Senator Leverett Saltonstall of Massachusetts had died June 17, 1979.

Coming from neighboring States, Leverett Saltonstall and I had known each other for many years. He was Governor of Massachusetts from 1939 to 1944. It was during this period that I got started in elective politics, serving in the Connecticut General Assembly. I met Governor Saltonstall at that time and I was impressed by his civility, his modesty, his wit, and his intelligence.

Governor Saltonstall was elected to the Senate in 1944. Nineteen years later, in 1963, when I came to the U.S. Senate, Senator Saltonstall had become a strong, effective, and most able senior Member. I had the opportunity of working with him on many issues. He had not changed at all. He was still the same decent, self-effacing, thoughtful, and courtly man I had first known years before.

That quality of decency made Senator Saltonstall a very respected and liked man. It came to him naturally. In the 1960's, when his important role in the Senate was most apparent, Senator Saltonstall continued to be thoughtful, fair, considerate. The Senator was so likeable, and so much a statesman, that his opponents were put off balance by the difficulty of mounting a campaign against someone virtually everybody liked and respected. That may have been a factor in his continued success at election time.

In 1967, Senator Saltonstall, at the age of 74, retired. After a 46-year po-

litical career, he decided it was time to step aside and open the way for younger political aspirants. Of that decision, the Boston Globe has observed:

If "Salty" or "Lev," as he was affectionately known to countless friends, admirers and constituents, had chosen to run for reelection, there was little doubt that victory would have been his. But he didn't, since he wasn't sure he could give his best for six more years.

In Senate remarks the day after Senator Saltonstall's death, Senator KENNEDY spoke warmly of his late colleague, saying:

He was perhaps the most widely loved and respected Massachusetts public figure of his day, and it was common knowledge that his Senate seat was his for so long as he chose to hold it.

Another New England colleague of Senator Saltonstall, Senator PELL, said Leverett Saltonstall "epitomized the good qualities of New England and he combined the qualities of compassion and a humanitarian outlook with the traditional New England Yankee values."

Leverett Saltonstall was a great U.S. Senator. He was a great human being.●

IS IT NOT TIME FOR "ANGEL OF DEATH" TO FACE ACCUSERS?

● Mr. HELMS. Mr. President, earlier this week I introduced Senate Resolution 184, a sense of the Senate resolution calling upon the U.S. Government to promote the apprehension and extradition of one of the most infamous Nazi war criminals still being sought—Dr. Josef Mengele, known to the inmates of the Auschwitz concentration camp as the angel of death.

Simon Wiesenthal, the courageous man who has brought more than 1,100 Nazi war criminals to trial, speaks of the survivors of the camps and asks, "How can we live if we do not forget, but it is given to us not to be able to forget." Senate Resolution 184 expresses the fact that the American people are not able to forget and are willing to take practical steps to bring to justice those involved.

Mr. President, I ask unanimous consent that the distinguished colleagues, the Senator from Alabama (Mr. STEWART), the Senator from Michigan (Mr. LEVIN), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from South Carolina (Mr. HOLLINGS) be added as cosponsors of Senate Resolution 184.●

PRESIDENTIAL DECISION TO INCREASE TIMBER SUPPLIES

● Mr. BUMPERS. Mr. President, on June 11, Alfred Kahn announced a Presidential decision to increase timber supplies from Federal lands by limited departures from the nondeclining even-flow policy. The announcement concerns me because it appears to abandon sound forest management policy for an insignificant anti-inflation impact.

For the information of my colleagues, I request that copies of the White House factsheet and my letters to President Carter and Chief McGuire of the Forest Service be printed in the RECORD.

The letter and factsheet follows:

THE WHITE HOUSE FACTSHEET DEPARTURE FROM EVEN-FLOW TIMBER HARVEST ON FEDERAL LANDS

The President is instructing the Secretaries of Agriculture and Interior to take steps consistent with existing law and environmental considerations to increase timber supplies from federal lands by limited and temporary departures from the non-declining even-flow policy.

Present federal policy limits annual sales from federal lands to levels that can be sustained in perpetuity. Strict application of this limit means that excessive inventories of mature timber will be carried on a number of western national forests.

Inflation in housing is partially the result of limitations in the supply of timber. An expansion of the timber supply is one of the few actions that can be taken at the federal level to moderate rising housing costs.

Lumber accounts for about 15 percent of the total cost of an average house. For each billion board foot increase in federal timber sales, the price of timber will decline by an estimated 10 percent and lumber by over 4 percent. That is a saving of more than a half percent of the total cost of a new house.

Housing costs are a principal factor in the recent dramatic increase in the Consumer Price Index. The median price of a new house rose 120 percent from 1971 to 1978; consumer prices as a whole rose more than 60 percent.

An expansion of the timber supply will also make an important contribution to reducing inflation by helping to sustain employment in timber-dependent communities, particularly in the Northwest.

A temporary departure from the current even-flow, sustained yield policy, permitted under the National Forest Management Act of 1976, will not cause an eventual decline in the long-term flow of timber harvested from federal land; in fact, it will probably mean a higher reate of growth and production from these lands in the future.

U.S. SENATE,
Washington, D.C., June 21, 1979.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Your announcement of June 11, directing the Secretaries of Agriculture and the Interior to increase timber harvesting from the National Forests concerns me.

I am concerned that the directive, which purports to be consistent with existing law and environmental considerations, may result in the abandonment of even flow sustained yield timber management policy in National Forests. This long-standing policy is based on the principles of multiple use-sustained yield and embodied in the Forest and Rangeland Renewable Resources Planning Act and the National Forest Management Act of 1976. I recognize that the Congress has provided the Forest Service discretionary authority for limited departures from sustained yield management where necessary to meet overall multiple-use objectives. However, in its role as steward of our public lands and resources, Congress has consistently determined that "managing the timber resource on a sustained yield basis is the most advisable means of guaranteeing a continuous flow of timber and related resources to meet the needs of the American people . . . This approach also provides the best assurance that the other forest resources will not be subjected to sudden potentially adverse changes or disruptions." (Sen. Rept. 91-893, National Forest Management Act of 1976)

The Forest Service has made a highly creditable effort to implement the intent of Congress in the draft National Forest Management Act regulations and the draft Resources Planning Act program. The timing of your announcement prior to final promulgation of the regulations, and after the close of the public comment period for the RPA program is confusing and could prove troublesome. It would be unfortunate if the implementation of the NFMA regulations is delayed or the opportunity for meaningful public comment on the regulations and the RPA program is jeopardized by this directive.

Finally, I am concerned about your attempt to combat inflation with a policy which will not result in any significant reduction in housing costs, but could result in significant adverse impacts on the precious resources of our National Forests.

Sincerely yours,

DALE BUMPERS.

U.S. SENATE,
Washington, D.C., June 21, 1979.

Hon. JOHN MCGUIRE,
Chief, Forest Service, U.S. Department of Agriculture, Washington, D.C.

DEAR CHIEF MCGUIRE: Recently I wrote to President Carter expressing my concern about his decision to direct the Secretaries of Agriculture and the Interior to increase timber supplies from Federal forest lands. The announcement raises several questions which I would like to explore with you in your professional capacity as the Nation's Chief Forester prior to making a decision about scheduling a Subcommittee hearing on the issue.

I am interested in knowing what specific instructions, if any, you have received from the White House to implement this directive. Will the directive have any impact on timber supply this year? When do you estimate that departures could occur? How much additional funding would be required in this or future fiscal years to increase the timber harvest by a billion board feet? Have you received a commitment from the Office of Management and Budget for budget increases for timber sale preparation, reforestation, timber stand improvement, or road construction?

By its own terms, the directive is limited to actions which are consistent with existing law. However, I believe that any meaningful implementation of the President's instructions—that is, a significant departure from the allowable cut in order to lower timber prices and reduce inflation—is simply not possible under existing law.

I am familiar with the language of the National Forest Management Act and the draft regulations concerning departures. They do not identify "inflation fighting" as a multiple-use objective. Will the final regulations be changed to accommodate this new policy? The draft Resources Planning Act program contains five alternatives, all of which are based on the nondeclining even flow policy.

Does the President's directive mean that the Forest Service will consider a new departures alternative in the RPA program? If so, does the Forest Service intend to allow for public review and comment on this new alternative?

I hope that you will be able to provide me with further information on these questions in a timely manner.

Sincerely,

DALE BUMPERS.●

THE NEED FOR OLDER AMERICANS ACT REGULATIONS

● Mr. HEINZ. Mr. President, Tuesday marked the 8-month anniversary of the signing of the Older Americans Act Amendments of 1978, amendments which call for substantial changes in the administration and focus of federally assisted aging programs. Yet with less than 4 months to go before the begin-

ning of fiscal year 1980, no regulations have been issued to implement these new initiatives.

Certainly when the Congress acted last year to strengthen and improve the delivery of services under the Older Americans Act, we did not envision such a long delay in putting those changes in place. Neither did we expect that an entire fiscal year would pass before our efforts to tighten program administration, with an increased emphasis on services, would be realized.

Because of this delay, State and area agencies on aging are being pushed to the limit to develop their aging plans for next year within extremely tight timeframes. In some instances, they are doing so under the "guidance" of seemingly conflicting signals from the Administration on Aging at HEW. As an example, my own Commonwealth of Pennsylvania is encountering difficulty in implementing the new State planning requirements. The old 1-year planning cycle is being replaced by a new 3-year State plan that must be "based upon area plans developed by Area Agencies on Aging." This is a complex and potentially far-reaching change that Pennsylvania and the other States are approaching in a total vacuum.

Unfortunately, the regulations have yet to appear, even in proposed form. With State aging plans due by August 15 and a new fiscal year beginning October 1, issuance of regulations to implement Public Law 95-248 is critical. Allowing for the appropriate period of public review and comment, it seems unlikely that any final regulations could be in place in time to solve the problems or answer the questions which State and area agencies may have going into fiscal year 1980.

Without Federal guidance, area and State aging agencies risk making choices which may later prove to be wrong when final regulations are in place. This confusion and uncertainty is imposing unnecessary burdens on these agencies. Ultimately, this burden will fall on those older Americans who rely on the programs and services which are provided under the act.

Mr. President, the necessity for the prompt issuance of the Older Americans Act regulations must be underscored. I invite my distinguished colleagues to join with me in registering with Secretary Califano, our displeasure over the prolonged delay in issuing these regulations and in urging him to expedite this important matter. ●

EXPLOSIVES TAGGANTS AIDED IN BOMBING INVESTIGATION

● Mr. RIBICOFF. Mr. President, the Governmental Affairs Committee is presently considering S. 333, the Omnibus Antiterrorism Act of 1979. The bill will, if enacted, put the United States at the forefront of world efforts to combat terrorism. It would give the Federal Government a variety of effective tools to fight the modern, sophisticated terrorist and to prevent future wanton terrorist destruction.

One of the "tools" in the bill is the section which mandates the use of "taggants" in explosive materials. Taggants are coded microparticles which are added to explosives as a means of aiding in the prior detection or criminal investigation of bombings. Identification taggants survive an explosion, are retrieved by law enforcement personnel at the scene of the crime, and are then analyzed under a microscope to reveal the brand of explosive, its date of manufacture, and movement through the distribution chain. The idea is to give law enforcement personnel a lead in the investigation of bombings, thereby deterring future criminals.

Throughout the last year, several concerns have been raised about the explosives tagging program, including the cost of the taggants, recordkeeping, safety, and value in criminal investigation. To aid in the committee's consideration of these issues, Senators JAVITS, STEVENS, and myself recently asked the Office of Technology Assessment to study the feasibility of mandating the use of taggants in nearly all explosives. We expect the OTA will conclude their independent review by early September.

But there has been an important development directly relating to one of these issues—value to criminal investigations. On Monday of this week, special agents of the Bureau of Alcohol, Tobacco, and Firearms (ATF) arrested a man for a bombing, through the use of taggants. This is a very encouraging development for the tagging program, which has been in the research phase for more than 4 years.

The case involves a May 10 bombing in Sparrows Point, Md., in which one man was killed, and another seriously injured. The next day, investigators on the scene sifted through the debris and found the coded microparticles. Just 7 days later, the ATF explosives laboratory deciphered the date-shift code contained in the taggants. The code revealed the explosive brand name was "Tovex 220," manufactured by DuPont. The investigators then traced the movement of the explosive through the distribution chain, using records required under existing law. The records of purchases led the investigators to a retailer in West Virginia, and, 5 weeks later, to the arrest of the suspect.

The taggants, by themselves, were not responsible for the arrest. But, by leading investigators to a particular geographic area and a small number of explosives purchasers, they were quickly able to piece the evidence together and make the arrest.

The success of this investigation stands in direct contrast to the terrible number of bombings, both in the United States and abroad, which remain unsolved. Bombs destroy evidence. Bombings are the single most frustrating crimes for police and detectives to solve. This is why so many criminals and terrorists resort to explosives to kill and destroy.

Ironically, the suspect in the Sparrows Point case used an explosive manufactured from an experimental batch containing the taggants. To date, only approximately 10 million pounds of explosives have been "tagged" as part of the testing process. American companies alone, however, manufacture another 200 million pounds of explosives every year. Some of the materials often are illegally obtained by would-be terrorists and criminals.

Tagging of explosives is not the whole answer to a strong, effective, comprehensive antiterrorism strategy. But, it does appear taggants can give the law enforcement community a good lead in solving and attacking bombings where before they had virtually nothing to go on.

The Federal Government has invested more than $4 million on research on explosives taggants. It is a promising new technology which could give us the means to stem back the most horrendous and feared crimes—bombings. ●

SALT II AND THE FEAR OF REJECTION

● Mr. GARN. Mr. President, the editorial writers of the Wall Street Journal have once again demonstrated their unique, keen insight into the national debate on SALT II. The Journal points out that fear of the possible consequences of a Senate rejection of SALT II is one of the most formidable issues that underlies the whole SALT debate.

Both President Carter and Soviet Chairman Brezhnev have exploited this argument by conjuring up images of a nuclear arms race, heightened superpower tensions, and even nuclear confrontation. Given the general lack of detailed knowledge about SALT II amongst the American public, these kind of scare tactics can be very effective. They cannot, therefore, be ignored or dismissed out of hand by opponents of the treaty. As the Journal notes, "The fear of rejection has to be faced squarely. It will be the great subterranean force behind the drive for ratification."

Combating fear of the unknown is a difficult task, but it can be addressed best by looking first at the historical record. We are told that a failure to ratify SALT II without any changes will allow the Soviets to expand their nuclear arsenal far beyond what would be possible under SALT II. In other words, SALT II may not be a succesful arms control treaty, but it is better than no treaty at all. Unfortunately, the historical record provided by the period since the signing of SALT I does little to support this line of reasoning. Again the Journal correctly states that "the Soviets are already turning out arms like sausages, and are already stirring trouble from Cambodia to Angola to South Yemen. Will SALT really cause them to be more reasonable, or rejecting SALT cause them to be less so?"

The United States has too often been blinded by the hopes and aspirations that SALT I inspired with its effusive rhetoric. We have pursued a policy of restraint while the Soviets have actually increased their spending on nuclear weapons. It is significant that only recently Senator JACKSON spoke of American appeasement. Senator JACKSON observed:

> In the last seven years, we and the Soviet Union have gone jointly into space. The Soviet Union has gone alone into Ethiopia.

We have sent our scientists to Moscow. The Soviets have sent their Cubans to Angola.

We have encouraged peace in the Middle East. The Soviets have encouraged war in Southeast Asia.

We tried to calm the turmoil in Iran. The Soviets sought to aggravate it.

We have encouraged human rights around the world. The Soviets have trampled human rights at home.

We have exercised restraint in the acquisition of strategic weapons. The Soviets have invested, in the last decade, over 104 billion dollars more than the United States in strategic nuclear forces alone.

The danger is real that seven years of détente are becoming a decade of appeasement.

This, then, is the record with which we are now faced. It is not a very comforting picture, and Senate ratification of SALT II will not make matters any better. In sum, the Journal wisely concludes:

If there is no treaty, the essential constraints on Soviet behavior will remain. If a bad treaty is approved, the result is not likely to be a more reasonable Soviet Union. Rather, the result will be even more bold and strident Soviet demands.

We must debate the treaty on the basis of its merits, not on the basis of fear and scare tactics. If the Senate decides that SALT II does not constitute meaningful, equitable, and verifiable arms control, then it should either substantially amend or reject the treaty.

Mr. President, I request that the Wall Street Journal editorial, "Fear of Rejection," be printed in the RECORD.

The article follows:

[From the Wall Street Journal, June 19, 1979]

FEAR OF REJECTION

The long-imminent strategic arms treaty has finally arrived, and over the next few weeks there will be plenty of time for detailed textual analysis. But listening to many of the proponents over the last few months, we have heard that the text hardly matters. Whatever the flaws the provisions are the best we can do, they argue, and rejecting the deal will only make matters worse.

At the Vienna summit, Soviet Chairman Brezhnev backed this argument with some threats of his own. If the U.S. Senate rejects or even amends the treaty, he warned of "grave and even dangerous consequences for our relations and for the situation in the world as a whole."

The fear of rejection has to be faced squarely. It will be the great subterranean force behind the drive for ratification. Its influence reaches far beyond a final up-or-down vote. In our judgment it has already profoundly influenced the negotiations. And certainly it will influence the drive for amendments. Proposals for amendment are likely to be met not with arguments on their merits but with the objection: yes, yes, but do you want to kill the treaty?

Fear of rejection is in large part simply fear of the unknown, but if you try to break it into analytical pieces you come up with two concerns. Without the treaty, the Soviets will accelerate their military build-up. And without the treaty, the Soviets will stir up more trouble around the world. But the Soviets are already turning out arms like sausages, and are already stirring trouble from Cambodia to Angola to South Yemen. Will SALT really cause them to be more reasonable, or rejecting SALT cause them to be less so?

Even more precisely, what are the real constraints on the Soviets? It's hard to find any serious constraint on their weapons program in SALT. They have conducted a huge build-up, both strategic and conventional, under SALT-I. SALT-II will require them to deactivate some 250 missile silos, but it allows them to add some 5,000 warheads. Within the treaty they can meet any military requirement they are likely to want. Why would they build more without it?

The truly serious constraint on Soviet weapons-building is the economic one. Last June the CIA issued a public assessment of Soviet military spending, showing it growing 4 percent to 5 percent a year in constant prices, consuming 11 percent to 13 percent of the Soviet GNP, and consuming one-third of the output in machine building and metalworking. A slowing Soviet economy will make it more difficult to sustain this pace, the CIA estimated, but predicted at best a marginal slowing. It added, "Conclusion of a SALT II agreement along the lines currently being discussed would not, in itself, slow the growth of Soviet defense spending significantly."

In the political field, the Soviets have stepped up emigration permits and made a few friendly gestures. But even the gestures are marred by what seems a congenital ill-nature; as when they allow a dissident to flee but drag their feet over his family. In geo-politics, they have supplied arms aid to establish new Marxist regimes in South Vietnam, Laos, Cambodia, Angola, Ethiopia, Afghanistan and South Yemen. Without SALT, without detente, would it have been nine nations instead of seven?

Regardless of treaty ratification, the Soviets will be constrained by their economic problems, by their succession uncertainties, and most of all by wariness about awakening a West still full of latent power. That is not to say, of course, that it's impossible to wring more military expenditure out of a stagnant economy. And it certainly is not to dismiss the possibility that they might react to the rejection or amendment of SALT-II with a show of belligerence somewhere in the world, exploiting sooner rather than later the opportunities implicit in a deteriorating U.S. military posture, even in crucial areas such as the Middle East. Yet unless the West does something to redress the underlying military and political deterioration, these opportunities will only grow, and ultimately and inevitably be exploited, with SALT or without it.

This is why Senator Jackson has started to talk about "appeasement." About this he was rather precise: "Diplomatic accommodation becomes appeasement when we make concessions out of fear that the Soviets will cause trouble around the world unless we yield to their desires." The precise mistake made at Munich was to yield to unreasonable demands out of fear of what would happen if those demands were rejected; we learned that appeasement leads to yet more unreasonable demands and higher risks of conflict.

So the debate on SALT comes back to whether the text released yesterday can withstand the scrutiny it will receive, whether it really provides equality or advances the Soviet buildup, whether its terms are meaningful constraints or vaguely ambiguous. If it fails in these respects it should be amended or rejected. If there is no treaty, the essential constraints on Soviet behavior will remain. If a bad treaty is approved, the result is not likely to be a more reasonable Soviet Union. Rather, the result will be even more bold and strident Soviet demands.●

PROF. LAURENCE TRIBE ON "TOO MUCH LAW, TOO LITTLE JUSTICE"

● Mr. KENNEDY. Mr. President, the continued vitality of the Nation's legal heritage is of particular concern to all of us. One of the most thoughtful analyses I have seen recently of the precarious state of America's legal system is contained in an article in the July issue of the Atlantic by Prof. Laurence Tribe of Harvard Law School.

As American society becomes increasingly complex, the legal machinery which protects and sustains the institutions of democracy, justice, and free enterprise are becoming overburdened with excessive laws and unnecessary regulation. Responding to the needs of citizens by adopting countless separate pieces of legislation, we have often succeeded in solving some problems while inadvertently creating others.

The result is a heavily encumbered legal system that dispenses, as Professor Tribe writes:

Too much law, too little justice; too many rules, too few results.

What is needed, he suggests, is a well-coordinated program to achieve the "delegalization" of America—a systematic attempt to weed out the laws and regulations and other legal procedures that create unnecessary burdens. If our society is to function properly, our legal system must operate in a more coherent manner, with due regard to the costs as well as the benefits of existing and future legislation.

The approach is not antilaw, nor is it antiregulation. Indeed, as Professor Tribe points out, it is because of regulation in critical areas like public health and safety that thousands of American lives have been saved on the highways, and that infant deaths from crib strangulation and household poisons have been halved.

Yet there is equally compelling evidence, as the early returns from our highly successful effort to deregulate the airlines demonstrates, that deregulation can bring great benefit to our free enterprise system. In recent decades, the pendulum had swung too far toward Government regulation in areas of the economy where competition could function more effectively.

The same principles apply to the courts. The glut of cases clogging judicial tribunals is a primary cause of inequity and injustice. By seeking new methods for the nonjudicial resolution of disputes, and by taking other steps such as the elimination of the diversity jurisdiction of the Federal courts, we can achieve major reductions in the current caseloads and major improvements in the functioning of the judicial system.

Many of these issues and questions have been high on the agenda of the Senate Judiciary Committee in recent years, and I believe we are making substantial progress in these areas. Our goal is to buttress the system from within; rather than burden it from without.

Mr. President, I believe that Professor Tribe's excellent and comprehensive analysis of these issues will be of interest to all of us, and I am pleased to submit it for the RECORD.

The article follows:

[From the Atlantic, July 1979]

TOO MUCH LAW, TOO LITTLE JUSTICE—AN ARGUMENT FOR DELEGALIZING AMERICA

(By Laurence H. Tribe)

Luke, 11:46—"And [Jesus] said Woe unto you lawyers also! for ye load men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers."

THE LITIGIOUS SOCIETY

Undaunted even by that judgment, lawyers have overburdened more than a few societies before and since. Gibson wrote that, after five years of legal education, law students in the Roman Empire "dispersed themselves through the provinces in search of fortune and honors; nor could they want an inexhaustible supply of business in a great empire already corrupted by a multiplicity of laws." When Gulliver traveled, he explained to one of his exotic hosts that, in England, "those who made a profession of [law] were exceedingly multiplied, being almost equal to the caterpillars in number."

Yet the United States now has three times as many lawyers per capita as England and twenty times as many as Japan. Law has never flourished in more fertile soil. In this century, the number of American lawyers has grown twice as fast as the population as a whole, and the profession is expanding more rapidly than ever. Over 126,000 students enrolled in law school in 1978—more than twice the enrollment fifteen years ago. In the same brief period, the number of lawyers has increased by more than 50 percent, from 300,000 to 460,000.

Multiplying even more quickly than lawyers are laws and lawsuits. In 1977, the legislative bodies at the federal, state, and local levels enacted approximately 150,000 new laws, and each of these new laws, on the average, required the issuance of ten new regulations. Between 1969 and 1972, the case load of the federal courts (corrected for the increase in population) rose by half. If the federal appellate case load, which accounts for only 10 percent of all federal cases, continues to grow as it has in the past decade, over one million federal appellate cases a year will flood the courts by the year 2010. And four times as many suits are filed each year in the state courts of California alone as in the entire federal system.

Clearly, something is awry. For too long we have reflexively relied on law to right every wrong. We think of the rule of law, justice under law, peace through law—as though law and the legal process were perfectly synonymous with fairness and equity. Our automatic reaction to injustice has been to declare, "There ought to be a law!" Each of us expects to get his "day in court."

This intoxication with law costs us dearly. Legal fees have soared to more than $25 billion a year. Because much of that expense is tax-deductible, the tax system in effect finances the litigious society. Still more perverse, some federal regulation discourages competition and boosts prices billions of dollars annually. Hundreds of thousands of people injured in automobile accidents suffer doubly because the fault system denies compensation to many and delays it to all. And each year, thousands are incarcerated at a cost of hundreds of millions of dollars for crimes that victimize no one but themselves.

While accumulating towering costs, the legal system casts only a shadow of justice. The federal Legal Services Corporation, handling a million cases annually, meets less than 15 percent of the official (and understated) need for legal services among the poor. At today's prices, the middle class too needs a legal aid program. And even those who can afford to seek justice must often wait years to find it.

An excess of law inescapably weakens the rule of law. Frustrated citizens naturally distrust an expensive, inefficient, frequently incomprehensible nonsystem that often seems contrived to serve lawyers rather than law. The scale of despair is alarming.

The sources of our predicament are not hard to discern. Our economic interactions are numerous and complex, and market mechanisms alone set few restraints on such social crimes as pollution, industrial safety hazards, and consumer fraud. At the same time, we have guaranteed individual rights and freedoms that require painstaking protection. Most fundamental, our native individualism has worn our social fabric thin, leaving virtually no enveloping system of family, community, or custom to guide or constrain each of us—as less mobile, more traditional societies could provide. Reversing cause and effect, the atomization of society has triggered an explosion of law.

Too much law, too little justice; too many rules, too few results—that is our problem. Obviously, the answer is not to abandon law or renounce all rules, leaving the powerless unprotected and inviting social chaos. The answer is to deregulate and simplify selectively, attacking only those laws and legal processes that aggravate injustice. The idea is hardly startling, and efforts to implement it are already under way in many precincts. The challenge is to find the links among these seemingly unrelated efforts, and to forge them into a unified program to delegalize America.

SELECTIVE DEREGULATION

Deregulation can restore competition to areas where the regulatory agencies have served as the agents of those they purport to regulate. Regulation in such areas was originally justified by the need to protect infant or otherwise vulnerable industries from "destructive" competition. The government has set floors on the prices certain industries may charge for their products or services, has restricted entry by newcomers into those and other industries, and has at times guaranteed minimum levels of profitability. Whether or not the "infant industry" justification should ever have been accepted, it is clear that consumers have had to bear the costs of such protectionism—no longer with even arguable justification.

And those costs have been substantial. A 1977 General Accounting Office study estimated the cost to consumers of regulating air transport at over $2 billion a year. Since then, thanks to the work of Senator Kennedy and the Carter Administration, the Civil Aeronautics Board has been stripped of much of its authority over air freight and passenger fares—in favor of private market forces. Now fares are falling (and profits are rising) because more Americans can afford to fly. In 1978, the CAB admits, passengers saved $2.5 billion as a result.

Similar deregulation in the trucking industry could save consumers as much as 10 percent of the $110 billion spent annually on truck transportation. Government interference with market forces in other industries also exacts a high price from consumers. The annual cost of Interstate Commerce Commission regulations resulting in excess rail capacity is at least $3.5 billion: The Federal Maritime Commission's regulation of ocean shipping may inflate rates by 45 percent. Federal milk marketing regulations cost $100 million annually and generate a sharp income transfer upward. And regulation pads the price of cable television by one to two billion dollars a year.

By gradually deregulating specific activities, we may begin to recapture such social costs as these. The airlines were not the first to realize the benefits of a deregulated market. When the Securities Act Amendments of 1975 ended the system of fixed brokerage commission rates on stock transactions, institutional brokerage rates fell more than 45 percent and individual rates more than 15 percent—with total savings of $700 million by the fall of 1976.

For all the talk of deregulation as a boon to free enterprise, however, the fiercest opposition to deregulation that will promote competition comes from industry itself. Trucking lobbyists have fought to keep Senator Kennedy's trucking deregulation bill out of his Senate Judiciary Committee and to consign it to the legislative graveyard of the Commerce Committee instead. Nor is such opposition to pro-competitive deregulation atypical, for many businessmen who decry government intervention in the marketplace consider such deregulation inimical to their own interests. Selective deregulation must therefore distinguish between regulations that insulate corporations from competition with one another and regulations designed to protect consumers, workers, and the environment from industrial depredation.

Deregulation is thus hardly a categorical imperative. The degrees to which the various regulatory agencies serve the public interest vary widely. Many agencies passed through the crucible of an age of reform and today serve worthy goals—environmental protection, occupational safety and health, consumer and motorist safety. Other agencies, established as guardians of fledgling or infirm industries such as trucking and shipping, continue to interfere with market forces long after the supposed need for such interference has ceased. Separating those activities that ought to remain regulated from those that should be deregulated is clearly a manageable task.

Of course, even the best of the protective agencies have committed some egregious errors—to the glee of their enemies and the discomfiture of their friends. But such blunders have been wildly exaggerated. Infant deaths from crib strangulation and household poisons have been cut in half by product standards requiring closely spaced crib slats and childproof containers for dangerous substances. An estimated 200,000 Americans would not be alive today but for the federal automobile and highway safety standards enacted since 1966. Carbon monoxide levels in eight representative cities declined 46 percent between 1972 and 1976—a decline which may be linked to the recent reduction in heart disease. And worker exposure to harmful doses of coal dust, asbestos, lead, and other toxic substances, has been substantially cut.

Notwithstanding the common wisdom that the public opposes all government regulation, California voters approved $375 million for pollution controls on the very day they approved Proposition 13—and by nearly the same margin. Opinion Research Corporation surveys show public support for regulations to protect worker health and safety by a margin of four to one, consumer safety by a margin of three to one, and environmental quality by two to one. Thus the public's praise of deregulated air fares, for example, may not demonstrate broad public antipathy toward regulation in all sectors.

Dire predictions that protective regulation will invariably cost more than society can afford are themselves highly inflated. In the early 1970s, chemical manufacturers warned that a federal standard for worker exposure to vinyl chloride (a potent carcinogen) would cost $65 to $95 billion and destroy two million jobs. "The standard is simply beyond the compliance capacity of the industry," their trade association baldly asserted. As consumer advocate Mark Green has noted, the standard was nevertheless imposed—at a cost one-twentieth of the industry's frenzied overestimate, and with no loss of jobs.

For many years, protective agencies had to bluff their way through such prophesies of fiscal ruin, hoping that the alarms of regulated industries would prove unwarranted. In those days, it seemed farfetched to defend protective regulations in "hard" terms of dollar benefits, for who could say whether a beautiful sunset was worth the cost? No longer are the protective agencies on the defensive, however. A brand-new study by scientists working under a grant from the Environmental Protection Agency concludes that protective regulation may not only be less costly than its critics have maintained, but may even be *profitable*. These scientists reported that, as of 1977, the federal government was reaping $8 billion in benefits from a pollution-control program that cost only $6.7 billion. Under this program, particulate pollution from certain stationary sources (that is to say, smog and soot from power plants and factories) had been cut 12 percent since 1970. The study estimated that, by reducing the amount of such pollution by 60 percent, the government could increase labor productivity by $36 billion and realize an additional $4 billion gain from reduced mortality. In the Los Angeles basin alone, the study predicted, real estate values would jump $950 million a year—$500 per household—if smog were cut by only 30 percent.

Figures such as these clearly demonstrate the benefits of protective regulation in terms that would persuade the most severe cost accountant—which is not to say that the intangible benefits of protective regulation should be ignored. Both "hard" and "soft" values demonstrably served by the protective agencies offer good reason not to let our frustration with excessive regulation lead us into mindless deregulation.

SIMPLIFICATION

Just as it would be a mistake to equate the deregulation of consumer prices with the dismantling of consumer protection, so it would be a mistake to equate acceptance of regulation in a particular area with complacence about that regulation as it is currently structured and administered. Often, where we cannot or should not deregulate, we should still delegalize. For example, we can replace complex, ineffectual, uniform standards for water and air pollution with simpler effluent fees—that is, require manufacturers to pay as they pollute, rather than prohibit pollution or set pollution limits—thus making pollution subject to self-regulation by manufacturers, and thereby reducing government's role without sacrificing regulatory goals. Such an approach might regulate more effectively—but with fewer rules, fewer lawsuits, and, in effect, less law. Charles Schultze, chairman of the Council of Economic Advisers, has endorsed this technique more broadly, arguing that, in many cases, fees or incentives would be preferable to the "command control" system of direct regulation. Under this approach, the government can influence private behavior by using, not discarding, market mechanisms.

The difference between direct and indirect regulation of private behavior is illustrated by the case of worker safety. Federal law directs the Occupational Safety and Health Administration to set safety and health standards for the workplace, inspect firms, and assess fines for violations. Enforcement is necessarily ineffective under such a direct approach, for there are 5 million workplaces in the United States and OSHA cannot possibly inspect more than a tiny fraction of them each year—or ever. With detection unlikely and the threat of penalty therefore remote, many employers have disregarded OSHA workplace standards. Consequently, 14,000 workers still die and two million others are injured each year in accidents on the job.

At least one alternative to the direct approach could radically improve the situation. Taxing employers for on-the-job injuries to their workers would provide an effective incentive to guard against workplace accidents in the most cost-effective way. This and other self-executing enforcement devices would better serve the purposes now entrusted to an intrinsically inadequate inspection system. Workers themselves would enforce OSHA's standards—by filing accident reports. OSHA inspectors could then concentrate on workplace conditions that are likely to cause injuries that may not manifest themselves for years—injuries that workers may not even associate with their work sites.

DECOMPLICATING ANTITRUST

Selective deregulation can clear much of the legal pollution that suppresses fair competition and keeps prices artificially high. But, even where deregulation is needed, rote dismantling of big government could leave consumers at the mercy of corporations big enough to dominate whole industries. No invisible hand will operate where concentrated business has a visible grip on entire sectors of the economy. The policy of selective deregulation demands a freer market, not a market in which government control has been replaced with control by corporate power.

Yet concentrated business maintains its grip on various sectors of the economy largely because antitrust law has itself become a study in overlegalization. To bring an antitrust action against any large corporation amounts to a declaration of judicial war. Armies of lawyers must be enlisted to wage one—Exxon, for example, has on retainer more lawyers than the entire U.S. Department of Justice. Some clashes last for years. For private antitrust cases reaching trial, the median time between filing and disposition, for cases decided in 1977, was 44 months. A charge brought under § 2 of the Sherman Act will consume, on the average, eight years before a final judgment is rendered.

And many cases simply never end—they just fade in and out. In 1932, the Justice Department had antitrust suits pending against AT&T and IBM, and had just signed consent decrees with General Electric and Westinghouse. In 1952, the scene was the same; indeed, little had changed by 1977 (see "Corporate Star Wars," May 1979 *Atlantic*). In such cases as these, legal wizards can mock the law with mountains of motions and by burying their opponents in blizzards of paper. In one IBM suit, the plaintiff produced almost 26 million pages of documents. The defendants produced 4 million pages and 60 million supporting documents.

Surely a celestial visitor would think us mad if informed that we endeavor to promote economic efficiency through this process. He would not be surprised to hear that the attempt has utterly failed. In 1973, the 100 largest firms controlled nearly the same share of the nation's assets as did the 200 largest firms in 1948. This concentration of economic power, according to the best available estimates, costs consumers between $150 and $180 billion a year in price overcharges, or about $2000 per family. In the face of these inflexible overcharges, attempts to restrain inflation through budget cuts and tight credit fail while aggravating unemployment and risking recession. Secure from competition, concentrated industries also tend to resist change. The National Science Foundation has concluded that every dollar spent for research and development by small firms is twenty-four times more productive than the same dollar spent by big firms.

The problem lies not in the antitrust idea but in its implementation. Strict judicial management, for example, could reduce antitrust delays. Judicial districts with stringent time controls resolve cases as much as 50 percent faster than districts with more relaxed schedules. Reducing the number of relevant antitrust issues would also limit litigation. Lawmakers have spent much of the period since the Sherman Act was passed nearly a century ago tailoring legal rules to ever finer factual nuances. The result has been not swifter or surer justice, but more and bigger lawsuits. Rougher—but readier—rules of thumb would better serve both litigants and the public interest.

For example, an action under § 2 of the Sherman Act now requires proof of two elements: monopoly power and culpable conduct with intent to acquire or maintain that power. Generally, one third to one half of antitrust trial time is spent—or wasted—on the issue of culpable conduct. Dispening with that over-burden of proof, and instead requiring only a showing of persistent monopoly power, would remove the greatest statutory cause of protracted antitrust lawsuits. A defendant corporation would still be entitled to persuade a court that its monopoly power was based on a lawful use of patents, or that divestiture would destroy substantial economies of scale. (Such economies result when the fixed cost of producing or distributing a product or service, or the cost of producing or distributing different items together rather than separately, makes it wasteful to operate at low volume or without combining separate operations.) Allowing an alleged monopolist to point to economies of scale in self-defense in the few cases where that justification is acceptable makes far more sense than focusing the government to prove illicit acts or motives in the many cases where monopoly power may claim no such justification.

Congress could also limit the scale of these cases by formulating a federal antitrust code to clarify questions that have chronically troubled the courts since 1890. Finally, Congress should consider the direct reorganization of certain sectors of the economy. The problems of concentration and monopoly in the oil, computer, automobile, and other basic industries might be addressed more fruitfully by Congress than by the courts.

DEJUDICIALIZATION

These reforms do not touch the plight of the ordinary citizen seeking justice in court. Over fifty years ago, Judge Learned Hand scolded the bar of New York City: "As a litigant, I should dread a lawsuit beyond almost anything short of sickness and death." Today, legal expenses alone could make Judge Hand sick; and if court backlogs grow at their present rate, our children may not be able to bring a lawsuit to a conclusion within their lifetime. Legal claims might then be willed on, generation to generation, like hillbilly feuds; and the burdens of pressing them would be contracted like a hereditary disease. Resort to law would be the nightmare described by Dickens in *Bleak House*—a dismal rite that "so exhausts finances, patience, courage, hope, so overthrows the brain and breaks the heart, that there is not an honorable [lawyer] who would not give—who does not often give—the warning, 'Suffer any wrong that can be done you rather than come here!'"

The time and expense of righting wrongs have themselves become glaring inequities. The law obstructs justice when a five-year wait for a federal courtroom is common. But a number of tested alternatives can ease the plight of the individual litigant. Many disputes can be avoided althogether, and others can be resolved without recourse to a courtroom.

One of the most dispensable judicial tasks is the determination of fault in personal injury cases. The legal expenses involved inflate insurance premiums for everyone. Injured claimants wait endlessly for compensation, while unpaid medical bills accumulate. Hundreds of cases clog court dockets and delay justice in disputes where the ad-

versary process is essential. No-fault automobile insurance—at least for bodily injuries—is the first widely adopted scheme of dejudicialization, and it has already shown its superiority to the fault system. A Department of Transportation study of the sixteen states with no-fault systems found that victims in those states receive fairer compensation faster than victims in other states. Under New York's no-fault system, the average time spent waiting for payment has been cut to three months—from an average of sixteen months under the old fault system. Three quarters of the premium dollar now goes to accident victims—50 percent more than under the fault system, which diverted huge sums from compensation to litigation. Over 99 percent of New York accident victims—40 percent more than under the fault system—are compensated for all medical expenses, and for as much as $1,000 a month of lost wages.

Following the adoption of no-fault in Massachusetts, the court dockets for the three largest districts in Middlesex County—an area extending from the Boston suburbs to the New Hampshire border—showed a drop of 93 percent in the number of negligence suits for bodily injuries in an automobile accident. Statewide, the number of motor vehicle tort suits has declined 87 percent since the passage of no-fault in 1970. Naturally, these statistics leave some attorneys very unhappy. Of Massachusetts lawyers responding to a recent survey, 17 percent reported that the adoption of no-fault had hurt their practices. These lawyers noted that over half their income prior to no-fault had been derived from motor vehicle injury cases. The American Trial Lawyers Association, the guild for lawyers who specialize in personal injury litigation, has narrowly defeated attempts to extend no-fault coverage nationally. In 1976, the Senate defeated no-fault 49 to 45, and the movement to no-fault in the states has stalled. Although the Carter Administration has endorsed no-fault, its prospects remain doubtful in the face of fierce lobbying from trial lawyers, who often carry political clout in local communities. Thus, the injured in many states will continue to be detoured through a legal jungle, scraped raw by the underbrush of needless and costly litigation that benefits only the professional litigators.

For disputes that call for adversary process, promising alternatives to current practice are already available. The Justice Department is experimenting in three cities with Neighborhood Justice Centers that resolve disputes through mediation and arbitration. Center mediators handle family arguments, minor assaults, and consumer-merchant, landlord-tenant, and employer-employee disputes. Citizens may bring complaints to the center themselves, or they may be referred by judges, the police, Legal Aid, or government agencies. One mediator or more may then hear a dispute and try to negotiate a written settlement without intervention by counsel. Compared to courts, the Neighborhood Justice Centers are models of both speedy justice and government economy. Hearings at the Kansas City center, for example, commonly take two hours. Thirteen days elapse, on the average, between first hearing and a case closing. Of all cases that have been heard, 86 percent have been successfully negotiated. And each Neighborhood Justice Center has cost approximately only $135,000 a year.

Decentralized, less formal judicial procedures can bring justice within the reach of a majority of Americans. Literally mobile courts, which would be to halls of justice what bookmobiles are to libraries, could ride circuit from neighborhood to neighborhood in big cities, and from town to town, each one staffed by a judge and trained aides. Satellite courthouses in each of several communities could hold weekly or bimonthly court sessions in the evenings, with judicial personnel making regular rounds from court to court.

Another reform that can divert cases from the usual treadmill of adjudication is arbitration. In one California county, 80 percent of arbitated cases have been concluded without formal judicial proceedings. Last year, the California legislature voted to provide mandatory arbitration statewide for all cases under $15,000. If either party challenges the award, the case goes to trial; but if the challenger comes out worse off in court, he can be ordered to pay the other side's expenses for both the litigation and the earlier arbitration.

LESS LAW, MORE JUSTICE

Delegalization has wide appeal. One sensible course would be to eliminate regulations that serve no purpose and result in pointless costs and delays, to simplify needlessly complex laws and judicial processes that now frustrate the very goals they were designed to achieve. Such reforms, of course, are more easily proposed than accomplished. Anguished cries arose from boardrooms and law firms throughout the country last January when the Attorney General received the final report of the National Commission for the Review of Antitrust Laws and Procedures, which recommended major reforms to speed and simplify antitrust cases. At every step, those who gain from regulatory schemes that hurt the public may be expected to resist reform with all of the considerable resources at their command.

Nevertheless, the future of delegalization seems promising. As chairman of the Senate Judiciary Committee, Senator Kennedy is likely to press vigorously for reform—not only in the realm of antitrust law but in other areas requiring delegalization as well. He has proposed a special court to expedite tax appeals. He would remove so-called "diversity" cases—usually involving automobile accidents in which the parties are citizens of different states—from the federal courts, where they currenlty jam the calendar. Other reforms would encourage arbitration instead of trials in more civil suits and would assign petty criminal cases to magistrates rather than judges. Localities could obtain federal assistance to establish non-judicial methods of dispute resolution. Kennedy has perceived that broader access to justice—one of his main themes—is not only compatible with a trimmer legal system but in fact cannot be achieved in the absence of a legal system that society can afford. While Senator Kennedy is toiling in the vineyard of legislative reform, the Carter Administration is developing its own proposal for "regulatory experiments" to reduce the number of regulations and replace them all with economic incentives for industries to police themselves. And the American Bar Association is reviewing no-fault malpractice insurance.

Although delegalizing America is grounded in good sense, it is a program inviting exploitation by those who would reap the benefits of its nearly universal appeal without working to achieve its goals. Worse still, those who favor a return to the unregulated days of the robber barons may try to twist a genuine program of delegalization into a scheme to dismantle the entire system of protective regulation that serves the public well—and could, if reformed, serve the public even better. But a serious commitment to delegalization need not succumb to such tawdry designs. It can mean progress without legal excess. Properly conceived and implemented, delegalization can transform the rule of law from a source of frustration into a foundation for a more just society.●

ALCOHOL AS FUEL

● Mr. BUMPERS. Mr. President, the long gas lines and skyrocketing gasoline prices have demonstrated the need for developing alternative fuels.

One of the most promising substitutes for gasoline is methanol, commonly known as wood alcohol. Methanol can be produced from urban wastes, and is less expensive to produce than ethanol, which is made from corn and other food grains. A recent article in the New York Times cited the advantages of a system that would allow motorists to have combined gasoline and methanol systems in their automobiles. A constituent of mine, Stanley Barber of Fort Smith, has demonstrated the viability of this system.

The difficulty is producing enough methanol and developing enough automobiles that are capable of running on alcohol. Another New York Times article stated that Brazil will invest $5 billion through 1985 in its national alcohol fuels program; 1.7 million alcohol-powered automobiles will be in use in Brazil by 1985. Ten fleets of government and utility automobiles, approximately 750 cars, already only burn alcohol. This type of national commitment is essential before alternative fuels will be utilized in the United States.

Mr. President, I request that the recent articles that appeared in the New York Times be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

BRAZIL TO SPEND $5 BILLION ON ALCOHOL FUELS PROJECT

BRASILIA, June 8.—Brazil will invest $5 billion through 1985 in its national alcohol fuels program, the Government announced today. Cars throughout Brazil are already using gasohol, a mixture of alcohol and gasoline, and about 1.7 million automobiles are to be designed for 100 percent alcohol combustion.

There are an estimated seven million cars in Brazil and one million new cars are produced annually. Of the projected all-alcohol cars, 1.2 million are to be produced by major automakers in the nation, such as Volkswagen, Ford and Fiat. In addition, 475,000 cars are to be converted from the country's current automobile fleet, the Government said.

Following a meeting here Wednesday of key economic ministers, the Government released a series of guidelines for its overall energy program, giving "the highest priority" to "Proalcohol," a national program for the conversion of sugar cane and other plants into fuels to substitute for gasoline and other petroleum products.

According to Camillo Pena, Minister of Industry and Commerce, Brazil's next sugar cane crop will yield about 900,000 gallons of alcohol, more than twice the 390,000 gallons produced in the 1977–78 crop year. Mr. Pena said that the Proalcohol program hoped to raise this figure to about 2.7 million gallons by 1985.

TWENTY PERCENT ALCOHOL MIX PLANNED

Mr. Pena said that alcohol was being mixed with gasoline at pumps throughout Brazil in varying levels, with a national gasohol average of 15 percent alcohol to 85 percent gasoline. He said that, by 1985, the country hoped to use gasohol with a 20 percent alcohol mix for cars not equipped to burn the 100 percent alcohol fuel.

Similar mixtures have been tried in the United States with 10 percent to 30 percent alcohol used. However, there has been no all-alcohol fuel used other than in test vehicles.

The Government's announcement confirmed statements made here Tuesday by Vice President Aureliano Chaves that Pro-alcohol would be given greater priority than Brazil's nuclear program, which calls for construction of eight 1,300-megawatt pressurized water reactors.

Another problem in using alcohol, manufacturers agree, is that it has only two-thirds the energy of gasoline, gallon for gallon. In other words, there are fewer British Thermal Units in a tank of ethanol—meaning that cars will require larger fuel tanks if they are to have the same range.

Mr. Harner said, however, that Ford was "tuned in" with the Government of Brazil on the switch to alcohol. "They are more dependent on imported oil than we are," he said. "So, whatever it takes we're going to comply."

The use of alcohol in cars is not new. In this country, the Federal Government studied the possibility as early as 1907. And 10 years later, Alexander Graham Bell called ethanol a "beautifully clean and efficient motor fuel" and urged that it replace petroleum as a renewable fuel of the future.

Mercedes-Benz, whose Brazilian division produces only commercial vehicles, has already demonstrated a diesel bus that runs on a mixture of oil and ethyl alcohol.

GM CARS TO BE INVOLVED

And the General Motors Corporation, which is second to Volkswagen as a producer of vehicles in Brazil, ran its first studies on alcohol in 1931.

"We know our cars down there are going to be involved in this," a spokesman said yesterday. "In 1978, we sold 188,000 vehicles there, so a lot of them will probably be switched to alcohol, but we don't know how many."

The company's policy, outlined in reports over the last several years, is that wood alcohol—known as methyl alcohol or methanol—has an advantage over ethanol, since it can be made from garbage, wood chips and almost any other waste, rather than from food crops.

Using corn as a source to substitute ethanol for gasoline, for example, General Motors estimates that 1.45 billion acres would be needed—assuming the water was available. That represents 64 percent of the total land area in the United States and three times the amount of crop land in use.

BRAZIL IS HIGH ON ALCOHOL FUEL

(By Warren Hoge)

SAO JOSE DOS CAMPOS, BRAZIL, June 11.—Even in Brazil, home of some of the world's most exotic ways of worship, one had to wonder why a grown man was crouching behind the tailpipe of an idling car, inhaling deeply and smiling the smile of the rapturously committed.

"Sweet, isn't it?" he asked, ladling a handful of warm air toward a visitor.

The man, Urbano Ernesto Stumpf, is the head engineer of the Brazilian Government's Testing Center for Alcohol-Powered Engines here on the grounds of the Aerospace Center, and the ritual is one he performs regularly to show the uninitiated how relatively pollution-free the exhaust is.

The car he was examining, a Brazilian-made Dodge Polara, had recently returned to the center here, an hour outside of São Paulo, after a 20,000-mile binge through the Amazon as a complete alcoholic.

Mr. Stumpf is not alone in beaming over Brazil's decision to free its 6.5 million vehicles from gasoline and run them on 100 percent alcohol. The undertaking has captured the national imagination the way the construction of the capital of Brasilia did 20 years ago.

"This program has conquered society," said José Goldemberg, head of the Institute of Physics at the University of São Paulo.

"The momentum is irreversible," commented Waldyr A. Giannetti, president of the Brazilian Industrial Association.

"This is a guess, and I'm no futurologist, but in as little as eight years, Brazil could have all its cars running on alcohol," said José Rossi Jr., president of Zanini S.A., manufacturer of heavy equipment for sugar factories and distilleries.

The Government has already spent $2.5 billion on the effort and is budgeting twice that amount for the next five years with an objective of having 1.7 million alcohol-powered cars rolling by 1985; 1.2 million of them are to be cars newly built with alcohol-fueled motors; the rest are to be gasoline-powered motors adapted for alcohol.

ALCOHOL PUMPS IN PLACE

Ten fleets of Government and utility vehicles throughout the country—some 750 autos—already burn only alcohol. Alcohol pumps have been installed in five major cities at selected service stations flying pennants proclaming,"We are entering the era of alcohol," and mechanics are being certified to modify gasoline engines for alcohol. Brazil's auto industry, the world's ninth largest with subsidiaries of Volkswagen, Fiat and leading American car makers, among others, has committed itself to producing alcohol engines by next year.

Alcohol has been added to gasoline here since 1975, with the current mixture amounting to about 15 percent anhydrous alcohol. (In the pure alcohol system, hydrated alcohol is used.) The intention is to keep increasing the alcohol until it reaches 20 percent, said to be the highest level an unadapted gasoline engine will tolerate efficiently.

The technology to burn alcohol in vehicles existed before the turn of the century, but few people were enthusiastic about it because of the costs—it still costs twice as much to distill a gallon of alcohol as it does to refine a gallon of gasoline—but dependence on imported oil at current and projected world prices has taken the wince out of the taste for alcohol.

A COSTLY PROGRAM

It will be an expensive habit. To replace gasoline in all cars here, Brazil would have to quintuple its production of one billion gallons of alcohol a year. Current projections are that it will be able to make only 2.8 billion gallons by 1985.

If sugar cane is to be the source of the alcohol—and though the nation is experimenting with other plants, sugar cane is the most available and sugar cane technology the most advanced—Brazil will have to put some 2 percent of its vast arable land under sugar cultivation to meet the goals.

Distilleries do not come cheaply. According to Eduardo Zabrockis, a Zanini executive, a 33,000-gallon-a-day facility would cost $10 million and would require 120 skilled workers, while one making 270,000 gallons a day is priced at $55 million. Reaching the five-billion-gallon objective consequently presents Brazil with awesome management and training problems.

Alcohol now sells at the pump for $1.04 a gallon compared with $1.52 for gasoline and 74 cents for diesel fuel, but these prices reflect the Government's taxing schedules rather than the real cost of the fuels.

Converting a gasoline engine to use alcohol is relatively simple and costs $200 to $400. There are three major adjustments: increasing the compression ratio by scaling down the combustion chamber, changing the timing of the ignition and enriching the blend of fuel to air in the carburetor. In a gasoline engine the mix is 14 parts air to one part gas; in the alcohol engine, the mix is nine to one.

New alcohol engines do not cost any more to build, although tooling-up costs will probably result in higher prices for them at the outset.

CLEAN-BURNING FUEL

Mr. Stumpf persuaded then-President Ernesto Geisel to drive an alcohol-burning car four years ago, and the practice has been maintained by the new President, João Baptista de Figueiredo, who is awaiting delivery of his alcohol-powered Ford Galaxie Landau.

Brazilian technicians concede that alcohol provides only about 80 percent of the power of gasoline, but they argue that this is compensated for by its clean-burning characteristics. A major attribute they cite is alcohol's no knock properties because of an "octane" rating of nearly 140 compared with a gasoline rating of 73 in Brazil and 90 in the United States.

Brazil is especially suited to be the first nation to ponder large-scale conversion to alcohol. It has in abundance the three necessary ingredients—land, sun and water—and it lacks substantial fossil fuels.

Alcohol is plentiful—it can even be distilled from grass—and technicians at the Aerospace Center, working beneath a slogan that says "Alcohol is Solar Energy in Liquid Form," are examining everything under the sun that might yield it.

This includes potatoes, yams, a mealy tuber called manioc that grows in very poor soil and the thick shells from the nuts of the Babacu palm, which covers large parts of the impoverished North and Northeast of Brazil.

The Government looks to the day when Brazil will produce enough alcohol to service its own petrochemical and pharmaceutical industries and to bring in export revenue. But for the moment, energy remains its priority use among the planners who hope that along with the huge investments the country has made in hydroelectric and nuclear power, the country can free itself from imported oil, which this year alone will cost Brazil $7.8 billion.

ALCOHOL: THE FUEL OF THE FUTURE?

(By Marshall Schuon)

With gas lines in California and spot shortages and everhigher prices at pumps across the country, the gasoline shortage is generating some energy of its own—primarily in new research on gasohol, alcohol and other alternative fuels for the nation's 100 million automobiles.

"The thing is, the urgency wasn't there before," said a Chrysler Corporation engineer who asked anonymity. "Now everybody's paying attention, and reams of reports are coming in from all over the world."

What those reports show is that gasohol and straight alcohol are feasible substitutes for gasoline with a great many technical advantages—as well as a great many drawbacks that are not only technical but economic.

Gasohol, which blends 10 percent ethyl alcohol with 90 percent unleaded gasoline, went on sale last week on Long Island. It offers some advantages over gasoline, the experts agree, particularly as a first step in extending the energy supply.

The alcohol additive, called ethanol, also raises the gasoline's octane rating—eliminating engine knock—and lowers some types of exhaust emissions. Other performance claims, though, can be true or untrue, depending on the vehicle using the gasohol.

Since oxygen accounts for about half the weight of a molecule of alcohol, adding it to gasoline essentially reduces the amount of fuel, increases the gasoline's oxygen and thus makes the engine run leaner. On an older car, that can mean better performance and mileage. Auto mobiles built since 1974, however, are designed for extremely lean mix-

tures to reduce exhaust emissions. Therefore, they already use all the oxygen they can. And, since alcohol has less energy than gasoline on a gallon-for-gallon basis, gasohol will offer about the same, or slightly poorer, mileage in those cars.

METHANOL SOURCES AVAILABLE

General Motors, which with most other auto manufacturers sees a strong future for alcohol, has recommended use of pure methanol, rather than ethanol or gasohol, as the fuel of the future.

That is because methanol, commonly known as wood alcohol, can be produced from readily available sources, including garbage and agricultural waste such as manure and cornstalks. Ethanol, on the other hand, is made from corn, sugar beets and other food grains, and it is three times as expensive to produce.

To make methanol, the raw materials must be converted under high temperature to a gas composed of carbon monoxide and hydrogen. After that, it is relatively simple to pass the gas over a catalyst and form methyl alcohol.

While a gallon of ethanol has about two-thirds the energy content of the same amount of gas, methanol has only half. That means that cars designed to run on pure alcohol would require larger tanks if they were to have the same range as current models.

Both Mercedes-Benz and Volkswagen have experimented with alcohol, not only in Europe but also in Brazil, where a surplus of sugar crops has allowed the Government to market the fuel. Mercedes, in fact, has demonstrated commercial vehicles with diesel engines that run on ethanol.

Volkswagen converted a fleet of cars to methanol and found that they had 12 percent more power because methanol's high vaporization point cooled the mixture, creating greater density than gasoline would have as it entered the engine.

Mileage was both better and worse, the company said, in that the cars used more fuel—but consumed far less actual energy.

ALCOHOL HAS HIGH OCTANE RATING

One of the major advantages of alcohol is its high octane rating, which allows engines to gain power through higher compression without anti-knock fuel additives, such as lead, that increase exhaust emissions. For this reason, in fact, Atlantic Richfield Company has been quietly making its gasoline with 7 percent alcohol content for a decade.

In recent years, the compression ratio in cars—the degree to which fuel is squeezed in the cylinder—has been lowered to about 8 to 1, mainly so they can use unleaded gasoline without pinging. With straight methanol, the compression ratio can be boosted to 12 to 1 and even higher, yielding more power.

In Sacramento, Charles Stone, director of California's synthetic fuels program, has been driving a Ford Pinto converted for pure methanol, and the engine's compression ratio has been raised to 14 to 1 without problems.

"Not only that," said Mr. Stone, who has become one of alcohol's chief boosters, "our tests shows that this car runs about 10 times cleaner than it would on gas."

POLLUTION PICTURE IS MIXED

Alcohol does burn more cleanly, but as with its other facets, the pollution characteristics are mixed. In a General Motors gasohol study, for instance, hydrocarbon emissions from the methanol blend averaged a 1 percent increase compared to gasoline. Carbon monoxide emissions decreased an average of 38 percent and nitrogen oxide emissions were scattered from a 20 percent increase in some cars to a 36 percent decrease in others.

Volkswagen found that emission of aldehydes increased with straight methanol but that the problem could be reduced by raising the compression ratio and by adding a slight amount of water to the fuel. Aldehydes, the organic substances that give the exhaust of an alcohol-powered car its somewhat unpleasant odor, are not Federally regulated.

With the generally lower carbon monoxide and nitrogen oxide readings, alcohol's supporters believe that widespread use of the fuel could eliminate hundreds of dollars worth of pollution equipment on a car. However, buyers probably would not save any money, since use of alcohol would present problems requiring other modifications.

First, larger fuel tanks would be needed if the range of the vehicle were to be maintained. And, since alcohol tends to be corrosive, substitute materials would have to be used in the fuel system.

FUEL WOULD NEED PREHEATING

Methanol, in particular, attacks filters, plastic seals and other parts, especially the lead/tin plating used inside gas tanks. Gasoline is an insulator, but methanol conducts current and sets up an electrolytic attack on standard gas tank coatings. The galvanic action reportedly can strip a tank in two days.

Because it takes more heat to vaporize methanol than gasoline, fuel entering the engine also would have to be preheated. Volkswagen has adapted test cars to run on straight methanol by heating the intake manifold with exhaust gases.

In cold weather, a small amount of gasoline or some other easily vaporized fuel also is necessary to get the engines started. And in summer, alcohol poses other problems, particularly vapor lock, which occurs when fuel begins to boil in the lines, creating bubbles that block the flow to the carburetor.

DUAL FUEL SYSTEM ENVISIONED

One new method, developed at Texas A. & M., solves a number of the problems by combining separate gasoline and methanol systems.

Hard starting because of poor vaporization is taken care of by using gasoline until the engine warms up, at which point an automatic switchover takes place. The system also allows a driver to use nothing but gas when methanol is not available.

Vapor lock and the need for manifold heating are eliminated by a separate tank, heated by exhaust, that vaporizes the methanol before it gets to the carburetor.

That solution and others are viable, according to engineers for the auto companies. In fact, they add, the mechanical problems may be the easy part. What's tougher is finding enough alcohol to quench America's annual thirst for 110 billion gallons of gasoline.●

COAL POWER

● Mr. HUDDLESTON. Mr. President, while the handwringing continues over our deteriorating energy situation, we continue to ignore the one fuel that we have in sufficient abundance to help see us through the crisis.

The Washington Post in their lead editorial this morning stated it as plainly and as succinctly as it can be stated:

The fastest and most direct way to expand American energy supplies is to begin, forcefully, to shift oil-burning powerplants to coal.

Mr. President, that is a point I have been arguing the entire time I have been in the Senate, and a point I will continue to argue until this Nation's vast coal reserves are put to use.

There is no question that there are obstacles to the use of coal. Those obstacles make it absolutely essential that our Government have a specific commitment to coal and a specific plan for achieving it. We have to set a target for coal use; identify what we will have to do to achieve it; and, then do it. The Senate has approved a resolution which I sponsored calling on the administration to devise just such a target and plan. We have all the information we need. We have done all the studies. It is time now—past time, really—to act.

A good place to start would be for the Government to become part of the solution instead of part of the problem. The Post editorial singles out as one of the obstacles to coal use uncertainty over environmental rules. This was borne out time and time again in recent hearings which I chaired on the effect of Government regulations on the production and use of coal. What more powerful disincentive to coal use could there be than uncertainty over the level of our commitment to coal and uncertainty over what it will cost to use it.

I introduced legislation on Monday to try to inject some certainty by providing a period of assurance for utilities and industries that are in compliance with existing air pollution requirements that they will not be subjected to more stringent standards unless there is an imminent threat to public health. And, I plan to introduce legislation next week to permit case by case temporary suspensions of State air pollution requirements which are more stringent than necessary to meet national ambient air quality standard, if such suspensions are necessary to cope with an energy emergency.

Finally, the Post goes on to say that though it will be expensive for utilities to move toward greater coal use, it will be in their own interest, as well as the Nation's. They suggest tax cuts and other subsidies in order to get a fast response.

It is hard to assign a monetary value to certainty of supply. It is hard to calculate how much more we can afford to spend here in our own country than we can afford to send overseas to buy imported oil. But, there is no doubt in my mind that the benefits of self-reliance and assurance of supply would far outweigh the price of conversion to coal.

I ask that the full text of the Washington Post editorial "The Fast Way to More Fuel" be printed in the RECORD.

I ask also that two earlier editorials—"Oil From Coal—in a Hurry" from the Washington Post of June 15, and "A Synthetic Solution?" from the Washington Star be printed in the RECORD. Both deal with the urgent need for a crash program to develop synthetic fuels. We have a head start on the technologies. All we lack is the commitment.

The editorials follow:

[From the Washington Post, June 21, 1979]

THE FAST WAY TO MORE FUEL

The fastest and most direct way to expand American energy supplies is to begin, forcefully, to shift oil-burning power plants to coal. That strategy is second only to conservation in the speed with which it could make a real difference in a tightening fuel shortage. Making synthetic fuels out of coal

is very much worth doing, for the long term, but synthetics can't contribute much before the late 1980s. In contrast, burning more coal to generate power could free perhaps 1 million barrels of oil a day—the equivalent of the present national oil shortage—within five years. The coal strategy is an obvious choice, but it has been proceeding very slowly. Why?

One reason is uncertainty over environmental rules. Congress intended to rewrite the Clean Air Act in 1977, but got bogged down in a long quarrel that lasted until late 1978. Then the new law left the key decision on power plant standards to the Environmental Protection Agency, and the final ruling appeared only this month. Perhaps these delays were inevitable. Coal smoke is toxic, and requires careful regulation. But during that long debate, the utilities had no way of knowing what it would cost to use coal. That was a powerful incentive to avoid any great commitment to it.

But economic uncertainty has also slowed progress. To the great surprise of the utilities, the country's consumption of electric power is no longer rising as fast as it used to. That's conservation of the most useful and beneficial kind. But, with demand far below their expectations and a recession probably coming, the utilities have grown more cautious than ever about embracing large construction programs.

At this point, the government has to end the uncertainty. It has to tell the utilities that it will be in their own interest, as well as the nation's, for them to move rapidly and steadily toward greater use of coal. Tax cuts and other subsidies on a substantial scale would be justified to get a fast response. Coal generates about 44 percent of the country's electricity, compared with 17 percent for oil and 14 percent for natural gas. (The rest is nuclear and hydroelectric power.)

Public policy now needs to push hard to replace that oil and gas with coal, by converting those oil and gas-fired plants that are capable of it, and by buying the rest into early retirement. It will take a lot of money, both public and private. But when you consider the costs of severe and repeated oil shortages and disruptions, the price of coal conversion begins to seem entirely reasonable.

[From the Washington Post, June 15, 1979]

OIL FROM COAL—IN A HURRY

With the latest surge in oil prices, the case for a large-scale effort to make oil and gas out of coal has become overwhelming. Nobody knows exactly what it would cost to make gasoline from coal. But the country needs to find out—and quickly. It's obvious that the only real limit on the price of oil is the cost of substitute fuels. The only plausible substitute is synthetic oil manufactured from coal.

The country's most readily available defenses against steadily rising oil prices are conservation, of course, and solar energy. But it is evident that they cannot reduce the need for oil fast enough to avoid the need for synthetics. That will be true even if all of the oil-exporting nations continue their present production. But the Iranian revolution is a warning not to count on stability, peace and harmony in the Persian Gulf.

The technology is already available to make oil and gas from coal. One argument against proceeding with it is the cost. The plants would be extremely expensive. The Carter administration is reluctant to speed up federal spending at a time when it's trying to balance the budget. Private industry thinks that the risks are too great. But past experience with joint public-private enterprises suggests many possible solutions. The most promising would require private investment, with federal price guarantees.

As for the environmental dangers, they are real but no greater than those incurred by any large mining or industrial operation. These plants would contiribute to public health protection by removing from coal the pollutants that make its smoke toxic.

The Carter administration has several coal-oil and coal-gas projects in one stage or another of development. It is now imperative to force the pace, make decisions and greatly expand the plans for construction. Even with the greatest pressure for speed, it takes four or five years to move a plant from blueprint into operation.

The risks in the present slow progress are not entirely economic. The indecision at the White House on energy policy, and the incessant wrangling with Congress, are fueling the presidential campaigns of candidates who promise the opposite extreme—the most dramatic of whom is John B. Connally. It is easy to imagine the possibility next winter of a severe recession caused by high oil prices, plus continuing lines at the filling stations, plus more quarreling and uncertainty over energy policy, all adding up to victories for Mr. Connally in one party's primaries and defeats for Mr. Carter in the other's.

What are Mr. Carter and his administration to do? They are going to have to respond, and show that they are responding, to a deepening oil shortage. One endeavor on which they can embark immediately, visibly and most usefully, is to demonstrate the promise of coal technology.

[From the Washington Star, June 13, 1979]

A SYNTHETIC SOLUTION?

Proposals for meeting the energy crisis are focusing on the idea of a massive national commitment to synthetic fuel production. This is not routine stuff. There are major bills along these lines, with important backing, in both chambers of Congress. After the endless months of inaction and quibbling over details of President Carter's energy program, the legislators are at last moving swiftly.

The House leadership is behind a package of measures to devote billions in federal guarantees and subsidies to spur the creation of plants to produce fuel from plentiful resources like coal. Because of high costs and the uncertainties of competition with petroleum, the government would assume risks in the effort. A market would be assured by a requirement that the Defense Department buy 500,000 barrels a day by 1984.

In the Senate, a bipartisan group led by Chairman Jackson of the Energy Committee is pushing a new energy development program aimed at reducing the need for energy imports by as much as 6.2 million barrels a day by 1990. (We now import about eight million barrels.) One section of the measure would authorize nearly $5 billion for 15 synthetic fuel demonstration projects. The bill would force a speedup of Energy Department plans for promoting alternative energy sources, including solar and geothermal power, coal gasification and waste conversion.

A well-publicized chorus outside the government is making the case for a crash program to produce synthetic fuels quickly and in huge quantities to end the stranglehold on the nation's economy by the Organization of Petroleum Exporting Countries. These appeals evoke the successes of the Manhattan Project, the Apollo missions to the moon, and the World War II conversion to synthetic rubber when the Japanese seized almost all natural supplies. Though the development of alternative sources has been a regular part of the energy litany for years, mostly in viewing a distant and hazy future, the present talk is urgent, and responsible commentators are taking it seriously.

There are reasons for this. The reappearance of the gasoline queues has made everyone ponder the future more soberly. A half-hour wait at the pump is worth 100 presidental admonitions. The international petroleum supply seems ever more precarious, subject to the ayatollah's whim, the next Mideast flare-up and such blackmail as Nigeria's warning about U.S. Rhodesian policy. A bit of scarcity brings out the greediest instincts of the OPEC hawks—the cartel price is headed for the clouds.

OPEC pricing, though, is the best friend the synthetic-fuel drive could have. The expensive conversion processes gain in economic feasibility with each boost in the price of ordinary crude.

It is possible to be skeptical of the sudden upsurge in congressional interest. The congressmen collectively have shown little courage in the past in making hard decisions on energy. They as well as the administration are under fire now by a public worried about where the next gallon of gasoline or heating oil is coming from, and what it will cost. The Hill is under great pressure to act.

There are dangers, of course, in doing something on as large a scale as is now contemplated. A great deal of taxpayers' money could be wasted. The pork barrel will be passed around—so much for West Virginia, so much for Kentucky coal conversion projects. But the ultimate test is the extent to which the drive for synthetic fuels can free the nation from the debilitating dependence on foreign oil. At the moment it appears to be one of the brighter hopes in a dismal energy picture.

What's needed mostly is President Carter's leadership in this area. A House delegation led by Speaker O'Neill and Majority Leader Wright met with him on it last week, and found him sympathetic but non-committal. The administration's plans on synthetics and other alternative sources of energy are more modest and of longer range. The president is thinking about the budget impact, and proposals for energy cooperation at the upcoming Western economic summit in Tokyo.

The congressmen, though, have their eyes on the people in the gas queues. The plan to stress new production using American ingenuity has undeniable political appeal.

If Mr. Carter wishes to be the nation's leader in energy policy, he needs to take a fresh look at this aspect of the game.●

AMBASSADOR WILLIAM V. SHANNON'S ADDRESS IN WEXFORD, IRELAND, ON THE ANNIVERSARY OF PRESIDENT KENNEDY'S BIRTH

● Mr. KENNEDY. Mr. President, on May 29 this year, the anniversary of President Kennedy's birth, America's Ambassador to Ireland, the Honorable William V. Shannon, traveled to Wexford with the purpose of paying tribute to the President in the community where both our Kennedy and Fitzgerald ancestors were born.

I received a copy of Ambassador Shannon's remarks the other day. It is an eloquent address and a very moving tribute to President Kennedy, with poignant comments about the President's trip to Ireland in 1963. I am honored to submit Ambassador Shannon's address for the RECORD.

The speech follows:

SPEECH BY THE U.S. AMBASSADOR TO IRELAND, WILLIAM V. SHANNON

If President Kennedy were alive, he would be 62 years old today. Ever since President Carter appointed me as Ambassador two years ago, I have had the ambition to come to Wexford on May 29th and pay tribute to President Kennedy's memory in his native country.

My wife and I could not come last year because we were involved with American visitors in events on the other side of Ireland. We went then with the directors of the American Irish Foundation to Listowel in Co. Kerry, where I presented the Foundation's annual Literary Award at the Listowel Writers' Week. The Writers' Week is one of the cultural activities that the American Irish Foundation helps to underwrite.

The work of the Foundation has a happy association with President Kennedy, for it was during his visit to Ireland in June 1963 that President Eamon De Valera proposed to him that our two countries should have a foundation that would maintain and encourage the traditional cultural, educational and scientific relationships between our two countries. President Kennedy readily agreed. As a result, the presidents of Ireland and the United States have been honorary co-patrons of the Foundation since its inception and the respective ambassadors—the Irish Ambassador in Washington and the American Ambassador in Dublin—are ex officio directors of the Foundation, representing their respective presidents.

Having missed Wexford last May, I was determined to make it this year and I put it on my calendar early on. Only after your Mayor had kindly agreed to receive us did it occur to me that this year May 29th falls in the midst of a briskly fought local election. He and most of the other councillors here today are busily involved in reelection campaigns and might wish that the American Ambassador had chosen some other day to come to Wexford. I appreciate your taking time out from your campaigning and I wish you all success on June 7th.

Until the very moment he died, John Kennedy was a man who was still growing, intellectually and emotionally. He was becoming wiser, stronger, more accomplished. He was a complicated man who kept life a little at a distance because he wanted, insofar as a man can, to be in control and to see men and events in perspective. Yet at the same time he was open to experience. He was interested in new ideas, new experiences, new people, new ways of looking at things.

His visit to Ireland in June, 1963 was a part of his growing and learning. His family and friends and staff, and his biographers, are all agreed that he never enjoyed a visit to any country more than he did those days in Ireland. Arthur Schlesinger, for example, wrote in his book A Thousand Days: "I imagine that he was never easier, happier, more involved and detached, more complexly himself, than in the next few days."

It was characteristic of John Kennedy that he had earlier made only two brief visits to Ireland. Many Irish-Americans would have come over sooner and oftener. But John Kennedy never wore his Irishness on his sleeve. Like his Catholicism, it was an important part of him, too important to be readily articulated. He distrusted automatic responses in himself or in anyone else. He disliked sentimentality as he disliked all forms of exaggeration. Therefore, he kept his Irishness in reserve, a strength to be called upon.

It was as if, too, he had unconsciously been waiting until he proved himself, until as the great-grandson of Wexford immigrants he really had something enormously significant to show to Mother Ireland.

Thus it was that he did not come merely as a famous young senator or even as a newly-elected President. Rather, he waited and came as a leader at the height of his powers, a man who had demonstrated his mastery of the most responsible office in the free world.

June 1963 was an opportune moment for Ireland as well. Ireland then was only four years into the industrial revolution that Sean Lemass was organizing. What has become the Irish economic miracle of the last twenty years was then only in its beginning. Ireland, having achieved its independence and consolidated its political nationhood, was beginning to stretch itself economically, beginning to match its human talents with the industrial and commercial opportunities of the modern world, beginning to size up its wonderful assets off air land and clean air and abundant water and to decide what constructive use could be made of them in the interests of its own sons and daughters rather than of other people. Ireland was beginning to realize that it was not necessary for its own young people to emigrate to England or America to find careers worthy of their abilities. It was beginning to cast off old attitudes and to realize that much that had been taken for granted—fatalistically—as the lot in life of most Irish people was not really necessary or inevitable at all. Fresh approaches could awaken dormant energies. New ideas could change old patterns of expectation.

John Kennedy arrived in Ireland at that psychologically strategic moment. Irish men and women looked at him and realized that if he could rise so high and become so powerful coming as he did from a family that four generations earlier started from humble roots in rural Wexford why, then, there was nothing on God's green earth to which Irish men and women could not aspire. To the Irish people at that moment, he was more than an American President or an admired world leader. He was an embodiment of hope—their hope.

John Kennedy lives in the minds of the Irish people because the hope that he kindled in 1963 is still alive. His handsome physical presence, his unforgettable smile, his stirring, eloquent words brought into clear focus those hopes and ambitions and energies that were already stirring and restless in the Irish people and that still animate them today as they move confidently into a more prosperous and rewarding future. The gift of hope is no small gift for any man to bring to the land of his fathers.

But Ireland gave John Kennedy a precious gift as well. In his travels, President Kennedy had been greeted by crowds as large or larger in Mexico City and West Berlin than the crowds that greeted him in Ireland. Those crowds in other countries were more frenzied in their enthusiasm. But in Ireland, he sensed everywhere the direct, open, uncomplicated friendliness of the people, the warmth and genuineness of their feeling for him and for the country that he represented. As he traveled from Dublin to Wexford, back to Dublin, to Galway and Limerick and then to Shannon Airport, he came to realize Ireland's variety—in geography, in patterns of speech, in local customs. Although Ireland on the map looks like a small country, it is a country with many diverse localities. Each has its own rich history and unique local character. He saw the humble cottage here in rural Wexford where his great-grandfather was born. He saw also the sprawling, modern metropolis of Dublin. He saw the spires of this ancient town and the visible architectural evidence of its Norman and medieval past. He saw the ancient port of Galway at the entrance to the beautiful dark mountains of Connemara. He visited Limerick, situated where the Shannon River broadens out to its great estuary. At Arbor Hill he participated in the solemn ceremonies recalling the sacrifices of the heroes of 1916. At a joint convocation of Trinity College and University College Dublin, he received honorary degrees from both. He was deeply appreciative of this unique honor because he esteemed scholarship and understood the importance of universities in the life of any nation. He recognized the complexity of Ireland's intellectual traditions when he jokingly observed, "If there is a game of Irish football or hurling, I shall cheer for Trinity and pray for UCD."

In all these ways, his visit to Ireland made real to him for the first time the broad scope and complex character of his Irish heritage. Stories that he had heard from his famous grandfather Mayor "Honey Fitz" Fitzgerald and from many other Irish people while growing up in Massachusetts acquired added meaning and new vitality in his own imagination.

When President Kennedy came to Ireland, Mayors and local officials naturally puzzled over what appropriate gift they could give him. What could he possibly need or want? A piece of old Irish silver? A christening dress for an unborn child? The mayors and other officials did their best. They chose appropriate gifts and President Kennedy was happy to receive them.

But, all unaware, they were giving him an invisible gift—the precious and tangible gift of understanding. John Kennedy was a man who deeply agreed with the ancient Greeks that "An unexamined life is not worth living." He had the outgoing qualities of a political leader who could meet people easily but he also had introspective qualities. He constantly examined himself and his own ideas and his own responses to life. Ireland enriched his understanding of his ancestors and their background. It enabled him to see himself and his Irish-American heritage in a truer perspective. The Irish people gave him the gift of a deeper understanding of himself and that is no small gift for any man to receive in another country.

In October, 1963, President Kennedy repaid this Irish hospitality when he welcomed Sean Lemass, the then Taoiseach, at a State dinner in the White House. Unlike many Americans, President Kennedy knew that the bagpipe is an Irish as well as a Scottish instrument. For the entertainment following the dinner he had bagpipers play their tunes through the State reception rooms. As any of you knows who has been close to a piper, when he is in full cry, that is a startling experience. When my wife and I think of President Kennedy, the sound of the piper rings in our ears for we were guests at that dinner and it was the last time that we ever talked with President Kennedy.

A few moments ago, I presented a copy of my book, "The American Irish," to your Mayor. That book was published in January, 1964 but in accordance with normal publishing procedure, advance copies were sent out six weeks earlier to newspapers and magazines. Since publishers knew that President Kennedy read books, they had also begun sending him copies of new books. It was his custom to wander out from his own office two or three times a day to the adjoining office of his secretary and look at the mail and packages that regularly piled up on her desk. One day in late November, 1963, he looked at several new books that had come in. My book was one of them. He leafed through it and said, "This looks interesting. I must read it when I get back from Texas."

That is a poignant memory for me. But it is not in autumn or with sorrowful thoughts that we should recall John Kennedy. He is best commemorated at this time of the year, in the springtime. He visited Ireland in the springtime and it is with the qualities of spring—the energy, the budding hope, the freshness of youth—that he lives in the mem-

ory of the American people. I do not mean to identify him with youth in its superficial manifestations or in any silly way—as if mere youthfulness were in itself a virtue or as if middle age and old age did not each have its own important qualities. Rather, John Kennedy exemplified during his presidency the true virtues of youth—optimism and energy and idealism. Youth has the eagerness to learn, the willingness to try new ways, the capacity for generosity and hope. Young people are willing to sacrifice themselves for others. We see that quality among young Americans who join the Peace Corps that President Kennedy founded and among young Irish men and women who volunteer to serve a year or two years in various Irish organizations that help the people of the Third World. President Kennedy spoke to young people and for young people. He articulated their ideals and tried to focus their energies. He enabled Americans to remember that ours is a young country and he summoned up the hopefulness and generosity and idealism of youth. It is as the embodiment of that hope and idealism that he lives—forever young—in the memories of his countrymen.

When he was in Limerick shortly before departing for the United States, President Kennedy recalled those lines from the old song:

Come back to Erin, Mavourneen, Mavourneen,
Come back again to the land of thy birth,
Come with the shamrock in springtime,
Mavourneen

He quoted those lines and added: "I'll return in the springtime."

He did not live to see another spring. But with ever-returning spring, he lives again in the hearts of Irish people as he does in the hearts of his fellow Americans. I am grateful to you on this beautiful spring day for joining with me to pay homage to his memory.●

BROAD SUPPORT FOR TRUCKING DEREGULATION

● Mr. METZENBAUM. Mr. President, today I am submitting several additional newspaper articles and columns which are representative of editorial opinion throughout the country on the subject of deregulation in the trucking industry.

Today's articles are from newspapers in the States of New Jersey, New York, and Ohio.

I commend them to the attention of my colleagues, and ask that they be printed in the RECORD.

The material follows:

[From the Hackensack (N.J.) Record, Feb. 12, 1979]

WHOSE OX IS GORED?

Few things rankle American industry more than government regulation. Every time the government tries to regulate the business practices of private enterprise, cries of "big-brotherism," "economic strangulation," and "meddlesome bureaucracy" can be heard rising from corporate boardrooms across the country.

To hear the business community tell it, there's little wrong with the American economy that less government and less regulation wouldn't cure; get those rigid rules and silly standards off our backs, and everyone will be the better for it.

But not all government regulation is evil, in this point of view. There are a few cases where regulation serves the public interest, and needs to be protected or strengthened. By an odd coincidence, these are regulations that serve to protect the interests of the industry or business that's being regulated.

In Washington, the Carter administration is talking about deregulating the trucking industry, and who's heading up the campaign against? Truckers. In Trenton, the Byrne administration is talking about deregulating the price of alcoholic beverages, and who's opposing it? The liquor industry. In Newark, the Board of Public Utilities has just taken steps to deregulate the rates charged by moving companies, and who's fighting it? Movers.

In all three of these cases, the government is doing exactly what business interests have been clamoring for—getting rid of regulations that have stifled competition. But it seems that in the trucking, liquor, and moving businesses, the principal beneficiaries of regulation have been truckers, liquor wholesalers, and movers. The last thing they want to see is deregulation, which might force them to charge lower prices for their goods or services in order to compete in an open market. The line seems to be that deregulation will drive "mom-and-pop" operations out of business; the real fear is that lower prices might mean lower profits.

Regulation is not necessarily a dirty word; its value, like that of a novel or film or work of art, is in the eye of the beholder. The next time somebody starts screaming about too much government regulation, we suggest taking a moment to consider the source.

[From the Asbury Park (N.J.) Press, Jan. 30, 1979]

REMOVING THE FLOOR

The trend toward deregulation can develop into a major weapon in the campaign against inflation. In general, price regulation by government, or by industry with government's sufferance, minimizes competition and sends prices upward. It customarily sets a floor under prices but provides no ceiling. Obviously there is but one direction in which prices can go, and that is upward.

Deregulation of airline fares reduced the cost to travelers and thereby encouraged patronage to increase airline revenue and profits. Deregulation of natural gas promises to increase supplies and eventually hold prices far below the level that shortages would set. Similarly deregulation of the oil industry would encourage exploration for additional domestic sources and reduce our dependency on foreign oil. And that in turn would release us from the arbitrary price increases that oil-producing nations periodically impose on us.

Now Sen. Kennedy proposes deregulation of the trucking industry with a view to reducing costs to shippers and thereby holding down prices on a multitude of products. Under the prevailing system the industry is able to minimize competition and support prices and practices that are highly inflationary.

And in New Jersey Atty. Gen. Degnan proposes to deregulate the liquor industry by no longer permitting producers and distributors to set minimum prices on their product. Under the present system liquor prices in New Jersey are higher than in nearby states, thus encouraging the purchase of lower-priced liquor elsewhere and depriving New Jersey retailers of patronage and the state of taxes. And the system is largely responsible for kickbacks and assorted illegal practices that arise when competitive prices are shut out.

Each of these approaches toward deregulation deserves enthusiastic public support. By removing the floor under needlessly high prices they are major contributors to the nation's effort to control inflation and bring down the cost of living.

[From the Garden City (N.Y.) Newsday, Nov. 26, 1978]

TRUCKERS ARE A PRIME TARGET FOR DEREGULATION

The Carter administration is deadly serious about its pledge to deregulate industries that have grown bloated under government protection. After the airlines, the next target is the huge and complex trucking industry.

Airline deregulation is paying off beyond expectations—both for consumers and for the industry. Because of lower ticket prices, more people are flying than ever before, and the airlines' profits have never been higher.

Like the airlines, the trucking industry has been coddled for decades by government regulations establishing rates and routes and limiting competition. The administration is drawing up a bill to deregulate the truckers, and even before it's introduced, the Interstate Commerce Commission is moving administratively to increase competition among them.

This is the same pattern followed with the airlines. By the time Congress passed the deregulation act, Alfred Kahn, then chairman of the Civil Aeronautics Board and now President Carter's principal inflation fighter, had largely blown away the wall of protection surrounding them.

ICC chairman Daniel O'Neill has the same goal as Kahn: to make his agency obsolete. He has proposed a wide range of administrative options that would make it easier for new firms to enter the trucking industry. He also wants to make it illegal for truckers to get together and set group rates, as they now do routinely.

The cases are not entirely parallel. There are far more truckers than airlines, and the ICC and Congress must make sure that a few large companies don't wind up dominating the industry. They must also take care not to put the railroads out of business. But as both the airlines and their customers can testify, everybody benefits when competition is restored to its rightful place in a free market economy.

[From the Buffalo (N.Y.) News, Dec. 6, 1978]

SPUR TRUCK COMPETITION

In a decision that we hope signals a change in broad regulatory policy, the federal Interstate Commerce Commission has tentatively agreed to relax rules governing the trucking industry.

The specific ICC policy, if finally approved in a couple of months, would make it easier for new carriers to gain access to interstate trucking routes, a significant change. It would reverse a regulatory direction, developed in Washington since the mid-1930s, that tended to shelter existing trucking firms by creating bureaucratic obstacles for new carriers to hurdle in order to secure productive routes.

By making access to routes easier to acquire, the ICC would encourage freer competition in the industry. This would improve service and reduce costs, as the less sheltered firms competed for customers. That is exactly what happened during the last couple of years when the Civil Aeronautics Board deregulated the airlines.

Indeed, the ICC may be taking a cue from the CAB—and that would be fine. For despite cries of doom from some airline managements and unions in the early stages of the CAB's decision to cut red-tape, the airlines have scored big profit gains. Everyone gained as passenger volume soared in response to deep discounts in individual fares. If the airlines were over-regulated, as they were, the same is true, if not more so, for truckers. There are many, many more trucking than airlines companies, so the risks of monopolistic controls by one or a few big firms are less. Moreover, studies have shown that the rates charged by federally regulated, interstate truckers can substantially exceed those for similar kinds of service, which is unregulated within a single state.

This particular ICC policy change by itself won't accomplish all of what the numerous changes have done for the airlines. But it would be a promising step. Happily, too, the ICC's expressed rationale ap-

peared to venture beyond a mere easing of entries to new routes.

"In light of the maturity of the motor carrier industry and of changing economic conditions generally," the ICC said, "the commission has concluded that more weight should be given to the benefits of healthy competition and less emphasis should be placed on protection in carrying out its regulatory responsibilities. . . ."

Amen to that. Three years ago former President Ford recommended trucking deregulation to Congress, which balked. The Carter administration may advance similar proposals in the next few months. With airline deregulation won in Congress this year, that would be a logical next step. Meanwhile, we hope the ICC will accelerate its shift toward promoting more robust competition in the trucking industry, with free-market forces influencing the rates charged to a larger degree than they now do. Nothing, for the moment, could help consumers of trucking services more in fighting inflation.

[From the Middletown (N.Y.) Times Herald-Record, Jan. 5, 1979]

DEREGULATION

Another set of laws of dubious merit involve regulation of prices and practices in such industries as drugs, liquor, airlines, rail freight and trucking. Supposedly they were enacted to protect the public and maybe they once did. But most of the laws turned sour as the regulators proved to be the defenders of the entrenched business interests—and the biggest corporations at that.

President Carter succeeded last year in partially deregulating the airlines. Despite dire warnings by the industry, competition has brought the public lower prices and the airlines higher profits as more of us flew.

The experiment in what we once called free enterprise—until it became corporate socialism—succeeded.

Now New Jersey's Gov. Byrne means to deregulate the liquor industry, a move designed to reduce the consumer prices and eliminate corruption in the industry.

On the congressional agenda this year will be proposals to deregulate the trucking and rail freight industry. We expect and hope that the trend will continue.

One collateral benefit, we assume, will be a reduction in the size of the massive governmental agencies that have been doing the regulating—or purporting to do so.

[From the Middletown (N.Y.) Times Herald-Record, Jan. 6, 1979]

DEREGULATING TRUCKING

Dallas Times Herald:

This year's battle to deregulate the trucking industry is going to make last year's scrap over airline regulation look like a minor squabble.

The trucking industry favors federal regulation because it limits competition, thus producing handsome industry profits for existing firms with a minimum of effort.

The airline industry claimed a lessening of federal regulations would be a disaster. It was no disaster. Ticket prices fell as the airlines began competing with each other. Ridership soared along with profits.

The success of airline deregulation encouraged the administration to see where else deregulation could stimulate better service at a lower cost.

We urge Texas' congressional delegation to work aggressively for deregulation of the trucking industry and freight railroads.

[From the Cleveland (Ohio) Press, Nov. 22, 1978]

KEEP IT UP

Cry as it might, the trucking industry had better get used to the idea that it is going to undergo some deregulation, just as the airline industry has and the railroad and barge industries inevitably will.

The Interstate Commerce Commission, which has already moved to curb the power of trucking lines to snarl in red tape a rival line's request to offer new service, has struck another blow for competition.

The ICC says that manufacturing firms which use their own trucks for long-distance deliveries will no longer be forced by regulation to "dead-head" (travel empty) on the return trip. Instead, these companies may fill their empty trucks with cargo in competition with regular trucking lines.

This makes excellent sense. The idea of empty trucks rolling around the highways is indefensible in these days, of sky-high energy costs.

But the American Trucking Associations, lobbying group for the established trucking lines wails that the ICC's action is "arbitrary, capricious, and unreasonable," i.e., it upsets the truckers' applecart.

The ATA fears that the new competition will hurt the business of the regular carriers. But the ICC's answer was blunt:

"It is not this commission's purpose to provide protection for regulated carriers, rail, water or motor, when the public's interest in more adequate transportation service could best be served by authorization of a new, competitive service."

Exactly.

The days of Washington regulation of transportation industry routes and rates are drawing to a close, and a good thing, too. Real competition is the best anti-inflation medicine there is.

Keep it up, ICC.

[From the Columbus (Ohio) Citizen-Journal, Oct. 24, 1978]

MORE DEREGULATION

One of the most noteworthy achievements of the just-ended 95th Congress was passage, with President Carter's enthusiastic backing, of a bill that would unsnarl the airline industry from government red tape.

Get this: The bill envisions the abolishment of a federal regulatory agency. Unless Congress decrees otherwise, the Civil Aeronautics Board goes out of business by 1985.

The bill allows airlines to slash prices without waiting for CAB permission and also allows them to raise prices by 5 percent on routes where they have competition. Higher rate boosts will still have to have CAB approval.

The airlines also will have vastly greater freedom to expand service between cities and eventually discontinue uneconomical service to airports with little traffic. Taxpayer subsidies for small-town service will continue for 10 years.

Most airlines threw up their hands in horror at the thought of removing their comforting blanket of regulation, which led to shared monopolies and little real competition.

But CAB Chairman Alfred E. Kahn, one of the real jewels of the Carter administration, lifted a lot of the price-route restrictions himself, opening up the skies to competition. The airlines responded, offered all sorts of cut-rate fares, and discovered to their delight that their planes were filling up and that they were making money hand over fist. They benefited, and so did the public.

This lesson should not be lost on Congress, nor should it go unnoticed at the Interstate Commerce Commission, where long-outdated regulations still grip (or comfort) the trucking, railroad and barge industries.

Removal of route and rate restrictions on trucks, freight trains and barges would be one of the most salutory developments to come out of Washington in years. The airline bill, we hope, heralds further government action in this field.

[From the Springfield (Ohio) News, Dec. 6, 1978]

TRUCKERS UPSET

The trucking industry is planning to assault the public and Congress with a lobbying campaign aimed at allowing it to keep on truckin' the way it has for years, with a kind of federal "regulation" that spares the industry from the horrors of having to practice the free enterprise system.

The Carter administration, flush from its success in restoring some competition to the airline industry, has trucking next on the list. Already the Interstate Commerce Commission has lowered some of the barriers to the entry of new firms.

It's not only the trucking companies that hate the prospect of freedom from government regulation; the banks and insurance companies that do business with the truckers are uneasy, too. That's a combination of powerful interests for the regulations that keep competitors out, procedures wasteful and cost high.

No doubt they will hire the best PR flaks and ad men available and soon you and your congressman will be reading and hearing about the virtues of keeping the comforting arm of government around the truckers to ward off the frightful dangers of competition.

Few cries of "foul" are louder than the ones from sinners who are being asked only to practice what they preach.

[From the Springfield (Ohio) News, Jan. 16, 1979]

RADICAL PLANS

Radical plans are being made for the trucking and railroading business. The Carter administration is gearing up to assault the business with free enterprise.

Deregulation of the airlines has produced cost-cutting competition (and heavier use) and the truckers and railroads are next in line for deregulation, according to Transportation Secretary Brock Adams.

President Carter is seeking less government regulation in these areas partly to help curb inflation. The high costs are caused in part by restraint of competition by the Interstate Commerce Commission, thus allowing the carriers to maintain higher, set rates.

The costs also are puffed up by the clumsiness of regulation. The railroads, once defenders of ICC paternalism, are now keener for deregulation because the freedom to make more of their own decisions will also allow them to cut off some unprofitable routes. The railroads are likely to lower rates in some areas while raising them in others, thus adjusting to the nuances of the marketplace.

The truckers are much less comfortable with the prospect of free enterprise because that will knock competition wide open. They will be offering competing proposals for partial deregulation. But the White House and Congress, aware of the opportunity to introduce competition and cut costs, should take full advantage of this anti-inflationary opportunity.

[From the Youngstown (Ohio) Vindicator, Nov. 24, 1978]

ICC BACKS THE PUBLIC

Announcing a revolutionary change in regulations for trucking a few days ago, the Interstate Commerce Commission evidenced a completely new viewpoint on regulation. It said: "It is not this commission's purpose to provide protection for regulated carriers, rail, water or motor, when the public's inter-

est in more adequate transportation service could best be served by authorization of a new, competitive service."

This is gratifying language from a commission that has a history of protecting the various transportation industries, often at the expense of the public. It was used in discussing a decision that, for the first time in 40 years, permits a firm that has its own delivery trucks to undertake transportation for other firms.

The "empty backhaul," or return trip without cargo, has been required of such firms, so they would not be competing with the public haulers. It has wasted untold sums in manpower, investment and energy.

The commission signaled its change of heart last March when it held that Toto Purchasing & Supply Co. of Las Vegas and Avon Corrugate Corp. of Canton, Mass. could hire out their empty trucks. Avon, for example, wanted to carry biscuits back to Massachusetts after delivering cardboard boxes to Atlanta, 1,400 miles to the south. The ICC held up the effect of this ruling while it weighed the overall situation. It finally voted 5–1 to permit private haulers to work for hire, thus abolishing the empty backhaul.

The American Trucking Association, representing the public carriers, protested and threatens to take the ICC to court. It contends that the empty backhaul is not being abolished but transferred to the public haulers, since no new freight business is being created. This, as usual, is an overstatement: what is happening is that the public carriers now must compete for the freight that the private carrier was forbidden for so long to touch.

The ICC said the "high cost of energy . . . requires greater attention to operating efficiency." By reducing shipping costs, the commission said, it will help the fight against inflation.

And that is in everybody's interest.●

CONSTITUTIONAL CONVENTION ON BALANCED BUDGET

● Mr. CULVER. Mr. President, I have been asked by 27 members of the Iowa State Senate to include in the RECORD a copy of their letter to the President of the U.S. Senate and the Speaker of the U.S. House of Representatives regarding action on Iowa State Senate Joint Resolution 1. This resolution requests Congress to call for a constitutional convention to propose an amendment to balance the Federal budget.

Senate Joint Resolution 1 was introduced on January 9, 1979, in the Iowa Senate. Though the resolution, as amended by the State House of Representatives, was subsequently approved by the Senate on February 22, 1979, it was held on the calendar pending the outcome of a motion to reconsider it. The motion to reconsider the resolution was debated on May 11, 1979.

The motion was ruled out of order by the presiding officer, and there was no opportunity to have another vote on it. Twenty-seven State senators, comprising a majority of that body, subsequently entered a statement in the Senate Journal expressing their views on this resolution. This statement, which I submit for the RECORD, indicates that the 27 senators would have voted against final passage of the resolution if a vote would have occurred.

The statement follows:

DES MOINES, IOWA,
May 11, 1979.

THOMAS O'NEILL,
Speaker, House of Representatives,
Washington, D.C.
WALTER MONDALE,
President of the Senate,
Washington, D.C.

GENTLEMEN: The presiding officer of the Senate today ruled "out of order" a motion to reconsider the vote by which Senate Joint Resolution 1 passed the Senate.

Because of that ruling, we were unable to register our opposition to that resolution.

A majority of the Iowa Senate intended to vote for the motion to reconsider and to vote against final passage of the resolution, "Proposing an amendment to the federal Constitution to require that the federal budget be balanced".

Had we been allowed to vote, we would have voted YES on the motion to reconsider Senate Joint Resolution 1, and we would have voted NO on final passage of the resolution.

We request that this letter be entered in the Congressional Record.

Patrick J. Deluhery, Clarence Carney, Norman Rodgers, Julia Gentleman, Alvin V. Miller, Arthur Small, Jr., William D. Palmer, Charles P. Miller, Bass Van Gilst, Joann Orr, George R. Kinley, Bob Rush, and James Calhoon.

Dave Readinger, Lucas J. DeKoster, A. R. Kudart, Sue Yenger, C. W. Hutchins, John Scott, Tom Slater, Earl M. Willits, Cloyd Robinson, Lowell L. Junkins, Bob Carr, Joe Brown, and C. Joseph Coleman.

[This statement was entered in the Senate Journal, State of Iowa, May 11, 1979.]

EXPLANATIONS OF VOTES

Mr. President. Because the motion to reconsider the vote by which Senate Joint Resolution 1 passed the Senate was ruled out of order, we were unable to register our opposition to that Resolution. Had we been able to vote, we would have voted to reconsider and then voted against Senate Joint Resolution 1.

Lowell L. Junkins, Earl M. Willits, George R. Kinley, Julia Gentlemen, Joe Brown, Bob Carr, C. Joseph Coleman, Tom Slater, James Calhoon, C. W. Hutchins, William D. Palmer, Bob Rush, Clarence Carney, Patrick J. Deluhery, Lucas J. DeKoster, John S. Murray, Dave Readinger, A. R. Kudart, Bass Van Gilst, Alvin V. Miller, Charles P. Miller, Arthur Small, Jr., John Scott, Norman Rodgers, Joann Orr, Cloyd Robinson, Sue Yenger.

IOWA GENERAL ASSEMBLY

The legislative history of Senate Joint Resolution 1:

January 9, 1979.

Senate Joint Resolution 1 was filed in the Iowa Senate on the first day of the 1979 session. Thirty Senate sponsors.

The Title: A Joint Resolution for the purpose of requesting appropriate action by the Congress, either acting by consent of two-thirds of both houses or, on the application of the legislatures of two-thirds of the several states, calling a constitutional convention to propose an amendment to the federal Constitution to require, with certain exceptions, that the federal budget be balanced.

February 1, 1979.

SJR 1 passed the Senate 31 to 16.

February 9, 1979.

SJR 1, amended by the House, passed the House of Representatives 53 to 43.

February 22, 1979.

The Senate agreed to the amendments and passed the amended resolution 29 to 21.

February 26, 1979.

A motion to reconsider SJR 1 was filed in the Senate, holding the resolution on the Senate calendar.

May 11, 1979.

The motion to reconsider SJR 1 was called up and moved. A point of order was raised that the consideration of the motion was not in order. The presiding officer of the Senate ruled the motion to reconsider SJR 1 out of order.

Twenty seven Iowa Senators, a majority of the fifty, then entered a statement in the Senate Journal under the heading "Explanations of Votes", expresing their opposition to the resolution, their intention to vote to reconsider, and to vote against final passage of the resolution.

The Senate then adjourned sine die.●

SYNTHETIC FUELS

● Mr. DOMENICI. Mr. President, 2 days ago, 11 of us introduced a bill, S. 1377, that would establish a true Federal effort to bring substantial amounts of commercial synthetic fuels on board in the country by 1990. That bill, the Synthetic Fuels Production Act of 1979, is a proposal that would create an independent, goal-oriented partnership between private enterprise and the Federal Government to accelerate the development of synthetic fuels.

One cannot discuss synthetic fuels development in this country without noting the pioneering efforts of my colleague, the chairman of the Senate Environment and Public Works Committee, Senator JENNINGS RANDOLPH of West Virginia. He authored the 1944 Synthetic Liquids Fuel Act. He flew in an airplane powered by gasoline from coal in 1943, when few Americans realized the great potential for such fuels. He is undeniably an expert on the potential of synthetic fuels in this Nation in the Congress today. It is a tragic failure of policy that the programs he initiated more than 30 years ago were allowed to die and the expertise that those programs developed lost to the Nation.

With this historic background, Senator RANDOLPH's presence as an original cosponsor of S. 1377 is especially noteworthy. In addition, as I review an article that Senator RANDOLPH wrote for the West Virginia Review back in 1943, "Petroleum in the United States," I see where the policies he advocated then, the potential dangers to this Nation's security that he foresaw in an oil-short America, and the disruption of our economy if energy sources dried up that he predicted all have the solid ring of truth.

I say to my good friend from West Virginia that very few men, and very few nations, get a second chance. However, America has a second chance now to embark on the kind of synthetic fuels program that she should have embraced when Senator RANDOLPH advocated it. And, Senator RANDOLPH will get a second chance to see his vision of an energy secure America become a reality if this Congress acts quickly and boldly to establish an independent Synthetic Fuels Production Authority along the lines of S. 1377. I thank Chairman RANDOLPH immensely for his support of this initiative, which owes much to his historic work.

Mr. President, I submit a letter from Senator RANDOLPH to the editor of the

Washington Star, a copy of the article in the West Viriginia Review of October 1943, "Petroleum in the United States," authored by Senator RANDOLPH, and a United States News article on Senator RANDOLPH for the RECORD.

The material follows:

WASHINGTON, D.C.,
June 19, 1979.

Mr. MURRAY J. GART,
Editor, The Washington Star,
Washington, D.C.

DEAR MR. GART: I commend your editorial of June 13, entitled a Synthetic Solution? There is, as you indicate, Congressional awareness and support for synthetic fuel production as a substitute for oil imports. The newly formed Congressional coalition for this program is encouraging. Throughout my career I have advocated establishment of such a Federal commitment to foster synthetic fuels.

On November 6, 1943, I flew with Arthur Hyde on the first airplane flight in the United States using a gasoline produced from coal by the Bureau of Mines. Realizing the value of having the capability to produce fuel from our abundant coal resources, I authored the Synthetic Liquids Fuel Act of 1944, which established the first Federal programs for gasification of coal; for the liquefaction of coal and lignite to produce aviation gasoline, diesel oil and petrochemicals; and the production of shale oil; and liquid fuels from agricultural and forestry products. My initiative to support Federal development of these nonnuclear activities in the House of Representatives was sponsored in the Senate by Joseph O'Mahoney of Wyoming.

Passed during the 78th Congress and signed into law on April 5, 1944, by President Franklin D. Roosevelt, this measure provided the Bureau of Mines and Department of Agriculture with the mandate to develop new technologies to produce methanol, ethanol, and other liquid fuels from coal and agricultural wastes. Approximately $82 million were spent by the Bureau of Mines on this program prior to its termination in 1955 because synthetic fuels could not compete with cheap petroleum and natural gas supplies. But tragically, when the synthetic fuel program was terminated, our national knowledge and skill on processes for the conversion of coal to synthetic products also was lost. I realized that the domestic scarcity of liquid fuels we faced during World War II would come again.

I was not in the Congress when the synthetics development program was ended. But on my return to the Senate in 1958, I began to work for a national fuels and energy policy, including syn-fuels. For example, I testified before the Senate Interior Committee in 1961 and said:

"Every year that passes in which we become more and more dependent on foreign oil to buttress our national economy and security perhaps is one year nearer to disaster. We are gambling on our country's future."

Today, hopefully, a majority of my colleagues in the 96th Congress realize we are again at a turning point where coal synthetics must substitute for foreign petroleum. This Congress, faced with a scarcity of oil, should move with dispatch to provide a clear and decisive Federal policy to foster the private development of alternative domestic fuels.

The Department of Energy should fully implement programs to achieve the Congressionally-established goals of the Federal Non-nuclear Energy Research and Development Act of 1974 and the synthetic fuels loan guarantees enacted in 1977. This latter program which passed the Senate in 1975 and 1976 would have provided $5 and $6 billion in loan guarantee authority. But more importantly, the Department of Energy has failed to fully implement existing statutory authorities which provide for the Federal government to be partners with private industry in the areas of coal liquefaction and gasification, oil shale, solar energy, and geothermal and other renewable technologies. A principal feature of S. 1308, the Energy Supply Act introduced by Senator Jackson, myself and 18 other senators, is to direct the Department of Energy to carry out existing Congressional energy mandates.

The fresh look at synthetic fuels which your editorial describes will produce positive results from the investment in our country's energy future. If our national energy policies are to be responsive to national needs, we must require energy resources of every form—not competition between energy resources. The time for development is NOW, whether by direct Federal subsidies or price supports. The incentives must be tailored to the technology.

Coal can fill many of the world's energy requirements, but particularly those of commerce and manufacturing, before the turn of the century. The decisions now being made on energy by the Congress and the Administration will have far-reaching and lasting effects. During the last few years we have witnessed energy decisions based on the short-term perspective, at great expense to public confidence. Because of our preoccupation with minimizing the short-term effects of inadequate domestic energy supplies we have failed to act to solve the longer-term supply problems. We now must correct this situation. A national commitment is needed for synthetic fuels.

Truly,

JENNINGS RANDOLPH,
U.S. Senator.

PETROLEUM IN THE UNITED STATES—WEST VIRGINIA COAL PRODUCES LIQUID FUELS

(By JENNINGS RANDOLPH)

Are American petroleum resources sufficient to supply the tremendous demands for aviation fuels and lubricants that will follow the close of the war? Under war-time demands, aviation has made tremendous strides and these war-time developments will be applied to peace-time use. The millions of young men released from the army will be air-minded and will have no patience with the slower and more restricted modes of travel. The numerous airplane and aviation equipment-manufacturing plants built during the war will seek to maintain their business as far as possible in the production of planes for passenger and freight transport. The facilities for producing great quantities of light metals—aluminum and magnesium—will be available for the construction of these planes. In fact, everything is set for an unprecedented increase in aviation, not only in the United States, but throughout the world.

The Congress of the United States has been actively interested in forestalling any domestic shortage of petroleum. During this war our wells have supplied the greatest share—about 65 per cent—of the military demands of the allied nations as well as the essential civilian requirements of this country. The drain has been heavy and Congressional investigation has shown that it is far from safe to assume that our reserves can meet it indefinitely.

In the future we will not be able to depend on the importation of oil from any foreign country, even though it may appear to be a very friendly one now, for then a major portion of our economy could be subjected to the whims and controls of outside powers. Unless we have our own sources for gasoline and oil in time of peace, we might be forced to pay exorbitant prices; and, if supplies were cut off in time of war, our entire military machine would be helpless. Certainly this war has imprinted deeply in our minds the necessity for having within the borders of the United States all the essential raw materials to support the major functions of our economy.

The United States has long been proud of its mass production and distribution of automobiles, and of the fact that most of the people can own and drive cars. To support our automotive transportation we have produced from 60 to 70 per cent of the world's output of petroleum for several years. It is estimated that if the wells in this country were uniformly spaced, there would be one every three miles. Mineral resources, such as petroleum, are not supplied to any geographical area in unlimited amounts and the United States may be facing the day in the relatively near future when it will be one of the "have not" nations so far as petroleum is concerned.

In contrast to our prodigal use of this resource, and to our intense drilling and exploration campaigns, we find many foreign nations with almost untouched reserves and these may be the "have" nations of the future. For example, in Russia, and in the Persian Gulf, only one well has been drilled for each 500 square miles of land. Many of these countries also have large areas which are considered highly favorable prospects for exploration.

The recent decline in the rate of discovery of new petroleum fields in this country has given rise to the question of what we can do to meet the demands of an air-minded automotive post-war age. Since 1939, petroleum has been consumed at a greater rate than it has been discovered in new fields not previously known. Another unfavorable factor has been the smaller capacity of pools of oil discovered in recent years. While oil production is reaching an all-time high (1,402,228,000 barrels in 1941, and figures will be higher this year), we cannot continue to drain sources which are already being depleted. One would scarcely expect to have a full gasoline tank if we add only three gallons each time we use four. Yet that is just what we are doing. Last year the new oil found was a half-billion barrels less than we produced. Since 1937, the number of new pools found has increased but the amount has consistently fallen from 928,742,000 barrels found in 1937 to 260,051,000 barrels in 1942.

Nor do the oil men have much to offer in the way of encouragement, for the big fields have been discovered and many have already been exhausted. The newer fields are smaller and the costs of exploration and drilling are necessarily higher.

To say just how long the supply of oil will last this nation is foolish. Experts in the oil industry say that there will be an acute shortage in twenty years. Other equally expert experts say that new fields will delay this shortage for fifty years.

Is there any reasonable prospect for securing the liquid fuel necessary for the construction and expansion of automotive transportation on land and sea and in the air from other sources which will be available for many years? What can be done to utilize our far vaster deposits of coal, oil shale, lignite, and natural gas?

Great Britain, Germany, and Japan are making synthetic oil and gasoline by processes that are known to have passed the experimental stage. Great Britain produces enough gasoline by coal hydrogenation to keep one hundred to two hundred bombers over Germany every night, and a lower octane gasoline and Diesel oil from oil shale. Germany produces over one-half of her liquid fuel from coal and coal tar, while Japan is likewise reported to produce large amounts of liquid fuel from coal and oil shale.

The first Congressional hearings to awaken this country's interest in securing

oil and gasoline from sources other than petroleum were held by a subcommittee of the House Committee of Mines and Mining (of which my Congressional colleague, Joe L. Smith of Beckley, is chairman) in June and July of 1942. Before this subcommittee, of which I am chairman, appeared some of the Nation's foremost scientists to testify on the methods used in Europe, England, and Japan for making gasoline from coal or gases. A complete transcript of these hearings has been published under the title, "Production of Gasoline from Coal and Other Products."

Later in 1942, hearings specifically directed to consideration of methods to increase petroleum discoveries and also touching on the production of gasoline and oil from coal or shale were also held before a subcommittee of the Senate Public Lands Committee. A transcript is available under the title, "To Encourage the Discovery of Oil and Gas in the Public Domain," part four.

More than a year and a half have passed since the initial hearings held by the House of Representatives' Subcommittee, and the gasoline and oil situation has become progressively worse. Military demands have increased steadily and civilians are now rationed to essential requirements. Our land forces have not yet engaged the enemy on the fullest scale and, when they do, large additional demands for gasoline may be expected, resulting in further heavy drains on our domestic supplies.

Domestic rationing of gasoline started with submarine warfare that interrupted tanker shipments to the east coast, since the problem was then largely one of transportation. Rationing was extended to the west as a rubber conservation measure to bridge the gap between the time our stock pile of natural rubber was exhausted and large scale production of synthetic rubber was begun.

These two reasons for saving gasoline are now fading from the picture and the country must face the fact that its wells cannot produce petroleum fast enough to satisfy the manifold demands. We believe our nation has enough gasoline to fight this war and to supply essential requirements, but what about the period immediately after the war?

Early in August of this year the Senate War Minerals Subcommittee held hearings on the feasibility of producing synthetic oil at Washington, Pittsburgh, Salt Lake City, and Sheridan, Wyoming. Experts from the Government, industry, and engineering schools testified on the question, and they were in substantial agreement that the gasoline age would not end with the exhaustion of natural petroleum.

The chemists called attention to processes for obtaining synthetic gasoline from natural gas, coal, lignite, and vegetable material and the production of crude oil from oil shale and tar sands. The geologists pointed to abundant reserves in North America of these raw materials which would last for a period of one to two thousand years.

Experts of the Bureau of Mines, the Petroleum Administrator for War, oil companies, coal companies, and colleges and universities, as well as representatives of the governors of several states, testified—and the endorsement of the objectives of the legislation was unanimous. At the hearings in Washington, Harold L. Ickes, Secretary of the Interior demonstrated a motor which operated equally well on regular petroleum gasoline and gasoline made from coal.

Gasoline from coal was processed by the Bureau of Mines in a small laboratory-size plant in Pittsburgh. This plant was built about seven years ago with a relatively small sum of money appropriated by the Congress. I saw this plant when we were holding our recent hearings. It's small—I would almost call it a toy plant. But I saw coal going in at one end and gasoline coming out at the other end. We took some of this gasoline and put it in standard make automobiles and drove the cars through the city streets. It performed like any gasoline made from pertoleum. According to testimony presented, the gasoline made from coal can be made as good as any high-grade gasoline that flies our bombers on their missions over Berlin. In fact, witnesses testified, Germany is now getting from one-half to two-thirds of all her liquid fuels from coal—synthetic power from her brown coals which are not nearly as rich as the coals of West Virginia. Germany today is powering her airforce, U-boats, tanks, trucks, and mobile cannon with liquid fuels from coal.

Liquid fuels can be made from American coals. In the small laboratory in Pittsburgh, which I have mentioned, scientists from the Bureau of Mines have tested fifteen different coals from the United States and Alaska. They have found that each of them can be used to make gasoline and other products. I was interested to learn that coals from the West Virginia area are among those giving the highest yields of gasoline per ton of coal. From the Upper Freeport bed (taken from a mine near Morgantown) coal will yield as much as *seventy gallons of gasoline per ton.* This West Virginia coal—like the coals of Maryland, Pennsylvania, and other states—will not only yield gasoline but can be used to produce Diesel fuel, fuel oil, and chemicals for plastics, explosives, synthetic rubber, and medicinals.

This production can be done but at the present time oil shale and coal do not offer as cheap a source of supply as petroleum from the ground. But certainly our people will back the extra effort and the extra cost when the alternatives are ample or restricted supplies of gasoline. Furthermore, even though the production cost is higher, the increase to the ultimate user may not be greater than seven to thirteen cents per gallon, and further technologic development will reduce these costs.

But with all this pioneering work, we cannot say to American industry: "Here is a coal liquefying process that will work on a particular coal. Here is the way to build a plant. Here are the plans for operating it." Such facts cannot be obtained from the equipment the Bureau of Mines now has. They are available only from plants which resemble commercial-scale operations—operations which would be established under a proposed Congressional measure. These plants must be of minimum size and for the sole purpose of furnishing industry with the necessary cost and engineering data for the development of synthetic liquid fuel by private enterprise. The combined product of all the experimental plants should not constitute a commercially significant amount of the total national commercial sale and distribution of petroleum and its products.

My enthusiasm for demonstration-scale plants, to produce liquid fuels from coals, stems from the firm belief that we must have liquid fuels to maintain our way of life. The post-war era will see millions of new automobiles on improved highways. It will see helicopters and planes by the thousands, piloted by men now flying fighters and bombers. We will find larger and faster commercial transport aircraft spanning oceans and continents on hourly schedules. All these planes and automobiles must be powered with liquid fuels.

On one hand there is a promising future for our country, with vast increase in air transportation, fast trips to foreign lands, rapid development in the use of private planes, and the resumption of our normal automobile manufacture and use. On the other hand, the picture may be changed entirely if our petroleum reserves show signs of serious depletions and if, in the meantime, we fail to develop ways for producing gasoline from other materials. Certainly the great majority of the citizens of this country do not want a future in which gasoline will be rationed continuously with decreasing amounts available each year. I believe that our people will back a vigorous program to avoid any such prospect.

The Congress of the United States is now planning to forestall possible gasoline and oil shortages. Senator O'Mahoney, distinguished legislator of Wyoming, has introduced Senate Bill 1243 to authorize the Bureau of Mines to investigate and develop processes for making oil and gasoline from the Nation's great reserves of coal, oil shale, and other materials.

In order that prompt action may be taken, I have introduced a companion bill in the House of Representatives. It is known as HR 3209.

The essential features of the proposed legislation are as follows: it authorizes the Secretary of the Interior, acting through the Bureau of Mines, within the limits of critical materials available, to construct, maintain, and operate one or more demonstration plants to produce synthetic liquid fuels from coal and other substances.

To carry out the purposes of this act, the Secretary of the Interior is authorized to (a) conduct laboratory research and development work necessary to determine the best demonstration plant designs and conditions of operation; (b) acquire, by purchase, lease for a term of ten years or less, donation, or otherwise, land and any interest in land, including easements and leasehold interests, options on real or personal property; plants and their facilities; secret processes, technical data, inventions, patent applications, patents, irrevocable non-exclusive licenses, and other rights and licenses granted by this or any other nation; to assume the obligation to pay rentals in advance on property so acquired, and to pay damages arising out of the use of any such property; (c) engage, by contract or otherwise, engineers, architects, and any private industrial organization he deems suitable, to do all or any part of the work of designing, constructing, or operating the plants, the operation to be under his supervision, and through leases or otherwise as he believes advisable; (d) cooperate with any Federal or State department, agency, or instrumentality, and with any private person, firm, or corporation, in effectuating the purpose of this Act.

The high-speed motors of tomorrow, just like those of today, will need the best quality lubricants to keep them from burning out. If we drain our supply of natural petroleum year after year until it is exhausted, then we must surely fall back on imported petroleum for special lubricants because some crude oils provide lubricating oil of a high quality which cannot be duplicated by synthesis.

We will reach the turning point eventually. We must not, for the sake of our national defense and security, come to depend on any foreign country for our fuels. There is only one distraction—the one which will make us independent of imported petroleum for our gasoline, Diesel oil, fuel oil, and other essential products obtainable from coal and our special lubricants coming from our natural petroleum reserves which should be conserved for that purpose.

I have unshakable faith in the ability of our scientists and engineers to provide the best coaliquefaction methods for American industry and American coals, but I know that the necessary answers will not be supplied overnight. Years of additional research may be required, even with commercial scale demonstration plants. It took Germany more than twelve years to jump from the laboratory stage to commercial scale levels. American industry cannot be asked to risk the time and money on these experiments in coal liquefaction. Since it is to the advantage of all the people, it obviously is the Government's responsibility to undertake the development work to the point where industry can profitably enter.

When we are required to turn to coal and oil shale as the chief source of motor fuels in the United States we should have the processes at hand for immediate application. We certainly do not want to be panicked into emptying our natural petroleum reserves of every drop while waiting for satisfactory coal liquefaction methods to be developed.

The forthcoming era of synthetic fuel production in the United States will find West Virginia in an extremely advantageous position. Not only is this the foremost bituminous coal-producing state in the Nation, but it will possibly be the leading gasoline producing state as well. Here lies the great potential area for jobs for the men in the Service and the men at home in a continuation of large coal production and in plants producing synthetic liquid fuels. The past and the present industrial importance of coal to West Virginia is recognized everywhere, but the future—the post-war age—should see even greater achievements credited to us because of our great, untapped resources of solid fuels and the people's will to work together so that the peace that follows victory will see an era of great achievement and sound prosperity.

GASOLINE OF THE FUTURE—SYNTHETIC FUEL FROM COAL AND SHALE AS A PROSPECTIVE RESERVE

An intensive search now is planned for new domestic sources of gasoline for use in the event that present reserves of crude oil disappear during the years ahead.

The idea is that the search should be financed by the Federal Government. Legislation authorizing an appropriation of $30,000,000 has been approved by Congress. The House passed a bill sponsored by Representative Randolph (Dem.), of West Virginia. This measure was accepted by the Senate as a substitute for a similar bill introduced by Senator O'Mahoney (Dem.), of Wyoming.

With this money, the Bureau of Mines will set out to find the best methods of producing synthetic gasoline. The Bureau will explore the possibilities of extracting oil from shale, from coal and from natural gas. It also may investigate the feasibility of obtaining gasoline from oil sands and from farm products. Two or three demonstration plants will be built. One probably will be placed near the coal fields of the East and another near the shale deposits of the Rockies. These plants will be more than laboratories, will operate on a scale large enough to provide industry with economic and scientific knowledge on commercial production. Maximum capacity of the plants will be 1,000 barrels a day.

An effort will be made to quiet any fear that now exists that the country may be caught short when its domestic reserves of oil are used up. Congress is determined that this country shall not repeat the error it made in rubber by waiting for a crisis before developing a synthetic industry.

Vast resources are present in the U.S. from which to develop a synthetic fuel industry as large or larger than the $15,000,000,000 petroleum industry. Some of the known sources of synthetic oil are these:

Coal. It is estimated that the U.S. has enough coal to provide both synthetic oil and coal for more than 1,000 years at present rates of consumption. Conversion of coal to oil is more costly than the process of converting from other products, but the process also is more highly developed. Coal can be expected to provide the bulk of the oil of the future, after natural supplies are exhausted, because it is present in such great abundance.

Shale. Oil shale deposits in Colorado, Utah and Wyoming would yield an estimated 92,000,000,000 barrels of oil, a 65-year supply at the present rate of consumption. Shale is less expensive to convert than coal, but to product satisfactory motor and aviation oil from shale probably will require more experimental work than in the case of coal.

Natural gas. Here is a source of synthetic gasoline that would offer the easiest and cheapest substitute if the supply were inexhaustible. It is cheaper to process and lends itself better to conversion, but the supply is limited. An extensive conversion industry is not likely to develop since natural gas is an important resource in itself and is not as plentiful as coal and shale.

Oil sands. Biggest known deposits of crude oil in the world are the tar sands of Northern Canada. These deposits could yield 100,000,000,000 to 250,000,000,000 barrels of oil. But they are remote and production and transportation costs would be high. Oil sands of Utah and other less explored areas of the U.S. also might yield an oil supply that would last several years.

Of these sources of synthetic oil, coal and shale offer the best possibilities. Now the question arises as to how much more the consumer might have to pay at some future time for synthetic gasoline than he now pays for gasoline from petroleum.

Gasoline from crude oil now is produced for 5 or 6 cents a gallon. Gasoline from shale can be extracted by processes still in the experimental stage at 7 to 12 cents a gallon. Gasoline from natural gas costs 8 to 10 cents to produce. Tar sands in this country yield gasoline at a cost of 5 to 12 cents. Coal extraction is the most expensive process. Representative Randolph estimates that gasoline from coal can be produced for 15 to 17 cents a gallon by one method and for 13 to 18 cents by another method, but cost estimates of the oil industry sometimes run higher.

Automobile users would have to pay considerably more for synthetic gasoline than they now pay for gas from crude oil unless production costs are reduced materially. However, Congress did not intend that the experiments create a cheaper and better gasoline. It merely believed that the country should insure itself against the day when natural oil supplies are exhausted.

That brings up the question of why Congress is disturbed over the oil supply. The reasons are these:

This country is heading into a serious oil shortage unless large new fields are discovered. The present annual rate of crude oil production is about 1,500,000,000 barrels and the known reserve supply of oil is around 20,000,000,000 barrels. Production and consumption have been exceeding new discoveries for the last five years. The industry and the Government agree that present proved reserves will provide only a 13 or 14-year supply of oil at present rates of consumption.

Rather extensive experiments already have been carried on by the Bureau of Mines in making oil from coal. We have learned much from Germany, where synthetic oil provides more than half the military fuel. We also have learned from Great Britain. Twenty years were required by Germany to develop a synthetic oil industry, but it is believed that we can do the preliminary work for developing such an industry in four or five years.

The test-tube stage is past. The $30,000,000 program authorized by Congress goes into the stage of commercial production. The knowledge learned in the demonstration plants will be available to all in private industry who wish to use it, and will not be used to put the Government in competition with business.●

MODIFICATION OF UNANIMOUS CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that with respect to the agreement that was entered into earlier today concerning time on the supplemental appropriations bill (H.R. 4289) that that agreement be amended as follows:

Provided that any amendment dealing with the reduction of funds in relation to the Virgin Islands be limited to 2 hours, subject to the approval of Mr. STEVENS.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that the agreement be further amended to provide that there be a 1-hour limitation on each of 10 amendments, rather than one amendment, by Mr. WEICKER. As I understand, they all deal with the same subject matter.

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

Mr. ROBERT C. BYRD subsequently said: Mr. President, this has been cleared with the minority leader and with the minority whip who, in particular, was affected.

I ask unanimous consent that with respect to the supplemental appropriation bill, the time limit on any amendment reducing funds to the Virgin Islands be the same as is generally applicable in the agreement to amendments.

Mr. STEVENS, it is my understanding, approves of this approach and does not expect any additional time on any such amendment.

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

ESTATE AND GIFT TAX TREATY WITH THE FRENCH REPUBLIC; PROTOCOL TO THE INCOME TAX CONVENTION WITH THE FRENCH REPUBLIC; THIRD PROTOCOL TO THE 1975 TAX CONVENTION WITH THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AS AMENDED; ESTATE AND GIFT TAX TREATY WITH THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND; TAX CONVENTION WITH THE REPUBLIC OF KOREA; AND TAX CONVENTION WITH THE HUNGARIAN PEOPLE'S REPUBLIC

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, as in executive session, that the six treaties on the Executive Calendar be considered as having passed through the various legislative stages, up to and including the presentation of the resolution of ratification, and that a vote occur on the six treaties en bloc at 2 o'clock p.m. on Monday, July 9; that there be 10 minutes of debate preceding the vote, to be equally divided between Mr. JAVITS and Mr. CHURCH; that the Senate go into executive session at 10 minutes prior to 2 o'clock p.m. on that date; that the RECORD show a rollcall vote on each of the six treaties, notwithstanding only one actual vote occurring; and that, upon the disposition of the treaties, the Senate return to legislative session.

Mr. BAKER. Mr. President, reserving the right to object, I shall not object, my reservation is for the purpose of stating for the RECORD that negotiations looking to the scheduling of these items for action of the Senate has been underway for some time. We have cleared it with all of those Senators who have indicated an interest in this matter on our side. We find this to be a satisfactory

arrangement and I have no objection to the request.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate, as in executive session, and as in the Committee of the Whole, proceeded to consider executive J, 96th Congress, first session, Estate and Gift Tax Treaty with the French Republic; executive K, 96th Congress, first session, Protocol to the Income Tax Convention with the French Republic; executive Q, 96th Congress, first session, Third Protocol to the 1975 Tax Convention with the United Kingdom of Great Britain and Northern Ireland, as amended; executive R, 96th Congress, first session, Estate and Gift Tax Treaty with the United Kingdom of Great Britain and Northern Ireland; executive P, 94th Congress, second session, Tax Convention with the Republic of Korea; and executive K, 96th Congress, first session, Tax Convention with the Hungarian People's Republic, which were read as follows:

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES, INHERITANCES, AND GIFTS

The President of the United States of America and the President of the French Republic, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances, and gifts, have appointed for that purpose as their respective plenipotentiaries:

The President of the United States of America: The Honorable George S. Vest, Assistant Secretary of State for European Affairs, the President of the French Republic: His Excellency Francois de Laboulaye, Ambassador of France, who having communicated to each other their full powers, found in good and due form, have agreed upon the following provisions.

CHAPTER I.—SCOPE OF THE CONVENTION

ARTICLE 1.—ESTATES AND GIFTS COVERED

(1) This Convention shall apply to estates of decedents whose domicile at death was in France and to estates of decedents which are subject to the taxing jurisdiction of the United States by reason of the decedent's domicile therein or citizenship thereof at death.

(2) This Convention shall also apply to gifts of donors whose domicile at the time of making a gift was in France, and to gifts which are subject to the taxing jurisdiction of the United States by reason of the donor's domicile therein or citizenship thereof at the time of making of a gift.

(3) A person who at the time of death or the making of a gift was a resident of a possession of the United States and who acquired United States citizenship solely by reason of (a) his being a citizen of such possession, or (b) his birth or residence within such possession, shall be considered as having been neither domiciled in nor a citizen of the United States for purposes of this Convention.

ARTICLE 2.—TAXES COVERED

(1) This Convention shall apply to:

(a) In the case of the United States: the Federal gift tax and the Federal estate tax, including the tax on generation-skipping transfers; and

(b) In the case of France: the duty on gifts and the duty levied on succession.

(2) This Convention shall also apply to any identical or substantially similar taxes on estates, inheritances, and gifts which are subsequently imposed by a Contracting State in addition to, or in place of, the existing taxes.

(3) The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective laws relating to taxes on estates, inheritances, and gifts.

CHAPTER II.—DEFINITIONS

ARTICLE 3.—GENERAL DEFINITIONS

(1) In this Convention:

(a) The terms "Contracting State" and "other Contracting State" means the United States or France, as the context requires.

(b) The term "United States" means the United States of America and, when used in a geographical sense, means the states thereof and the District of Columbia. Such term also includes any area outside the States and the District of Columbia which is, in accordance with international law, an area within which the United States may exercise rights with respect to the natural resources of the seabed and sub-soil.

(c) The term "France" means the French Republic and, when used in a geographical sense, means the European and Overseas departments of the French Republic. Such term also includes any area outside those departments which is, in accordance with international law, an area within which France may exercise rights with respect to the natural resources of the seabed and sub-soil.

(d) the term "enterprise" means a commercial or industrial enterprise carried on by an individual domiciled in a Contracting State.

(e) Except where expressly stated to the contrary, the term "tax" means the tax or taxes referred to in Article 2 which are imposed by the Contracting State (or Contracting States) as indicated by the context of the term's usage.

(f) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of France, the Minister of Budget or his delegate.

(2) Any term not otherwise defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the tax laws of the Contracting State whose tax is being determined. However, if the meaning of such a term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, the Contracting State may, in order to prevent double taxation or to further any other purposes of this Convention, establish a common meaning of the term for purposes of this Convention.

ARTICLE 4.—FISCAL DOMICILE

(1) For the purpose of this Convention, the question whether an individual was domiciled in one of the Contracting States shall be determined according to the law of that State.

(2) Where by reason of the provisions of paragraph (1) an individual was domiciled in both Contracting States, then this case shall be determined in accordance with the following rules:

(a) He shall be deemed to have been domiciled in the Contracting State in which he maintained his permanent home;

(b) If he had a permanent home in both Contracting States or in neither of the Contracting States, his domicile shall be deemed to be in the Contracting State with which his personal relations were closest (center of vital interests);

(c) If the Contracting State in which he had his center of vital interests cannot be determined, his domicile shall be deemed to be in the Contracting State in which he had an habitual abode;

(d) If he had an habitual abode in both Contracting States or in neither of the Contracting States, his domicile shall be deemed to be in the Contracting State of which he was a citizen; or

(e) If he was a citizen of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine the Contracting State of his domicile by mutual agreement.

(3) (a) Notwithstanding the provisions of paragraph (2), an individual who at the time of his death or the making of a gift was a citizen of one of the Contracting States without being a citizen of the other Contracting State, and who would be considered under paragraph (1) as having been domiciled in both Contracting States, shall be deemed to have been domiciled only in the Contracting State of which he was a citizen, if he had a clear intention to retain his domicile in that Contracting State and if he was domiciled in the other Contracting State in the aggregate less than 5 years during the 7-year period ending with the year of his death or the making of a gift.

(b) Notwithstanding the provisions of paragraph (2) or of subparagraph (a) of this paragraph, an individual who at the time of his death or the making of a gift was a citizen of one of the Contracting States without being a citizen of the other Contracting State, and who would be considered under paragraph (1) as having been domiciled in both Contracting States, shall be deemed to have been domiciled only in the Contracting State of which he was a citizen if:

(i) He was domiciled in the other Contracting State in the aggregate less than 5 years during the 7-year period ending with the year of his death or the making of a gift, provided that he was in that other Contracting State by reason of an assignment of employment or as the spouse or other dependent (personne à charge) of a person present in that other Contracting State for such a purpose; or

(ii) He was domiciled in the other Contracting State in the aggregate less than 7 years during the 10-year period ending with the year of his death or the making of a gift, provided that he was in that other Contracting State by reason of a renewal of an assignment of employment or as the spouse or other dependent (personne a charge) of a person present in that other Contracting State for such a purpose.

CHAPTER III.—TAXING RULES

ARTICLE 5.—IMMOVABLE (REAL) PROPERTY

(1) Immovable (real) property may be taxed by a Contracting State if such property is situated in that State.

(2) The term "immovable (real) property" shall be defined in accordance with the tax laws of the Contracting State in which such property is situated. Mortgages or other claims secured by immovable (real) property shall not be regarded as immovable (real) property.

(3) The provisions of paragraphs (1) and (2) shall also apply to immovable (real) property which forms part of the business property of a permanent establishment or is used for the performance of professional services or other independent activities of a similar character.

ARTICLE 6.—BUSINESS PROPERTY OF A PERMANENT ESTABLISHMENT AND ASSETS PERTAINING TO A FIXED BASE USED FOR THE PERFORMANCE OF PROFESSIONAL SERRVICES

(1) Except as provided in Article 5, assets (other than ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft) used in or held for use in the conduct of the business of a permanent establishment may be taxed by a Contracting State if the permanent establishment is situated therein.

(2) For purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. If an individual is a member of a

partnership or other association that is not a corporation which is engaged in industrial or commercial activity through a fixed placed of business, he shall be deemed to have been so engaged to the extent of his interest therein.

(3) The term "permanent establishment" shall include especially:

(a) A seat of management;

(b) A branch;

(c) An office;

(d) A factory;

(e) A workshop;

(f) A warehouse;

(g) A mine, quarry, or other place of extraction of natural resources; and

(h) A building site or a construction or assembly project which exists for more than 12 months.

(4) Notwithstanding the provisions of paragraphs (2) and (3), the term "permanent establishment" shall not be deemed to include:

(a) The use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another person;

(d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or the collection of information, for the enterprise;

(e) The maintenance of a fixed place of business solely for the purpose of advertising, supplying information, conducting scientific research, or similar activities which have a preparatory or auxiliary character, for the enterprise; or

(f) The maintenance of a fixed place of business solely for investment purposes (and not for purposes of engaging in industrial or commercial activity) of an individual, whether by the individual or his employees or through a broker or other agent.

(5) A person who was acting in a Contracting State on behalf of an enterprise—other than agent to whom paragraph (4)(f) or (6) applies—shall be deemed to have been a permanent establishment of the enterprise in that State if such person had, and habitually exercised in that State, an authority to conclude contracts in the name of the enterprise, unless the exercise of such authority was limited to the purchase of goods or merchandise for the enterprise.

(6) An enterprise shall not be deemed to have had a permanent establishment in a Contracting State merely because the enterprise engaged in industrial or commercial activity in that State through a broker, general commission agent, or any other agent of an independent status acting in the ordinary course of his business.

(7) The fact that an enterprise controlled a corporation which engaged in industrial or commercial activity in a Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether the enterprise had a permanent establishment in that State.

(8) Except as provided in Article 5, assets pertaining to a fixed base used for the performance of professional services or other independent activities of a similar character may be taxed by a Contracting State if the fixed base is situated in that State.

ARTICLE 7.—TANGIBLE MOVABLE PROPERTY

(1) Tangible movable property other than currency may be taxed by a Contracting State if such property is situated in that State and is not taxable by the other Contracting State pursuant to Article 6. For this purpose, tangible movable property which is in transit shall be considered situated at the place of destination.

(2) Notwithstanding the provisions of paragraph (1), tangible movable property owned by an individual referred to in paragraph (3) of Article 4 and used for his normal personal use or that of his family may be taxed only by the Contracting State in which the individual was domiciled.

(3) Notwithstanding the provisions of paragraph (1), ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft, may be taxed by a Contracting State if such ships and aircraft are registered in that Contracting State. Other ships and aircraft may be taxed by a Contracting State if the harbors and airports most frequently used by such ships and aircraft are situated in that State.

ARTICLE 8.—TAXATION OTHER THAN PURSUANT TO ARTICLES 5, 6, AND 7

Except as provided in Articles 5, 6, and 7, property, including shares or stock in a corporation, debt obligations (whether or not there is written evidence thereof), other intangible property, and currency may be taxed by a Contracting State only if the decedent or donor was a citizen of or was domiciled in that State at the time of death or the making of a gift, and if taxable by that State under its laws.

ARTICLE 9.—DEDUCTION OF DEBTS

(1) Debts, to the extent they would be deductible according to the internal law of a Contracting State, shall be deducted from the gross value of the property which may be taxed by that State in the proportion that such gross value bears to the gross value of the entire property wherever situated.

(2) Notwithstanding the provisions of paragraph (1), for purposes of determining the French tax:

(a) Debts pertaining to a permanent establishment or to a fixed base used for the performance of professional services or other independent activities of a similar character shall be deducted from the value of assets referred to in Article 6.

(b) Debts pertaining to ships and aircraft operated in international traffic and to movable property related to the operation of such ships and aircraft shall be deducted from the value of these assets.

ARTICLE 10.—CHARITABLE EXEMPTIONS AND DEDUCTIONS

(1) A transfer to a legal entity created or organized in a Contracting State shall be exempt from tax, or fully deductible from the gross value liable to tax, in the other Contracting State with respect to its taxes referred to in Article 2, provided the transfer would be eligible for such exemption or deduction if the legal entity had been created or organized in that other Contracting State.

(2) The provisions of paragraph (1) shall apply only if the legal entity:

(a) Has a tax-exempt status in the first Contracting State by reason of which transfers to such legal entity are exempt or fully deductible;

(b) Is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; and

(c) Receives a substantial part of its support from contributions from the public or governmental funds.

(3) This Article shall not apply to transfers to a Contracting State or a political or administrative subdivision thereof unless specifically limited to a purpose described in paragraph (2)(b).

ARTICLE 11.—COMMUNITY PROPERTY AND MARITAL DEDUCTION

(1) Property (other than community property) which was acquired during marriage for consideration by an individual who at the time of death or the making of a gift was domiciled in, or a citizen of, the United States and which passes to the spouse of such individual shall, * * * community property, unless the spouses expressly elected to have a treatment other than community property treatment provided by French civil law.

(2) In the case of an individual who was domiciled in France there shall, for purpose of determining the United States tax, be allowed the same marital deduction in effect on the date of signature of this Convention, as if such individual were domiciled in the United States, and in such a case the tax rates applicable if the decedent or donor had been domiciled in the United States shall apply. If the tax determined without regard to the preceding provision of this paragraph is lower than that computed under the preceding provision, the lower tax shall apply.

(3) In the event the laws of either Contracting State are changed substantially to reduce the tax benefits of the marital deduction or community property, the competent authorities of the Contracting States shall consult to determine whether this Article shall be modified or shall cease to have effect.

CHAPTER IV.—RELIEF FROM DOUBLE TAXATION

ARTICLE 12.—EXEMPTIONS AND CREDITS

(1) Except as otherwise provided in this Convention, each Contracting State shall impose its tax, and shall allow exemptions, deductions, credits, and other allowances, in accordance with its laws.

(2) Double taxation shall be avoided in the following manner:

(a) In determining the French tax where property may be taxed by the United States in accordance with Article 5, 6, or 7, such property shall be exempt from the French tax. However, French tax with respect to property which is taxable by France in accordance with this Convention shall be computed at the rate appropriate to the total of property taxable under French law.

(b) In determining the United States tax:

(i) Where both Contracting States impose tax with respect to property which is taxable by France in accordance with Article 5, 6, or 7, the United States shall allow a credit equal to the amount of the tax imposed by France with respect to such property.

(ii) Notwithstanding the provisions of subparagraph (i), the total amount of all credits allowed by the United States pursuant to this Article or pursuant to its laws or other conventions with respect to all property in respect of which a credit is allowable under subparagraph (i) shall not exceed that part of the tax of the United States which is attributable to such property.

(iii) Any credits for tax imposed by France allowable under this Article are in lieu of, and not in addition to, any such credits allowed by the laws of the United States.

(3) If the decedent or donor was a citizen of the United States at the time of death or the making of a gift and would be considered under Article 4 as having been domiciled in France at such time, the United States shall allow a credit equal to the amount of the tax imposed by France.

(4) Exemption and credits under this Article shall be tentatively allowed by the United States on the basis of statements made in the tax return as to the amount of any tax paid or payable to France. However, such exemptions and credits shall not be finally allowed until any such tax for which the exemption or credit is allowable has been paid.

(5) The provisions of this Convention shall not result in an increase in the amount of the tax imposed by either Contracting State under its domestic laws. A reduction in the credit allowed against United States tax for the tax paid to France which results from the application of this Convention shall not be construed as an increase in tax.

CHAPTER V.—SPECIAL PROVISIONS

ARTICLE 13.—TIME LIMITATIONS ON CLAIMS FOR CREDIT OR REFUND

(1) Any claim for credit or for refund of tax founded on the provisions of this Con-

vention shall be made before the expiration of the latest of:

(a) The time for making of a claim for refund of tax under the laws of the Contracting State to which the claim for credit or refund is made;

(b) Five years from the date of death of the decedent, or from the making of a gift with respect to which the claim is made; or

(c) One year after final determination (administrative or judicial) and payment of tax for which any credit under Article 12 is claimed, provided that the determination and payment are made within 10 years of the date of death of the decedent or of the making of a gift.

(2) Any refund based on the provisions of this Convention shall be made without payment of interest on the amount so refunded.

ARTICLE 14.—MUTUAL AGREEMENT PROCEDURE

(1) Any person who considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention may, notwithstanding the remedies provided by the laws of those States, present his case to the competent authority of either Contracting State. Such presentation must be made within the period of time prescribed for the filing of a claim for credit or refund under Article 13. Should the person's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall seek agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation contrary to the provisions of this Convention.

(2) The competent authorities of the Contracting States shall resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this Article. When it seems advisable for the purpose of reaching an agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) When the competent authorities reach such an agreement, taxes shall be imposed, and refund or credit of taxes shall be allowed by the Contracting States in accordance with such agreements, notwithstanding any procedural rule (including the statute of limitations) applicable under the laws of either Contracting State.

(5) The competent authority of each Contracting State may prescribe such regulations and forms as may be necessary or appropriate to give effect to and implement the provisions of this Convention.

ARTICLE 15.—FILING OF RETURNS AND EXCHANGE OF INFORMATION

(1)(a) The provisions of Articles 5, 6, 7, or 8, which change the taxability or situs of property or the amount of tax which would have been due in the absence of this Convention, shall not change:

(i) The requirements of the respective tax laws of the Contracting States relating to information or tax returns or notices, transfer certificates or maintenance of records, and

(ii) The applicability and amount of any sanctions of such laws with respect to the requirements referred to in subparagraph (i).

(b) As concerns the United States notwithstanding the provisions of paragraph (a), the requirements or sanctions found to be unnecessary for the prevention of fraud or fiscal evasion with respect to taxes to which this Convention applies may be eliminated or modified (but not made more burdensome) by regulations prescribed pursuant to paragraph (5) of Article 14.

(2) The competent authority of each Contracting State shall furnish the competent authority of the other Contracting State such information as is pertinent to:

(a) Carrying out the provisions of this Convention or the laws of such other Contracting State concerning its tax insofar as the taxation thereunder is in accordance with this Convention, or

(b) Preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention (including information with respect to property exempted from the tax of the first-mentioned Contracting State by reason of Article 8).

However, this paragraph shall not require the competent authority of a Contracting State to furnish information not in the possession of that Contracting State with respect to property exempted from its tax by reason of Article 8. Any information furnished shall be treated as secret and shall not be disclosed to any persons other than those (including a court or administrative body) concerned with assessment, collection, enforcement, or prosecution in respect of the taxes which are the subject of this Convention.

(3) In no case shall the provisions of paragraph (2) be construed so as to impose on one of the Contracting States the obligation:

(a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) To supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

(4) The furnishing of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States shall agree on the list of information which shall be furnished on a routine basis.

ARTICLE 16.—ASSISTANCE IN COLLECTION

(1) The two Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which this Convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character according to the laws of the State requested, in cases where the taxes are definitively due according to the laws of the State making the application.

(2) In the case of an application for enforcement of taxes, revenue claims of each of the Contracting States which have been finally determined will be accepted for enforcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

(3) The application will be accompanied by such documents as are required by the laws of the State making the application to establish that the taxes have been finally determined.

(4) If the revenue claim has not been finally determined, the State to which application is made will take such measures of conservancy (including measures with respect to transfer of property belonging to nonresident aliens) as are authorized by its laws for the enforcement of its own taxes.

(5) The assistance provided for in this Article shall not be accorded with respect to estates of citizens of the Contracting State to which application is made.

ARTICLE 17.—DIPLOMATIC AND CONSULAR OFFICIALS

(1) Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

(2) Insofar as such privileges prevent the imposition of tax in the receiving Contracting State, the right to tax shall be reserved to the Contracting State in whose service the persons concerned exercised their functions and, notwithstanding any other provisions of this Convention, such persons shall not be deemed to have been domiciled in the receiving Contracting State.

ARTICLE 18.—TERRITORIAL EXTENSION

(1) This Convention may be extended, either in its entirety or with necessary modifications, to all or any of the Overseas Territories of the French Republic or the territories for whose international relations the United States is responsible, if such territories impose taxes substantially similar in character to those referred to in Article 2. Any such extension shall take effect from such date and subject to such modifications and conditions as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedure. In the case of the United States, such procedure shall be that set forth in Article II, Section 2, of the Constitution of the United States (advice and consent of the Senate).

(2) At any time after the expiration of a period of one year from the effective date of an extension made by virtue of paragraph (1) either of the Contracting States may, by a written notice of termination given to the other Contracting State through diplomatic channels, terminate the application of the provisions in respect of any territory to which this Convention has been extended, in which case the provisions of the Convention shall cease to be applicable to such territory on and after the first day of January following the date of such notice.

(3) Unless otherwise agreed by both Contracting States, the termination of the Convention by one of the Contracting States under Article 20 shall also terminate the application of the Convention to any territory to which it has been extended under this Article.

CHAPTER VI.—FINAL PROVISIONS

ARTICLE 19.—ENTRY INTO FORCE

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Paris as soon as possible.

(2) This Convention shall enter into force the first day of the second month following the month in which the exchange of the instruments of ratification takes place. Its provisions shall apply to estates of persons dying and to gifts made on or after that date.

(3) The Convention of October 18, 1946, as modified by the Protocol of May 17, 1948, and the Convention of June 22, 1956, shall be terminated on, and shall cease to have effect from, the date on which the present Convention enters into force according to paragraph (2).

ARTICLE 20.—TERMINATION

(1) This Convention shall remain in force until terminated by one of the Contracting States. However, not earlier than the fifth year following the year in which this Convention entered into force, either Contracting State may, between the first of January and the thirtieth of June, give written notice of termination through diplomatic channels, with effect from the end of the calendar year in which such notice is given. In such an event, its provisions shall not apply to estates of persons dying or to gifts made after the end of the calendar year with respect to the end of which this Convention has been terminated.

(2) Notwithstanding the provisions of paragraph (1), if the effects of this Convention are substantially altered as a result of changes made in the tax law of either Contracting State, either Contracting State may, through diplomatic channels, give a written notice of termination with effect not earlier than 6 months after such notice is given. In such an event, its provisions shall not apply to estates of persons dying or to gifts made on or after the effective date of the termination.

In witness whereof, the plenipotentiaries of the two Contracting States have signed this Convention and affixed thereto their seals.

Done at Washington, in duplicate, in the English and French languages, each text being equally authentic, this 24th day of November 1978.

For the President of the United States of America:

For the President of the French Republic:

The resolution of ratification of executive J was read, as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Between the United States of America and the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates, Inheritances and Gifts, done at Washington on November 24, 1978 (Ex. J, Ninety-sixth Congress, first session).

PROTOCOL TO THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC WITH RESPECT TO TAXES ON INCOME AND PROPERTY OF JULY 28, 1967, AS AMENDED BY THE PROTOCOL OF OCTOBER 12, 1970

The President of the United States of America and the President of the French Republic, desiring to amend the Convention between the United States of America and the French Republic with respect to taxes on income and property of July 28, 1967, as amended by the Protocol of October 12, 1970, have appointed for that purpose as their respective plenipotentiaries:

The President of the United States of America: The Honorable George S. Vest, Assistant Secretary of State for European Affairs, and

The President of the French Republic: His Excellency Francois de Laboulaye, Ambassador of France.

who have agreed upon the following provisions.

ARTICLE 1

1. In Article 1, paragraph (1) is replaced by the following:

"(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code and the excise tax on insurance premiums paid to foreign insurers. The excise tax imposed on insurance premiums paid to foreign insurers, however, is covered only to the extent that the foreign insurer does not reinsure such risks with a person not entitled to exemption from such tax under this or another convention.

(b) In the case of France:

(i) the income tax, the corporation tax, including any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes; and

(ii) the tax on Stock Exchange transactions."

2. Article 2 is amended as follows:

(1) Subparagraph (1)(a) of Article 2 is replaced by:

"(a) The term 'United States' means the United States of America and, when used in a geographical sense, includes the States thereof and the District of Columbia. Such term also includes any area outside the States and the District of Columbia which is, in accordance with international law, an area within which the United States may exercise rights with respect to the natural resources of the seabed and subsoil.

"The term 'France' means the French Republic and, when used in a geographical sense, means the European and Overseas departments of the French Republic. Such term also includes any area outside those departments which is, in accordance with international law, an area within which France may exercise rights with respect to the natural resources of the seabed and subsoil."

(2) A new subparagraph (1)(e) is added, and the present subparagraph (1)(e) is renumbered (1)(f):

"(e) the term 'international traffic' means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State."

3. Article 6 is amended by introducing the following new paragraph (4), the current paragraphs (4) and (5) becoming the new paragraphs (5) and (6):

"(4) A partner shall be considered to have realized income or incurred deductions to the extent of this ratable share of the profits or losses of the partnership. For this purpose, the character of any item of income or deduction accruing to a partner shall be determined as if it were realized or incurred from the same source and in the same manner as realized or incurred by the partnership. A partner will be considered to have realized or incurred a proportionate share of each item of income and deduction of the partnership, except to the extent that his share of the profits depends on the source of the income."

4. Article 7 is replaced by the following article:

"ARTICLE 7"

SHIPPING AND AIR TRANSPORT

(1) Notwithstanding Articles 6 and 12:

(a) Where a resident of the United States derives income from the operation in international traffic of ships or aircraft, or gains from the sale, exchange or other disposition of ships or aircraft used in international traffic by such resident, such income or gains shall be taxable only in the United States.

(b) Where a resident of France derives income from the operation in international traffic of ships or aircraft, or gains from the sale, exchange or other disposition of ships or aircraft used in international traffic by such resident, such income or gains shall be taxable only in France.

(2) The provisions of this Article shall also apply to the proportionate share of income derived by a resident of a Contracting State from participation in a pool, a joint business or an international operating agency. The proportionate share shall be treated as derived directly from the operation in international traffic of ships or aircraft.

(3) In the case of a corporation, the provisions of paragraphs (1) and (2) shall apply only if more than 50 percent of the capital of such corporation is owned, directly or indirectly:

(a) by individuals who are residents of the Contracting State in which such corporation is resident or of a State with which the other Contracting State has a convention which exempts such income; or

(b) by such Contracting State.

However, if more than 50 percent in value of the shares of a corporation or of its parent are listed on one or more recognized securities exchanges in a Contracting State, and there is substantial trading activity in those shares on such exchange or exchanges, then the provisions of paragraphs (1) and (2) shall apply if it can be shown that 20 percent or more of the capital of such corporation is owned, directly or indirectly, by individuals and the Contracting State specified in this paragraph.

(4) For the purposes of this Article, income derived from the operation in international traffic of ships or aircraft includes:

(a) profits derived from the rental on a full or bareboat basis of ships or aircraft if operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph (1), or

(b) profits of a resident of a Contracting State from the use or maintenance of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise if such income is incidental to other profits described in paragraph (1)."

5. Article 10 is amended by adding a new paragraph (9) as follows:

"(9) Notwithstanding the provisions of paragraphs (2) and (3), the subject to the provisions of paragraph (4), interest on any loan of whatever kind granted by a bank shall be exempt in the State in which such interest has its source."

6. Article 14 is amended by adding a new paragraph (4) as follows:

"(4) Article 6, paragraph (4), shall apply by analogy. In no event, however, shall that provision result in France exempting under Article 23 more than 50 percent of the earned income from a partnership accruing to a United States citizen who is a resident of France. The amount of such a partner's income which is not exempt under Article 23 solely by reason of the preceding sentence shall reduce the amount of partnership earned income from sources within France on which France can tax partners who are not residents of France."

7. In Article 15, paragraph (3) shall be amended as follows:

"(3) Remuneration received by an individual for personal services performed aboard ships or aircraft operated by a resident of a Contracting State shall be exempt from tax by the other Contracting State if the income from the operation of the ship or aircraft is exempt from tax in the other Contracting State under Article 7 and such individual is a member of the regular complement of the ship or aircraft."

8. Article 20 is amended to read as follows:

"ARTICLE 20

SOCIAL SECURITY PAYMENTS

Social security payments (whether representing employee or employer contributions or accretions thereto) paid by one of the Contracting States to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the former Contracting State."

9. In Article 22, paragraph (4)(a) is amended by adding the following sentence immediately after the first sentence:

"For this purpose the term 'citizen' shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax, but only for a period of 10 years following such loss."

10. Article 23 shall be replaced by the following new article:

ARTICLE 23

RELIEF FROM DOUBLE TAXATION

Double taxation of income shall be avoided in the following manner:

(1) In the case of the United States: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof) the United States shall allow to a citizen, resident or corporation of the United States as a credit against its tax specified in paragraph (1)(a) of Article 1 the appropriate amount of income taxes paid to France. Such appropriate amount shall be based upon the amount of French tax paid but shall not exceed that portion of the United States tax which net income from sources within France bears to the entire net income.

(2) In the case of France:

(a) income referred to below derived by a resident of France shall be exempt from the French taxes mentioned in subparagraph (1)(b)(i) of Article 1:

(i) income (other than income referred to in paragraph (2)(b) of this Article)

which is taxable in the United States under this Convention other than by reason of the citizenship of the taxpayer; and

(ii) in the case of an individual who is a citizen of the United States.

(a) income dealt with in Articles 14 or 15 to the extent the services are performed in the United States;

(b) income which would be exempt from United States tax under Articles 17 or 18 if the recipient were not an individual who is a citizen of the United States;

(c) income dealt with in paragraph (1) of Article 19, to the extent attributable to services performed while his principal place of employment was in the United States.

(b) As regards income taxable in the United States under Articles 9, 10, 11 or 12 and income to which paragraph (4)(b) of Article 22 applies, France shall allow to a resident of France a tax credit corresponding to the amount of tax levied by the United States under this Convention other than by reason of citizenship. Such tax credit, not to exceed the amount of French tax levied on such income, shall be allowed against taxes mentioned in subparagraph (1)(b)(i) of Article 1 of the Convention in the bases of which such income is included.

(c) Notwithstanding the provisions of subparagraphs (a) and (b), French tax may be computed on income chargeable in France by virtue of this Convention at the rate appropriate to the total of the income chargeable in accordance with French law.

(3) In the case of an individual who is both a resident of France and a citizen of the United States:

(a) the amount of the tax credit referred to in subparagraph (b) of paragraph (2) shall be equal to the amount of tax which the United States would be entitled to levy in respect of the item of income if the individual deriving the income were not a citizen of the United States, but shall not exceed the amount of French tax levied on such item of income;

(b) the United States, in determining the amount of credit allowable for foreign taxes, shall consider as income from sources within the United States only that portion of each item of income referred to in subparagraph (2) which is equal to the ratio of X to Y where:

(i) X is the rate of tax which the United States would be entitled to levy if the individual deriving the income were not a citizen of the United States, and

(ii) Y is the effective rate of tax (before reduction by investment tax credit or foreign tax credit) which the United States levies for the year on the individual's gross income.

The proportion of each item of income which is not considered as from sources within the United States under this subparagraph shall be considered as from sources within France. The provision of this subparagraph shall apply only to the extent that an item of income is included in gross income for purposes of determining French tax.

(c) If for any taxable year a partnership of which an individual member is both a resident of France and a citizen of the United States so elects, for United States tax purposes,

(i) any income which solely by reason of paragraph (4) of Article 14 is not exempt from French tax under this Article shall be considered income from sources within France; and

(ii) the amount of income to which subparagraph (i) applies shall reduce (but not below zero) the amount of partnership earned income from sources outside the United States which would otherwise be allocated to partners who are not residents of France. For this purpose the reduction shall apply first to income from sources within France and then to other income from sources outside the United States.

This provision shall not result in a reduction of United States tax below that which the taxpayer would have incurred without the benefit of deductions or exclusions available solely by reasons of his presence or residence outside the United States.

(4) A resident of a Contracting State who maintains one or several abodes in the territory of the other Contracting State shall not be subject in that other State to an income tax according to an "imputed" income based on the rental value of that or other abodes."

ARTICLE 2

This Protocol shall be ratified and instruments of ratification shall be exchanged at Paris. It shall enter into force one month after the date of exchange of the instruments of ratification.

Its provisions shall for the first time have effect with respect to taxable years beginning on or after January 1, 1979.

ARTICLE 3

This Protocol shall remain in force as long as the Convention between the United States of America and the French Republic with respect to taxes on income and property of July 28, 1967, as amended by the Protocol of October 12, 1970, shall remain in force.

In witness whereof, the respective plenipotentiaries have signed the present Protocol and affixed thereto their seals.

Done at Washington in duplicate, in the English and French languages, both texts being equally authoritative, this 24th day of November, 1978.

For the President of the United States of America:

For the President of the French Republic:

The resolution of ratification of executive K was read, as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 1978 Tax Protocol with the French Republic, together with an exchange of notes relating thereto, done at Washington on November 24, 1978 (Ex. K, Ninety-sixth Congress, first session).

THIRD PROTOCOL FURTHER AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT LONDON ON 31 DECEMBER 1975

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a third Protocol to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, signed at London on 31 December 1975, as amended by Notes exchanged at London on 13 April 1976 and by Protocols signed at London on 26 August 1976 and 31 March 1977 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

(1) Paragraph (2) of Article 2 (Taxes covered) shall be deleted and replaced by the following:

"(2) The existing taxes to which this Convention shall apply are:

(a) in the case of the United States, the Federal income taxes imposed by the Internal Revenue Code and the tax on insurance premiums paid to foreign insurers; but (except as provided in paragraph (6) of Article 10 (Dividends)) excluding the accumulated earnings tax and the personal holding tax. The foregoing taxes covered are hereinafter referred to as "United States tax";

(b) in the case of the United Kingdom, the income tax, the capital gains tax, the corporation tax and the petroleum revenue tax. The foregoing taxes covered are hereinafter referred to as "United Kingdom tax"."

(2) Paragraph (3) or Article 2 (Taxes covered) shall be deleted and replaced by the following:

"(3) This Convention shall also apply to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws."

(3) Paragraph (4) of Article 9 (Associated enterprises) shall be deleted and replaced by the following:

"(4) Except as specifically provided in this Article:

(a) where an enterprise doing business in one Contracting State:

(i) is a resident of the other Contracting State; or

(ii) is controlled, directly or indirectly, by an enterprise which is a resident of the other Contracting State; and

(b) where the enterprise which is a resident of the other Contracting State is a corporation, such corporation is neither:

(i) a controlled foreign corporation within the meaning of section 957 of the United States Internal Revenue Code of 1954 (as it may be amended from time to time without changing the principle thereof); nor

(ii) created or organised under the laws of the first-mentioned State or of any third State or controlled, directly or indirectly, by a corporation which is a resident of any third State;

then, in determining the tax liability of the first-mentioned enterprise in the State in which it does business, such State shall not take into account the income, deductions, receipts or outgoings of a related enterprise which is a resident of the other Contracting State or of an enterprise of any third State which is related to the enterprise of the other Contracting State, except that this prohibition shall not apply where the first-mentioned enterprise is a resident of the first-mentioned Contracting State, to the extent that it owns, directly or indirectly, the capital of the related enterprise."

ARTICLE II

The following new paragraph (6A) shall be added to Article 7 (Business profits) after paragraph (6):

"(6A) The United States tax on insurance premiums paid to foreign insurers shall not be imposed on insurance on reinsurance premiums which are the receipts of a business of insurance carried on by an enterprise of the United Kingdom whether or not that business is carried on through a permanent establishment in the United States."

ARTICLE III

Paragraph (5) of Article 10 (Dividends) shall be deleted and replaced by the following:

"(5) Where a corporation which is a resident of a Contracting State (and not a resident of the other Contracting State) derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the corporation, except insofar as such dividends are paid to a resident of that other State (and where that other State is the United States, to a national of the United States) or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State, even if the

dividends paid consist wholly or partly of profits or income arising in that other State."

ARTICLE IV

Sub-paragraph (b) of paragraph (1) of Article 19 (Government service) shall be deleted and replaced by the following:

"(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident and a national of that State."

ARTICLE V

Paragraph (4) of Article 23 (Elimination of double taxation) shall be deleted and replaced by the following:

"Notwithstanding subparagraph (a) of paragraph (1) of this Article, the amount of United Kingdom petroleum revenue tax allowable as a credit against United States tax shall be limited to the amount attributable to United Kingdom source taxable income in the following way, namely:

(a) The amount of United Kingdom petroleum revenue tax on income from the extraction of minerals from oil or gas wells in the United Kingdom to be allowed as a credit for a taxable year shall not exceed the amount, if any, by which the product of the maximum statutory United States tax rate applicable to a corporation for such taxable year and the amount of such income exceeds the amount of other United Kingdom tax on such income.

(b) The lesser of (i) the amount of United Kingdom petroleum revenue tax on income from the extraction of minerals from oil or gas wells in the United Kingdom that is not allowable as a credit under the preceding subparagraph, or (ii) 2 per cent of such income for the taxable year shall be deemed to be income taxes paid or accrued in the two preceding or five succeeding taxable years, to the extent not deemed paid or accrued in a prior taxable year, and shall be allowable as a credit in the year in which it is deemed paid or accrued subject to the limitation in subparagraph (a) above.

(c) The provisions of sub-pargraphs (a) and (b) shall apply, separately, *mutatis mutandis* (but with the deletion, in the case of (b), of the words "the lesser of (i)" and "or (ii) 2 percent of such income for the taxable year"), to the amount of United Kingdom petroleum revenue tax on income from initial transportation, initial treatment and initial storage of minerals from oil or gas wells in the United Kingdom".

ARTICLE VI

The following new Article 27A (Offshore activities) shall be inserted after Article 27 (Effect on diplomatic and consular officials and domestic laws):

"ARTICLE 27A

Offshore Activities

(1) Notwithstanding the provisions of Article 5 (Permanent establishment) and Article 14 (Independent personnel services), a person who is a resident of a Contracting State and carries on activities in the other Contracting State in connection with the exploration or exploitation of the seabed and sub-soil and their natural resources situated in that other Contracting State shall be deemed to be carrying on in respect of those activities a business in that other Contracting State through a permanent establishment or fixed base situated therein.

(2) The provisions of paragraph (1) shall not apply where the activities are carried on for a period not exceeding 30 days in aggregate in any 12 month period. However, for the purpose of this paragraph, activities carried on by any enterprise related to another enterprise shall be regarded as carried on by the enterprise to which it is related if the activities in question are substantially the same as those carried on by the last-mentioned enterprise.

(3) The provisions of Article 8 (Shipping and air transport) shall not apply to a drilling rig or any vessel the principal function of which is the performance of activities other than the transportation of goods or passengers."

ARTICLE VII

The following new paragraph (7) shall be added at the end of Article 28 (Entry into force):

"(7) Notwithstanding any provisions of the respective domestic laws of the Contracting States imposing time limits for applications for relief from tax, an application for relief under the provisions of this Convention shall have effect, and any consequential refunds of tax made, if the application is made to the competent authority concerned within three years of the end of the calendar year in which this Convention enters into force."

ARTICLE VIII

(1) This Protocol shall be ratified and the Instruments of Ratification shall be exchanged at Washington as soon as possible.

(2) This Protocol shall enter into force immediately after the expiration of 30 days following the date on which the Instruments of Ratification are exchanged and shall thereupon have effect, subject to the provisions of paragraph (3) of this Article, in accordance with Article 28 of the Convention.

(3) Notwithstanding the provisions of Article 28 (Entry into force) of the Convention, the provisions of Article 27A (Offshore activities) of the Convention (as added by Article VI of this Protocol) shall not have effect until the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this third Protocol.

Done in duplicate at London this 15th day of March 1979.

For the Government of the United States of America:

For the Government of the United Kingdom of Great Britain and Northern Ireland:

The resolution of ratification of executive Q was read, as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 1979 Tax Protocol with the United Kingdom of Great Britain and Northern Ireland, done at London on March 15, 1979 (Ex. Q, Ninety-sixth Congress, first session).

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES OF DECEASED PERSONS AND ON GIFTS

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates of deceased persons and on gifts;

Have agreed as follows:

ARTICLE 1

SCOPE

This Convention shall apply to any person who is within the scope of a tax which is the subject of this Convention.

ARTICLE 2

TAXES COVERED

(1) The existing taxes to which this Convention shall apply are:

(a) in the United States: the Federal gift tax and the Federal estate tax, including the tax on generation-skipping transfers; and

(b) in the United Kingdom: the capital transfer tax.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

(1) In this Convention:

(a) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;

(b) the term "United Kingdom" means Great Britain and Northern Ireland;

(c) the term "enterprise" means an industrial or commercial undertaking;

(d) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate, and

(ii) in the United Kingdom: the Commissioners of Inland Revenue or their authorised representative;

(e) the term "nationals" means:

(i) in relation to the United States, United States citizens, and

(ii) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided in either case he had the right of abode in the United Kingdom at the time of the death or a transfer;

(f) the term "tax" means:

(i) the Federal gift tax or the Federal estate tax, including the tax on generation-skipping transfers, imposed in the United States, or

(ii) the capital transfer tax imposed in the United Kingdom, or

(iii) any other tax imposed by a Contracting State to which this Convention applies by virtue of the provisions of paragraph (2) of Article 2.

as the context requires; and

(g) the term "Contracting State" means the United States or the United Kingdom as the context requires.

(2) As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires and subject to the provisions of Article 11 (Mutual Agreement Procedure), have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

ARTICLE 4

FISCAL DOMICILE

(1) For the purposes of this Convention an individual was domiciled:

(a) in the United States: if he was a resident (domiciliary) thereof or if he was a national thereof and had been a resident (domiciliary) thereof at any time during the preceding three years; and

(b) in the United Kingdom: if he was domiciled in the United Kingdom in accordance with the law of the United Kingdom or is treated as so domiciled for the purposes of a tax which is the subject of this Convention.

(2) Where by reason of the provisions of paragraph (1) an individual was at any time domiciled in both Contracting States, and

(a) was a national of the United Kingdom but not of the United States, and

(b) had not been resident in the United States for Federal income tax purposes in seven or more of the ten taxable years ending with the year in which that time falls.

he shall be deemed to be domiciled in the United Kingdom at that time.

(3) Where by reason of the provisions of paragraph (1) an individual was at any time domiciled in both Contracting States, and

(a) was a national of the United States but not of the United Kingdom, and

(b) had not been resident in the United Kingdom in seven or more of the ten income tax years of assessment ending with the year in which that time falls.

he shall be deemed to be domiciled in the United States at that time. For the purposes of this paragraph, the question of whether a person was so resident shall be determined as for income tax purposes but without regard to any dwelling-house available to him in the United Kingdom for his use.

(4) Where by reason of the provisions of paragraph (1) an individual was domiciled in both Contracting States, then, subject to the provisions of paragraphs (2) and (3), his status shall be determined as follows:

(a) the individual shall be deemed to be domiciled in the Contracting State in which he had a permanent home available to him. If he had a permanent home available to him in both Contracting States, or in neither Contracting State, he shall be deemed to be domiciled in the Contracting State with which his personal and economic relations were closest (centre of vital interests);

(b) if the Contracting State in which the individual's centre of vital interests was located cannot be determined, he shall be deemed to be domiciled in the Contracting State in which he had an habitual abode;

(c) if the individual had an habitual abode in both Contracting States or in neither of them, he shall be deemed to be domiciled in the Contracting State of which he was a national; and

(d) if the individual was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(5) An individual who was a resident (domiciliary) of a possession of the United States and who became a citizen of the United States solely by reason of his

(a) being a citizen of such possession, or

(b) birth or residence within such possession,

shall be considered as neither domiciled in nor a national of the United States for the purposes of this Convention.

ARTICLE 5

TAXING RIGHTS

(1)(a) Subject to the provisions of Articles 6 (Immovable Property (Real Property)) and 7 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services) and the following paragraphs of this Article, if the decedent or transferor was domiciled in one of the Contracting States at the time of the death or transfer, property shall not be taxable in the other State.

(b) Sub-paragraph (a) shall not apply if at the time of the death or transfer the decedent or transferor was a national of that other State.

(2) Subject to the provisions of the said Articles 6 and 7, if at the time of the death or transfer the decedent or transferor was domiciled in neither Contracting State and was a national of one Contracting State (but not of both), property which is taxable in the Contracting State of which he was a national shall not be taxable in the other Contracting State.

(3) Paragraphs (1) and (2) shall not apply in the United States to property held in a generation-skipping trust or trust equivalent on the occasion of a generation-skipping transfer; but, subject to the provisions of the said Articles 6 and 7, tax shall not be imposed in the United States on such property if at the time when the transfer was made the deemed transferor was domiciled in the United Kingdom and was not a national of the United States.

(4) Paragraphs (1) and (2) shall not apply in the United Kingdom to property comprised in a settlement; but, subject to the provisions of the said Articles 6 and 7, tax shall not be imposed in the United Kingdom on such property if at the time when the settlement was made the settlor was domiciled in the United States and was not a national of the United Kingdom.

(5) If by reason of the preceding paragraphs of this Article any property would be taxable only in one Contracting State and tax, though chargeable, is not paid (otherwise than as a result of a specific exemption, deduction, exclusion, credit or allowance) in that State, tax may be imposed by reference to that property in the other Contracting State notwithstanding those paragraphs.

(6) If at the time of the death or transfer the decedent or transferor was domiciled in neither Contracting State and each State would regard any property as situated in its territory and in consequence tax would be imposed in both States, the competent authorities of the Contracting States shall determine the situs of the property by mutual agreement.

ARTICLE 6

IMMOVABLE PROPERTY (REAL PROPERTY)

(1) Immovable property (real property) may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated, provided always that debts secured by mortgage or otherwise shall not be regarded as immovable property. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) shall also apply to immovable property of an enterprise and to immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROPERTY OF A PERMANENT ESTABLISHMENT AND ASSETS PERTAINING TO A FIXED BASE USED FOR THE PERFORMANCE OF INDEPENDENT PERSONAL SERVICES

(1) Except for assets referred to in Article 6 (Immovable Property (Real Property)) assets forming parts of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.

(2)(a) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(b) The term "permanent establishment" includes especially:

(i) a branch;

(ii) an office;

(iii) a factory;

(iv) a workshop; and

(v) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

(c) A building site or construction or installation project constitutes a permanent establishment only if it lasts for more than twelve months.

(d) Notwithstanding the preceding provisions of this paragraph, the term "permanent establishment" shall be deemed not to include:

(i) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information for the enterprise;

(v) the maintenance of fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or

(vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i)-(v) of this sub-paragraph.

(e) Notwithstanding the provisions of sub-paragraphs (a) and (b) where a person—other than an agent of an independent status to whom sub-paragraph (f) applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in sub-paragraph (d) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that sub-paragraph.

(f) An enterprise shall not be deemed to have a permanent establishement in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(g) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

(3) Except for assets described in Article 6 (Immovable Property (Real Property)), assets pertaining to a fixed base used for the performance of independent personal services may be taxed in the Contracting State in which the fixed base is situated.

ARTICLE 8

DEDUCTIONS, EXEMPTIONS ETC.

(1) In determining the amount on which tax is to be computed, permitted deductions shall be allowed in accordance with the law in force in the Contracting State in which tax is imposed.

(2) Property which passes to the spouse from a decedent or transferor who was domiciled in or a national of the United Kingdom and which may be taxed in the United States shall qualify for a marital deduction there to the extent that a marital deduction would have been allowable if the decedent or transferor had been domiciled in the United States and if the gross estate of the decedent had been limited to property which may be taxed in the United States or the transfers of the transferor had been limited to transfers of property which may be so taxed.

(3) Property which passes to the spouse from a decedent or transferor who was domiciled in or a national of the United States

and which may be taxed in the United Kingdom shall, where

(a) the transferor's spouse was not domiciled in the United Kingdom but the transfer would have been wholly exempt had the spouse been so domiciled, and

(b) a greater exemption for transfers between spouses would not have been given under the law of the United Kingdom apart from this Convention,

be exempt from tax in the United Kingdom to the extent of 50 per cent of the value transferred, calculated as a value on which no tax is payable and after taking account of all exemptions except those for transfers between spouses.

(4)(a) Property which on the death of a decedent domiciled in the United Kingdom became comprised in a settlement shall, if the personal representatives and the trustees of every settlement in which the decedent had an interest in possession immediately before the death so elect and subject to sub-paragraph (b), be exempt from tax in the United Kingdom to the extent of 50 per cent of the value transferred (calculated as in paragraph (3)) on the death of the decedent if:

(i) under the settlement, the spouse of the decedent was entitled to an immediate interest in possession.

(ii) the spouse was domiciled in or a national of the United States,

(iii) the transfer would have been wholly exempt had the spouse been domiciled in the United Kingdom, and

(iv) a greater exemption for transfers between spouses would not have been given under the law of the United Kingdom apart from this Convention.

(b) Where the spouse of the decedent becomes absolutely and indefeasibly entitled to any of the settled property at any time after the decedent's death, the election shall, as regards that property, be deemed never to have been made and tax shall be payable as if on the death such property had been given to the spouse absolutely and indefeasibly.

(5) Where property may be taxed in the United States on the death of a United Kingdom national who was neither domiciled in nor a national if the United States and a claim is made under this paragraph, the tax imposed in the United States shall be limited to the amount of tax which would have been imposed had the decedent become domiciled in the United States immediately before his death, on the property which would in that event have been taxable.

ARTICLE 9

CREDITS

(1) Where under this Convention the United States may impose tax with respect to any property other than property which the United States is entitled to tax in accordance with Article 6 (Immovable Property (Real Property)) or 7 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services) (that is, where the decedent or transferor was domiciled in or a national of the United States), then, except in cases to which paragraph (3) applies, double taxation shall be avoided in the following manner:

(a) Where the United Kingdom imposes tax with respect to property in accordance with the said Article 6 or 7, the United States shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United Kingdom with respect to that property.

(b) Where the United Kingdom imposes tax with respect to property not referred to in sub-paragraph (a) and the decedent or transferor was a national of the United States and was domiciled in the United Kingdom at the time of the death or transfer, the United States shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United Kingdom with respect to that property.

(2) Where under this Convention the United Kingdom may impose tax with respect to any property other than property which the United Kingdom is entitled to tax in accordance with the said Article 6 or 7 (that is, where the decedent or transferor was domiciled in or a national of the United Kingdom), then, except in the cases to which paragraph (3) applies, double taxation shall be avoided in the following manner:

(a) Where the United States imposes tax with respect to property in accordance with the said Article 6 or 7, the United Kingdom shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United States with respect to that property.

(b) Where the United States imposes tax with respect to property not referred to in sub-paragraph (a) and the decedent or transferor was a national of the United Kingdom and was domiciled in the United States at the time of the death or transfer, the United Kingdom shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United States with respect to that property.

(3) Where both Contracting States impose tax on the same event with respect to property which under the law of the United States would be regarded as property held in a trust or trust equivalent and under the law of the United Kingdom would be regarded as property comprised in a settlement, double taxation shall be avoided in the following manner:

(a) Where a Contracting State imposes tax with respect to property in accordance with the said Article 6 or 7, the other Contracting State shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the first-mentioned Contracting State with respect to that property.

(b) Where the United States imposes tax with respect to property which is not taxable in accordance with the said Article 6 or 7 then

(i) where the event giving rise to a liability to tax was a generation-skipping transfer and the deemed transferor was domiciled in the United States at the time of that event.

(ii) where the event giving rise to a liability to tax was the exercise or lapse of a power of appointment and the holder of the power was domiciled in the United States at the time of that event, or

(iii) where (i) or (ii) does not apply and the settler or grantor was domiciled in the United States at the time when the tax is imposed,

the United Kingdom shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United States with respect to that property.

(c) Where the United States imposes tax with respect to property which is not taxable in accordance with the said Article 6 or 7 and subparagraph (b) does not apply, the United States shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United Kingdom with respect to that property.

(4) The credits allowed by a Contracting State according to the provisions of paragraphs (1), (2), and (3) shall not take into account amounts of such taxes not levied by reason of a credit otherwise allowed under those paragraphs until the tax (reduced by any credit allowable with respect thereto) for which the credit is allowable has been paid. Any credit allowed under those paragraphs shall not, however, exceed the part of the tax paid in a Contracting State (as computed before the credit is given but reduced by any credit for other tax) which is attributable to the property with respect to which the credit is given.

(5) Any claim for a credit or for a refund of tax founded on the provisions of the present Convention shall be made within six years from the date of the event giving rise to a liability to tax or, where later, within one year from the last date on which tax for which credit is given is due. The competent authority may, in appropriate circumstances, extend this time limit where the final determination of the taxes which are the subject of the claim for credit is delayed.

ARTICLE 10

NON-DISCRIMINATION

(1)(a) Subject to the provisions of sub-paragraph (b), nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(b) Sub-paragraph (a) shall not prevent the United States from taxing a national of the United Kingdom, who is not domiciled in the United States, as a non-resident alien under its law, subject to the provisions of paragraph (5) of Article 8 (Deductions, Exemptions, Etc).

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not domiciled in that Contracting State any personal allowances, reliefs and reductions for taxation purposes which are granted to individuals so domiciled.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) The provisions of this Article shall apply to taxes which are the subject of this Convention.

ARTICLE 11

MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of either Contracting State.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention. Where an agreement has been reached, a refund as appropriate shall be made to give effect to the agreement.

(3) The competent authorities of the Contracting States shall endeavour to reselve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may reach agreement on the meaning of the terms not otherwise defined in this Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement as contemplated by this Convention.

ARTICLE 12

EXCHANGE OF INFORMATION

The competent authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for the carrying out of the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a court or administrative body) concerned with the assessment, enforcement, collection, or prosecution in respect of the taxes which are the subject of the Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 13

EFFECT ON DIPLOMATIC AND CONSULAR OFFICIALS AND DOMESTIC LAW

(1) Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

(2) This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded by the laws of either Contracting State.

ARTICLE 14

ENTRY INTO FORCE

(1) This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

(2) This Convention shall enter into force immediately after the expiration of thirty days following the date on which the instruments of ratification are exchanged, and shall thereupon have effect:

(*a*) in the United States in respect of estates of individuals dying and transfers taking effect after that date; and

(*b*) in the United Kingdom in respect of property by reference to which there is a charge to tax which arises after that date.

(3) Subject to the provisions of paragraph (4) of this Article, the Convention between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on the Estates of Deceased Persons signed at Washington on 16 April 1945 (hereinafter referred to as "the 1945 Convention") shall cease to have effect in respect of property to which this Convention in accordance with the provisions of paragraph (2) of this Article applies.

(4) Where on a death before 27 March 1981 any provision of the 1945 Convention would have afforded any greater relief from tax than this Convention in respect of

(*a*) any gift inter vivos made by the decedent before 27 March 1974, or

(*b*) any settled property in which the decedent had a beneficial interest in possession before 27 March 1974 but not at any time thereafter,

that provision shall continue to have effect in the United Kingdom in relation to that gift or settled property.

(5) The 1945 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 15

TERMINATION

(1) This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Convention, at any time after five years from the date on which the Convention enters into force provided that at least six months' prior notice has been given through the diplomatic channel. In such event the Convention shall cease to have effect at the end of the period specified in the notice, but shall continue to apply in respect of the estate of any individual dying before the end of that period and in respect of any event (other than death) occurring before the end of that period and giving rise to liability to tax under the laws of either Contracting State.

(2) The termination of the present Convention shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting States.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

Done in duplicate at London this 19th day of October 1978.

For the Government of the United States of America:

For the Government of the United Kingdom of Great Britain and Northern Ireland:

The resolution of ratification of executive R was read, as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates of Deceased Persons and on Gifts, done at London on October 19, 1978 (Ex. R, Ninety-sixth Congress, first session).

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND THE ENCOURAGEMENT OF INTERNATIONAL TRADE AND INVESTMENT

The Government of the United States of America and the Government of the Republic of Korea, desiring to conclude a convention for the avoidance of double taxation of income and the prevention of fiscal evasion and the encouragement of international trade and investment have appointed for that purpose as their respective Plenipotentiaries:

The Government of the United States of America:

His Excellency RICHARD L. SNEIDER, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Korea;

The Government of the Republic of Korea:

His Excellency PARK TONG-JIN, Minister of Foreign Affairs of the Republic of Korea;

Who, having communicated to each other their full powers, found in good and due form, have agreed upon the following articles.

ARTICLE 1

TAXES COVERED

(1) The taxes which are the subject of this Convention are:

(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code (the United States tax), and

(b) In the case of Korea, the income tax and the corporation tax (the Korean tax).

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing taxes after the date of signature of this Convention.

(3) For the purpose of Article 7 (Nondiscrimination), this Convention shall also apply to taxes of every kind imposed at the National, state, or local level. For the purpose of Article 28 (Exchange of Information) this Convention shall also apply to taxes of every kind imposed at the National level.

ARTICLE 2

GENERAL DEFINITIONS

(1) In this Convention, unless the context otherwise requires:

(a) (i) The term "United States" means the United States of America; and

(ii) When used in a geographical sense, the term "United States" means the states thereof and the District of Columbia. Such term also includes:

(A) The territorial sea thereof, and

(B) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

(b) (i) The term "Korea" means the Republic of Korea; and

(ii) When used in a geographical sense, the term "Korea" means all the territory in which the laws relating to Korean tax are in force. The term also includes:

(A) The territorial sea thereof, and

(B) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Korea exercises sovereign rights, in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

(c) The term "Contracting State" means the United States or Korea, as the context requires.

(d) The term "person" includes an individual, a partnership, a corporation, an estate, a trust, or any body of persons.

(e) (i) The term "United States corporation" or "corporation of the United States" means a corporation which is created or organized under the laws of the United States or any state thereof or the District of Columbia, or any unincorporated entity treated as a United States corporation for United States tax purposes; and

(ii) the term "Korean corporation" or "corporation of Korea means a corporation (other than a United States corporation) which has its head or main office in Korea, or any entity treated as a Korean corporation for Korean tax purposes.

(f) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of Korea, the Minister of Finance or his delegate.

(g) The term "State" means any National State, whether or not one of the Contracting States.

(h) The term "citizen" means:

(i) In the case of the United States, a citizen of the United States, and

(ii) In the case of Korea, a national of Korea.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one Contracting State is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of this Convention.

ARTICLE 3

FISCAL DOMICILE

In this Convention:

(a) The term "resident of the United States" means:

(i) A United States corporation, and

(ii) Any other person (except a corporation or any entity treated under Korean law tion or an entity treated under United States law as a corporation) resident in the United States for purposes of its tax, but in the as a corporation) resident in Korea for purposes of its tax, but in the case of a person acting as a partner or fiduciary only to the resident of that Contracting State with extent that the income derived by such person is subject to United States A, he shall be deemed to be at resident.

(b) The term "resident of Korea" means:

(i) A Korea corporation, and

(ii) Any other person (except a corporation or any entity treated under Korean law as a corporation) resident in Korea for purposes of its tax, but in the case of a person acting as a partner or fiduciary only to the extent that the income derived by such person is subject to Korean tax as the income of a resident.

(c) In determining the residence of a partnership which makes a payment, a partnership shall be considered a resident of the State under the laws of which it was created or organized.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States:

(a) He shall be deemed to be a resident of that Contracting State in which he maintains his permanent home;

(b) If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests);

(c) If his center of vital interest is in neither of the Contracting States or cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode;

(d) If he has a habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(e) If he is a citizen of both Contracting States or of neither Contracting State the competent authorities of the Contracting States shall settle the question by mutual agreement.

For the purpose of this paragraph, a permanent home is the place where an individual dwells with his family.

(3) An individual who is deemed to be a resident of one of the Contracting States and not a resident of the other Contracting State by reason of the provisions of paragraph (2) shall be deemed to be a resident only of the first-mentioned Contracting State for all purposes of this Convention, including Article 4 (General Rules of Taxation).

ARTICLE 4

GENERAL RULES OF TAXATION

(1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 6 (Source of Income) shall be applied to determine the source of income.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) By any other agreement between the Contracting States.

(3) The provisions of this Convention shall not affect Korean law so as to deny benefits accorded residents of the United States under the provisions of the Korean Foreign Capital Inducement Law Number 2958 of March 12, 1973 as amended or any similar law to encourage investment in Korea.

(4) Nothwithstanding any provisions of this Convention except paragraph (5) of this Article, a Contracting State may tax a citizen or resident of that Contracting State as if this Convention had not come into effect.

(5) The provisions of paragraph (4) shall not affect:

(a) The benefits conferred by a Contracting State under Articles 5 (Relief from Double Taxation), 7 (Nondiscrimination), 24 (Social Security Payments), and 27 (Mutual Agreement Procedure); and

(b) The benefits conferred by a Contracting State under Articles 20 (Teachers), 21 (Students and Trainees), and 22 (Government Functions), upon individuals who are neither citizens of, nor have immigrant status in, that Contracting State.

(6) The competent authorities of the two Contracting States may prescribe regulations necessary to carry out the provisions of this Convention.

(7) There shall be allowed, for purposes of United States tax, in the case of a resident of Korea who is not a resident of the United States (other than an officer or employee of the Government of Korea or local authority thereof), as long as the United States Internal Revenue Code provides only one personal exemption, a deduction for personal exemptions, subject to the conditions prescribed in sections 151 through 154 of the Internal Revenue Code as in effect on the date of the signature of this Convention, for the spouse of the taxpayer and for each child of the taxpayer present in the United States and residing with him in the United States at any time during the taxable year, but such additional deduction shall not exceed that proportion thereof which the taxpayer's gross income from sources within the United States which is treated effectively connected with the conduct of a trade or business within the United States within the meaning of section 864(c) of the Internal Revenue Code for the taxpayer's taxable year bears to his entire income from all sources for such taxable year.

(8) The United States may impose its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Convention. However, a Korean corporation shall be exempt from the United States personal holding company tax in any taxable year if all of its stock is owned, directly or indirectly, by one or more individuals who are residents of Korea (and not citizens of the United States) for that entire year. A Korean corporation shall be exempt from the United States accumulated earnings tax in any taxable year unless such corporation is engaged in trade or business in the United States through a permanent establishment at any time during such year.

ARTICLE 5

RELIEF FROM DOUBLE TAXATION

Double taxation of income shall be avoided in the following manner:

(1) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the principles hereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of Korean tax and, in the case of a United States corporation owning at least 10 percent of the voting power of a Korean corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid to Korea by the Korean corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Korea but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources within Korea or on income from sources outside the United States) provided by United States law for the taxable year. For the purpose of applying the United States credit in relation to taxes paid to Korea, the rules set forth in Article 6 (Sources of Income) shall be applied to determine the source of income.

(2) In accordance with the provisions and subject to the limitations of the law of Korea (as it may be amended from time to time without changing the principles hereof), Korea shall allow to a citizen or resident of Korea as a credit against Korean tax the appropriate amount of income taxes paid to the United States and, in the case of a Korea corporation owning at least 10 percent of the voting power of a United States corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid to the United States by the United States corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to the United States but shall not exceed that portion of Korean tax which such citizen's or resident's net income from sources within the United States bears to his entire net income for the same taxable year. For the purpose of applying the Korean credit in relation to taxes paid to the United States, the rules set forth in Article 6 (Source of Income) shall be applied to determine the source of income.

ARTICLE 6

SOURCE OF INCOME

For the purposes of this Convention:

(1) Dividends shall be treated as income from sources within a Contracting State only if paid by a corporation of that Contracting State.

(2) Interest shall be treated as income from sources within one of the Contracting States only if paid by that Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State. Notwithstanding the preceding sentence—

(a) If a person paying the interest (whether or not he is a resident of one of the Contracting States) in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, or

(b) If the person paying the interest is a resident of one of the Contracting States

and has a permanent establishment in a State other than a Contracting State in connection with which the indebtedness on which the interest is paid was incurred and such interest is paid to a resident of the other Contracting State, and such interest is borne by such permanent establishment, such interest shall be deemed to be from sources within the State in which the permanent establishment is situated.

(3) Royalties described in paragraph (4) of Article 14 (Royalties) for the use, or the right of use, property (other than as provided in paragraph (5) with respect to ships or aircraft) described in such paragraph shall be treated as income from sources within one of the Contracting States only if paid for the use of, or the right to use, such property within the Contracting State.

(4) Income from real property and royalties from the operation of mines, quarries, or other natural resources (including gains derived from the sale of such property or the right giving rise to such royalties) shall be treated as income from sources within one of the Contracting States only if such property is located in that Contracting State.

(5) Income from the rental of tangible property (movable property) shall be treated as income from sources within one of the Contracting States only if such property is located in that Contracting State. Income from the rental of ships or aircraft derived by a person not engaged in the operation of ships or aircraft in international traffic shall be treated as income from sources within a Contracting State only if the lessee is a resident of that Contracting State.

(6) Income received by an individual for his performance of labor or person services, whether as an employee or in an independent capacity, or for furnishing the person services of another person and income received by a corporation for furnishing the personal services of its employees or others, shall be treated as income from sources within one of the Contracting States only to the extent that such services are performed in that Contracting State. Income from personal services performed aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be treated as income from sources within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. For purposes of this paragraph, income from labor or personal services includes pensions (as defined in paragraph (3) of Article 23 (Private Pensions and Annuities)) paid in respect of such services. Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 22 (Governmental Functions) and payments described in Article 24 (Social Security Payments) shall be treated as income from sources within one of the Contracting States only if paid by or from the public funds of that Contracting State or local authority thereof.

(7) Income from the purchase and sale of intangible or tangible personal (including movable) property (other than gains defined as royalties by paragraph (4)(b) of Article 15 (Royalties)), shall be treated as income from sources within one of the Contracting States only if such property is sold in that Contracting State.

(8) Notwithstanding paragraphs (1) through (7), industrial or commercial profits which are attributable to a permanent establishment which the recipient, a resident of one of the Contracting States, has in the other Contracting State, including income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (4) of Article 14 (Royalties)), and capital gains, but only if the rights or property giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with such permanent establishment, shall be treated as income from sources within that other Contracting State.

(9) The source of any item of income to which paragraphs (1) through (8) of this article are not applicable shall be determined by each of the Contracting States in accordance with its own law. Notwithstanding the preceding sentence, if the source of any item of income under the laws of one Contracting State is different from the source of such item of income under the laws of the other Contracting State or if the source of such income is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or further any other purpose of this Convention, establish a common source of the item of income for purposes of this Convention.

ARTICLE 7

NONDISCRIMINATION

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof.

(2) A permanent establishment which a resident of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than a resident of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging one of the Contracting States to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for taxation purposes on account of civil status or family responsibilities which the first-mentioned Contracting State grants to its own individual residents.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly owned or controlled by one or more residents of the first-mentioned Contracting State, is or may be subjected.

ARTICLE 8

BUSINESS PROFITS

(1) Industrial or commercial profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless such resident is engaged in industrial or commercial activity in that other Contracting State through a permanent establishment situated therein. If such resident is so engage, tax may be imposed by that other Contracting State on the industrial or commercial profits of such resident but only on so much of such profits as are attributable to the permanent establishment.

(2) Where a resident of one of the Contracting States is engaged in industrial or commercial activity in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions, and dealing wholly independently with the resident of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment of a resident of one of the Contracting States in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term "industrial or commercial activity" means the active conduct of a trade or business. It includes the conduct of manufacturing, mercantile, insurance, banking, financing, agricultural, fishing or mining activities, the operation of ships or aircraft, the furnishing of services and the rental of tangible personal property (including ships or aircraft). Such term does not include the performance of personal services by an individual either as an employee or in an independent capacity.

(6)(a) The term "industrial or commercial profits" means income derived from industrial or commercial activity, and income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (4) of Article 14 (Royalties)), and capital gains but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with a permanent establishment which the recipient, being a resident of one of the Contracting States, has in the other Contracting State, whether or not such income is derived from industrial or commercial activity.

(b) To determine whether property or rights are effectively connected with a permanent establishment, the factors taken into account shall include whether the rights or property are used in or held for use in carrying on industrial or commercial activity through such permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income from such property or rights. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

(7) Where industrial or commercial profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall, except as otherwise provided therein, supersede the provisions of this Article.

ARTICLE 9

PERMANENT ESTABISHMENT

(1) For purposes of this Convention, the term "permanent establishment" means a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity.

(2) The term "fixed place of business" includes but is not limited to:

(a) A branch;

(b) An office;

(c) A factory;

(d) A workshop;

(e) A warehouse;

(f) A store or other sales outlet;

(g) A mine, quarry, or other place of extraction of natural resources; and

(h) A building site or construction or installation project which exists for more than 6 months.

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not include a fixed place of business used only for one or more of the following:

(a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;

(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;

(c) The maintenance of a stock of goods of merchandise belonging to the resident for the purpose of processing by another person;

(d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;

(e) the maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident; or

(f) The maintenance of a building site or construction or installation project which does not exist for more than 6 months.

(4) Even if a resident of one of the Contracting States does not have a permanent establishment in the other Contracting State under paragraphs (1) through (3) of this Article, nevertheless he shall be deemed to have a permanent establishment in that other Contracting State if he engages in trade or business in that other Contracting State through an agent who—

(a) Has an authority to conclude contracts in the name of that resident and regularly exercises that authority in that other Contracting State, unless the exercise of the authority is limited to the purchase of goods or merchandise for the account of the resident; or

(b) Maintains in that other Contracting State a stock of goods or merchandise belonging to that resident from which he regularly fills orders or makes deliveries.

(5) Notwithstanding subparagraphs (a), (c) and (d) of paragraph (3), if a resident of one of the Contracting States has a fixed place of business in the other Contracting State and goods or merchandise are either:

(a) Subjected to processing in that other Contracting State by another person (whether or not purchased in that other Contracting State); or

(b) Purchased in that other Contracting State (and such goods or merchandise are not subjected to processing outside that other Contracting State).

such resident shall be considered to have a permanent establishment in that other Contracting State, if all or part of such goods or merchandise is sold by or on behalf of such resident for use, consumption, or disposition in that other Contracting State.

(6) Notwithstanding the provisions of paragraphs (4) and (5), a resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(7) The fact that a resident of one of the Contracting States is a related person (as defined under Article 11 (Related Persons)) with respect to a resident of the other Contracting State or with respect to a person who engages in industrial or commercial activity in that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether that resident of the first-mentioned Contracting State has a permanent establishment in that other Contracting State.

(8) The principles set forth in paragraphs (1) through (7) shall be applied in determining for the purpose of this Convention whether there is a permanent establishment in a State other than one of the Contracting States or whether a person other than a resident of one of the Contracting States has a permanent establishment in one of the Contracting States.

ARTICLE 10

SHIPPING AND AIR TRANSPORT

Notwithstanding Article 8 (Business Profits), income which a resident of one of the Contracting States derives from the operation in international traffic of ships or aircraft shall be exempt from tax by the other Contracting State. For purposes of this Article, income derived from the operation in international traffic of ships or aircraft includes income incidental to such operation, such as income derived from the use or lease of containers, trailers for the inland transportation of containers and other related equipment, but does not include other income from the inland transportation of containers.

ARTICLE 11

RELATED PERSONS

(1) Where a person subject to the taxing jurisdiction of one of the Contracting States and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person.

(2) For the purposes of this Convention, a person is related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons owns or controls directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

ARTICLE 12

DIVIDENDS

(1) Dividends derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed—

(a) 15 percent of the gross amount of the dividend; or

(b) When the recipient is a corporation, 10 percent of the gross amount of the dividend if—

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received).

(3) Paragraph (2) shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment. In such a case, paragraph (6)(a) of Article 8 (Business Profits) shall apply.

ARTICLE 13

INTEREST

(1) Interest derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 12 percent of the gross amount thereof.

(3) Notwithstanding paragraphs (1) and (2), interest derived from sources within one of the Contracting States shall be exempt from tax by that Contracting State if it is beneficially derived by the Government of the other Contracting State, by any local authority thereof, the central bank of that other Contracting State, or any instrumentality wholly owned by that Government or that central bank or both, not subject to tax by that other Contracting State on its income.

(4) Paragraph (2) shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such case, paragraph (6)(a) of Article 8 (Business Profits) shall apply.

(5) Where any amount designated as interest paid to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to it own law, including the provisions of this Convention where applicable.

(6) The term "interest" as used in this Convention means income from bonds, debentures, Government securities, notes, or other evidences of indebtedness, whether or not secured and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

ARTICLE 14

ROYALTIES

(1) The tax imposed by one of the Contracting States on royalties derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 15 percent of the gross amount thereof, except as provided in paragraphs (2) and (3).

(2) Royalties derived from copyrights, or rights to produce or reproduce any literary, dramatic, musical, or artistic work, by a resident of one Contracting State, as well as royalties received as consideration for the use of, or the right to use, motion picture films including films and tapes used for radio or television broadcasting, may not be taxed by the other Contracting State at a rate of tax which exceeds 10 percent of the gross amount of such royalties.

(3) Paragraphs (1) and (2) shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with such permanent establishment. In such a case, paragraph (6)(a) of article 8 (Business Profits) shall apply.

(4) The term "royalties" as used in this article means—

(a) Payment of any kind made as consid-

eration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, copyrights of motion picture films or films or tapes used for radio or television broadcasting, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or knowledge, experience, or skill (knowhow), or ships or aircraft (but only if the lessor is a person not engaged in the operation in international traffic of ships or aircraft), and

(b) Gains derived from the sale, exchange, or other disposition of any such property or rights (other than ships or aircraft) to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights.

The term does not include any royalties, rentals or other amounts paid in respect of the operation of mines, quarries, or other natural resources.

(5) Where an amount is paid to a related person which would be treated as royalty but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the royalty as would have been paid to an unrelated person. In such a case, the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

ARTICLE 15

INCOME FROM REAL PROPERTY

(1) Income from real property, including royalties and other payments in respect of the exploitation of natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such royalties or other payments, may be taxed by the Contracting State in which such real property or natural resources are situated. For purposes of this Convention, interest on indebtedness secured by real property or secured by a right giving rise to royalties or other payments in respect of the exploitation of natural resources shall not be regarded as income from real property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of real property.

ARTICLE 16

CAPITAL GAINS

(1) A resident of one of the Contracting States shall be exempt from tax by the other Contracting State on gains from the sale, exchange, or other disposition of capital assets unless—

(a) The gain is derived by a resident of one of the Contracting States from the sale, exchange, or other disposition of property described in Article 15 (Income from Real Property) situated within the other Contracting State,

(b) The recipient of the gain, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the property giving rise to the gain is effectively connected with such permanent establishment, or

(c) The recipient of the gain, being an individual who is a resident of one of the Contracting States—

(i) Maintains a fixed base in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year and the property giving rise to such gains is effectively connected with such fixed base, or

(ii) Is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

(2) In the case of gains described in paragraph (1)(a), the provisions of Article 15 (Income from Real Property) shall apply. In the case of gains described in paragraph (1)(b), the provisions of Article 8 (Business Profits) shall apply.

ARTICLE 17

INVESTMENT OR HOLDING COMPANIES

A corporation of one of the Contracting States deriving dividends, interest, royalties, or capital gains from sources within the other Contracting State shall not be entitled to the benefits of Article 12 (Dividends), 13 (Interest), 14 (Royalties), or 16 (Capital Gains) if—

(a) By reason of special measures the tax imposed on such corporation by the first-mentioned Contracting State with respect to such dividends, interest, royalties, or capital gains in susbtantially less than the tax generally imposed by such Contracting State on corporate profits, and

(b) 25 percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting States, to be owned directly or indirectly, by one or more persons who are not individual residents of the first-mentioned Contracting State (or, in the case of a Korean corporation, who are citizens of the United States).

ARTICLE 18

INDEPENDENT PERSONAL SERVICES

(1) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity, may be taxed by that Contracting State. Except as provided in paragraph (2), such income shall be exempt from tax by the other Contracting State.

(2) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State if:

(a) The individual is present in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year;

(b) Such income exceeds 3,000 United States dollars or its equivalent in Korean won in a taxable year; or

(c) The individual maintains a fixed base in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year, but only so much of his income as is attributable to such fixed base.

ARTICLE 19

DEPENDENT PERSONAL SERVICES

(1) Wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee, including remuneration from services performed by an officer of a corporation, may be taxed by that Contracting State. Except as provided by paragraph (2) such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if—

(a) He is present in that other Contracting State for a period or periods aggregating less than 183 days in the taxable year;

(b) He is an employee of a resident of the first-mentioned Contracting State or of a permanent establishment maintained in the first-mentioned Contracting State;

(c) The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State; and

(d) Such income does not exceed 3,000 United States dollars or its equivalent in Korean won.

(3) Notwithstanding paragraph (2), remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be exempt from tax by the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

ARTICLE 20

TEACHERS

(1) Where a resident of one of the Contracting States is invited by the Government of the other Contracting State, a political subdivision, or a local authority thereof, or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed 2 years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational institution and such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at such university or educational institution shall be exempt from tax by that other Contracting State for a period not exceeding 2 years from the date of his arrival in that other Contracting State.

(2) This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 21

STUDENTS AND TRAINEES

(1)(a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of—

(i) Studying at a university or other recognized educational institution in that other Contracting State, or

(ii) Securing training required to qualify him to practice a profession or professional specialty, or

(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in subparagraph (a) are—

(i) Remittances from abroad for the purpose of his maintenance, education, study research, or training;

(ii) The grant, allowance, or award; and

(iii) Income from personal services performed in that other Contracting State in an amount not in excess of 2,000 United States dollars or its equivalent in Korean won for any taxable year.

(2) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of—

(a) Acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident, or

(b) Studying at a university or other recognized educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State for a period not exceeding 1 year with respect to his income from personal services in an aggregate amount not in excess of 5,000 United States dollars of its equivalent in Korean won.

(3) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for a period not exceeding 1 year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect to such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Korean won.

(4) The benefits provided under Article 20 (Teachers) and paragraph (1) of this Article shall, when taken together, extend only for such period of time, not to exceed 5 taxable years from the date of arrival of the individual claiming such benefits, as may reasonably or customarily be required to effectuate the purpose of the visit.

ARTICLE 22

GOVERNMENTAL FUNCTIONS

Wages, salaries, and similar remuneration including pensions, annuities, or similar benefits, paid from public funds of one of the Contracting States to a citizen of that Contracting State for labor or personal services performed as an employee of that Contracting State or an instrumentality thereof in the discharge of governmental functions shall be exempt from tax by the other Contracting State.

ARTICLE 23

PRIVATE PENSIONS AND ANNUITIES

(1) Except as provided in Article 22 (Governmental Functions) pensions and other similar remuneration paid to an individual who is a resident of one of the Contracting States in consideration of past employment shall be taxable only in that Contracting State.

(2) Alimony and annuities paid to an individual who is a resident of one of the Contracting States shall be taxable only in that Contracting State.

(3) The term "pensions and other similar remuneration", as used in this Article, means periodic payments made (a) by reason of retirement or death in consideration for services rendered, or (b) by way of compensation for injuries received in connection with past employment.

(4) The term "annuities", as used in this Article, means a stated sum paid periodically as stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

(5) The term "alimony", as used in this Article, means periodic payments made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement which is taxable to the recipient under the internal laws of the Contracting State of which he is a resident.

ARTICLE 24

SOCIAL SECURITY PAYMENTS

Social security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State (or in the case of such payments by Korea, to an individual who is a citizen of the United States) shall be taxable only in the first-mentioned Contracting State. This Article shall not apply to payments described in Article 22 (Governmental Functions).

ARTICLE 25

EXEMPTION FROM SOCIAL SECURITY TAXES

(1) The taxes imposed by Chapter 21 of the Internal Revenue Code shall not apply with respect to wages paid for services performed in Guam by a resident of Korea while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15(H)(ii) of the United States Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

(2) The exemption provided in paragraph (1) shall continue only so long as the similar exemption provided by section 3121 (b)(18) of the Internal Revenue Code.

ARTICLE 26

DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 27

MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of one of the Contracting States considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competant authority of the contracting State of which he is a resident. Should the resident's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of the other Contracting State with a view to avoiding taxation contrary to the provisions of this Convention.

(2) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention. In particular, the competent authorities of the Contracting States may agree—

(a) To the same attribution of industrial or commercal profits to a resident of one of the Contracting States and its permanent establishment situated in the other Contracting State;

(b) To the same allocation of income, deductions, credits, or allowances between a person subject to the taxing jurisdiction of one of the Contracting States and any related person;

(c) To the same determination of the source of particular items of income;

(d) To the uniform accounting for income and deductions; or

(e) To the same meaning of any term used in this Convention.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this Article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) In the event that the competent authorities reach such an agreement, taxes shall be imposed on such income, and refund or credit of taxes shall be allowed, by the Contracting States in accordance with such agreement.

ARTICLE 28

EXCHANGE OF INFORMATION

(1) The competent authorities shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions concerning taxes to which this Convention applies provided the information is of a class that can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

(2) Any information so exchanged shall be treated as secret, except that such information may be—

(a) Disclosed to any person concerned with, or

(b) Made part of a public record with respect to, the assessment, collection, or enforcement of, or litigation with respect to, the taxes to which this Convention applies.

(3) No information shall be exchanged which would be contrary to public policy.

(4) If specifically requested by the competent authority of one of the Contracting States, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

(5) The exchange of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

(6) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in paragraph (1) of Article 1 (Taxes Covered) and of the adoption of any taxes referred to in paragraph (2) of Article 1 (Taxes Covered) by transmitting the texts of any amendments or new statutes at least once a year.

(7) The competent authorities of the Contracting States shall notify each other of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of regulations, rulings, or judicial decisions by transmitting the texts of any such materials at least once a year.

ARTICLE 29

EXTENSION TO TERRITORIES

(1) Either one of the Contracting States may, at any time while this Convention continues in force, by a written notification given to the other Contracting State through diplomatic channels, declare its desire that the operation of this Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, shall extend to all or any of the areas (to which this Convention is not otherwise applicable) for whose international relations it is responsible and which impose taxes substantially similar in character to those which are the subject of this Convention. When the other Contracting State has, by a written communication through diplomatic channels, signified to the first-mentioned Contracting State that such notification is accepted in respect of such area or areas, and the notification and communication have been ratified and instruments of ratification exchanged, this Convention, in whole or in part, or with such modifications as may be found necessary for special application in a particular case, as specified in the notification, shall apply to the area or areas named in the notification and shall enter into force and effect on and after the date or dates specified therein. None of the provisions of this Convention shall apply to any such area in the absence of such acceptance and exchange of instruments of ratification in respect of that area.

(2) At any time after the date of entry into force of an extension under paragraph (1), either of the Contracting States may, by 6 month's prior notice of termination given to the other Contracting State through diplomatic channels, terminate the application of this Convention to any area to which it has been extended under paragraph (1), and in such event this Convention shall cease to apply and have force and effect, beginning

on or after the first day of January next following the expiration of the 6-month period, to the area or areas named therein, but without affecting its continued application to the United States, Korea, or to any other area to which it has been extended under paragraph (1).

(3) In the application of this Convention in relation to any area to which it is extended by notification by the United States or Korea, reference to the "United States" or "Korea", as the case may be, shall be construed as referring to that area.

(4) The termination in respect of the United States or Korea of this Convention under Article 32 (Termination) shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Convention to any area to which the Convention has been extended under this article by the United States or Korea.

ARTICLE 30

ASSISTANCE IN COLLECTION

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits.

(2) In no case shall this Article be construed so as to impose upon one of the Contracting States the obligation to carry out measures at variance with the laws, administrative practices, or public policy of either Contracting State with respect to the collection of its own taxes.

ARTICLE 31

ENTRY INTO FORCE

This Convention shall be ratified and instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force on the thirtieth day following the exchange of instruments of ratification and shall then have effect for the first time:

(a) As respects the rate of withholding taxes and Article 25 (Exemption from Social Security Taxes), to amounts paid on or after the first day of the second month following the date on which this Convention enters into force;

(b) As respects other taxes, to taxable years beginning on or after January 1 of the year following the date on which this Convention enters into force.

ARTICLE 32

TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income of taxable years beginning (or, in the case of withholding taxes and social security taxes, payments made) on or after January 1 next following the expiration of the 6-month period.

DONE at Seoul in duplicate in the English and Korean languages this 4th day of June 1976.

For the United States of America:

RICHARD L. SNEIDER.

For the Republic of Korea:

PARK TONG-JIN.

The resolution of ratification of executive P was read, as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 1976 Tax Convention with the Republic of Korea, together with an exchange of notes relating thereto, signed at Seoul on June 4, 1976 (Ex. P, Ninety-fourth Congress, second session).

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Hungarian People's Republic, desiring to further expand and facilitate mutual economic relations, have resolved to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in this convention.

2. Notwithstanding any provision of this Convention except paragraph 3 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Fiscal Domicile)) and citizens (including, in the case of the United States, former citizens) as if this Convention had not come into effect.

3. The provisions of paragraph 2 shall not affect:

(*a*) The benefits conferred by a Contracting State under paragraph 2 of Article 15 (Pensions), Articles 20 (Relief from Double Taxation), 21 (Non-discrimination), and 22 (Mutual Agreement Procedure); and

(*b*) The benefits conferred by a Contracting State under Articles 16 (Government Service), 17 (Teachers), 18 (Students and Trainees) and 24 (Effect of Convention on Diplomatic and Consular Officials, Domestic Laws, and Other Treaties), upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State.

2. The existing taxes to which this Convention shall apply are:

(*a*) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations, but excluding the accumulated earnings tax and the personal holding company tax.

(*b*) In the case of the Hungarian People's Republic:

(i) The general income tax.

(ii) The income tax on intellectual activities,

(iii) The profit tax,

(iv) The profit tax on economic associations with foreign participation,

(v) The enterprises special tax,

(vi) The levy on dividends and profit distributions of commercial companies,

(vii) The profit tax on state-owned enterprises, and

(viii) The contribution to communal development, but only to the extent imposed in respect of income taxes covered by this Convention.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

4. For the purpose of Article 21 (Nondiscrimination), this Convention shall also apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof. For the purpose of Article 23 (Exchange of Information), this Convention shall also apply to taxes of every kind imposed by a Contracting State.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:

(*a*) The term "person" includes an individual, a partnership, a company or juridical person, an estate, a trust, and any other body of persons;

(b) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(d) The term "nationals" means:

(i) All individuals possessing the citizenship of a Contracting State, and

(ii) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;

(e) The term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State;

(f) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of the Hungarian People's Republic, the Minister of Finance or his delegate;

(g) (i) The term "United States" means the United States of America, and

(ii) When used in a geographical sense, the term "United States" does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory; and

(h) The term "Hungarian People's Republic", when used in a geographical sense, means the territory of the Hungarian People's Republic.

2. As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires and subject to the provisions of Article 22 (Mutual Agreement Procedure), have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

FISCAL DOMICILE

1. For purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature; provided, however, that:

(*a*) This term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein or capital situated in that State; and

(*b*) In the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax as the income of a resident of the Contracting State, either in its hands or in the hands of its partners or beneficiaries.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individ-

ual's tax status shall be determined as follows:

(a) The individual shall be deemed to be a resident of the Contracting State in which the individual has a permanent home available to him. If the individual has a permanent home available to him in both Contracting States or in neither Contracting State, the individual shall be deemed to be a resident of the Contracting State in which the individual's center of vital interests is located;

(b) If the Contracting State in which the individual's center of vital interests is located cannot be determined, the individual shall be deemed to be a resident of that Contracting State in which the individual has an habitual abode;

(c) If the individual has an habitual abode in both Contracting States or in neither of them, the individual shall be deemed to be a resident of the Contracting State of which the individual is a national; and

(d) If the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created or organized under the laws of a Contracting State or a political subdivision thereof, it shall be treated as a resident of that State.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

5. For purposes of this Convention, an individual who is a national of a Contracting State shall also be deemed to be a resident of that State if (a) the individual is an employee of that State or an instrumentality thereof in the other Contracting State or in a third State; (b) the individual is engaged in the performance of governmental functions for the first-mentioned State; and (c) the individual is subjected in the first-mentioned State to the same obligations in respect of taxes on income as are residents of the first mentioned State. The spouse and minor children residing with the employee and subject to the requirements of (c) above shall also be deemed to be residents of the first-mentioned State.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business or production through which the activities of an enterprise are wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) A place of management;

(b) A branch;

(c) An office;

(d) A factory;

(e) A workshop; and

(f) A mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, shall constitute a permanent establishment only if it lasts more than 24 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) The maintenance of a fixed place of business solely for the purpose of carrying on for the enterprise any other activity if it has a preparatory or auxiliary character; and

(f) The maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e) of this paragraph.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State, an authority to conclude contracts in the name of such enterprise, that enterprise shall be deemed to have a permanent establishment in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised at a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY (REAL PROPERTY)

1. Income derived by a resident of a Contracting State from immovable property (real property) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting land property apply, usufruct of immovable property and rights to variable or fixed payments as considered for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in that other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In the determination of the business profits of a permanent establishment, there shall be allowed as deductions those expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of:

(a) The mere purchase by that permanent establishment of goods or merchandise for the enterprise, or

(b) The mere delivery to the permanent establishment of goods or merchandise for its use.

5. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

2. For purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental on a full or bareboat basis of ships or aircraft operated in international traffic if such rental profits are incidental to other profits described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that State.

4. The provisions of this Article shall also apply where the enterprise has an agency in the other State for the transportation of goods or persons, but only to the extent of activities directly connected with the business of shipping and aircraft transportation, including auxiliary activities connected therewith.

ARTICLE 9

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and

according to the law of that State, but if the beneficial owners of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) Five percent of the gross amount of the dividends if the beneficial owner is a company which owns, directly or indirectly, at least 10 percent of the voting stock of the company paying the dividends;

(b) In all other cases, 15 percent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 13 (Independent Personal Services), as the case may be, shall apply.

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as:

(a) Such dividends are paid to a resident of that other State,

(b) The holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, or

(c) Such dividends are paid out of profits attributable to a permanent establishment which such company had in that other State, provided that at least 50 percent of such company's gross income from all sources was attributable to a permanent establishment which such company had in that other State.

Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, any such tax shall be subject to the limitations of paragraph 2.

ARTICLE 10

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to bonds or debentures.

3. The provisions of paragraph 1 shall not apply if the person deriving the interest, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 13 (Independent Personal Services). as the case may be, shall apply.

ARTICLE 11

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience.

3. The provisions of pargraph 1 shall not apply if the person deriving the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits) or Article 13 (Independent Personal Services), as the case may be, shall apply.

ARTICLE 12

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in paragraph 2 of Article 6 (Immovable Property), situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable propery pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated by such enterprise in international traffic shall be taxable only in that State.

3. Gains from the alienation of any property other than those mentioned in paragraphs 1 and 2, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 13

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and—

(a) The individual is present in that other State for a period or periods aggregating more than 183 days in the taxable year concerned, or

(b) The individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base.

2. The term "personal services" includes especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, artists, athletes and accountants.

ARTICLE 14

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 15 (Pensions) and 16 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment as a member of the regular complement of a shop or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed only in that Contracting State.

ARTICLE 15

PENSIONS

Subject to the provisions of paragraph 2 of Article 16 (Government Services),

1. Pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State, and

2. Social security payments and other public pensions paid by a Contracting State to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State.

ARTICLE 16

GOVERNMENT SERVICE

1(a) Remuneration other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivison or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:

(i) Is a national of that State; or

(ii) Did not become a resident of that State solely for the purpose of performing the services.

2(a) Any person paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the recipient is a national of and a resident of that State.

3. The provisions of Article 13 (Independent Personal Services), 14 (Dependent Personal Services), and 15 (Pensions), as the case may be, shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 17

TEACHERS

1. Where a resident of one of the Contracting States is invited by the Government of the other Contracting State, a political subdivision or a local authority thereof, or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed 2 years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational institution, and such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at such university or educational institution shall be exempt from tax by that other Contracting State for a period not exceeding 2 years from the date of his arrival in that other Contracting State.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 18

STUDENTS AND TRAINEES

1. Payments which a student, apprentice or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned Contracting State for the purpose of his full-time education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State provided that such payments are made to him from sources outside that State.

2. An individual to whom paragraph 1 applies may elect to be treated for tax purposes as a resident of the first-mentioned State. The election shall apply to all periods during the taxable year of the election and subsequent taxable years during which the individual qualifies under paragraph 1, and may not be revoked except with the consent of the competent authority of that State.

ARTICLE 19

ALL OTHER INCOME

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

ARTICLE 20

RELIEF FROM DOUBLE TAXATION

1. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the appropriate amount of tax paid to the Hungarian People's Republic; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of the Hungarian People's Republic from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income tax paid to the Hungarian People's Republic by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of income tax paid to the Hungarian People's Republic, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid to the Hungarian People's Republic, the taxes referred to in paragraphs 2(b) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

2. In the case of the Hungarian People's Republic, double taxation shall be avoided as follows:

(*a*) Where a resident of the Hungarian People's Republic:

(i) Derives income which, in accordance with the provisions of this Convention other than paragraph 2 of Article 1 (Personal Scope), may be taxed in the United States, or

(ii) Derives income from sources within the United States which may be taxed only by reason of paragraph 2 of Article 1 (Personal Scope),

the Hungarian People's Republic shall, subject to the provisions of subparagraphs (b) and (c), exempt such income from tax.

(*b*) Where a resident of the Hungarian People's Republic derives items of income which, in accordance with the provisions of paragraph 2 of Article 9, may be taxed in the United States, the Hungarian People's Republic shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the United States. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the United States.

(c) Where in accordance with any provision of the Convention income derived by a resident of the Hungarian People's Republic is exempt from tax in the Hungarian People's Republic, the Hungarian People's Republic may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 21

NONDISCRIMINATION

1. The nationals of a Contracting State, whether or not they are residents of one of the Contracting States, shall not be subjected in the other State to any taxation or any requirement connected therewith, which is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. For purposes of the preceding sentence, nationals who are subject to tax by a Contracting State on worldwide income are not in the same circumstances as nationals who are not so subject.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. In this Article the term "taxation" means taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 22

MUTUAL AGREEMENT PROCEDURE

1. Where a resident or national of a Contracting State considers that the actions of one or both of the Contracting States result or will result for it in taxation not in accordance with this Convention, it may, notwithstanding the remedies provided by the national laws of those States, present its case to the competent authority of the Contracting State of which it is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. The competent authorities of the Contracting States may prescribe regulations to carry out the purposes of this Convention.

ARTICLE 23

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

(*a*) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting States shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and copies of unedited original documents (including books, documents, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

ARTICLE 24

EFFECT OF CONVENTION ON DIPLOMATIC AND CONSULAR OFFICIALS, DOMESTIC LAWS, AND OTHER TREATIES

1. Nothing in this Convention shall affect the taxation privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) By the laws of either Contracting State, or

(b) By any other agreement between the Contracting States.

ARTICLE 25

ENTRY INTO FORCE

1. This Convention shall be subject to ratification or approval in accordance with the applicable procedures of the Governments of the Contracting States and it shall enter into force as soon as the parties have notified one another that their respective constitutional requirements have been met.

2. The provisions of this Convention shall have effect:

(a) In respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which this Convention enters into force,

(b) In respect of other taxes, to taxable periods beginning on or after the first day of January next following the date on which this Convention enters into force.

ARTICLE 26

TERMINATION

This Convention shall remain in force until terminated by the Government of one of the Contracting States. The Government of either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

1. In respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;

2. In respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

Done at Washington in duplicate, both in the English and Hungarian languages, the two texts having equal authenticity, this 12th day of February 1979.

For the Government of the United States of America:

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

For the Government of the Hungarian People's Republic:

LAJOS FALUVEGI,
Minister of Finance.

The resolution of ratification of executive X was read, as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Between the Government of the United States of America and the Government of the Hungarian People's Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with an exchange of notes relating thereto, done at Washington on February 12, 1979 (Ex. X, Ninety-sixth Congress, first session).

AUTHORITY TO ORDER YEAS AND NAYS AT ANY TIME ON SIX TREATIES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, as in executive session, that it be in order to order the yeas and nays at any time on the treaties just referred to.

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

INTERNATIONAL SECURITY ASSISTANCE ACT OF 1979

Mr. JAVITS. Mr. President, on behalf of Senator CHURCH, chairman of the Committee on Foreign Relations, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 3173.

The PRESIDING OFFICER (Mr. LEVIN) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 3173) to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to authorize international security assistance programs for fiscal years 1980 and 1981, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. JAVITS. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. CHURCH, Mr. BIDEN, Mr. GLENN, Mr. STONE, Mr. JAVITS, Mr. PERCY, and Mr. HELMS conferees on the part of the Senate.

ORDER FOR RECESS TO 10:30 A.M. ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10:30 a.m. on Monday, rather than 10 o'clock.

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

OCEAN THERMAL ENERGY FOR THE EIGHTIES

Mr. MATSUNAGA. Mr. President, during these difficult times when we are reminded daily of our energy problems, I am pleased to report on an emerging technology having great hopes for the future.

I am referring to the promise of obtaining energy from the ocean through the application of ocean thermal energy conversion, commonly known as OTEC.

In the OTEC process, the heat contained in the surface waters of our oceans is used to evaporate a fluid, passing the resulting vapor through a turbine, then returning the vapor back into a liquid state by chilling it with cold water obtained from the deep ocean. The turbine generates electricity, and the entire process is similar in concept to that of conventional steam powerplants.

During the past 2 years in which I have been a member of the Senate Energy Committee, and vice chairman of the Subcommittee on Energy Research and Development, I have had the opportunity of considering a number of new technologies to meet our future energy needs. Use of the ocean to obtain energy is one of the most exciting.

It is especially intriguing to note that the ocean is a solar energy source which knows no difference in capability, whether it be in the bright sunlight during the daytime, or in the pitch darkness of a starless night; energy whose source knows scarcely any seasonable variations in capability. No storage of energy is required because the world's oceans serve as huge solar heat collectors and store the energy for us. In terms of air and water quality, energy from the ocean would be clean, and essentially pollution free. Most important, the "fuel supply" is virtually inexhaustible and free of inflation.

What was just a few years ago an OTEC program mostly directed to theoretical studies, paper investigations and basic research, has become a hardware program with great opportunity for early substantial pilot plant construction and rapid follow-up commercialization.

We now know that no scientific breakthroughs are needed, and the basic technology is available, to build a full-scale OTEC plant, although complex engineering problems remain to be solved and cost projections need to be verified before widespread application takes place.

On May 29, 1979 in Hawaii, a ceremony was held to commission the world's first closed-cycle, self-sustaining OTEC plant, which will be operating in waters off the coast of the big island of Hawaii. In another week, we will actually be seeing, for the first time, an actual OTEC plant producing electricity.

"Ocean Thermal Energy for the 80's" is the theme of the Sixth Annual OTEC Conference, meeting this week in Washington. This is an apt title considering the reports of excellent progress heard throughout the conference. Also at the

conference is an impressive display of actual hardware and conceptual designs of OTEC systems being planned for the coming decade.

The outstanding progress made to date in the OTEC program is good reason for joining the participants at the Sixth Annual OTEC Conference in celebrating the dawn of a new source of energy for our Nation and the world.

Mr. President, the Washington Post on June 20 carried an article entitled "Energy from the Oceans" concerning this technology, which I would like to share with my colleagues.

I ask unanimous consent it be printed in the RECORD.

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

[From the Washington Post, June 20, 1979]

ENERGY FROM THE OCEANS

(By J. P. Smith)

While hardly a catch phrase in the government's multi-billion-dollar energy technology sweepstakes, OTEC—Ocean Thermal Energy Conversion—has evolved quietly to where it can be counted on to produce solar-generated electricity at commercial rates in the mid-1980s.

That at least is the judgment of senior Energy Department officials, Lockheed, Bechtel, TRW and other industrial giants urging Congress and the Carter administration to spend tens of millions of dollars on an OTEC demonstration plant.

They are not alone. Last year, the President's Council on Environmental Quality projected that OTEC could generate the equivalent of 1 quadrillion to 3 quadrillion BTUs (quads) by the year 2000 compared with the 3 quads that the nation today gets gets from hydroelectric power.

OTEC utilizes the temperature differences between warm ocean surface water and cold subsurface water pumped through an almost totally submerged 7-story pipe to form steam and power a turbine.

From the tower, which is tethered to the ocean floor, electrical current is transmitted ashore by submarine cable into the electrical grid.

OTEC is simply an engine that draws on the ocean's heat. It is based on concepts formulated in 1881 by Jacques d'Arsonval, a French scientist.

"What we really have is a very rudimentary power plant, with low temperatures and low pressures," said the Energy Department's Robert Cohen, adding, "It's not that exotic." Cohen and others such as Lockheed's James Wenzel also say that OTEC draws largely on off-the-shelf technology and many of the same engineering principals utilized in building offshore oil rigs.

Most important of all, however, OTEC uses solar energy, requiring no oil, natural gas or coal to generate electricity.

Still another positive point is that OTEC is one of the few solar technologies under consideration by DOE that can be used in the near term to generate electricity on a large-scale basis.

Not everyone is unabashedly optimistic. Energy Secretary James R. Schlesinger is said to have expressed "nothing more than a distracted interest," according to administration officials. And, on Capitol Hill, a senior Senate aide dismisses it out of hand as "pork barrel for the aerospace companies who designed Skylab."

Although OTEC is one of the few solar technologies that promises early commercial-scale operations, it receives the smallest share—about $33 million—of the 8 solar technologies funded in DOE's budget of nearly $600 million.

Part of the reason for this is that OTEC has a limited political constituency due to its limited regional application. Congressmen outside of the Gulf Coast states, Puerto Rico and Hawaii see little gain from funding OTEC research or demonstration projects.

Still another drawback is that OTEC's political fortunes have not benefited from the emerging power of the sprawling solar lobby. "All the (OTEC) pipes and aerospace companies (OTEC contractors) simply spook the Small-is-Beautiful People," says one scientist working on a DOE-funded OTEC project.

DOE's Cohen is quick to admit there are some obstacles. "We have a perception gap in OTEC; there are still a lot of misconceptions that have to be overcome," he said.

This doesn't mean there hasn't been fierce lobbying.

MAJORITY LEADER SALUTES ASIAN/PACIFIC AMERICANS DURING HERITAGE WEEK

Mr. MATSUNAGA. Mr. President, during the week of May 4–10, the United States celebrated, for the first time, Asian/Pacific American Heritage Week. As one of the principal sponsors of the legislation providing for this historic event, I am deeply grateful for the support rendered by my colleagues in the U.S. Senate and for their efforts to make the celebration of Asian/Pacific American Heritage Week a truly meaningful event for thousands of Asian Americans and Pacific Islanders throughout our great country.

The distinguished majority leader of the Senate, the Honorable ROBERT C. BYRD of West Virginia, was particularly helpful in arranging for consideration of Senate Joint Resolution 72, the legislation providing for observance of Asian/Pacific American Heritage Week. On May 4, Senator BYRD attended the opening reception of Asian/Pacific American Heritage Week, hosted by the Washington, D.C., Chapter of the Japanese American Citizens League, and graciously introduced the guest of honor, Prime Miniter Masayoshi Ohira, of Japan. All who attended the reception agreed that Senator BYRD's introduction was especially appropriate in view of Asian/Pacific American Heritage Week and in view of the ongoing United States-Japan trade talks.

With the thought that my colleagues will find the majority leader's remarks of equally great interest, I ask unanimous consent to have the text of his introduction printed in the RECORD at this point.

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

INAUGURATION RECEPTION FOR ASIAN/PACIFIC AMERICAN HERITAGE WEEK

(By ROBERT C. BYRD)

I want to thank Mike Masaoka for his gracious introduction, and I want to join my friends and colleagues from the Senate and House of Representatives in welcoming each of you here tonight.

The United States for many generations was virtually a one-ocean Nation.

Since most citizens of this country had European antecedents, the Atlantic Ocean served as the primary avenue for the transport of commerce, ideas, and political concerns.

But once the tide of nation-building reached the Pacific coasts of North America, the magnetism of the American dream began to exert its irresistible influence on the people of Asia and the Pacific islands.

It has been variously estimated that there are today more than four million citizens of the United States whose ancestral origins are in Japan, China, Korea, the Philippines, Southeast Asia, or the Archipelagos of Oceana.

The American heritage is no longer strictly European, Middle Eastern, or African in nature.

In every field of human endeavor—the performing arts, science, literature, technology, government, and economics—Americans of Asian or Pacific background are making significant and laudatory contributions to the life of this country. The United States is becoming increasingly cosmopolitan, and this country is in truth today a Nation of two oceans.

It is appropriate, therefore, that this distinguished company has gathered here to inaugurate Asian/Pacific American heritage week. And it is doubly appropriate, I believe, that we have as a special guest the prime minister of Japan.

In Mr. Masayoshi Ohira, Japan has a prime minister whose background and experience are both broad and deep. Mr. Ohira has had a stellar career in the Japanese legislature, economics, administration, and in foreign relations. After serving for a number of years in the ministry of finance, he was elected to the house of representatives in Tokyo in 1952, and he has been reelected to that body nine consecutive times since then. He has served in various cabinets as the minister of foreign affairs, minister of finance, and minister of international trade and industry, prior to being chosen prime minister.

According to many economic experts, no one in modern Japanese history has done more than prime minister Ohira, in the many roles that he has played over his impressive career, to foster and nurture the economic prosperity and industrial growth that Japan can boast. But prime minister Ohira, even during his brief months in his present position, has demonstrated that his vision of economics and commerce are not limited by parochial considerations alone. Prime minister Ohira is working to strengthen the bonds of world economic relations, in order that Japan's friends, neighbors, allies, and trading partners may likewise enhance their own prosperity and abundance. Prime minister Ohira is a man of great wisdom and international perception.

It gives me extreme pleasure, therefore, to introduce to you, his excellency Masayoshi Ohira, the prime minister of Japan, who will speak to you at this time.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Hawaii (Mr. MATSUNAGA) for his kind references.

I appreciate his friendship and applaud his statesmanship.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday will be as follows: The Senate will come in at 10:30 a.m. After the two leaders or their designees have been recognized under the standing order, the supplemental appropriations bill (H.R. 4289) will become the business before the Senate.

Under the order previously entered, it cannot be taken down by a call for regular order.

There is a time agreement on the bill and, hopefully, final action can be completed thereon on Monday.

Mr. President, upon the completion of the supplemental appropriations bill, the Senate will be back on the unfinished business, which is now the constitutional amendment, Senate Joint Resolution 28; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. And the question which has been before the Senate dealing with mutual defense treaties has automatically been put back on the calendar, has it not?

The PRESIDING OFFICER. That is also correct. It has gone back to the calendar.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, as we look into the days of next week beyond Monday, I hope it will be possible to clear other matters for action. If not, the Senate will be debating the direct elections constitutional amendment, once the supplemental appropriations bill has been disposed of.

I believe under the understanding that I have articulated from time to time, through the month of June there will be no late evening sessions on Mondays.

So the Senate will go out shortly after 6:30 p.m. on Monday.

I hope the action on the appropriations bill have been completed by that time. If it can be completed within another half hour, of course, I will have the understanding of all Senators that if we have to go a little longer to complete action on the bill, we will do so. But if action is not completed on the bill Monday, the Senate will continue on Tuesday.

Then upon the disposition of that bill, of course, any others that have been cleared for action will be taken up. But the unfinished business at that time is and will be the direct popular elections on the constitutional amendments.

Debate will continue on that at times when the Senate does not have other matters before it.

RECESS TO 10:30 A.M. ON MONDAY, JUNE 25, 1979

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 10:30 a.m. on Monday.

The motion was agreed to; and at 6:26 p.m., the Senate recessed until Monday, June 25, 1979, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate on June 21, 1979:

DEPARTMENT OF THE AIR FORCE

Hans Michael Mark, of Virginia, to be Secretary of the Air Force, vice John C. Stetson, resigned.

Antonia Handler Chayes, of Massachusetts, to be Under Secretary of the Air Force, vice Hans Michael Mark.

Robert Jay Herman, of Maryland, to be an Assistant Secretary of the Air Force, vice John J. Martin, resigned.

MISSISSIPPI RIVER COMMISSION

Sam Epstein Angel, of Arkansas, to be a member of the Mississippi River Commission for a term of 9 years, vice James Williams Yancey, deceased.

DEPARTMENT OF STATE

Herbert F. York, of California, for the rank of Ambassador during the tenure of his assignment as the U.S. Representative to the Comprehensive Test Ban negotiations.

The following-named person for appointment as a Foreign Service officer of class 4, a Consular Officer, and a Secretary in the Diplomatic Service of the United States of America:

Joan Melanie Plaisted, of California.

For appointment as a Foreign Service information officer of class 4, a Consular Officer and a Secretary in the Diplomatic Service of the United States of America:

John Pearce Stirn, of Florida.

For appointment as Foreign Service officers of class 5, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Nancy Jane Cope, of California.
James V. Doane, Jr., of Virginia.
Gordon Eugene Hill, of Ohio.

For promotion from Foreign Service officers of class 7 to class 6:

Charles Russell Allegrone, of North Carolina.
Richard Warren Behrend, of Pennsylvania.
Michael James Benefiel, of Maryland.
William James Bolling, of Connecticut.
Donald E. Booth, of New Jersey.
William Noel Campbell, of Arizona.
Steven James Coffey, of Maryland.
Raymond E. Clore, of California.
Joseph Michael DeThomas, of Pennsylvania.
Charles Lewis English, of New York.
Stephen J. Gallogly, of Rhode Island.
Richard A. Garrison, of Colorado.
Norman Slote Hastings, of Kansas.
Dennis K. Hays, of Virginia.
Christopher Robert Hill, of Rhode Island.
Frank Arthur Hofmann, of Oregon.
Patrick David Husar, of Ohio.
Michael Allen Jacobs, of California.
David Timothy Johnson, of Georgia.
James Joseph Kessinger, Jr., of Virginia.
Stephen Charles Kish, of Virginia.
Paul Conley Kline, of California.
Karen E. Krueger, of Illinois.
Joan Clare Martin, of West Virginia.
Kevin-John H. McIntyre, of Virginia.
Sharon K. Mercurio, of Virginia.
William Gregory Perett, of California.
Nancy J. Powell, of Iowa.
Steven A. Saboe, of Minnesota.
Baldwin Paul Scogna, of New York.
Virginia Sher, of California.
James Curtis Struble, of California.
Elena Michele Thoren, of the District of Columbia.
Mark A. Tokola, of Washington.
Peter B. Vaden, of Virginia.
Larry L. Woodruff, of Iowa.
Frances F. Wurlitzer, of New York.

For appointment as Foreign Service officers of class 6, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Glen William Carey, of New Jersey.
Esther Klein, of Connecticut.
Maurice S. Parker, of California.

For appointment as a Foreign Service information officer of class 6, a Consular Officer, and a Secretary in the Diplomatic Service of the United States of America:

Shirley Scher, of California.

For appointment as Foreign Service information officers of class 7, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Gretchen S. Brainerd, of Virginia.
James L. Bullock, of Ohio.
Cynthia B. Caples, of Texas.
Stuart B. Glauberman, of Hawaii.
Mary Ann Ignatius, of Hawaii.
Lee James Irwin, of Wisconsin.
J. Michael Korff, of New Jersey.
William M. Morgan, of California.
Daniel J. Schuman, of Michigan.
Patricia L. Sharpe, of Florida.
Craig J. Stromme, of New York.
Walter Theurer, of New York.

For appointment as Foreign Service information officers of class 8, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Louise Bedichek, of New York.
Robert Lee Earle, of Maryland.
Ruth A. Kurzbauer, of Ohio.

Foreign Service reserve officers to be Consular Officers of the United States of America:

William Bach, of Illinois.
Martin C. Dougherty, of Illinois.
James L. Holmes, Jr., of Florida.
Stephen D. Sena, of Virginia.

Foreign Service reserve officers to be consular Officers and Secretaries in the Diplomatic Service of the United States of America:

Robert E. Arthurs, of California.
Emanuella Barrasso, of Massachusetts.
Lincoln Benedicto, of Pennsylvania.
J. Cofer Black, of Virginia.
Brian H. Bramson, of Virginia.
Adrian B. Ciazza, of Nevada.
Kevin K. Corcoran, of Ohio.
Janet L. Crist, of Illinois.
Lloyd D. Davis, of Maryland.
Michael F. DeFazio, of Massachusetts.
Joseph R. Detrani, of New York.
Louis Harris Dupart, of Virginia.
Judith Ann Edgette, of the District of Columbia.
John M. Feeney, of Virginia.
Sean Edward Fitzgerald, of Virginia.
John P. Gower, of Maryland.
David Harper, of Maryland.
Elaine Hoptiak, of Virginia.
Howard F. Jeter, of the District of Columbia.
Frederick W. Latrash, of Virginia.
Peggy M. Maggard, of Missouri.
Kenneth P. Moorefield, of Virginia.
J. Warren Navarre, of Mississippi.
Thomas V. Pozarycki, of Virginia.
Rowland E. Roberts, Jr., of Maryland.
Guy A. Stone, of Virginia.
George S. Swicker, of Virginia.
Rita Falk Taubenfeld, of Texas.
Gary L. Vinson, of Virginia.
Molly K. Williamson, of California.

Foreign Service reserve officers who are candidates for appointment as Junior Foreign Service officers to be Consular Officers and Secretaries in the Diplomatic Service of the United States of America:

Norma Ruth Banigan, of Virginia.
James Joseph Barnes, of Alabama.
Shelley Elise Berlin, of Virginia.
Linda Marie Brown, of the District of Columbia.
Peter C. Bruce, of the District of Columbia.
William Holmer Crane, Jr., of Florida.
Joseph F. Cuadrado III, of Louisiana.
David Scott DeCrane, of Virginia.
Kenneth James Dillon, of Virginia.
Victoria F. Douglas, of New York.
Robert Emmett Downey, of New Jersey.
Eric N. Duncan, of New Jersey.
Mark Thomas Fitzpatrick, of Minnesota.
Robert D. Goldberg, of Florida.
Laura K. Greulich, of California.
Michael Bethea Hamilton, of Maryland.
Ronald Allan Harms, of Hawaii.
John Edward Herbst, of New York.
J. Anthony Holmes, of Ohio.
Sterling Johnson, of Ohio.
Robert Paul Konrath, of California.
Thomas Charles Krajeski, of Massachusetts.
Elliot R. Lief, of New York.
Scott R. Loney, of Michigan.
Eric Hubert Madison, of the District of Columbia.
C. Steven McGann, of New York.

Brian H. McIntosh, of California.
Louis Steven Menyhert, of New York.
Joseph John Merante, of New York.
Stephen Maxwell Miller, of California.
Lawrence S. Mondschein, of New York.
David Daniel Nelson, of Minnesota.
Deborah Mary Odell, of the District of Columbia.
Raymond J. Pepper, of New York.
Evans Joseph Robert Revere, of Virginia.
Julia Stuart Rose, of Delaware.
Albert E. Schrock, of Illinois.
Angus Taylor Simmons, of the District of Columbia.
Martin Wesley Smith III, of California.
Sandra Ruth Smith, of Missouri.
Dennis Adrian Volman, of New York.
Stephen Duffus Weiss, of California.
Langdon Phillips Williams, Jr., of New York.
Stephen Bryan Williams, of Arkansas.
Ross Lee Wilson, of Minnesota.

Foreign Service reserve officers to be Secretaries in the Diplomatic Service of the United States of America:

Vernon E. Adler, of Maryland.
Walter M. Berwick, of Virginia.
Jacques A. de Coster, of Virginia.
Thomas J. Hirschfeld, of Virginia.
Mary Bland Marshall, of Virginia.
Austin P. McHale, of Virginia.

Foreign Service staff officers to be Consular Officers of the United States of America:

Lane T. Cubstead, of Texas.
Francis R. Daulong, of New York.

IN THE AIR FORCE

The following midshipmen, U.S. Naval Academy, for appointment in the Regular Air Force in the grade of second lieutenant, effective upon their graduation under the provisions of sections 541 and 8284, title 10, United States Code, date of rank to be determined by the Secretary of the Air Force.

Berry, Eric C., [redacted]
Brummett, Jack D., [redacted]
Firmin, Glynn R., [redacted]
Hutto, Gregory T., [redacted]
Leon-Guerrero, Franklin P., [redacted]
McLarney, David W., [redacted]
Needham, Robin P., [redacted]
Strader, James T [redacted]
Warner, Richard C., [redacted]

IN THE ARMY

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, U.S.C., sections 3370 and 3383.

ARMY PROMOTION LIST

To be colonel

Bordenaro, Ronald J., [redacted]
Browning, Robert C., [redacted]
Clayton, Lawrence G., [redacted]
Conley, Robert H., [redacted]
Dalche, Richard J., [redacted]
Danielson, Jervis A. [redacted]
Dell'Aquila, Louis J., [redacted]
Dirgins, Richard J., [redacted]
Frye, William V. [redacted]
Harris, Virgil W., [redacted]
Hasham, Lewis K., [redacted]
Holloman, Dale, [redacted]
Howard, Lawrence, [redacted]
Jenkins, Edwin, [redacted]
Johnson, Albert L., [redacted]
Keadle, Jack L., [redacted]
King, Richard P., [redacted]
Massey, Dean T. [redacted]
Miller, Clarence W., [redacted]
Orsi, Robert J. [redacted]
Otte, William L., [redacted]
Padavan, Frank, [redacted]
Pascarella, Daniel J. [redacted]
Porter, Kenneth B., [redacted]
Rayburn, Bruce A., [redacted]
Richert, Gordon A., [redacted]
Rocha, Manuel, [redacted]
Rodriguez-Torres, Jaime, [redacted]
Rung, John P. [redacted]
Toye, Robert L., [redacted]
Van Horn, James E., [redacted]
Wallis, Thomas W., [redacted]

CHAPLAIN

To be colonel

Duval, John H., Jr., [redacted]
Helman, Rayfield, [redacted]
Lundeen, Wallace L., [redacted]
Robertson, Russell C., [redacted]
Welsh, Donald H., [redacted]

ARMY NURSE CORPS

To be colonel

Connell, William R., [redacted]
Corey, Beryl J., [redacted]
Devese, Ida M., [redacted]
Ferebee, Calister, [redacted]
Gilmore, Bertie M., [redacted]
Green, Vendetta, [redacted]
Hadley, Ida F., [redacted]
Hanson, Alma M., [redacted]
Jackson, Nancy A., [redacted]
Jackson, Nina K., [redacted]
Jesse, Florence C. [redacted]
Krazinski, Olga, [redacted]
King, Joyce W., [redacted]
Liberator, Jack, [redacted]
Macritche, Mary G., [redacted]
Majewski, Mary T., [redacted]
McWillie, Nancy A., [redacted]
Parsons, Janet L., [redacted]
Penrod, Geanne, [redacted]
Primack, Clara S., [redacted]
Quint, Desta [redacted]
Randall, Mary T., [redacted]
Reed, Elaine G., [redacted]
Sorensen, Betty F., [redacted]
Sroka, Regina E., [redacted]
Szymanski, Bernice, [redacted]
Van Baalen, Doris, [redacted]
Watson, Randall J., [redacted]
Wheeler, Margaret L., [redacted]

DENTAL CORPS

To be colonel

Body, Charles D., [redacted]
Bolinger, George F., [redacted]
Bradford, Thomas, [redacted]
Brown, Paul R., [redacted]
Bunch, James P., [redacted]
Darling, Roy G., [redacted]
Dolin, Paul R., [redacted]
Ducklow, Robert G., [redacted]
Gildner, Manfred F., [redacted]
Gruber, Adrian, [redacted]
Herrold, Jon A., [redacted]
Huntington, Walter H., [redacted]
Ledwich, Edward, [redacted]
Logan, Maurice, [redacted]
McClanahan, Robert, [redacted]
Pokorney, Robert, [redacted]
Pope, Joseph W., [redacted]
Robison, Ray B., [redacted]
Runge, William H., [redacted]
Schlegel, Charles, [redacted]
Signorella, Arthur, [redacted]
Skinner, Frederick, [redacted]
Vazquez, Torres H., [redacted]
Wise, Donald G., [redacted]

MEDICAL CORPS

To be colonel

Anglin, Walter M., [redacted]
Bennett, Alfred J., [redacted]
Beres, Joseph A., [redacted]
Callis, James T., [redacted]
Christensen, Edward W., [redacted]
DePalma, Anthony T., [redacted]
Didier, Edward P., [redacted]
Fourcaud, Robert B., [redacted]
Gares, Gustavo, [redacted]
Gilmartin, Richard C., Jr., [redacted]
Goodman, Gerald H. [redacted]
Gosline, Ernest, [redacted]
Hansen, Robert W., [redacted]
Harper, Neville W., [redacted]
Henderson, Claude B., [redacted]
Henderson, George P., Jr. [redacted]
Jackman, Frederick, [redacted]
Jiamachello, Nichol, [redacted]
Leppla, Bruce W., [redacted]
Littleton, Leonidas R., Jr., [redacted]
Mathewson, John J., [redacted]
Nunn, Stewart, [redacted]
Richardson, Don A., [redacted]
Tanaka, Kengo, [redacted]
Tolson, James M., [redacted]
Walston, Abe, II, [redacted]
Warren, Mary L., [redacted]
Werner, John L., [redacted]
Yoo, Tai-June, [redacted]

MEDICAL SERVICE CORPS

To be colonel

Atlas, Harry, [redacted]
Bakke, Arnold E., [redacted]
Berry, Albert G., [redacted]
Burns, Edward J., [redacted]
Clayton, David L., [redacted]
Comitos, Nicholas, [redacted]
Deering, William J., [redacted]
Elmore, Elmon M., [redacted]
Giglione, Jack W., [redacted]
Horton, Jack V., [redacted]
Kalbfeld, Louis, [redacted]
Kelleher, Cornelius, [redacted]
Kendrick, Edwin K., [redacted]
Lastelic, Joseph A., [redacted]
Lathrop, Eugene C., [redacted]
Meier, Gene B., [redacted]
Racki, Henry R., [redacted]
Reinke, Albert R., [redacted]
Rosenblatt, David H., [redacted]
Taketa, Takumi, [redacted]
Tomimatso, Louis, [redacted]
Wanberg, Larrie, [redacted]
Yeakel, Mary H., [redacted]

ARMY MEDICAL SPECIALIST CORPS

To be colonel

Cole, Edith, [redacted]
Cotterill, Mary J., [redacted]
Richards, Anne W., [redacted]
Schippers, Ronald L., [redacted]
Wearne, Richard W., [redacted]

VETERINARY CORPS

To be colonel

Lyons, Richard D., [redacted]

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, U.S.C., sections 3367 and 3383:

ARMY PROMOTION LIST

To be lieutenant colonel

Agent, Kenneth N. [redacted]
Aurelio, Frank J., [redacted]
Bishop, Michael E., [redacted]
Bland, Francis H., [redacted]
Brandriff, Arthur V., Jr., [redacted]
Bristol, James E., [redacted]
Brown, Earl E., [redacted]
Brown, James M., Jr., [redacted]
Callaway, William R., [redacted]
Canfield, Allan R., [redacted]
Carpo-Medina, Juan E., [redacted]
Cary, Garland L., [redacted]
Compere, John M. [redacted]
Connelly, John E. III, [redacted]
Corets, Myron L., [redacted]
Crogan, Thomas W. III, [redacted]
Darden, James W., [redacted]
Delmaramo, James A., [redacted]
DeMartini, Frank J., Jr., [redacted]
DenBraven, Donald, [redacted]
Detterline, Donald R., [redacted]
Diesen, Charles F., [redacted]
Diliberti, Angelo, [redacted]
Dorland, John H., [redacted]
Dotson, Arell J. [redacted]
Doty, John W., [redacted]
Dwyer, Raymond M., [redacted]
Erfurdt, Richard J., [redacted]
Ernst, Joe M., [redacted]
Evans, Edwin R., [redacted]
Everett, Ronald E., [redacted]
Fallon, Richard J., [redacted]
Flynn, Arthur V., [redacted]
Frank, Gilbert L., [redacted]
Fuller, Jerry L., [redacted]

Garrigues, Jack A., [redacted]
Giglio, John R., [redacted]
Gleason, Lemmie T., [redacted]
Graves, Herbert M., [redacted]
Grooms, Randall D., [redacted]
Gugler, Ted C., [redacted]
Haymond, George R., [redacted]
Hayuk, Hlib S. [redacted]
Helinski, Edward P., [redacted]
Holloway, George L., [redacted]
Hudson, Franklin E., [redacted]
Hundley, Wayne E., [redacted]
Jackson, Joseph M. [redacted]
Kiernan, James M., [redacted]
Kinslow, George A., [redacted]
Knehans, Adolph H., Jr. [redacted]
Knueven, Robert J., [redacted]
Littlejohn, Bobby J., [redacted]
Lull, Don F., [redacted]
Maar, Henry R., Jr., [redacted]
Mabry, Duane R. [redacted]
Macary, Richard P., [redacted]
Magit, Nathan L., [redacted]
Marquis, Fred E., [redacted]
Matta, Bernard J., [redacted]
McClintock, Andrew F., [redacted]
McCostlin, Walter M., [redacted]
McGraw, Henry C., [redacted]
McGuire, James H., [redacted]
McKenzie, Roger L., [redacted]
McLeod, Joe E., Jr. [redacted]
McPherron, Larry L., [redacted]
Mele, John G., [redacted]
Moe, Ronald E., [redacted]
Monroe, Donald H. [redacted]
Moreau, Robert G. [redacted]
Murtha, Glen E. [redacted]
Oliver, Barney R. [redacted]
Orvis, Charles C. [redacted]
Payne, Herbert M., Jr., [redacted]
Payne, Joseph C. [redacted]
Perkins, Richard N., [redacted]
Perry, Robert M. [redacted]
Pezzullo, Joseph A. [redacted]
Policastri, Louis M., [redacted]
Porter, Dan B., [redacted]
Posey, Jerry B. [redacted]
Pottratz, Richard D., [redacted]
Preston, James M. [redacted]
Punch, Frank G., Jr., [redacted]
Ranus, Richard R. [redacted]
Rarden, Michael A., [redacted]
Rich, Wendell A., [redacted]
Robinson, James M., [redacted]
Ross, Omar G., [redacted]
Rostron, Ira R. [redacted]
Sabo, Thomas W., [redacted]
Schimpf, Glenn B. [redacted]
Schumcher, James R., [redacted]
Sebesta, Charles J. [redacted]
Seymour, Harold K., [redacted]
Simmons, Gene D. [redacted]
Sinks, Leslie E. [redacted]
Spivey, Jimmie B. [redacted]
Stevens, John C [redacted]
Taylor, Clarence B., [redacted]
Tellan, Marsh J. [redacted]
Thompson, George D., [redacted]
Thurbee, Lee A. [redacted]
Tilman, George M., [redacted]
Toney, Jenklin D., Jr., [redacted]
Topper, Ronald A. [redacted]
Undeberg, Oscar M., [redacted]
Wallace, James D. [redacted]
Waltman, Larry F. [redacted]
Whitton, George M. [redacted]
Williams, John L. [redacted]
Wilson, Howard H. [redacted]
Wingate, Lucius R. [redacted]
Woods, Ronald L. [redacted]
Wyse, Ronald C. [redacted]
Young, James H., Jr., [redacted]

CHAPLAIN

To be lieutenant colonel

Herrington, James R., [redacted]
Luljak, Louis P. [redacted]
Thomspon, William E., Jr., [redacted]
Vaughn, Douglas E., [redacted]

ARMY NURSE CORPS

To be lieutenant colonel

Brogan, Helen J., [redacted]
Brunk, Maude D. [redacted]
Lust, Barbara L [redacted]
Martin, Elma L., [redacted]
McCall, Carolyn, [redacted]
Stark, Ronald E., [redacted]
Steitz, Janet G [redacted]
Stevenson, Judith N., [redacted]
Sullivan, Flora M., [redacted]
Taylor, Keith H. [redacted]
Taylor, Rose M. [redacted]

DENTAL CORPS

To be lieutenant colonel

Cartwright, Robert, [redacted]
Falasco, Raymond F., [redacted]
Ford, Delane [redacted]
Hastings, John G., [redacted]
Madden, Richard M., [redacted]
McNutt, George W., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Alexander, Chundamannil, [redacted]
Caldwell, Earl N., [redacted]
Dew, Joseph M. [redacted]
Hayes, Matthew J., [redacted]
Hicks, Russell D., [redacted]
Hoyumpa, Anastacio, [redacted]
Longmire, Atkinson W., [redacted]
McCaffery, Lawrence A., [redacted]
Meimiridis, Stavros E., [redacted]
Restituto, Norberto, [redacted]
Salisbury, Roger E., [redacted]
Samorodin, Charles S., [redacted]
Streker, Edward J., [redacted]
Talarico, Francis J., [redacted]

MEDICAL SERVICE CORPS

To be lieutenant colonel

Atterbury, Urban S. [redacted]
Basham, Paul N., [redacted]
Blizzard, Paul T. [redacted]
Brooks, Robert N., [redacted]
Burrow, Kenneth, [redacted]
Chaluisan-Escanellas, J., [redacted]
Coleman, Charles T., [redacted]
Hueber, Jerald A., [redacted]
Madsen, Ralph C., [redacted]
Moore, Lloyd T. [redacted]
Patterson, Thomas D., [redacted]
Price, Paul L. [redacted]
Sudman, Marvin S., [redacted]
Tate, Alice M. [redacted]
Wasserman, Neil T., [redacted]
Whitehead, Patricia A., [redacted]

ARMY MEDICAL SPECIALIST CORPS

To be lieutenant colonel

Benson, Robert L., [redacted]

The following-named officers for appointment in the Reserve of the Army of the United States under the provisions of title 10, U.S.C. sections 591, 593, and 594:

MEDICAL CORPS

To be colonel

Badger, Virginia M., [redacted]
Levy, Arthur E., [redacted]
Lieberman, Murray, [redacted]
Nelson, James S. [redacted]

DENTAL CORPS

To be lieutenant colonel

Berringer, Ray D., [redacted]
Cancellara, Anthony N., [redacted]
Cannon, Joe L. [redacted]
Gustincic, David J., [redacted]
Hanratty, William J., [redacted]
McBride, Richard F., [redacted]
McMatton, Robert E., [redacted]
Perry, James J., [redacted]
Shufore, Gene M., [redacted]
Sullivan, Robert W., [redacted]
Tolman, Dan E., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Ahsanuddin, Khaja M., [redacted]
Benson, William L., [redacted]
Bernhard, William N., [redacted]
Bloom, Kenneth, [redacted]
Bryant, Kenneth L. [redacted]
Bunner, David L., [redacted]
Chobot, Edwin F., [redacted]
Clark, Charles F. [redacted]
Cleary, John P. [redacted]
Coldewey, Johnson F., [redacted]
Collins, Delano M., [redacted]
Davies, Douglas [redacted]
Davis, Jeffrey V. [redacted]
Dewitt, James E. [redacted]
Durand-Hollis, Gabriel, [redacted]
Durham, James C., [redacted]
Enquist, Robert W., [redacted]
Gray, Joseph W., [redacted]
Green, Howard G. [redacted]
Haym, Jerome L., [redacted]
Haynes, James L., [redacted]
Heacock, Allen K., [redacted]
Karlsberg, Robert C., [redacted]
Kim, Sarah, [redacted]
Lehtmets, Marliese L. [redacted]
Linares, Rene [redacted]
Miranda, Mario C., [redacted]
Modarelli, Robert O., [redacted]
Natkin, Roger A., [redacted]
Nicolay, William R., [redacted]
Nowakowski, Andrew, [redacted]
Otriz, Miguel A., [redacted]
Philbin, George E., [redacted]
Pianin, Stanley L., [redacted]
Pinc, Roger D [redacted]
Plavin, Melvin [redacted]
Robert, Lois M., [redacted]
Rodman, Harold J., [redacted]
Schulhoff, Diane I., [redacted]
Stone, Dale H. [redacted]
Thornszard, Charles T., [redacted]
Tomlinson, John P., III, [redacted]
Vynak, Miroslav B., [redacted]
Wear, Douglas, [redacted]
Weileppe, George N., [redacted]
Weinroth, Jerome R., [redacted]
Whetstone, Charles L., [redacted]
Woutersz, Theodore, [redacted]

The following-named officers for appointment in the Army of the United States, under the provisions of title 10, U.S.C., section 3494:

DENTAL CORPS

To be lieutenant colonel

Baumgartner, John C., [redacted]

The following-named Army National Guard officers for appointment in the Reserve of the Army of the United States, under the provisions of title 10, U.S.C., section 3385:

ARMY PROMOTION LIST

To be colonel

Adams, Charles R., [redacted]
Altenburg, Fred G., [redacted]
Anderson, Charles H., [redacted]
Brown, Clifford M., [redacted]
Carcaba, William T., [redacted]
Coates, George M., Jr., [redacted]
Dawson, Earl N., Jr., [redacted]
Dennan, David W., [redacted]
Episcopo, Arthur V., [redacted]
Fuqua, Billie E., [redacted]
Gaunce, Royland R., [redacted]
Hancock, Robert G., [redacted]
Heaton, Jerry W. [redacted]
Henthorn, Robert L., [redacted]
Hine, John M., [redacted]
Hoeller, Edward D., [redacted]
Irvin, Robert J., [redacted]
Jones, William D., [redacted]
Keim, Stephen F., [redacted]
Ketterman, Clark S., [redacted]
Kooken, Paul M., [redacted]
Leslie, Willis B., [redacted]
Lindell, William F., [redacted]
Lucas, Clarence A., [redacted]
McGoff, John J., Jr., [redacted]
Maness, James, [redacted]
Martin, Robert F., [redacted]
Meyer, Samuel M., [redacted]
Morgan, Robert M., [redacted]
Robertson, Sherrill B., [redacted]

Roe, James W., [redacted]
Rogozinski, Harold S., [redacted]
Scribner, John C. L., [redacted]
Sester, John A., [redacted]
Walsh, Burton K., [redacted]
Wood, Bobby G., [redacted]
Woods, Donald E., [redacted]

MEDICAL CORPS

To be colonel

Culp, Neil W., [redacted]

MEDICAL SERVICE CORPS

To be colonel

Duffy, James W., [redacted]

ARMY PROMOTION LIST

To be lieutenant colonel

Aleandri, John V., [redacted]
Alton, Jack E., [redacted]
Arnett, Daniel L., [redacted]
Bailey, Amon L., [redacted]
Boggs, Thomas W., [redacted]
Boone, William F., [redacted]
Boxwell, Edgar B., [redacted]
Brantley, Shelby K., [redacted]
Brantley, William E., [redacted]
Brown, Henry P., [redacted]
Brown, James O., [redacted]
Bushnell, Van L., [redacted]
Centracchio, Reginald, [redacted]
Christoffersen, Norman, [redacted]
Clark, Vernon I., Jr., [redacted]
Cline, Wayne L., [redacted]
Cole, John C., [redacted]
Deccio, Lawrence P., [redacted]
Dhionis, George C., [redacted]
Dupre, Charles C., [redacted]
Edwards, Thomas L., [redacted]
Gilbertz, Thomas E., [redacted]
Goble, Manuel G., [redacted]
Gorden, Jerry L., [redacted]
Gunji, Ken, [redacted]
Gunn, David W., [redacted]
Hannula, Rodney R., [redacted]
Hipp, Curtis W., [redacted]
Hopkins, Billy D., [redacted]
Jones, Robert G., [redacted]
Kane, John F., [redacted]
Leach, Charles D., [redacted]
Lexa, James J., [redacted]
Lott, Cleveland B., [redacted]
Lundy, Robert G., [redacted]
MacVay, James W., [redacted]
Michaels, Darwin D., [redacted]
Mikolash, Dale A., [redacted]
Moll, Joseph E., [redacted]
Montgomery, Jessie T., [redacted]
Moore, William E., [redacted]
Mueller, Jerold E., [redacted]
Murphy, Joseph T., [redacted]
Nelson, John W., [redacted]
Newton, James R., [redacted]
Norris, Dwight E., [redacted]
O'Kelly, Dewey T., Jr., [redacted]
Osburn, James D., [redacted]
Paige, Vernon G., [redacted]
Paparazzo, Frank F., [redacted]
Paulk, John R., [redacted]
Perdue, George P., [redacted]
Perez-Perez, Jorge, [redacted]
Perkins, Francis R., [redacted]
Rice, David K., [redacted]
Savoie, Romain B., [redacted]
Smalley, James C., [redacted]
Theriault, Raynold, [redacted]
Tierney, Henry L., [redacted]
Voight, Monte C., [redacted]
Wakefield, Richard L., [redacted]
Waynick, Andrew J. III, [redacted]
Woolf, Donald R., [redacted]

CHAPLAIN

To be lieutenant colonel

Brown, James L., [redacted]
Shirey, William C., [redacted]

DENTAL CORPS

To be lieutenant colonel

Antario, Joseph P., [redacted]
Ballard, John B., [redacted]
Kaufman, Donald, [redacted]
Lewis, Arthur, E., Jr., [redacted]
Miller, John W., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Buck, Harper J., [redacted]
Dillard, Charles O., [redacted]
Gropper, Arthur L., [redacted]
Howard, Leonard R., [redacted]
Kade, Harold, [redacted]
Koss, George W., [redacted]
Kroll, George V., [redacted]
Maultsby, James A., [redacted]
Miller, Leslie L., [redacted]
Mitchell, Andrew C., [redacted]
Russo, Charles P., [redacted]
Sison, Ramon C., [redacted]
Sison, Rosario F., [redacted]
Young, Anthony J., [redacted]

MEDICAL SERVICE CORPS

To be lieutenant colonel

Kolb, William H., [redacted]
Peart, Frank E., Jr., [redacted]
Potter, Donald C., [redacted]

IN THE NAVY

The following-named midshipman (Naval Academy) to be a permanent ensign in the staff corps of the Navy, subject to the qualifications therefor as provided by law:

Alden S. Salcedo.

The following-named (Naval Reserve Officers Training Corps candidates) to be appointed ensigns in the line or staff corps of the U.S. Navy, subject to qualifications therefor as provided by law:

Gary D. Atkinson	Teresa A. Halsema
Dean B. Creech	Cathy E. Hayden
Daniel Fusco	Stephen K. Schini

The following-named Navy enlisted scientific education program candidates to be permanent ensigns in the line of the U.S. Navy, subject to the qualifications therefor as provided by law:

Daniel P. Johnson	Patrick J. Rolow
Daniel L. Parker	David J. Swithers

The following-named (U.S. Navy officers) to be appointed temporary commanders in the Medical Corps in the Reserve of the U.S. Navy, subject to the qualifications therefor as provided by law:

Dennis L. Fielder	John R. Stoianoff
Thomas A. Gay	Raymond F. Taylor

IN THE MARINE CORPS

The following named officers of the Marine Corps Reserve for permanent appointment to the grade of colonel under the provisions of title 10, United States Code, section 5902:

Glenn E. Allen	Egbert Horton, Jr.
David L. Barry	Jack W. Humphrey
Richard G. Bean	Michael J. Kelly
Robert D. Becker	Edwin K. Kiefner
William H. Beyer	Lanny A. Kope
Donald E. Boomershine	John M. Kretsinger
	Robert E. Lee, Jr.
Robert J. Brazil	David J. Leighton
John V. Brennan	Robert E. Loughridge
James A. Bricker	David R. Martin
Joseph B. Byrnes	Harry R. McPike
Chilton S. Cabot	Donald J. Miloscia
Robert B. Calamari	John C. Moffett
William G. Cheadle	William M. Monroe
Richard T. Close	Hubert G. Much
Anthony G. Coleman	Arthur L. Nardiello
George F. Coleman	Lawrence E. Nugent
Richard M. Condrey	Paul J. Otis
James E. Cooper	Charles G. Peterson
William J. Cover III	Eric N. Piper
Robert B. Crawford	Howard E. Rast, Jr.
Thomas J. Cribbs	Stephen L. Reveal
Harry R. Delkeskamp	William P. Ricketts
Rocci M. Discipio	Frederick H. Russell
Anthony J. Dowd, Jr.	Thomas R. Sarver, Jr.
Edwin J. Emmet, Jr.	Arthur J. Sattolo
Richard M. Evans	David L. Shane
Ralph D. Fagge, Jr.	Carmen P. Silirie
Paul G. Fahlstrom	Dale W. Spence
Peter J. Finley	Vincent S. Spinella
William L. Goodwin	Carl R. Thomas
John W. Greiner	Robert D. Thomas
William S. Hamel	Richard B. Trotter
Harald R. Hansenpruss	Mitchell J. Waters
	William E. Wean
William J. Hatcher, Jr.	James R. Weinlander
	Frank E. Whitman, Jr.
Marshall B. Haraden, Jr.	Herman W. Winter
Kenneth A. Heimes	Donald L. Wright
Jon D. Hollabaugh	William D. Young, Jr.
Lee B. Holmes	

The following named women officers of the Marine Corps Reserve for permanent appointment to the grade of colonel under the provisions of title 10, United States Code, section 5902:

Margaret L. Nelson.
Catherine Y. Telford.

HOUSE OF REPRESENTATIVES—*Thursday, June 21, 1979*

The House met at 10 a.m.

Rev. Robert F. Bower, the Newman apostolate at Edinboro State College, Edinboro, Pa., offered the following prayer:

O Almighty God, we love our country, the United States of America, and we give You thanks for all those who have made us great: The Indian tribes and nations, and all those who crossed the oceans yearning to be free, those who struggled to give us our inheritance. We are their children, many races but one nation. We thank You for the good things in our heritage and the chance to correct the bad. We thank You for Your promise that if we ask in faith, and have true repentance, You will both forgive us and bless us with Your guidance. We ask You today for Your holy wisdom so that we may choose the hard right rather than the easy wrong and the good way instead of the evil.

Help us in our struggle to replace tyranny with law, bondage with freedom, and war with Your blessed peace.

We praise You, O God, Father of us all. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

□ This symbol represents the time of day during the House Proceedings, e.g., □ 1407 is 2:07 p.m.
● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.