SENATE—*Wednesday, July 16, 1986*

Legislative day of Monday, July 14, 1986

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

God of life and light and truth, we celebrate with gratitude the beautiful new facility now enjoyed by the Senate radio and TV gallery and for those who made it possible. We thank You for the men and women who work in the gallery—for their partnership with the Senate. We thank You for their dedication to serve the people by keeping them informed. Help them to be faithful eschewing disinformation and misinformation. We thank You for their courage to be critical as well as friendly and for the seriousness with which the Senate evaluates their criticism. We thank You for the freedom of the press and media and pray that the Senate will guard that freedom and the press and media will not abuse it. Grant that both, media and Senate, within integrity, will be committed to truth and to accuracy, never forgetting their responsibility to serve the people. In His name, Who is truth incarnate, Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator ROBERT DOLE, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND.

TELEVISION IN THE SENATE

Mr. DOLE. Mr. President, it is obvious that without TV in the Senate, which we will be without today, tomorrow, and Friday, that it is a little dark in here. Whether that will make it easier to accomplish our agenda or not, I am not certain. But those who wanted it dark will have it dark for 2 or 3 days. I was sort of getting used to the light. But I cannot believe that we really worked in this place all those years in the dark. But we will be back on television. We are live on radio, but not live on television until next Monday.

SCHEDULE

Mr. DOLE. Mr. President, there are a number of special orders, and I will yield 3 minutes of my leader time to the distinguished Presiding Officer, Senator THURMOND, who also has a 5-minute special order.

At the conclusion of morning business we hope to take up H.R. 3113, the Central Valley projects bill, followed by the risk retention bill, with possibly a time agreement on the risk retention bill, and then Executive Calendar No. 13, the extradition treaty with the United Kingdom, to which there are a number of amendments. Also Calendar No. 708, S. 2610, to authorize supplemental economic and military assistance for the Philippines may come up.

I indicate to my colleagues that if we can get action on some of these bills, I will be in a position to judge our schedule, hopefully, by noon or perhaps a little later in the afternoon. I have already had inquiries about how long we would be here on Friday and I would like to make that announcement. I hope those who have an interest in these bills will cooperate with the leadership on both sides and come to the floor, so we do not have 20- or 30-minute quorum calls. If we could start, for example, H.R. 3113, Central Valley projects bill, immediately after we conclude morning business, that will be very helpful. In the meantime staff on both sides are working to see if we can be prepared, as soon as that bill is finished, to have another one ready so we do not have this long lag of 30 or 45 minutes between each bill waiting for the managers to show up.

RELEASE OF SOVIET REFUSENIK ALEXANDER YAKIR

Mr. DOLE. Mr. President, yesterday I met with Secretary of State George Shultz. We discussed many issues, from aid to the Contras and the foreign aid budget to human rights issues. While recent news about human rights—whether from South Africa or Chile—has been dismal, today I have some good news to announce.

A young Soviet Jew, Alexander Yakir, who has been in a labor camp on trumped-up charges of draft evasion was released from prison several weeks ago and has returned to his home in Moscow.

Yakir was another so-called refusenik, whose only real offense was to want to emigrate from the Soviet Union.

I was only one of many from the United States who pressed the Soviet Government for his release. Now that he is out of prison, the next step is for the granting of emigration visas for Mr. Yakir and his mother and father.

In a note, I told Mr. Yakir that he had good friends in America, and many friends in the U.S. Senate on both sides of the aisle, friends who will not forget his dream.

But Mr. Yakir is not alone. There are more than 400,000 Jews, who if given the chance would leave the Soviet Union. We will not forget their dream either. We, who hold human rights supreme, will seize every opportunity to beseech the Soviet Government for a fundamental change in policy, for the granting of the most basic of human rights, the right to choose where you want to live.

Mr. President, in my letter, which I would like to appear in the RECORD at the end of my remarks, I urged Mr. Yakir to remain strong. We too must remain strong, strong and determined to carry on the fight for the thousands of Soviet people, Jews and Christians alike, who want to resettle in the West.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter to which I have made reference.

The PRESIDING OFFICER (Mr. KASTEN). Without objection, it is as ordered.

The letter ordered to be printed in the RECORD, follows:

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, July 15, 1986.

Mr. ALEXANDER YAKIR,
96 Profsoyusnaya, Korpus 5, Apartment 35, Moscow, Union of Soviet Socialist Republics 117485.

DEAR MR. YAKIR: I just heard the wonderful news of your release from prison and your return to Moscow.

Let us hope that gaining your freedom is only the first step toward emigration to the West for you and your family. You have good friends here, friends who will not forget your dream.

You have shown great determination and courage over the years. I hope that you will remain strong.

Sincerely,

BOB DOLE, *U.S. Senate.*

SUMMIT MEETING SUGGESTIONS

Mr. DOLE. Mr. President, it also appears there now seems to be more and more optimism about a meeting after the fall elections between Mr. Gorba-

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

chev and the President of the United States.

We are always giving advice to the President on what he ought to do to help our relationship with the Soviet Union. I might, in the appropriate spirit, indicate to Mr. Gorbachev that one way, I think, to make a lasting impression on the American people, particularly on those families of those who now would like to leave the Soviet Union, Jews or Christians alike, is perhaps to loosen up on their emigration policies. It would be a step in the right direction as we all prepare for a meeting, hopefully, some time in November or December, between our two leaders, President Reagan and Mr. Gorbachev.

I would also indicate that as far as our Government is concerned, it would be very helpful in my view if we take a hard look at some of our agricultural export policies as they relate to the Soviet Union.

The farm bill that was passed last December, included an export enhancement program. But because of some resistance by the administration, the benefits of this program are not being made available to the Soviet Union and, therefore, they are not buying from us. Why pay $14 more a ton if you can buy it from some other source.

It would seem to me that with the depressed state of agriculture, which is probably going to continue for some time, we need to make every reasonable effort to increase our exports. We cannot expect to sell grain to the Soviet Union, for example, if we are going to demand a price higher than any of our competitors.

So, it would be my hope that the administration in the very near future would change that policy. It would be a step in the right direction that we might take. Again, it would be a gesture of good will that would enhance the possibilities of reaching real results when Mr. Gorbachev and the President of the United States sit down together later this year.

□ 1110

Mr. President, I reserve the balance of my time, except for 3 minutes which I yield to the distinguished President pro tempore, Senator THURMOND.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. Under the previous order, the Democratic leader is recognized.

AFGHANISTAN

Mr. BYRD. Mr. President, anent those actions which the new General Secretary of the Soviet Union might take to stimulate interest in the President's meeting with the new General Secretary at a hoped-for summit, and more importantly what might help to pave the way for a building of confidence and faith on the part of the American people in what the Soviet leaders may say and what they may agree to, would be that the Soviets get their military forces out of Afghanistan. The world seems to have its eyes closed and its ears plugged as to what is going on in Afghanistan.

The Soviets have been in Afghanistan now for almost 7 years. Their military invasion of Afghanistan in December 1979 is what pulled the plug on the SALT II Treaty. That invasion put the SALT II Treaty on ice. The United States immediately reacted with sanctions against the Soviet Union, a grain embargo and other actions. Later, those sanctions were lifted. But the Soviets did not lift their siege of Afghanistan.

What we have seen there is the savage murder of men, women, and children, the dropping of booby-trapped toys from helicopters and airplanes, the result being that thousands of Afghanistan children who have had their arms blown off, legs blown off, and their eyes blinded; and millions of Afghans who love liberty have left the country.

The world goes on. Out of sight, out of mind. That appears to me to be the situation in Afghanistan. I know the difficulties are almost insurmountable, but the world press has the responsibility to reveal to the world as best it can, what is going on in Afghanistan—out of sight of the world.

So I hope that the free world will press the Soviets to get out of Afghanistan, as we hope for a summit between the two leaders of the United States and the Soviet Union, and as we hope for progress in arms control negotiations in Geneva and later at a summit.

LEGISLATIVE AGENDA

Mr. BYRD. Mr. President, in closing, may I say that we on our side will do whatever we possibly can to cooperate with the distinguished majority leader in getting legislation up throughout the day. And we will be discussing with him the various pieces of legislation which he identified.

Mr. President, I ask unanimous consent that I may reserve the balance of my time.

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

RECOGNITION OF SENATOR THURMOND

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

TEXTILE AGREEMENTS AND PUBLIC OPINION POLL

Mr. THURMOND. Mr. President, I would like to take this opportunity to voice strong concern over recently concluded textile bilateral trade agreements between the United States and Hong Kong and Taiwan.

Earlier this year, the United States Trade Representative announced that he would attempt to negotiate a "freeze" on textile/apparel imports to the United States from Hong Kong, Taiwan, and our other major suppliers. On the surface a freeze may seem appealing to some. However, closer examination proves the weakness of this strategy since textile/apparel imports from these and other nations reached record proportions last year. From Hong Kong alone, the United States absorbed over 1 billion square yards of textile/apparel imports in 1985. A freeze at those massive levels would not have been a bargain.

Yet, Mr. President, the recently completed agreements with Hong Kong and Taiwan do not even accomplish the freeze that Trade Representative Yeutter had announced that he would seek. To the contrary, the Hong Kong agreement guarantees 6 years of substantial growth from our largest value supplier of textile/apparel products. Over the life of this agreement, Hong Kong will be able to ship 7 billion square yards of textiles to this country. Much of this increase will be in sensitive apparel categories that already have high import penetration levels.

Mr. President, as always, the bottom line is jobs. Unfortunately, it is estimated that the increases allowed under the Hong Kong agreement alone will result in the loss of 25,000 jobs for American workers.

Mr. President, these agreements are just another factor leading to the continuing trend of record textile/apparel imports to the United States. During the first 5 months of 1986, textile/apparel imports from all sources grew at a staggering rate of 23 percent, compared to the same period in 1985. At the same time that import growth is soaring, the domestic market for textiles is only growing at a minimal rate of 1.5 percent a year. It is abundantly clear that we are headed for another record year of textile/apparel imports, and that we are facing a $20 billion textile/apparel trade deficit in 1986. These are the same circumstances that have cost us over 350,000 American textile industry jobs since 1980.

I have recently received the results of a national public opinion survey conducted by the Government Research Corporation and Mathew Greenwald & Associates. This survey polled the American public on their support for import controls and for controls on textile and apparel im-

ports in particular. According to this survey, 66 percent—I repeat, 66 percent—of the American people say their Congressman should vote to override President Reagan's veto of the textile bill and 73 percent say that their Congressman should vote to control clothing and textile imports. Also, 83 percent say that they will consider their Congressman's position on trade issues when deciding how to vote. In addition, 52 percent said that they would likely vote against their Congressman in November if he voted against controlling imports. It is evident that the vast majority of the American public favors limiting imports to help our trade situation. I ask unanimous consent that the fact sheet on the public opinion survey be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. THURMOND. Mr. President, I am a proud and enthusiastic supporter of the present administration on a wide range of issues. However, it is painfully evident to me that our current trade policy is extremely flawed and that thousands of U.S. manufacturing jobs, in all sectors, are being sacrificed because of it.

In an effort to help rectify this situation, last year I introduced the Textile and Apparel Trade Enforcement Act. The bill was designed to tie the growth of textile and apparel imports to the growth of the domestic market; reset textile and apparel import levels where they would be today had the administration adequately implemented and enforced the multifiber arrangement; allow foreign textile exporters over 40 percent of the U.S. market with built-in annual growth rates.

That legislation was approved overwhelmingly by both Houses of Congress. Unfortunately, President Reagan vetoed the Textile and Apparel Trade Enforcement Act. Mr. President, I would like to have the attention of the Chair while I am speaking. That action has left the United States without an efficient and effective textile trade policy.

Mr. President, Congress can no longer ignore this situation. We must be willing to take a stand for the American worker and the American industrial base. In August, Congress will have the opportunity to overturn the President's veto of the textile bill. We must be willing to take that important step. If we do not, then textile imports from foreign countries, that subsidize their products and produce them at slave wages, will continue to flood our markets, displace our workers, and harm our industries.

Mr. President, textiles and apparel is a national industry and a national responsibility. It is composed of 5,000 textile companies, 20,000 apparel companies, 120,000 wool growing and shearing operations, 41,000 cotton farms, and thousands of supplier companies. This issue is absolutely vital to the jobs of over 4 million workers nationwide that are directly and indirectly employed by the fiber/textile/apparel industry. How long are we going to stand by and watch healthy, able-bodied American workers go on welfare in the name of free trade? We must act decisively to give this industry and its employees a fighting chance to survive.

Mr. President, in closing, I want to say that I favor trading with other nations but I also favor trading in a fair way—not free trade, but fair trade. Why should we give thousands and thousands of jobs to other nations when our own people lose their jobs here? I think our first responsibility, and I think the first responsibility of this Congress is to protect its own people. Yet, we have lost 350,000 jobs in the last 5 years that have gone elsewhere that we could give to Americans.

I think the original arrangement that the President agreed to and which he gave me a commitment on, which is that he favored keeping the import growth in line with the domestic growth, is a fair one, but what has happened? The import growth has been 23 percent—I repeat, 23 percent over the last year—whereas the domestic growth has been below 3 percent.

Mr. President, that is unreasonable. It is throwing Americans out of jobs, and steps should be taken to address it. As I stated before, I think this administration has done an outstanding job in so many ways, but how can we stand idly by and see American jobs go overseas? Mr. President, the American textile people today have modernized their plants and done everything to compete. But how can they compete, for instance, when some of these countries pay from 16 cents an hour to 50 cents an hour, as do China and Hong Kong, when our workers are paid about $7 an hour? It is just impossible to do that. Therefore, we ought to keep the import growth in line with the domestic growth. If the domestic market grows, the imports can grow accordingly.

Mr. President, I hope the administration will take another look at this matter. I hope that they will realize the harm that they are doing the people of this country by allowing jobs to go to other nations.

Mr. President, I yield the floor.

EXHIBIT 1

GIVE AMERICA A FIGHTING CHANCE—STOP UNFAIR IMPORTS

FACT SHEET—PUBLIC OPINION ON TRADE

The following information was compiled from a national public opinion survey conducted in June by the Government Research Corporation and Mathew Greenwald & Associates. The survey is nationally projectable. The maximum sampling error is (+/−) 4 percent at the 95 percent confidence level.

Do Americans support imports controls? Do they support an override of the President's veto of the Textile and Apparel Trade Enforcement Act (H.R. 1562)?

66 percent say their "Congressman should vote to override Reagan's veto and control clothing and textile imports." 7 percent are undecided.

Northeast: 66 percent support override.
Midwest: 63 percent support override.
South: 67 percent support override.
West: 68 percent support override.

73 percent say their "Congressman should vote to control clothing and textile imports."

78 percent "favor Congress passing a bill that would limit imports from countries that engage in unfair trade practices."

83 percent say they "will consider their Congressman's position on trade issues when they decide who to vote for.

52 percent said they would likely "vote against their Congressman in November" if he voted against controlling imports.

Are Americans concerned about international trade?

71 percent say they are "angry that America is getting taken advantage of by its trading partners."

77 percent say they are "worried that Congress will not do much to stop our trading partners from hurting the economy."

32 percent say they "know of someone who has lost his job because of competition from foreign imports."

84 percent believe "the clothing and textile industry has been hurt by our trade relations with other countries."

80 percent believe "the clothing and textile industry has been hurt because other countries put more limits on what we can sell to them."

81 percent believe "the clothing and textile industry has been hurt because foreign governments give subsidies to their companies."

69 percent believe "the clothing and textile industry has been hurt because our government has been out-negotiated by foreign nations."

78 percent believe "the clothing and textile industry has been hurt because our government has been too lenient in trade negotiations."

85 percent believe "the clothing and textile industry has been hurt because foreign companies pay their workers very low wages."

Do other National Public Opinion surveys support the findings of the GRC/Greenwald Poll? Yes.

A November (1985) New York Times-CBS News Poll found that 63 percent of the American public believe "restricting foreign imports would be the most effective way for the U.S. to help its trade situation."

A February (1986) Roper survey found that 65 percent of the American public "favor restricting foreign imports."

A GRC/Greenwald survey conducted in March (1986) found that 57 percent of the American public feels "the government is doing a bad job in handling foreign trade."

RECOGNITION OF SENATOR DIXON

THE PRESIDING OFFICER. Under the previous order, the Senator from Illinois is recognized for a period not to exceed 5 minutes.

EMERGENCY STORAGE NEEDED FOR POTENTIAL RECORD CROPS

Mr. DIXON. Mr. President, I rise today amid alarming reports from my home State of Illinois, and other States across the Midwest, that our farmers will soon face a widespread shortage of storage space for grain.

Many of our farmers' loan contracts expire on July 31. Due to the depressed state of our agricultural economy, our grain prices are low. For this reason, a great number of farmers will decide to forfeit their crops when their contracts expire.

At this time, it is estimated that the State of Illinois may be 113 million bushels short of storage space when these contracts expire. Currently, elevators and warehouses which are used to store Government grain must first be approved for Federal licenses by the Commodity Credit Corporation [CCC]. This process is time consuming and though a number of temporary, emergency storage facilities have been licensed, even more space is needed. We are in a situation in which the grain may have to be stored in inadequate facilities, which could have a serious impact on the quality of our grain.

Crop reports for the State of Illinois and, indeed, across the Midwest, indicate that a record harvest is due this fall. Country elevators and warehouses do not have the storage capacity for this bumper crop harvest.

In fact, Time magazine highlighted the problem in its July 21, 1986, edition. Mr. President, I ask unanimous consent that the article entitled "Amber Waves of Strain," be printed in the RECORD at the conclusion of my statement.

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

(See exhibit No. 1.)

Mr. DIXON. Mr. President, last fall, I fought for an amendment to the 1985 farm bill which allows warehousemen to transfer grain from one federally licensed warehouse to another. This would enable the warehousemen to prepare their facilities for the upcoming harvest. The amendment passed the Senate by a vote of 86 to 0, but was inadvertently dropped in the farm bill conference. It was accepted again by both the House and Senate early this spring. Unfortunately, Mr. President, there are no warehouses to which we can send this grain.

The Department of Agriculture has taken a minor step toward reducing the great storage shortage. It has agreed to extend loan agreements for 12 months at the farmer's request. A producer can then repay the loan at any time, but will not be able to forfeit the grain until the 12 months have expired. The Department has also agreed to pay 26½ cents per bushel for the storage of this grain.

While this may alleviate some of our storage crisis, the Department still needs to take a good hard look at the problem and guarantee our Nation's farmers that they have received a fair deal.

It should be more than obvious by now that the American farmer has been made to suffer needlessly. Over the past several years, the decline of our agricultural economy has been rapid and threatens the very fabric of our Nation.

Our great Nation was founded on agriculture. It is important that we work our hardest to protect the Nation's agricultural sector and the family farmer.

I yield the floor, Mr. President.

EXHIBIT No. 1

AMBER WAVES OF STRAIN

Across the farm belt last week, it was clear that another bumper crop is on the way. In Illinois, the corn is already seven feet high in spots and not close to topping out. Some corn is tasseling weeks ahead of schedule, and an early harvest is in prospect. Soybeans have also benefited from perfect weather; many plants are waist high and flowering ahead of time. Good, dry planting weather came early this year across Iowa and Nebraska, and even scattered flooding has not hurt the promise of a bountiful harvest. Elsewhere in the Midwest, it is much the same, a year so good that Dennis Vercler, news director of the Illinois Farm Bureau, calls it "absolutely phenomenal."

Yet the great bounty of U.S. agriculture continues to be a curse as well as a blessing. As the corn rises speedily, so does a forest of new silos that signals a crop-storage problem of epic proportions. All across the corn belt, from Indiana to Nebraska and Missouri to Minnesota, a binge of bin and silo building is in full swing. Reason: by the end of summer, U.S. farmers and the Department of Agriculture will be buried under more excess wheat, corn, rice and other products than ever before in history. Last week the immensity of the surplus became clear in the marketplace, as commodities traders sent the price of corn futures plunging to $1.71 per bu., the lowest level in twelve years.

While farmers fret about how to store the huge harvest, much tougher questions will loom as unavoidably as tarpaulin-covered mountains of wheat. The unsentimental truth is that America's farm industry, once a source of pride and power, has become an economic burden. Because so many other countries have improved their agricultural output, maintaining American's vast farming capacity is now a costly exercise in excess. During fiscal 1986 the expense to taxpayers for supporting farm programs will reach, according to the Government's estimates, $24 billion—a 36% increase over last year. As exports shrivel and imports increase, the U.S. agricultural industry no longer even produces the hefty foreign exchange earnings that farmers once provided.

To put the situation in order, the Government is allowing thousands of farmers to fail but is spending billions to boost foreign sales and prop up incomes for those who survive. Yet the adjustment process is a bitter one that promises hardship not only for farm families but for the thousands of already troubled farm-oriented businesses, including machinery builders, petrochemical companies, seed producers and the mom-and-pop shops that keep small rural towns alive.

This year's corn crop will be the most dramatic example of U.S. agriculture's relentless surpluses. Because of the almost perversely ideal weather, with exactly the right amount of rain at the proper intervals, says Illinois' Vercler, "crop development is just about the best ever." Last year's corn crop was the largest in history, 8.9 billion bu., of which a record 5 billion bu. is left over in storage. The expected bumper harvest of 8 billion bu. this year, smaller in volume than 1985's because an increasing number of farmers have taken some acreage out of production to qualify for Government support programs, will send prices plummeting even further into the cellar.

Other vast surpluses abound. At the beginning of last month, the U.S. held 1.9 billion bu. of wheat, a record overstock, and 847 million bu. of soybeans, almost 40% more than at the same time last year. Kansas alone held 178.8 million bu. of grain sorghum, a livestock feed, almost 80% more than in June 1985. The U.S. is producing a huge excess of milk as well, a problem reduced only partly by the USDA's program this year to pay thousands of dairy farmers some $1.8 billion to send their herds to slaughter or export market.

The Midwest's surplus is so stubbornly large that even this year's severe drought in the South will fail to boost depressed farm prices. The sad result: farmers in those states will face a double bind of low prices and small harvests, which could push many of them over the financial brink. Last week's heat wave, which reached 105° F in parts of the Carolinas, further scorched crops and killed more than 500,000 chickens. "This could put us completely out of business," laments dairy farmer Charlie Bouldin, of Chatham County, N.C., who expects less than 30% of his hay and corn crops to survive.

But for most farmers, the problem is a lack of customers. Foreign sales of U.S. farm products have faltered because dozens of countries from Brazil to China have become more self-sufficient, while heavily indebted Third World nations lack the money to buy significant imports. This year total U.S. farm exports are expected to dip to $27.5 billion, down 12% from fiscal 1985 and 37% from 1981. At the same time, U.S. imports of such products as fish, fruit and vegetables have increased. Earlier this month the USDA announced that during May the U.S. became a net importer of farm products for the first time since 1959, except for occasions when dockworkers were on strike. May's farm deficit was $348.7 million. Although the USDA predicts a $7.5 billion agricultural-trade surplus for the year as a whole, the historic one-month deficit outraged farm-state legislators. Said Senate Majority Leader Robert Dole of Kansas: "Something is radically wrong when the greatest food producer in the world is buying more agricultural commodities than

it is selling. This trend simply cannot continue."

The best hope for boosting exports at the moment is the Food Security Act of 1985, the farm legislation passed by Congress last December. The act allows the Government to lower agricultural price supports and thereby make U.S. products cheaper in foreign markets. The new farm policy, however, is proving very costly. To compensate farmers for lowered price supports, the law provides dramatic increases in so-called deficiency payments, which are given directly to farmers to ensure that their net incomes remain stable. Under the new plan, farmers will generally derive a larger portion of their income, typically more than a third, from the Government. As a result budget-cutting pressure could force the program to be scaled back next year in Congress. Moreover, the dramatic increase in U.S. farm subsidies fans protectionist sentiment in other countries.

The subsidies, however, are backed by many farm-state voters with an understandably desperate zeal. More than 50,000 of the country's 2.3 million farmers hung up their tractor keys for good during 1985, and 50,000 more will probably be forced to quit this year. Says Enid Schlipf, who grows corn in Gridley Township, Ill.: "If a farmer's got a lot of debt, he's in deep trouble, no matter how good an operator he is." Foreclosures and bankruptcy have devastated the morale of many lifetime farmers and spurred at least a score of heartland suicides. Last week a 54-year-old farmwife in Chattanooga, Okla., despondent over her family's debts on their 1,280-acre wheat-and-cotton operation, killed herself by climbing atop a barrel of burning trash.

The financial strain has been aggravated by a get-tough lending policy at the Farmers Home Administration, the federal agency that makes and guarantees agricultural loans, and the Farm Credit System, a network of more than 600 banks and credit associations. Both organizations have adopted a more stringent policy, cutting off the most overextended farmers. The FCS suffered a loss of $2.7 billion last year, and holds some $12 billion in problem loans on its books. Says FHA Administrator Vance Clark: "We're going to lose a lot of farmers this year, and we've got to accept that."

Besides farm lenders, thousands of other businesses have suffered ripple effects. Tractor sales, for example, totaled only 58,500 in 1985, compared with 139,000 during the last good year, 1979. The slump has promoted several famous manufacturers to leave the business. Milwaukee's Allis-Chalmers, New York's Sperry and Chicago's International Harvester (renamed Navistar International) have sold their farm-machinery operations to competitors, a consolidation trend that has caused tens of thousands of employee layoffs. Of some 20 farm-equipment dealers who prospered in McLean County, Ill, five years ago, only three remain.

Some of the more optimistic farmers think they see a few rays of dawn on the horizon. The continuing decline of interest rates, for example, makes it easier for them to meet payments on their land and equipment. Falling prices for fertilizers, seed and other supplies have helped too, by reducing farm expenses. Finally, the falling value of the U.S. dollar should make farm exports more affordable for foreigners. But it will take the U.S. a long time to sell off the surpluses it has produced. Those rays of dawn are still barely visible through the lush, tall cornstalks.—By Stephen Koepp. Reported by Gisela Bolte, Washington; and Lee Griggs, Des Moines.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for a period not to exceed 15 minutes.

LIGHTS IN THE SENATE CHAMBER

Mr. PROXMIRE. Mr. President, I want to call the attention of my colleagues to the fact that the lighting in here is different than it has been for a long time, and it is much, much better. It is more relaxing. I always work better in the dark, and I think a lot of other people do, too. They accuse Democrats of working better in the dark but I think that is true of Republicans also—maybe a little more so.

I think we should be aware of the fact these glaring lights have their problems. My understanding is that medical studies have conclusively shown that cataracts are caused by bright lights. People who live in the parts of the world where they are exposed to bright sunlight have far more cataracts than people who live in the part of the world where the sunlight is not as prevalent. So I think if we can do this not just for 3 days, have the lights off Wednesday, Thursday, and Friday but have them off for much more of the time and, say, if we could only telecast the major debates in the Senate, because that is all that most people want to watch, I think we could make some real progress.

□ 1130

HOW PRESIDENT REAGAN HAS WRECKED ARMS CONTROL

Mr. PROXMIRE. Mr. President, once in a very great while an insight into a big and complex issue appears that all of us should welcome. Most Americans and most of us in the Congress are confused and bewildered by nuclear weapons arms control. Here is an immensely vital issue. Successful nuclear arms control treaties offer the one realistic opportunity for survival in this dangerous nuclear age. The American people know this. They overwhelmingly support arms control. Every time the professional pollsters question them they express 3 to 1 support or better for a negotiated end to the nuclear arms race. Those of us who rely on the electorate to win public office know this.

So whether it is a Member of the House or the Senate or the President of the United States or those who speak for the President, everyone in public office claim to favor arms control including those whose every action nullifies or sabotages arms control. For anyone who believes that this country can only advance arms control by negotiating treaties that stop or restrain the development, continuation, and deployment of new nuclear weapons, the behavior of this country's number one arms controller—the President of the United States, Ronald Reagan—is specifically puzzling.

The President of the United States is not just the main actor in arms control. He is truly a one man band. He is the whole show. This is specially true now.

Marshall Shulman, the director of the Institute for the Advanced Study of the Soviet Union at Columbia University, has recently said that in the 40 years he has been studying the Soviet Union, there has never been a time when the Soviets have been more ready to negotiate than they are now. For nearly a year the Soviet Union has unilaterally suspended all nuclear weapons tests as an initiative designed to begin super power negotiations to reach an agreement for a mutual end to nuclear weapons testing. Such an agreement would mark a major advance in arms control.

What has been the reaction of the administration? It has been an emphatic and consistent, No. No way. Never, Will not discuss it.

Now, to be sure, arms control negotiations with the Soviet Union are never easy. But Presidents Kennedy, Johnson, Nixon, Ford, and Carter all successfully negotiated arms control treaties with the Russians. Every one, all of these arms control treaties, was opposed by President Reagan.

But to truly appreciate the contradiction in the President's arms control support, consider a recent letter to New York Times correspondent James Reston by Gerard Smith, the principal negotiator of the first SALT treaty. Smith gives a marvelously telling insight into the Reagan administration's time posture on arms control: he wrote Reston the following:

I have been asking myself what we Americans would think if the Soviets had;

Failed to ratify the three latest arms control agreements that their premier had signed;

Walked away from negotiations for a comprehensive test ban and for limitations on anti-satellite systems;

Announced they were making an all-out effort to develop nation-wide defenses banned by the ABM treaty;

Announced that that treaty's correct interpretation permitted the development and testing of systems which the treaty by its very terms prohibited;

Had refrained from starting negotiations about strategic arms for many months, and then made offers which their former minister of foreign affairs had acknowledged to be non-negotiable and "absurd";

While claiming violations, had refrained from making effective use of the Standing Consultative Commission to resolve disputes

or was reported to have denied permission for its delegates to raise the issues;

Announced that it was breaking out of an agreement setting ceilings on missiles and bombers because of the bad behavior of the other party.

And Smith concluded: "This is what we have done and I suggest that it warrants a degree of caution in making judgments about Soviet behavior."

Mr. President, I submit that Gerard Smith's indictment of the Reagan administration's arms control policy is devastating. We can only understand how totally bankrupt this arms control policy is if we do as Mr. Smith suggests and ask ourselves how we would react if the Soviets had pursued the arms control policies the Reagan administration has followed. The answer is that we would be outraged. The administration has wrecked the fragile fabrics of arms control restraints put into place by six preceding administrations. Here is the teflon miracle at its most spectacular. No current national objective has more emphatic support across party lines than the end of the nuclear arms race. The American people recognize that we can only stop this suicidal and immensely burdensome race by building on the arms control agreements negotiated in the nuclear age. The Reagan administration has not only failed to build on the arms control agreements in place. It has deliberately wrecked them.

And somehow the President who has so conspicuously destroyed the fondest dreams of the American people for a negotiated peace has become the most popular President in 40 years. This is a true political miracle.

EDUCATION DEPARTMENT WINS JULY FLEECE

Mr. PROXMIRE. Mr. President, the Department of Education won my Golden Fleece Award for the month of July by earning a big, fat "F" for wasting well over $1 million of the taxpayers' money on useless consulting contracts. The Department is promoting a good line about getting back to the basics but when it comes to the taxpayers' money, those basics are waste, fraud, and abuse.

The villains of this Fleece are not all faceless bureaucrats but high-level political appointees, supposedly committed to wiping out waste. Yet these "true believers" have set a record for abuse which would make even the biggest spending liberal blink.

Start with the actions of a former Under Secretary, who directed the noncompetitive award of two contracts to a firm judged to be unqualified to do the work. Bureaucrats were concerned that the $335,000 involved would be wasted so they went to the Under Secretary with their fears. Their gutsy warnings fell on deaf ears when the Under Secretary told them to go ahead anyhow.

The bureaucrats were right; the work done was useless, and $335,000 of the taxpayers' money went down the tubes.

Next, the White House Initiatives staff in the Department finagled a $238,000 contract just as a fiscal year was about to end. Had this contract not been awarded, the money would have gone back to the Treasury. It would have reduced the deficit. Once again, career officials were doubtful, but were pressed to award the contract. The consultant was to set up three regional conferences, a questionable undertaking at best. But even this task was not performed. The money was wasted.

Finally, in another yearend spending spree, the Department shelled out approximately $300,000 in an effort to prepare job descriptions by using a computer. They spent the money and formally accepted the work. Then they promptly threw it in the wastebasket.

In response, the Department says they are doing better, that they are learning from these mistakes. Talk about costly lessons. Students this thickheaded should flunk. So should the Department of Education.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the Senator from Florida [Mrs. HAWKINS] is recognized for not to exceed 5 minutes.

THE ANTIDRUG OPERATION IN BOLIVIA

Mrs. HAWKINS. Mr. President, I read with mixed feelings today's front page headline of the Washington Post proclaiming "U.S. Army Joins Bolivian Drug Drive." My pleasure at seeing this type of cooperation against the drug traffickers in Bolivia was tempered by the knowledge that its advanced disclosure may permit the traffickers to flee into the jungles and, as a result, diminish the effectiveness of the operation. I have known about this operation for several days and was convinced that surprise was an important part of the effort.

In spite of this disappointment, I trust that when this operation gets underway on Friday, it will be D-Day for drug traffickers in Bolivia. Later this week, elements composed of U.S. Army Blackhawk helicopters, American DEA agents and Bolivian antidrug police (Umopar) will launch a series of strikes against the narcotics network that infests the Bolivian jungles. I believe that the Bolivian Government should be commended for this action. It is a courageous and farsighted move. I also believe that the Justice, State, and Defense Departments should be praised for their role in this operation.

The cooperation between these Departments in the war on drugs is almost as unprecedented as the cooperation between the Government of Bolivia and the United States.

In World War II, D-Day marked only the beginning in a long and difficult struggle against Nazi Germany. So, too, this week marks only the beginning of a long and difficult struggle against the merchants of the "White Death" in Bolivia. While I am pleased at these bold and tough steps against the drug processing centers, I hope that the Bolivian Government will not use these operations as camouflage for their refusal to get to the root of the problem by means of eradicating the entire coca crop.

Eradication is ultimately the only effective means of driving the traffickers out of business. If we do not go after the coca crop, the traffickers will simply set up new labs and processing centers and we shall find ourselves engaged in a never-ending struggle. It is my hope that this initiative signals the beginning of a new era marked by comprehensive action against the traffickers that will include both police actions such as this and coca eradication.

The tragic deaths of Lenny Bias, Don Rogers, and thousands of others has been a recent reminder of the danger of cocaine. Cocaine kills. But it does even more than kill; it breeds crimes, it devastates families, it destroys futures—not only in this country, but in producing and transit countries as well. Bolivia has been a country tottering on the edge of oblivion. It has come very close to losing its soul to the drug traffickers. It is my hope that this joint United States-Bolivian strike against the drug traffickers demonstrates a new will in Bolivia to confront and destroy the cocaine industry—to regain control over its own destiny, its own soul.

I also hope that this operation will set a precedent for other cooperative international enforcement efforts against the drug traffickers.

Mr. President, only time will tell, but it is my hope that we are entering a new phase in the war on drugs—a phase that is more deadly to these merchants of death.

I yield the floor.

RECOGNITION OF SENATOR CHAFEE

The PRESIDING OFFICER. Under the previous order, the Senator from Rhode Island is recognized for not to exceed 5 minutes.

THE COMMUNITY AND FAMILY LIVING AMENDMENTS OF 1985

Mr. CHAFEE. Mr. President, each week I come to the floor of the Senate to talk about legislation I have introduced—S. 873, the Community and Family Living Amendments of 1985—which would reform the Medicaid Program as it relates to those with developmental disabilities. To date, my legislation has eight cosponsors—Senators STAFFORD, LEAHY, PELL, INOUYE, BINGAMAN, SASSER, HATCH, and NUNN.

The goal of this legislation is simple: to replace policies which increase dependency and break up families, with policies that allow dignity, encourage families to remain intact, and recognize individual potential by helping it to grow and flourish.

Medicaid is the Federal program which provides States with the bulk of funding for long-term care services for the disabled. Currently these funds flow primarily toward large facilities. The reason for this has more to do with what Medicaid will pay for than what system of care and services is best for each individual.

It is because of this funding bias and lack of alternative services that I introduced S. 873.

This bill stands for the preposition that there should be a range of services available for those with mental and physical impairments. It recognizes that the number of disabled individuals who require institution-based services is far smaller than those who need community-based services.

Mr. President, my bill would allow Medicaid expenditures to support people in a wide variety of settings: From natural family homes to new community residences of up to about 12 people. In addition, S. 873 would allow 15 percent of a State's total Medicaid budget to be used to support institutional placements.

One of my top priorities as a Member of the U.S. Senate has been to move us closer to the goal of a society in which those with disabilities can participate significantly in the work force, in schools, in recreational activities and in the community.

We are in an era of changing technology and experience. Our understanding of the capabilities of those with disabilities is changing quickly. We have made tremendous strides in our ability to help those with disabilities to learn and to participate in many different facets of life.

Today I would like to share an example of the tremendous strides that can be made when those with disabilities and those with technological expertise team up.

As many of my colleagues in the Senate know, my home State of Rhode Island is the sailing capital of the world. It stands to reason, therefore, that there are many individuals with disabilities in Rhode Island who would like to sail. Unfortunately, the design of a sailing vessel is almost always a barrier to handicapped individuals.

Recently, an organization in Rhode Island called Shake-A-Leg, whose members have experienced spinal cord injuries or traumatic brain injuries, and the Council of Disabled Sailors teamed up with naval architect Gary Mull and boat builder Tillotson-Pearson to develop a boat designed from the keel up for handicapped individuals. The result of their efforts is the Freedom-Independence.

The Freedom-Independence is a small sailing vessel specifically designed so that those who are handicapped can sail it without assistance. It is a barrier-free boat—the first of its kind in the world.

The design of this small boat represents a tremendous step forward for those who, simply because of their disability, have been denied access to a wonderful recreational activity that most other Rhode Islanders have the opportunity to enjoy.

Tillotson-Pearson has donated the first two Freedom-Independence boats to Shake-a-Leg. The boats are berthed at the Fort Adams State Park in Newport, RI, and free sailing lessons are being offered to help individuals learn to sail. Sailing Director Tommy Banks has reported that the response has been tremendous.

Soon these very special boats will be available throughout the world. Tillotson-Pearson will sell future boats manufactured according to the Freedom-Independence design to organizations for the disabled at no more than the cost of construction.

Freedom-Independence is the perfect name for this spectacular result of the partnership between those with disabilities who have a dream for the future and those with the skills to make that dream a reality. There are many other disabled individuals who have a dream for the future—a dream of independence and opportunity. We in Congress have the ability to make their dream a reality by enacting my legislation, S. 873.

The production of the Freedom-Independence is one more step forward on the path to ensuring that those with disabilities have the opportunity to participate in many facets of life that are taken for granted by those of us without disabilities.

My legislation, S. 873, is another step forward. I hope my colleagues will join me in this effort to make freedom and independence a reality for all disabled individuals, not just for those who sail.

FAST FOOD LABELING

Mr. CHAFEE. Mr. President, this statement deals with the fast food industry, and particularly that industry's actions to reveal to consumers how its food is made and what the ingredients are. I recently introduced legislation that would require the fast food restaurants to label their products just as we find labeling now on cans and products when we go into a supermarket.

Fast food has become a mainstay in the American diet—and yet we know nothing about it except what the chains choose to tell us. Recently I introduced a bill that would change this, requiring that fast food be labeled the same way that supermarket food is labeled.

The response to this proposal—S. 2446—has been very good. If the letters I get every day from people all over the country are any indication, the American consumer wants the kind of information that fast food labeling would provide.

A number of major papers have also lent their support. The latest editorial comes from the New York Times of June 26, and I shall ask that it be printed in full at the end of my statement.

I am pleased that we are now starting to see individual States moving to get fast food information out to consumers. So far, New York, California, and Texas have negotiated agreements under which five of the largest fast food chains will supply brochures with ingredient information to customers that request it. I understand that other States—and other chains—will soon follow suit.

This is certainly a step in the right direction. The States that are pushing for action deserve credit, as do the chains that are participating—Burger King, Jack in the Box, Kentucky Fried Chicken, McDonald's, and Wendy's.

But these actions are by no means the whole solution: to be truly useful to the consumer, fast food information should be universally available and should conform to agreed-upon standards.

You should not have to request some pamphlet—either at the restaurant or from company headquarters. It seems to me that fast foods should conform to the standards we apply to canned foods; that is, the list of the ingredients should be on the products themselves—on the wrapper or the box that you buy your hamburger in.

Otherwise, it is just more advertising—and possibly misleading advertising at that. As the Times editorial concludes, "a law defining proper disclosure seems in order."

I hope that my colleagues in the Senate will agree, and that the Committee on Governmental Affairs will move quickly to schedule hearings on fast food labeling, so that all sides of this issue may be fully aired.

Mr. President, I ask unanimous consent that the editorial I referred to be printed in the RECORD.

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

[From the New York Times, June 27, 1986]

FAST FRIES FRIED IN WHAT?

Arguably, the Federal laws that require ingredient lists on packaged foods sold in supermarkets could also apply to Big Macs, Whoppers and other standardized products sold by fast food chains. But Federal officials refuse to apply them, exaggerating the financial burden. Legislation to extend the rules to chains, in the interest of public health, has thus been offered by Senator John Chafee, Republican of Rhode Island, and Representative Stephen Solarz, Democrat of Brooklyn.

The bills are supported by the American Heart Association, the American Diabetes Association and the American College of Allergists. They would require chains with 10 or more outlets to provide nutritional information and lists of ingredients by quantity either on the wrappers or on signs. Customers with allergies or struggling against fat, salt and other ingredients would thus be able to protect themselves. The fast food outlets, meanwhile, would gain a further incentive to compete, as some already do, on the basis of health as well as taste.

The National Restaurant Association contends that listing ingredients on wrappers would cause "undue anxiety." But some anxiety in fast-food consumption is justified. Studies show that chain outlets often cook french fries and other foods in beef tallow, a flavorful shortening high in the saturated fat linked to heart disease. Chicken that's supposedly low in fat may, in a fast food sandwich, contain more fat than a pint of ice cream.

The two largest chains, McDonald's and Burger King, seek a more wholesome reputation for their foods. They have switched from animal fat to unsaturated vegetable oil in frying chicken and fish, but still use beef tallow to fry potatoes. Starting next month, both chains plan to make a grudging concession to the pressure for disclosure. McDonald's will distribute brochures listing ingredients, but only in New York outlets. Burger King plans to have pamphlets nationwide, but it ordered only 300,000 for 11 million daily customers and seems uninterested in promoting them. Other chains may follow.

To accelerate the pace of change, the law defining proper disclosure seems in order.

Mr. CHAFEE. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. If the Senator would withhold.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 12 o'clock noon, with statements therein limited to 5 minutes each.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1210

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

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

NUCLEAR SAFEGUARDS

Mr. McCLURE. Mr. President, the nuclear accident last April in the Soviet Union alarmed and frightened the world; the lack of information regarding the accident and the potential for future accidents only served to heighten these fears. However, the International Atomic Energy Agency immediately became the key source of information regarding the accident, and over the months, the IAEA has been recognized by the leaders of the free world at the Tokyo Summit and by the Soviet leader, Gorbachev, as the only international agency with the potential for ensuring such an event not happen again anywhere in the world.

Responding to international concerns, the IAEA's Board of Governors recently called for a number of meetings to take place before October that should address and resolve, if possible, the critical issues raised as a result of the accident. These include a postaccident review meeting where the Soviet Union will present its analysis of the accident; two conventions, one to develop an international accident early warning system, and one to develop international safety standards; and the first meeting of a newly established group, the International Safety Advisory Group. The General Conference, which meets late in September, will have the results of these conventions and the member states will be asked to accept and sign a binding agreement regarding international safety and notification.

The development of an international program in nuclear safety has a precedent at the IAEA in the ongoing safeguards inspection system. IAEA safeguards are dedicated to restraining the proliferation of nuclear weapons by making sure nuclear plant operations and materials are not diverted to weapons production. The 112 member nations of the IAEA have voluntarily relinquished to the Agency some degree of control over their nuclear facilities to reassure the world that they are pursuing safe and peaceful nuclear development. It may be helpful for us to have a clear understanding of the way this system and these inspectors carry out this critically important work.

An article in the December, 1985 issue of the Science 85 magazine, "The Inspectors" by Carl Posey, gives a graphic description of a safeguards inspection made by "the man from Vienna"—an IAEA inspector. Posey calls the step-by-step inspection theoretical and a composite; for the inspector, the facility and the country he describes are unnamed, but the dedication of the inspector and the sensitive nature of his task are carefully and accurately delineated.

Posey notes the IAEA can not force nations to accept safeguards. I must add that neither can the Agency force nations to develop or comply with internationally accepted standards for nuclear safety. It can only carry out the dictates of its membership. To date, all signs indicate the member States are anxious to commit to such standards. If they do so, and propose a system for safety inspections, Posey's article makes clear the IAEA has competent, committed people capable of handling the task. The framework exists and must be added to, with conventions, agreements, increased funding, and greater support, if we are to continue put the atom to peaceful use, and prevent nuclear accidents.

Mr. President, I ask unanimous consent that the text of "The Inspectors" be printed in the RECORD.

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

THE INSPECTORS

(By Carl Posey)

The man from Vienna is tense. He has spent an uncomfortable night in a remote corner of this foreign nation, an unfamiliar breakfast will not let itself be digested, and he is preoccupied with rumors that all is not what it seems here. The sights of his destination through a gap in the black trees—the almost windowless gray boxes, the stacks and cooling towers, the domed enclosures where atoms are split for electricity and technical repute—stimulates yet another mental rehearsal of the careful routine the day must follow.

He has gone through it many times before at places where uranium is purified, loaded into fuel rods, consumed, cooled, or resurrected in another "combustible" form. Whether the plants lie in nations with thousands of nuclear warheads or in nations whose leaders thirst for their first taste of explosive fission, the essence of the routine is always the same. The visitor bears some mild celebrity, for against its instincts, this nation, on this day, relaxes its sovereignty, endures his scrutiny, just for him and for what he represents.

To his host, the operator of this facility, the nuclear safeguards inspector from the the International Atomic Energy (IAEA) in Vienna is both colleague and adversary. They share a belief in a nuclear future, but its evolution can make great trouble between them. The nation has known of this inspection for only a month, the reactor operator for barely a week. He shrugs. If all goes well, it can be done in one morning without even shutting down the reactor.

What follows lies at the core of the delicate balance between wars that are largely ritual and wars that are hot. The inspector must verify that the movement and location of uranium in this nation are exactly as the host nation says they are. He is here to prove nothing beyond the presence of a certain amount of nuclear material. It is verification, not detection. "Countries do not

submit to safeguards to prevent themselves from doing something," explains Hans Blix, the Swedish director general of the IAEA. "They submit because they have decided that they will not make use of a facility for producing weapons. And this willpower, the political will of a country, is where nuclear nonproliferation resides."

If nonproliferation resides in that political will, nuclear proliferation is embodied in the villain of nuclear mythology, the Diverter—the individual or group or nation bent on diverting uranium intended for power generation and research to primitive atom bombs. The potential diverter is any nation with nuclear material and without nuclear bombs. Inspection is the sharp but necessary slap nations must accept to demonstrate to other nations the continued firmness of their decision to forego nuclear weapons.

From an American perspective, the inspector's job seems obvious: verify that the bad guys have not diverted uranium or plutonium to weapons use. But one nation's bad guys are another nation's allies, and some nations are as bound by old animosities and fears as warring spouses. Thus, Israel's presumed nuclear arsenal must inevitaby persuade its enemies to seek fission weapons of their own, India's 1974 detonation of a "peaceful" fission device guarantees another in Pakistan. One must accept the fact that the Soviet Union will always suspect Germany of rearming, and that China and Taiwan and the two Koreas will never be quite comfortable about each other's nuclear abilities. In a world where mustard gas is used against troops of conscripted children, the nightmare of an unstable nation brandishing a rudimentary nuclear bomb is more than just a bad dream.

Against those possibilities, we have some 180 safeguards inspectors and the international apparatus they symbolize and serve. A typical inspector would be a male (although there are several women inspectors now) in his mid-30s, technically trained, with some experience in the nuclear industry, and a citizen of one of the 111 nations in the IAEA. Even though he finds his work physically and intellectually challenging, he may be a little worn around the edges, not so much from the acts of his ghostly adversary, the diverter, as from the day-to-day rigors of the job. He may have problems at home because he spends nearly a third of each year in the field, for periods of as much as a month at a time. But he retains some of the idealism that brought him into safeguards in the first place, and he believes in his ability to make a positive difference in the spread of nuclear weapons. He is unafraid of the radiation or of any of the other perils that some people see in the atom.

A reporter wanting to observe this inspector in an operational setting encounters formidable—and in the end impenetrable—obstructions. First, arranging such a visit requires the elusive consensus of the IAEA, nation, and operator, all shrouded in confidentiality. Nettled by earlier press reports, none of these players is very excited at the prospect of reporters sharing an inspection. At the same time, IAEA director general Blix insists on his organization being "open and transparent." So although an actual inspection is ruled out, the agency exposes itself to questions that permit an accurately imagined visit—a composite.

For this composite inspection, we go to a French-built Osiris-Isis reactor, a "lightwater" unit. Osiris, like most research reactors, uses enriched uranium as fuel to produce large numbers of neutrons with broad experimental uses. Such research reactors have complex layouts that provide some attractive opportunities to a potential diverter. Attractive, but difficult, because the uranium there, as in other reactors, is closely watched. The flow of uranium in the world is substantial—more than 47,000 tons were mined in the non-Communist world in 1983 alone. But the uranium and its byproducts in about 98 percent of the nuclear facilities in nonnuclear weapons states is safeguarded (subject to inspection), according to Peter M. Tempus, the Swiss physicist who directs the $30-million-a-year safeguards program. These safeguards apply of some 900 assorted power and research reactors, fabrication plants, and other nuclear facilities, including this Osiris type.

Uranium first comes under international safeguards after it has been pumped into containers as pressurized uranium hexafluoride (UF_6) gas. At a uranium enrichment plant, a centrifuge is used to increase the amount of easily fissionable U^{235}—which is less than one percent in nature—relative to the heavier, more stable, and more abundant U^{238}. Then, still in the form of "hex" gas, the uranium is transported on to a fuel fabrication facility. Here the gas is converted to powder, the powder is pressed into pellets or plates of uranium, and these are loaded into the long, cylindrical fuel rods that are inserted into a reactor core. At this point in its life cycle, the uranium has been out of the ground a year or more.

Shipped to a reactor, the uranium spends some five years in the core, radioactively burning away, before being removed and stored in a cooling pond for another year or two. New technology that makes it possible to reprocess spent fuel elements into usable plutonium has given these elements a modest immortality. While in the reactor, natural U^{238} becomes plutonium, a toxic, gray metal with a density nearly twice lead's and warm to the touch. At a reprocessing plant, plutonium can in turn be made into fuel for breeder reactors.

To the IAEA, relatively pure plutonium and uranium that is enriched much above 20 percent U^{235} are known as direct-use materials—only a few steps separate their peaceful form from the form the would need in a bomb. The critical mass required for a fission detonation is approximately 25 kilograms (55 pounds) of highly enriched uranium or about eight kilograms (18 pounds) of high-grade plutonium—a soccer ball of uranium, a warm grapefruit of plutonium.

Our hypothetical inspection of the Osiris research reactor makes use of procedures developed from blueprints that have been furnished to the IAEA by the host nation. All safeguards inspections are choreographed closely, shaped by the type of facility and also by the individual characteristics of each site. The first step is to examine the books; here, working under the watchful eye of the reactor operator, the inspector becomes an accountant.

A reactor consumes a known quantity of U^{235} per unit of energy generated and produces a predictable quantity of plutonium from its U^{238} for each level and period of operation. Every fuel element in the core is numbered and logged to record the percent of U^{235} it contained going into the core, the percent that remains after the indicated hours of operation at the indicated power levels, and the various ways in which the fuel elements have been rearranged to obtain maximum burnup before they are removed to a cooling pond for storage. The books also indicate the percentage of the total power drawn from each fuel element in the reactor core, a value needed to compute power production.

The scope of the inspection depends on the starting point. In this hypothetical case, there has already been an initial inventory, when the reactor was put into service, and another when it was fueled and started up. At that time, agency inspectors set small, metal seals on each fuel element and set up a system of surveillance that should detect any secret changes in that inventory. There are other records that are provided by the nation and the shippers of fuel. This elaborate cross-check ensures that material cannot be diverted simply by fiddling one set of books.

Inherent in the totals derived from the reactor logbooks is something called MUF, Material Unaccounted For. MUF is a statistical by-product of the fact that no measurement is ever perfectly exact, that something is lost every time the material is handled. But MUF can also be a screen for diversion. While attempting to explain all the discrepancies discovered in comparing IAEA, national, and operator records, the inspector must also look for that statistical anomaly in MUF—that small, steady rise in missing material beyond what experience would lead one to expect.

"If you find something," explains former inspector Joe Wilson, "your neck hairs don't bristle. It's like any audit trail. It requires explanation. And, as you move down the trail and need more explanations, you sense you are getting closer and closer to trouble."

The stresses of inspection, Wilson points out, often have to do with the fact that one is dealing with a colleague. "If you find something you don't understand, you are faced with an expert on the other side of the table. Your question to yourself is, 'Will I appear stupid?' or, 'Do I have an issue?' There's a lot of this tension."

Once the books are accepted and discrepancies either explained or deferred to some higher level of inquiry, the inspector puts away his figurative eyeshade and, in a dressing room nearby, dons the white robes of the nuclear industry.

The host takes the inspector to the vault where fresh fuel elements are lined up in polyethylene sleeves. The numbered elements here contain thin, rectangular plates of an enriched-uranium alloy. The inspector must take enough measurements to verify that the elements said to be here are in place and that the enrichment levels of the uranium match those stated in the shipping and inventory documents.

The instrument for doing this is a small case of microprocessor-equipped electronics and a sensor "gun," which measures the faint gamma radiation emitted by the fresh fuel rods and converts it to uranium enrichment levels. His host watches over his shoulder and may assist, though even a slight sense of being hurried may arouse the inspector's suspicions.

The first signal of a detected diversion, says conventional wisdom, would be a missing safeguards inspector. Vienna gossip persistently supports this with lurid fables, but in fact, there is no factual basis for such tales. Most inspectors would say that a diverter's early signals would be less clear, more like those between characters in a Henry James novel—a vague odor of reticence, of hurry, of cooperation withheld. This sense of things impending can lend an inspection a jittery watchfulness, one some-

times exacerbated by the fact that while English is the working language, it may not be mother tongue to either inspector or operator. "This is one of the most difficult areas," says an agency official with many years in safeguards. "This is part of the pressure. An unexpected answer. . .is it a misunderstanding, or something else?"

As the party moves toward the reactor itself, the inspector passes a point of no return. "This is the only way in and out of the reactor building," explains safeguards official Leslie Thorne. "It's like going aboard a submarine. A huge steel door shuts behind you. You feel the air pressure drop. Then the other door swings open, and you're inside the containment."

The reactor is a kind of raised concrete-and-metal pool of water, surrounded at the top by a railed gantry. "Hot cells' penetrate the lower portions. Experimenters place objects near the core using remote manipulators to drive claws on the other side of thick glass windows. At the top, scores of thickly bundled cables snake over the sides. Some 40 feet below, the lattice of the reactor core, partially obscured by a cooling chimney and core box and by a jungle of wires and control lines, turns the pool the color of a bright blue star. If this is a furnace, it burns cosmic coal.

In pressurized-water reactors, the reactor is covered by a heavy concrete slab. Across this slab, threaded through pinholes that are drilled in the massive retaining bolts, runs a thin, multistranded wire, joined by a small dime-sized button-snap seal. On one side of the seal is a faint inscription: "IAEA," along with a number. On the inside is a series of childish scratches, a unique fingerprint added at headquarters. Today's reactor is an open pool, and the seals are on the fuel elements themselves. To refuel in either case, you must break the seals and later apply new ones, with an inspector present on both occasions.

Several stories above the pool, against the domed interior roof of the containment and mounted on a catwalk beyond the abilities of even mild acrophobics, are twin super-8 cameras, adjusted to photograph, at regular intervals, the whole scene: the reactor; the transfer-and-storage channel linking it to another, smaller reactor next door; and the cranes used to move material into and out of the core. In an adjacent containment, separated by another airlock from the big reactor, a second set of cameras has a similar field of view. The plastic camera enclosures are wired shut and sealed. Now the inspector opens the seals, checks and reloads the cameras, and pockets the old seals and film. Back in Vienna, the wire strands attached to the seal will be scrutinized for concealed breaks, the scratch "fingerprint" verified, the film observed frame by frame. The cameras—which are slowly being replaced by expensive but handier, tamper-proof video recorders—photograph everything within their field of view at intervals too close together to permit unrecorded movement of uranium into or out of the reactor or storage channel.

Finally there is the spent fuel to check. This is where many inspectors have had their worst moments, at times when preliminary measurements suggested the substitution of dummy material. But this has turned out to be just another proof of Murphy's Law—the "dud" a frightening result of instrument error. "When you took measurements in the cooling pond," one inspector explains, "you had to put equipment underwater, the sensor on a stand, in an area with high radiation levels. The operators moved the fuel for us to and from the equipment which measured the radiation levels in each spent fuel element. Well, complex equipment doesn't always behave. Your bad moment is when the instrument doesn't do what it is supposed to. Is the fuel element a dud? If it is, you're in a serious situation. You're in the containment. You can't get out easily." He adds, with some relief, "So far, all of these have turned out to be false alarms."

That equipment has been replaced by a device that efficiently senses Cherenkov radiation in visible light. Real spent fuel emits this radiation, dummy fuel does not, and the device permits an inspector to verify the contents of even very old spent fuel elements whose Cherenkov radiation is low. In this Osiris facility, the spent fuel elements cool in the same pond as the reactor core, making them difficult to count just by looking. But if the cameras have not malfunctioned or been tampered with, the film will show that no spent fuel elements have been removed, and the look at the Cherenkov radiation ensures that none is a dummy.

But it is not all measurements, or all cut and dried. The inspector must be sensitive to every nuance of his host's behavior and to the physical facility as well. Why, he may ask himself, do the reactor control rods require so much space beneath the pool? Or, in another facility, Why is there a large empty room beneath the reactor? Can they change fuel downward as well as through the top of the reactor? What about the core? Is anything there that should not be? This manhole doesn't appear on the blueprints. . . or this tunnel. Where do they go? Why are they here?

Will I get out?

Our hypothetical inspection is finished by early afternoon, after some six hours in the facility. More elaborate inspections take 12 to 14. The inspector has been an auditor, a physicist, a chemist, and a diplomat. "Never a dull moment," says an Australian inspector. "Whether you get burnt out after five or six years, that's another question."

If the inspector finds the job challenging, surely the work of the diverter is even more difficult. The enriched uranium in the fresh fuel supply is hard to steal. Most operators, both for safeguards and economic reasons, keep fuel elements in bank-style vaults, and many do not even keep a key on the premises. Since the uranium is mixed with aluminum, a chemical-removal step is added to the diverter's problems. To get his 25-kilogram critical mass, moreover, the diverter needs dozens of elements. There is not usually this much material at a reactor, and if there were, it would require a good deal of hauling and theft under cameras; then there is that pesky inspector returning every few months.

Getting material out of the core is likewise difficult unless the thief is the plant operator or the host nation. Even so, it requires a lot of equipment movement, all under the eyes of safeguards cameras, to remove uranium from the core. Spent fuel is equally dangerous because it remains radioactive.

Diverters, obviously, are not available to explain their methods, but inspectors have their own ideas about how it could be done.

"The operator would say he'd had some trouble, had to take out more fuel than scheduled . . . the activity would show up on the cameras, but he'd have a plausible explanation, or perhaps he'd put the cameras out of order, drop something on them, perhaps, and then fire the people responsible as a cover. He would want confusion. . . ."

The IAEA guideline tells us that ". . . the optimum diversion strategy is a combination of diversion into MUF and falsification of flow or inventory data." This means substitution of dummy fuel elements both in the reactor and in the shipping process, undeclared reactor shutdowns, exaggerated burnup data, a shell game of uranium borrowed from other sites, inflation of measurement errors, altering serial numbers, and the like. For each diversion stategy, there is a countering safeguards procedure. Or that, at least, is the hope.

Two kinds of facilities—the uranium enrichment plant and the reprocessing plant—warrant especially close scrutiny because they are capable of producing significant amounts of fissionable, or weapons-grade, material. At uranium enrichment plants, the inspection process is technically straightforward. The individual centrifuge looks very simple, like a kind of high-tech spin dryer, designed to separate the U^{238} from the lighter U^{235}. But an enrichment plant contains hundreds of them, and they spin at thousands of revolutions per minute. Because such machines are difficult to build and operate successfully, centrifuge technology is jealously guarded by the countries that possess it. Their fear of stolen secrets is more than mere industrial paranoia. Pakistan, according to reports, has constructed centrifuges using blueprints spirited out of Urenco's Almelo enrichment facility in Holland. (But there is also some doubt that Pakistan can keep these exotic devices working.)

And in uranium reprocessing plants, complexity creates a kind of monster. Full-time safeguards staffs rotated in from Vienna monitor the transformation of spent fuel rods into a thin, pea-colored plutonium consommé. The end product of this "refinery" goes in bottles to an associated plant nearby, where, with materials being separated by technicians using sealed boxes, plutonium nitrate is chemically altered to plutonium oxide powder, which is used to fuel fast-breeder reactors.

Because everyone fears plutonium falling into the wrong hands, some nations with commercial reprocessing plants—the U.S. has none in operation—limit the explosive utility of their product. Japan precipitates plutonium and uranium together, producing a mixed-oxide powder from which it is difficult to obtain pure plutonium. France has suggested supplying customers a uranium "caramel" that can fuel a research reactor but is useless for weapons.

Ominously, the two percent of nuclear facilities not under international safeguards are not power reactors. They are fuel enrichment and reprocessing plants in nations that, by not ratifying the Non-Proliferation Treaty have signalled a belief that a nuclear explosive, especially one of those "peaceful" ones, is a sovereign right. And it is nations, not individuals, that concern the IAEA. "In most cases," explains safeguards director Tempus, "a group of people could divert material, but this would show up quite easily. For more sophisticated strategies, you would need to involve the entire structure of a state." Even then, he observes, because the material itself is radioactive, they could do plenty of damage without going to the trouble of building a bomb.

Still, once a diversion is indicated, a clock begins ticking away the countdown to a bomb. For highly enriched uranium or

weapons-grade plutonium, the IAEA assumes the countdown lasts about a week. Where the material is a mixed-oxide fuel and high-purity scraps, it is several weeks; for the fissionable material in spent fuel elements from power reactors, several months.

Says a State Department official with safeguards experience, "If 10 to 20 kilograms of plutonium were actually found missing, and some group said they had it and will blow up a city . . . the threat would be taken very seriously."

Others scoff at this possibility. "It is a question of belief outside of rational consideration," says an agency official.

It is academic. The acts of terrorists lie outside the IAEA narrow range of responsibilities. They are the problems of nations, internal security forces, the world of spies and counterspies. Safeguards deals with nations in their international setting, attempting to reinforce the political will to forswear nuclear weapons. And the record is reassuring. It has been more than 20 years since China joined the nuclear weapons club. The unruly mob of atomic weapons powers, the vision of the '60s, has not materialized. The nightmare has not happened.

One may argue that this has less to do with safeguards than with a global realpolitik that accommodates the fact that there are probably more atom bombs on Earth than we think, some in unexpected places. Perhaps. But safeguards also claims a 90 percent chance of detecting nuclear diversions, and most nations seem to believe it. Nor is the process completely placid. Inspectors can go as high as the 35-nation IAEA Board of Governors to get "anomalies" sorted out by IAEA members, and there is general willingness to go to what they call the extreme scenario should they detect a clear case of uranium diversion. This extreme scenario takes the matter to the U.N. Security Council, a step some may see as a feeble deterrent. At this an American inspector snaps, "Then you miss the point. The point of going to the Security Council is that you have all the diplomatic pressures of all the countries. It is then no longer in the hands of the IAEA, or even the Security Council. It become a matter of national interest."

That is how things are poised, the even-handedness and thoroughness of the ritual—the credibility of the inspectors' performance—balanced against the gravitation of real war; the political will of the international community bolstered against a descent to "a matter of national interest." It seems to work, most of the time.

In a moonscape not far south of Baghdad lies a sprawling structure, something out of Ozymandias, the remains of a powerful Osiris-Isis reactor complex purchased by Iraq from France and, by the summer of 1981, nearly complete. Twelve kilograms (62 pounds) of highly enriched uranium fuel had been received, and French engineers had begun to put the last touches on their great machine. The facility had been inspected by safeguards personnel a year earlier, when the first fuel arrived, and again in January 1981, at night and under wartime conditions. While safeguarded, the Tamuz-1 reactor would have been an effective producer of plutonium. It would have taken years to do so, all under the eyes of safeguards inspectors and French technicians. Still, plutonium production was possible.

For Israel, the prospect was apparently intolerable. On June 7, 1981, a flight of fighter-bombers swept in on the Tamuz facility in a surprise raid and transformed it into the ruin in the desert near Baghdad. With the possibility of an Iraqi nuclear weapons program, and perhaps the perceived imbalance between the IAEA's ability to detect diversions and to bring sanctions against them, Tamuz-1 became "a matter of national interest."

The remarkable thing is not that there has been a preemptive strike, but that there has been only one. And that the larger nightmare, the vision of fission bombs everywhere, has not happened.

NUCLEAR SAFEGUARDS: AN ECONOMIC DECISION

In the 1950s, the rapidly evolving American nuclear industry began looking at markets overseas—markets that had been effectively placed off-limits because of fears that shared nuclear technology inevitably meant the spread of weapons. The IAEA itself derived from President Eisenhower's 1953 "Atoms for Peace" proposal and came into being, with headquarters in Vienna, in 1957. Responsibilities formerly carried out by government and industry in the nuclear powers fell to the new agency, which took up the task of verifying the safeguards "bilaterals" that were part of sales agreements with client nations. In 1968, the "Treaty on the Non-Proliferation of Nuclear Weapons"—what people in the trade call the Non-Proliferation Treaty, or NPT—was settled among the United States, Soviet Union, and other powers and opened for signatures by the United Nations. Its main provisions are simple: Nuclear weapon states will block the spread of nuclear weapons and related technology to nonnuclear-weapon states, and nonweapon states will forego the development or acquisition of nuclear weapons. All nonweapon parties to the NPT must open *all* nuclear facilities to IAEA safeguards. The weapon powers, for their part, agree also to share nonweapon nuclear technology with signatory nations. Any of the 131 parties to the NPT may withdraw with three months' notice. None has, and it would be cause for alarm if any did.

In practice, the U.S. and Great Britain, both NPT weapon states, provide lists of nonmilitary facilities that are open to safeguards inspection and often used for training. The Soviet Union this year signed an agreement with the IAEA to open some peaceful nuclear facilities there to inspection, a precedent some observers see as a step toward on-site verification of disarmament terms. France, not a party to the NPT, nevertheless provides the agency with a list of nonmilitary facilities open to safeguards inspection. China, the last nation to become a known nuclear weapon power in 1964, did not join the IAEA (where Taiwan quietly continues under safeguards) until 1984. China is now negotiating with leading nations for more nuclear equipment and technology in exchange for submitting to appropriate safeguards.

But to many nations, the NPT works better for the haves than for the have-nots. Stung by this perceived discrimination and by the seemingly whimsical obstructions to a reliable supply of nuclear fuel, some nations with the raw materials to do so are electing to start up their own uranium fuel cycles. India, Pakistan, South Africa, Argentina, and Brazil, for example, have developed indigenous uranium supplies. And each escalation of their domestic ability to produce plutonium—because it moves them closer to nuclear weapons—greatly complicates the nonproliferation apparatus, even when the new facilities are placed under safeguards.—*C.P.*

FIRST ACROSS THE ATLANTIC IN 1919

Mr. PELL. Mr. President, Charles A. Linbergh is justly remembered and honored as the first man to make a solo nonstop flight across the Atlantic Ocean in 1927. Less known is the flight of the U.S. Navy's NC-4 flying boat, which crossed from Newfoundland to Lisbon, Portugal, with stops in the Azores Islands in May 1919.

The honor of accomplishing the first flight across the Atlantic belongs to the U.S. Navy, the NC-4, and to its designers and builders.

Glenn H. Curtiss, the inventor of the flying boat, had worked at the Navy's Bureau of Construction on the development of oceangoing planes and then had formed his own plant in Hammondsport, NY. The Curtiss plant subcontracted many of the planes' components in order that they might be completed on time; one of the subcontractors was the Herreshoff Manufacturing Co. of Bristol, RI, which built the hulls for the flying boats.

The flight of the big Navy flying boats began on May 2, 1919, with the formation of "NC Seaplane Division One" (N equals Navy, C equals Curtiss). On May 8, 1919, a squadron of three Navy Curtisses went on a thousand mile testing flight from Rockaway, NY, to Newfoundland, which was the established departure point for the transatlantic crossing. Other aviators, spurred on by the London Daily Mail's offer of 10,000 pounds prize money for the first to cross the Atlantic, were gathering at Newfoundland waiting for clear weather. At about 6 p.m. on Friday, May 16—67 years ago last May—the three Navy planes took off for the Azores, the first challengers to leave Newfoundland. A member of the Navy ground crew was the late Charles Callan of Barrington, RI.

The NC-1 and the NC-3 had difficulty on the flight to the Azores. Because of the fog, the NC-1 touched down in the water but could not take off again in bad weather. The waves destroyed enough of her hull to eventually cause her to sink, but luckily her crew was rescued.

The NC-1 also put down in the water and, unable to fly because of damage to the engines, ended her journey at Ponta Delgada, Sao Miguel, in the Azores.

The NC-4 had better luck. Under the command of the navigator, Lt. Comdr. Albert C. Read, the crew consisted of Lt. Elmer Stone, U.S. Coast Guard, pilot; Lt. Walter Hinton, copilot; Ens. Herbert C. Rodd, radio officer; Lt. James L. Breese, engineer; and Chief Machinist's Mate Eugene S. Rhoads, engineer. On Saturday, May 17, after a flight of 15 hours and 13 minutes, the NC-4 touched down in the harbor of Horta, Fayal, in the

Azores. Sunday's newspaper headlines in America treated it as a victory because the plane was safely in a Portugese port. The NC-4 was grounded at Fayal for 9 days by the fog. On the morning of May 27, the NC-4 flew eastward to Lisbon and after a flight of 9¾ hours became the first plane to conquer the Atlantic. In the space of 19 days, the NC-4 and its crew had traveled 3,322 miles in 41 hours and 58 minutes in the air.

The reception in Lisbon was tumultous and lasted for 3 days; 21-gun salutes were fired, and the Tagus River resounded with the ringing of church bells. The Portuguese Government awarded the fliers the Grand Cross of the Order of the Tower and Sword. On May 30, the NC-4 left for Plymouth, England, in order that the trip might end at the site of the Pilgrims' departure nearly 300 years before, in 1620.

To commemorate this landmark flight, the Navy has planned a recreation of the flight of the NC-4 during this summer. Representatives of the Government of the United States and Portugal will be on hand at festivities honoring the Navy for its seldom celebrated accomplishment. I know this reenactment flight will be of great interest in my own State of Rhode Island, where so many of our citizens are descended from residents of the Azores and Portugal. And Rhode Islanders can take particular pride in the fact that the Herreshoff Manufacturing Co. of Bristol, RI, played a major role in contributing to this successful flight—the first to conquer the Atlantic.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

Mr. McCLURE. 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.

□ 1240

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

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

TIME AGREEMENT ON H.R. 3113

Mr. McCLURE. Mr. President, I ask unanimous consent that when the Senate turns to the consideration of Calendar No. 578, H.R. 3113, dealing with the Central Valley project, it be considered under the following time agreement:

Two hours on the bill, to be equally divided between the chairman of the Energy Committee and the ranking minority member, or their designees;

That there be 5 minutes on the committee substitute, to be equally divided in the usual form, and if the amendment is agreed to, it be considered original text for the purpose of further amendments. If the committee substitute is not agreed to, this agreement be null and void.

One hour on all amendments in the first degree;

Thirty minutes on all amendments in the second degree;

That the following first degree amendments be the only first degree amendments in order, with the exception of the committee-reported substitute:

No more than two amendments to be offered by Senator METZENBAUM, to title III, on interest rates;

No more than two amendments to be offered by Senator METZENBAUM, to title III, on surplus corps;

That all amendments in the second degree must be germane to the first degree amendment they propose to amend, and are only in order to the Metzenbaum amendments;

That there be 5 minutes on any debatable motions, appeals, or points of order, if so submitted to the Senate;

That no motions to recommit with instructions be in order;

And that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, reserving the right to object, and I shall not object, this agreement has been cleared on our side of the aisle through the minority leader. We will not object.

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

COORDINATED CALIFORNIA WATER PROJECTS

Mr. McCLURE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 578, H.R. 3113, an act providing for the coordinated operation of the Central Valley project and the State water project in California.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3113) providing for the coordinated operation of the Central Valley project and the State water project in California.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause, and insert the following:

TITLE I—COORDINATED OPERATION AGREEMENT

SEC. 101. That the Secretary of the Interior is hereby authorized and directed to execute and implement the "Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" (dated May 8, 1985).

SEC. 102. The Secretary of the Interior shall not contract for the delivery of more than 75 percent of the firm annual yield of the Central Valley Project not currently committed under long-term contracts until one year after the Secretary has transmitted to the Congress a feasibility report, together with his recommendations, on the "Refuge Water Supply Investigations, Central Valley Basin, California.".

SEC. 103. The Secretary of the Interior shall include in all new or amended contracts for the delivery of water from the Central Valley Project a provision providing for the automatic adjustment of rates by the Secretary of the Interior if it is found that the rate in effect may not be adequate to recover the appropriate share of the existing Federal investment in the Project by the year 2030. The contracts shall also include a provision authorizing the Secretary of the Interior to adjust determinations of ability to pay every five years.

SEC. 104. The Secretary of the Interior shall include in all new or amended contracts for the delivery of water from the Central Valley Project provisions ensuring that all deficits (outstanding or hereafter arising) in the payment of operation and maintenance costs of the Central Valley Project are repaid under the terms of such new or amended contracts, together with interest on any such deficits which arise on or after October 1, 1985, at a rate equal to the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period of the Project, adjusted to the nearest one-eighth of 1 percent.

TITLE II—SUISUN MARSH PRESERVATION AGREEMENT

SEC. 201. The Secretary of the Interior is authorized to execute and implement the agreement between the Department of the Interior, the State of California and the Suisun Resources Conservation District (dated November 1, 1985).

SEC. 202. The costs of implementing the agreement provided in section 201 of this title shall be shared by the Bureau of Reclamation and the California Department of Water Resources in strict accordance with article 12 of that agreement, provided that—

(a) payments made by the Secretary of the Interior shall not exceed 40 percent of the construction costs incurred under articles 6, 7, and 8 of the agreement, or $50,000,000, whichever is less, plus or minus such amounts as are justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein;

(b) the Federal share of continuing annual operation and maintenance costs, including monitoring, shall not exceed 40 percent of the actual operation and maintenance costs; and

(c) the costs incurred by the United States for construction and for annual operation and maintenance in connection with the implementation of said agreement shall consti-

tute an integral part of the cost of the Central Valley Project. The Secretary shall allocate such costs to the reimbursable and nonreimbursable purposes served by the project.

SEC. 203. Costs incurred both before and after the date of execution of the agreement herein authorized are to be included in the total for determining the Federal share of construction, operation, and maintenance costs.

SEC. 204. There are authorized to be appropriated for the implementation of the agreement referred to in section 201 of this title $50,000,000 plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indices applicable to the types of construction involved therein and, in addition thereto, in accordance with subsection 201(b) of this title, such sums as may be required for operation and maintenance: *Provided*, That no Federal funds may be expended pursuant to this title in advance of appropriations therefor: *Provided further*, That appropriations pursuant to this title shall remain available until expended without any fiscal year limitation.

TITLE III—SMALL RECLAMATION PROJECTS ACT

SEC. 301. As used in this title, the term "the Act" means the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a et seq.).

SEC. 302. Section 1 of the Act is amended by inserting after the word "laws" ", with emphasis on rehabilitation and betterment of existing projects for purposes of significant conservation of water, energy and the environment and for purposes of water quality control,".

SEC. 303. The second sentence of section 3 of the Act is amended by striking "$1,000" and inserting in lieu thereof "$5,000".

SEC. 304. (a) Section 4(b) of the Act is amended by inserting "(1)" after (b) and by striking "by loan and grant under this Act" and inserting in lieu thereof "by loan and grant of Federal funds".

(b) Section 4(b) of the Act is amended by adding the following new paragraph at the end thereof:

"(2) The Secretary shall require each organization to contribute toward the cost of the project (other than by loan and/or grant of Federal funds) an amount equal to 25 percent or more of the allowable estimated cost of the project: *Provided*, That the Secretary, at his discretion, may reduce the amount of such contribution to the extent that he determines that the organization is unable to secure financing from other sources under reasonable terms and conditions, and shall include letters from lenders or other written evidence in support of any funding of an applicant's inability to secure such financing in any project proposal transmitted to the Congress: *Provided further*, That under no circumstances shall the Secretary reduce the amount of such contribution to less than 10 percent of the allowable estimated total project costs. In determining the amount of the contribution as required by this paragraph, the Secretary shall credit toward that amount the cost of investigations, surveys, engineering, and other services necessary to the preparation of proposals and plans for the project as required by the Secretary, and the costs of lands and rights-of-way required for the project, and the $5,000 fee described in section 3 of this Act. In determining the allowable estimated cost of the project, the Secretary shall not include the amount of grants accorded to the organization under section 5(b).".

SEC. 305. Section 4(c) of the Act is amended by inserting the following after the first sentence: "Each project proposal transmitted by the Secretary to the Congress shall include a certification by the Secretary that an adequate soil survey and land classification has been made, or that the successful irrigability of those lands and their susceptibility to sustained production of agricultural crops by means of irrigation has been demonstrated in practice. Such proposal shall also include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.".

SEC. 306. Section 5(b) of the Act is amended by striking everything after the words "joint use facilities properly allocable to fish and wildlife enhancement or public recreation;" and substituting the following in lieu thereof:

"(5) that portion of the estimated cost of constructing the project which, if it were constructed as a Federal reclamation project, would be properly allocable to functions, other than recreation and fish and wildlife enhancement and flood control, which are nonreimbursable under general provisions of law applicable to such projects; and (6) that portion of the estimated cost of constructing the project which is allocable to flood control and which would be nonreimbursable under general provisions of law applicable to projects constructed by the Secretary of the Army.".

SEC. 307. (a) Section 5(c)(1) of the Act is amended by striking "fifty" and inserting in lieu thereof "forty".

(b) Section 5(c)(2) of the Act is amended to read as follows: "interest, as determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the contract is executed, on the basis of the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 percent on the unamortized balance of any portion of the loan:

"(A) which is attributable to furnishing irrigation benefits in each particular year to land held in private ownership by a qualified recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of nine hundred and sixty irrigable acres, or by a limited recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of three hundred and twenty irrigable acres; or

"(B) which is allocated to domestic, industrial, or municipal water supply, commercial power, fish and wildlife enhancement, or public recreation except that portion of such allocation attributable to furnishing benefits to a facility operated by an agency of the United States, which portion shall bear no interest.".

(c) The remainder of section 5(c) of the Act is stricken in its entirety.

SEC. 308. Section 8 of the Act is amended by adding at the end thereof the following sentence: "The Secretary shall transfer to the Fish and Wildlife Service or to the National Marine Fisheries Service, out of appropriations or other funds made available under this Act, such funds as may be necessary to conduct the investigations required to carry out the purposes of this section.".

SEC. 309. (a) Section 10 of the Act is amended in the first sentence by inserting before ": *Provided*" "and, effective October 1, 1986, not to exceed an additional $600,000,000".

(b) Section 10 of the Act is further amended by adding at the end thereof the following: "Not more than 20 percent of the total amount of additional funds authorized to be appropriated effective October 1, 1986, for loans and grants pursuant to this Act shall be for projects in any single State.".

SEC. 310. The provisions of sections 303 and 308 of this title shall take effect upon enactment of this title. The provisions of sections 304(a) and 305 of this title shall be applicable to all proposals for which final applications are received by the Secretary after January 1, 1986. The provisions of sections 302, 304(b), 306, and 307 shall be applicable to all proposals for which draft applications are received by the Secretary after February 1, 1986.

TITLE IV—VALIDATION OF CONTRACTS

SEC. 401. The Federal Power Act (Act of June 10, 1920, 41 Stat. 1063; 16 U.S.C. 791a et. seq., and Acts amendatory thereof and supplementary thereto) is amended in section 10(e) (16 U.S.C. 803(e)) by deleting "Commission." and inserting in lieu thereof: "Commission: *Provided, however*, That no charge shall be assessed for the use of any Government dam or structure by any licensee if, before January 1, 1985, the Secretary of the Interior has entered into a contract with such licensee that meets each of the following requirements:

"(A) The contract covers one or more projects for which a license was issued by the Commission before January 1, 1985.

"(B) The contract contains provisions specifically providing each of the following:

"(i) A powerplant may be built by the licensee utilizing irrigation facilities constructed by the United States.

"(ii) The powerplant shall remain in the exclusive control, possession, and ownership of the licensee concerned.

"(iii) All revenue from the powerplant and from the use, sale, or disposal of electric energy from the powerplant shall be, and remain, the property of such licensee.

This paragraph shall apply to any project covered by a contract referred to in this paragraph only during the term of such contract unless otherwise provided by subsequent Act of Congress.".

Mr. McCLURE. Mr. President, as ordered reported by the Senate Committee on Energy and Natural Resources, H.R. 3113 is truly the culmination of years of effort and reflects years of success in the development of our water resources. The committee had carefully crafted what I consider to be for the West at large an extraordinarily productive measure and in the case of the State of California a truly comprehensive attempt to address the question of water management. Benefits will accrue to the Nation.

It is no secret and certainly should come as no surprise that, by and large, the days of authorizing massive new construction starts for the Bureau of Reclamation are almost over. You can only build Coulee Dam, Hoover Dam, the Central Valley project, the Central Arizona project, once. Most of the major physical water resource development sites have been constructed.

Today they are monuments to the integrity of the engineers of the past and testimonials to the foresight of the Congress and those who had the vision to look at the parched lands of our Western States and see a productive agricultural future. We are all sharing in the bounty of their efforts. But the job is far from done. The needs of water will continue and, in fact, are certain to grow.

Perhaps, here, in trying to meet the demands of the water resources future we can take a page from the energy crisis of the 1970's when we, as a Nation, discovered that our most economic new sources of energy were in fact the result of conservation—wise use of what we already had. So too, it may turn out to be in the field of water resources. As reported by the Committee on Energy and Natural Resources, H.R. 3113 is a landmark step toward a future of better water management.

On face value, it is obvious that title I of the bill provides for better water management by providing for the coordinated operation of the Bureau of Reclamation's Central Valley project and the State of California's State water project.

Title II furthers the effort of a comprehensive approach to California water problems and the operation of the two projects by authorizing the Suisun Marsh preservation agreement between the Federal Government, the State of California, and local entities. From a resource standpoint, operation of the two projects and the maintenance of water quality in the Suisun Marsh are inseparable.

Title III of the bill is the first comprehensive reauthorization of the Bureau of Reclamation's Small Projects Act in the 30 years that the program has been in successful operation and brings this program into step with contemporary water resources thought and responsibility. The amendments to the Small Reclamation Projects Act provides for significantly increased levels of non-Federal upfront cost sharing and redirection of the program to emphasize rehabilitation of existing water resource developments with commensurate water conservation and a heightened sensitivity to the needs of fish and wildlife and related environmental requirements.

Mr. President, this new emphasis is particularly timely from the standpoint of fish and wildlife and the environment as many of the projects which will utilize the program are old. They were constructed at a time when we were not as appreciative of the values associated with fish and wildlife or the potential adverse impacts on the environment which could result from water resource development.

And here I would take a moment to cite just one aspect of the amendments whereby it is required that each loan proposal transmitted to the Congress by the Secretary of the Interior be accompanied by an investigation of the potential for toxic or hazardous irrigation return flows. This is a direct result and in recognition of the unfortunate circumstances at the Kesterson National Wildlife Refuge in California and the related selenium contamination.

With this legislation we can do great good toward rectifying past mistakes while at the same time preventing future problems.

But, I have one paramount concern. None of this will come about—no water conservation, no better resource management, no fish and wildlife benefits, no going back to address the environmental problems of old projects, none of this will happen if, we in the Congress, place the threshold of participation by the water users at too high a level. We must remember that for the most part, these are already operating projects—they already work and provide benefits to the participants. But the additional benefits to the environment and fish and wildlife and better water management will not occur if the price is too high for those who would benefit directly from the project—and who also pay the bill. It would do little good to enact a program that would severly restrict the ability of the water user to participate.

If we are to achieve the mutually compatible goals of water conservation and mitigation of past and future adverse environmental impacts, we must authorize a program that offers a reasonable chance of acceptance by the water uses. It would be of little value if we, on the one hand were to improve the program from the environmental and fish and wildlife standpoint while at the same time burden the program with such constringent fiscal restraints or unrelated burdens that no water user organization was able to take advantage of the opportunity to improve a project.

We must not put our water users in the catch-22 position of offering them a program that requires substantial contributions, strengthens efforts and requirements to mitigate adverse fish and wildlife impacts—to which they all have agreed—and then place them in the untenable position of having agreed to assume these additional burdens—and then make the program unworkable.

This would be duplicitous and at best a hollow promise. It would be intellectually dishonest.

To my Western colleagues, the concepts embodied in H.R. 3113 are exciting. To my Eastern colleagues, I would propose that this legislation may serve as an important example of what may be in store in the future for my Eastern friends.

East or West, water is a finite resource. Limits have dictated to Westerners the need for development, conservation, and management of a scarce resource. To the east of the 100th meridian, citizens enjoy the free bounty of adequate precipitation—in fact in many eastern areas the problem has been too much water rather than too little. But in the east too, there are limits. Some areas are appproaching those limits and may benefit from turning to the Western States and their experience in water resource development.

I would assure my Eastern colleagues that just as they have helped us in the West to husband our resources, so too will we help them when the need arises.

Mr. President, I ask unanimous consent that the background and committee amendments sections from Report 99-265 which accompanied H.R. 3113 when it was reported by the Senate Committee on Energy and Natural Resources appear in the RECORD at this point.

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

REPORT 99-265

[Implementing the coordinated operation agreement for the Central Valley project and State Water project, California, to implement the Suisun Marsh Preservation Agreement, California, to amend the Small Reclamation Projects Act of 1956, as amended, and to validate certain contracts]

* * * * *

BACKGROUND

The Central Valley Project (CVP) and the State Water Project (SWP) are California's largest water resources development projects. The CVP is operated by the Bureau of Reclamation and the SWP is operated by the California Department of Water Resources. The two projects have commingled waters and interrelated operations. In many instances, the projects produce joint environmental effects.

The facilities of the CVP store, regulate, and divert flows of several rivers, principally the Sacramento and the San Joaquin, which flow into the Sacramento/San Joaquin Delta ("Delta") and then into San Francisco Bay. The CVP pumps water from the Delta and upstream points and exports it by means of canals to various locations, principally the San Joaquin Valley.

The SWP stores, regulates, and diverts flows of the Feather River, a major tributary of the Sacramento River. The SWP exports water from the Delta to the southern San Joaquin Valley, southern California, and the San Francisco Bay area.

The CVP and the SWP differ significantly in terms of water use, project yields, and export capacity. Ninety-five percent of the water delivered by the CVP goes to agricultural uses. By comparison, water delivered by the SWP goes about equally to agricultural and urban uses. The estimated yield of the CVP (water made available by the project on a reliable basis) is approximately three times greater than the SWP yield: 9.4 million acre-feet per year as compared to 3.1

million acre-feet per year. Finally, the SWP has a greater export capacity from the Delta than does the CVP: 6,400 cfs (cubic feet per second) versus 4,900 cfs.

Because the storage and export capacities of the CVP and the SWP differ and because the projects use some of the same water bodies, coordinated operation under the Coordinated Operation Agreement would provide benefits to each project in terms of greater operational efficiency. More importantly, granting the Secretary of the Interior the authority to enter into the COA is essential for ensuring both the maintenance of water quality standards in the Delta and the viability of the SWP in water short years.

In 1978, the California Water Resources Control Board set Delta water quality standards in Decision 1485 and held the CVP and the SWP jointly and severally responsible for maintaining these standards. Thus far, however, the Bureau of Reclamation has taken the position that it does not have the legal authority to make water releases for purposes of maintaining Delta water quality standards to the extent that such maintenance would require any reduction of exports to its contractors (water users). The result is that in dry years, the SWP alone would be forced to make water releases sufficient to maintain Delta standards which would in turn require severe reduction of water allotments to SWP contractors.

Execution of the COA would spread the potential burden of water reductions in dry years across both projects' contractors, thus lessening the impact on the SWP. This sharing of the responsibility for maintaining Delta water quality in dry years is a critical aspect of the COA which, in light of the Bureau of Reclamation's interpretation of its legal authority, makes legislative action necessary. In other respects, the CVP and the SWP have been in coordinated operation on a year-to-year basis since 1971, and with some modifications the COA largely formalizes the status quo. Pursuant to the COA:

Both the CVP and the SWP would be committed to meeting water quality and outflow standards for the Delta that are extracted from the standards contained in the State Water Resources Control Board's Decision 1485. Article 11 of the COA requires that the CVP and SWP be operated to meet the current Decision 1485 water quality standards which are referenced and made a part of the COA as "Exhibit A."

Mutually recognized annual water supplies of the two projects are established. CVP facilities built before the SWP are recognized as having the water supply yield they would have had if the later facilities had not been built. The CVP and the SWP have equal claims to the remaining water.

The COA would also provide for cooperative utilization of the facilities of the two projects for water conveyance and sales. Under the COA, conveyance through the other project's facilities would occur during times of project maintenance, to minimize adverse impacts on young striped bass in the Delta during May and June, and at such times when the SWP has excess capacity and the CVP needs to convey water for other purposes.

Implementation of the COA would free a substantial block of CVP water (estimates range up to 1.1 million acre-feet annually) for future long term water service contracts. There have been numerous requests for additional water supplies by current contractors. Delivery of some of the additional requested supplies would require the construction of new conveyance facilities while other supplies could be contracted for almost immediately.

During the consideration for H.R. 3113 by the Committee, various wildlife interests expressed concern that maintenance of existing wildlife refuges within the Central Valley Basin may require the allocation of a portion of the additional firm CVP yield possible by the implementation of the COA. In response, the Committee adopted an amendment that prohibits the Secretary of the Interior from contracting for more than a certain portion of the firm annual yield of the Central Valley project not currently committed under long term contract until 1 year after the Secretary of the Interior has transmitted to the Congress, along with his recommendations, a study on refuge water supply needs of the Central Valley Basin. The study is underway and due to be completed in October of 1987.

During Committee consideration of H.R. 3113, questions were also raised concernng contract repayment requirements and the sufficiency of rates to recover the Federal investment as well as operation and maintenance costs of the Central Valley Project. These concerns were also addressed by the Committee Amendment.

A critical environment aspect of the operation and management of the CVP and SWP is the effect of the projects on water quality standards in Suisun Marsh area, located approximately 40 miles northeast of San Francisco. The Suisun Marsh is the largest marsh in California encompassing more than 10 percent of the State's remaining wetlands. The Marsh consists of approximately 84,000 acres: 57,000 acres in wetland habitat and 27,000 acres in bays and waterways. Eighty percent of the wetland habitat is controlled by privately-owned duck clubs; 17 percent lies within State Wildlife Management Areas; and 3 percent consists of tidal lands. Although the abundance and diversity of the wetlands vegetation supports more than 250 species of fish and wildlife, its prime importance is its value to migratory birds. California is the wintering ground for 60 percent of the waterfowl population of the Pacific Flyway; Suisun Marsh harbors a substantial portion of these birds.

Salinity encroachment in the Marsh has become an increasing problem due to increased fresh water use in the Bay area, the San Joaquin Valley and the Central Valley. Ocean saltwater intrudes into the Marsh when the freshwater outflows from the Delta are decreased below the level necessary to prevent the tides from carrying saltwater upstream from the upper San Francisco Bay. Salinity inhibits the growth of plants necessary to provide food for waterfowl.

In May of 1978, the State of California in a report on the problems associated with management of the Marsh recommended that: "It is imperative that steps be taken now, even though the relative responsibility for the impacts of the SWP, CVP, and nonproject operations have not yet been determined to protect those portions of the marsh most adversely affected by upstream use."

Congress initially addressed the water quality problems of the Suisun Marsh with enactment of Public Law 96-495, the Suisun Marsh Preservation and Restoration Act of 1979 which authorized limited structural efforts, and a study, directed towards mitigating adverse effects of the CVP on the Marsh. There followed 5 years of negotiations between the California Department of Water Resources, California Department of Fish and Game, the Suisun Resource Conservation District, and the Bureau of Reclamation for the purposes of reaching an agreement for achieving the water quality standards desired for the Marsh area.

As passed by the House, H.R. 3113 did not address the Suisun Marsh issue as negotiations on the agreement were still underway. Agreement was reached on November 1, 1985 between all the parties concerned and the Committee amended H.R. 3113 to reflect this agreement and authorize the Secretary of the Interior to execute and implement the agreement and to construct related facilities. Absent the agreement and construction of the facilities, achievement of water quality standards could require the release of up to 2 million acre-feet of water (1.2 million acre-feet from the CVP) during dry years. Such a release would reduce the additional CVP yield made available by the COA by at least 750,000 acre-feet. To fully address the water quality needs of the Delta and Suisun Marsh requires implementation of both the COA and the Suisun Marsh Preservation Agreement.

Relevant to the issues of water conservation and related development efforts in California and the remaining western reclamation States, including Hawaii, are the activities undertaken pursuant to the Small Reclamation Projects Act of 1956, Public Law 84-984. The primary purpose of the program established by the Act is to enable water user organizations in the 17 Western States and Hawaii to obtain loans and/or grants for the construction of small water resource projects independently from the more formal and time consumming procedures required for authorization of Federal projects under the Reclamation Act of 1920 as amended and supplemented.

Projects may be single purpose irrigation or drainage, or they may be mutli-purpose and include in addition to irrigation, municipal and industrial water, fish and wildlife enhancement, outdoor recreation, flood control, or hydroelectric power. Grants can be made for costs allocated to flood control and for about 50 percent of the costs allocated to fish and wildlife enhancement and outdoor recreation. Grants under the program have amounted to only about 3 percent of the total program. The costs allocated to municipal and industrial water supplies, hydroelectric power, the loan portion of the costs allocated to fish and wildlife and outdoor recreation, and the costs associated with serving lands in excess of the acreage limitations of Reclamation law are reimbursable with interest. The interest rate for fiscal year 1985 was 10⅞ percent.

Each loan applicant provides for financing of certain initial costs such as land and feasibility studies. From 1957 to 1970, the non-Federal up-front contribution averaged 11 percent. From 1974 to date, the non-Federal up-front contribution has averaged approximately 20 percent.

The maximum allowable loan and/or grant cannot exceed two-thirds of the total project cost. The total project cost ceiling is established at $15 million (January 1971 prices) and is indexed for inflation. The project ceiling was $41 million for calender year 1985 with a maximum loan and/or grant of approximately $26 million.

Under the current program, loans are to be repaid in the shortest practicable time, but in no event, longer than 40 years from

the date when the principal benefits of the project become available. The most recent loans have repayments periods from 25 to 30 years.

The current authorization ceiling of $600 million is only adequate to complete loans already approved. Statistics on the program as of January 16, 1986 are as follows:

SMALL RECLAMATION PROJECTS DISPOSITION OF $600 MILLION APPROPRIATION CEILING, JANUARY 16, 1986

	Loan amount	Grant amount	Total Federal	Contribution	Total project
Completed	$230,670,739	$5,283,444	$235,954,183	$45,154,097	$281,108,280
Administration			10,200,000		10,200,000
Under construction	241,461,127	19,539,166	261,000,293	53,050,963	53,050,670
Approved	44,960,000	9,405,000	54,365,000	19,586,000	73,951,000
Escalation			20,000,000		
Total	517,091,866	34,227,610	581,,519,476	117,790,767	699,310,243
Ceiling			600,000,000		
Balance			18,480,524		

Bureau of Reclamation Code 705 Based on January 1, 1986 Status Report summary 3.

It is anticipated that the ceiling increase of $600 million will permit the program to operate for an additional 12 to 15 years.

The Committee amendment also amends section 10(e) of the Federal Power Act to provide that no "falling water charge" or other annual charge shall be assessed by the Federal Energy Regulatory Commission against a licensee utilizing irrigation facilities under certain conditions.

In 1969, the three irrigation districts of the Bureau of Reclamation's Columbia Basin project in Washington State entered into amended project repayment contracts with the Department of the Interior. The amended repayment contracts provide that the irrigation districts may construct hydroelectric facilities within the project area and retain all resulting revenues. The irrigation districts have argued before the Federal Energy Regulatory Commission (FERC) that these amended contracts preclude the FERC from imposing any charges pursuant to section 10(e) of the Federal Power Act to hydroelectric developments within the project. The FERC has rejected this argument, and the irrigation districts have appealed the FERC's ruling to the U.S. Court of Appeals for the D.C. Circuit.

The irrigation districts currently operate five small hydrolectric projects with one project under construction and one additional site licensed. The amendment would affect three projects.

Consideration of relate legislation during the 98th Congress revealed that a similar contractural relationship exists in connection with the Salt River project in Arizona. The contract between the United States and the Salt River project was entered into in 1917. The Columbia Basin Project and the Salt River Project are the only projects identified by the Administration where such contracts exist. Legislation similar or identical to title IV of the Committee amendment has passed both the House and the Senate.

In amending and reporting H.R. 3113, the Committee has sought to address several relevant water issues in the context of one legislative proposal for consideration by the Senate.

LEGISLATIVE HISTORY

As ordered reported, H.R. 3113 combines elements of four measures in the 99th Congress: H.R. 3113, providing for the coordinated operation of the Central Valley project and the State water project in California; S. 1192, to implement the Coordinated Operation Agreement; S. 1171, to amend the Small Reclamation Projects Act of 1956, as amended; and S. 953, to validate contractual relationships between the United States and various non-Federal entities.

H.R. 3113 was introduced on July 30, 1985, by Congressmen Miller (California), Coelho, and Lehman, and was reported by the House Committee on Interior and Insular Affairs on September 9, 1985 (H. Rept. 99-257). H.R. 3113 passed the House on September 9, 1985. Although hearings were not held on the text of H.R. 3113 by the House Committee, oversight hearings on the Coordinate operation agreement were held before the Subcommittee on Water and Power Resources on May 23, 1985 (unprinted).

S. 1192 was introduced on May 22, 1985, by Senators Wilson and Cranston and was referred to the Committee on Energy and Natural Resources where a hearing was held before the Subcommittee on Water and Power on July 16, 1985 (S. Hrg. 99-258).

COMMITTEE AMENDMENTS

The Committee struck all after the enacting clause of H.R. 3113, and inserted a substitute text in lieu thereof. As ordered reported, H.R. 3113, in addition to authorizing the Secretary of the Interior to enter into and implement the Coordinated Operation Agreement for the Central Valley Project and State Water Project in California, also authorizes the Secretary to execute and implement the Suisun Marsh Cooperative Agreement, amends the Small Reclamation Project Act of 1956, as amended, and amends section 10(e) of the Federal Power Act.

As referred to the Committee, H.R. 3113 amended the Act of August 26, 1937 (50 Stat. 850) to authorize and direct the Secretary of the Interior to operate the Central Valley Project, in conjunction with the State of California Water Project, so as to conform to State water quality standards and provide water of a certain quality at the intake of the Contra Costa Canal (a feature of the Central Valley Project). In addition, H.R. 3113 amends the Act of August 26, 1937, to provide that costs attributable to the Central Valley Project for the purposes of salinity control and complying with certain State water quality standards would be nonreimbursable project costs. The Congressional Budget Office estimated that about $50 million of the cost of the Central Valley Project would become nonreimbursable as a result of the cost reallocation mandated by H.R. 3113 and that any additional costs incurred to comply with new State water quality standards would also be nonreimbursable as a result of the legislation. Finally, H.R. 3113 as referred to the Committee amended the Act of August 26, 1937, to authorize and direct the Secretary of the Interior to execute and implement the "Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project" subject to certain conditions.

In regard to the Coordinated Operation Agreement, the Committee amendment substitutes the text of S. 1192 for the language of the House passed bill. This, in effect, provides a straightforward authorization for the Secretary of the Interior to execute and implement the COA. The Committee noted in its deliberations on H.R. 3113, that as passed by the House, the bill would evaluate the status of several provisions of the COA from that of elements of an agreement to the authority of statute. Concern was expressed that by doing so, the delicate balance achieved by competing interests during the negotiations leading up to the COA may be upset. Serious concern was also expressed as to whether or not investing the Secretary with the authority to enter into a cooperative agreement, while at the same time elevating some of the provisions of the agreement into the statute, may imply that the Secretary has the authority to make allocations of water which would circumvent the prescribed statutory terms of the original project authorization act. Finally, the Administration noted in its comment on H.R. 3113 that: "While we can support H.R. 3113 to the extent that it authorizes and directs the Secretary to execute and implement the May 1985 COA, we have major reservations and concerns with the remainder of the bill." The full text of the Administration's comments on H.R. 3113 is included in the Executive Communications section of this report. The Committee shares some of the Administration's concerns.

The Committee amendment in the nature of a substitute includes several provisions which, while not directly related to the COA, are nevertheless believed by the Committee to be relevant to the Central Valley Project or to western water resources. The amendment includes authorization for the Suisun Marsh restoration program thereby addressing further demands that may be made on the operation and management of the Central Valley Project; such action is complimentary to the authorization of the COA and furthers the effort to deal with the water resources of the area in a more coordinated and comprehensive manner. Problems associated with the water quality of the Suisun Marsh were not addressed in the House passed bill. The Committee amendment also substantively amends the Small Reclamation Projects Act of 1956, as amended, and amends the Federal Power Act; neither of which were included in the House passed bill.

Identified by section, the additional provisions would provide as follows:

SEC. 102. This section provides that the Secretary of the Interior shall not contract for the delivery of more than 75 percent of the firm annual yield of the Central Valley Project not currently committed under long term contracts until 1 year after the Secretary has transmitted to the Congress a feasibility report, together with his recommendations, on the "Refuge Water Supply Investigation," Central Valley Basin, California. This section was added to address the concerns expressed by fish and wildlife interests that with authorization and implementation of the COA, all available water supplies may become subject to long-term contracts without consideration of refuge needs. The Committee notes that the effect of the amendment is not to reserve water for refuge needs in the sense that it creates a legal reservation.

SEC. 103. This section provides that new or amended contracts for delivery of water from the Central Valley Project shall include provisions allowing for adjustment of rates and the redetermination of ability to pay. The effect of this section is to codify current practice by the Bureau of Reclamation.

SEC. 104. This section provides that new or amended contracts for the delivery of water from the Central Valley Project include provisions ensuring that operation and maintenance cost deficits of the Central Valley Project be repaid with interest. The effect of this section is to codify current practice by the Bureau of Reclamation except for the imposition of interest charges on operation and maintenance deficits originating as a result of project irrigation functions. In addition, the section provides that interest would be charged at a rate equal to the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period of the project.

SEC. 201. This section authorizes the Secretary of the Interior to execute and implement the Suisun Marsh Preservation Agreement.

SEC. 202. This section prescribes the sharing of costs between the Bureau of Reclamation and the California Department of Water Resources for the implementation of the agreement. The Federal share is not to exceed 40 percent of the construction costs or $50 million (indexed for cost increases or decreases) whichever is less, and not to exceed 40 percent of the related operation and maintenance costs. All Federal costs are to be considered costs of the Central Valley Project and are to be allocated to the reimbursable and nonreimbursable purposes served by the project.

SEC. 203. This section provides that costs incurred before and after the date of execution of the agreement are to be included in the total for determining the Federal share of construction, operation, and maintenance costs.

SEC. 204. This section authorizes the appropriation of $50 million (subject to indexing) for the implementation of the agreement and also such sums as may be required for operation and maintenance.

SEC. 301. This section specifies that the amendments made by title III of H.R. 3113 apply to the Small Reclamation Projects Act of 1956, as amended (hereinafter referred to as the "Act" in the context of amendments made to the Small Reclamation Projects Act by H.R. 3113 as ordered reported).

SEC. 302. This section amends section 1 of the Act so as to emphasize the use of the program for the rehabilitation and betterment of existing projects for purposes of significant conservation of water, energy and the environment, and for purposes of water quality control.

SEC. 303. This section amends section 3 of the Act to increase the filing fee for project applications from $1,000 to $5,000 to reflect the inflation that has occurred since enactment of the original Act in 1956.

SEC. 304. This section amends section 4(b) of the Act to provide that Federal funds cannot be used as "matching funds" for purposes of meeting the cost-sharing requirements of the Act. This section also amends section 4(b) to provide for a 25 percent upfront financing requirement which may be reduced to as low as 10 percent if the Secretary of the Interior determines that an organization is unable to secure financing from other sources under reasonable terms and conditions. This section recognizes the need to secure increased levels of non-Federal financial participation in water resource related developments, but also recognizes that flexibility must be provided to the Secretary so that he may respond to the unique financial and economic circumstances surrounding individual project proposals and loan applications.

SEC. 305. This section amends section 4(c) of the Act to require the Secretary of the Interior to transmit to the Congress with each loan proposal a certification of successful irrigability of project lands and an investigation of the potential for toxic or hazardous irrigation return flows. This section reflects the committee's concern that the viability of a project proposal be examined in the context of the available physical resource. In addition, the Committee, keenly aware of the unfortunate circumstances surrounding toxic contamination at the Kesterson National Wildlife Refuge in California, believes that an analysis of the potential hazards posed by irrigation return flows should be integral to the preparation of any project proposal submitted pursuant to the Small Reclamation Projects Act.

SEC. 306. This section amends section 5(b) of the Act to insure that cost-sharing requirements for project costs allocated to flood control for projects funded by the Small Reclamation Projects Act shall be on the same basis as required for Corps of Engineers projects. The Congress is presently considering legislation (H.R. 6 and S. 1567) which addresses fundamental changes in the policies guiding water resource development activities by the Corps of Engineers. It is the intent of the Committee that the policies which govern flood control activities by the Corps of Engineers should equally apply to identical activities undertaken by the Bureau of Reclamation pursuant to the Small Reclamation Projects Act.

SEC. 307. This section amends section 5(c)(1) of the Act to shorten the repayment period on project loans from 50 to 40 years and amends section 5(c)(2) of the Act to require that market rates of interest apply to the interest bearing portions of loans made pursuant to the Act. These conditions reflect the fiscal realities confronting the Federal Government in continuing monetary support for basic infrastructure and water resource development needs.

SEC. 308. This section amends section 8 of the Act to require the Secretary of the Interior to transfer to the Fish and Wildlife Service or to the National Marine Fisheries Service such funds as may be necessary for investigations required pursuant to the Fish and Wildlife Coordination Act for purposes of the Small Reclamation Projects Act.

SEC. 309. This section amends section 10 of the Act to authorize the appropriation of an additional $600 million for projects under the Small Reclamation Projects Act. In addition, section 10 is amended to require that no more than 20 percent of the newly authorized $600 million may be spent for projects located in a single State. The Committee notes that the benefits of the Small Reclamation Projects Act have largely accrued to three States. By adopting the language limiting expenditures of no more than 20 percent of the newly authorized funds to any one State, the Committee intends that the benefits of the program will be distributed over a wider geographical area.

SEC. 310. This section seeks to apply the new requirements made by the amendments to the Small Reclamation Projects Act in as equitable a manner as possible given that many organizations have already expended considerable sums in preparing loan applications under the terms of the "old" Act. The Committee recognizes that the amendments made to the Small Reclamation Projects Act by H.R. 3113 as ordered reported are substantive and will impose additional financial requirements on applicants. The Committee, therefore, has been selective as to the application of the new requirements to final applications received by the Secretary prior to January 1, 1986, and draft applications received by the Secretary after February 1, 1986.

SEC. 401. This section amends the Federal Power Act to provide that no charge shall be assessed for the use of any Government dam or structure if the Secretary of the Interior has entered into a contract with such licensee which covers one or more projects for which a license was issued by the Federal Energy Regulatory Commission prior to January 1, 1985, and if the contract contains provisions specifically providing each of the following: A powerplant may be built by the licensee utilizing irrigation facilities constructed by the United States; the powerplant shall remain in the exclusive control, possession, and ownership of the licensee concerned; and all revenue from the powerplant and from the use, sale, or disposal of electric energy from the powerplant shall be, and remain, the property of such licensee. The section applies to any project covered by such a contract only during the term of such contract unless otherwise provided by subsequent Act of Congress. Similar language has previously been considered by the Committee in the context of S. 1132 in the 98th Congress and S. 953 in this Congress.

Mr. JOHNSTON. Mr. President, today we consider historic water legislation for California. The bill before the Senate, H.R. 3113, would authorize the Bureau of Reclamation to operate the Federal Central Valley project in coordination with the California State water project. Enactment of this legislation will make possible a number of far-reaching changes in the utilization of these two water development projects and help to resolve nearly 20 years of litigation.

In essence, H.R. 3113 would ensure that in drought years environmental water quality standards will be main-

tained in the Sacramento-San Joaquin Delta and that the burden of meeting these standards will be shared equally by the water contractors of the Federal and State projects. In the absence of the coordinated operation agreement, the burden of meeting delta water quality standards could, as a legal matter, fall upon the contractors of the State water project alone. In return for sharing this burden, Federal water contractors will receive the benefit of being able to contract for new long-term water supplies from the Central Valley project. These long-term supplies will become available as the result of clarification of certain water rights under the terms of the coordinated operation agreement.

Mr. President, the terms of the coordinated operation agreement go beyond this compromise, but that is the heart of it. I think the agreement is a creative solution to a difficult problem, and I commend all those who were involved in negotiating its provisions.

Beyond the coordinated operation agreement, H.R. 3113 contains several other provisions that relate to the Central Valley project. H.R. 3113, as reported by the Committee on Energy and Natural Resources, would mitigate the negative environmental effects of the Central Valley project and the State water project by authorizing the construction of facilities for the protection of Suisun Marsh. In addition, H.R. 3113 includes several provisions imposing greater fiscal discipline on the repayment of the Federal expenditures on the Central Valley project. All of these provisions are in the public interest, and I am happy to see them included in the bill.

Beyond the coordinated operation agreement and other matters relating to the Central Valley project, H.R. 3113 accomplishes two other meritorious goals.

First, the bill authorizes an additional $600 million for loans and grants under the Small Reclamation Projects Act of 1956. This new authorization is made subject to substantially increased requirements for cost-sharing and other provisions ensuring wider distribution of benefits under the loan program.

Finally, Mr. President, H.R. 3113 would validate certain contracts entered into by a limited number of public utility districts for the construction and operation of hydroelectric projects at Bureau of Reclamation dams. The contracts in question allow these utility districts to keep all revenues from the generation of electricity at the projects in question. The complete retention of all revenues conflicts with provisions of the Federal Power Act requiring the payment of annual charges for hydroelectric projects located at Government dams. H.R. 3113 would simply make clear that the affected districts are entitled to retain the benefit of their bargain with the Federal Government.

In sum, Mr. President, H.R. 3113 accomplishes a number of disparate purposes. The common element shared by these purposes is that they are all in the public interest. I know that some would not agree with that assessment, and in the case of the Small Reclamation Projects Act, I believe we will hear some interesting debate. Nevertheless, I believe the legislation is sound, and I hope to see it passed without significant amendment.

Mr. MURKOWSKI. Mr. President, I rise in support of H.R. 3113 as reported by the Senate Committee on Energy and Natural Resources and I would like to associate myself with the remarks of the distinguished chairman of the committee, the senior Senator from Idaho.

Mr. President, as chairman of the Subcommittee on Water and Power it was my privilege to preside over the formulation of H.R. 3113 as ordered reported.

The distinguished chairman, in his remarks, alluded to the years of effort which have gone into the bill before us. This is a particularly relevant comment when considering the coordinated operation agreement for the Bureau of Reclamation's Central Valley project and California's State water project. There have been over 26 years of negotiations between all parties concerned in coming up with this document dating back to before 1960 when the first coordinated operation agreement was reached. For the benefit of those members who are interested, the operation agreement was printed in the appendix to the committee report on H.R. 3113, Senate Report 99-265. I would caution you, the complexity of the agreement—it takes 46 pages of the committee report—is intricate and reflects the archane language which is common to so many western water agreements. The agreement has been described as delicate. That is probably an understatement. The agreement has been endorsed almost unanimously by the water resources and environmental communities.

As a nation we invest in our future. We pay Social Security taxes in anticipation of old age. We provide dollars for defense to ensure our security and the ability of our children to be free of a totalitarian government. We invest funds to clean up our Nation's waters so that we and generations to come may enjoy a healthfull environment. We set aside what otherwise might be economically productive lands so that we may experience the wilderness. We protect our free flowing streams so that others in years to come may experience the excitement of rapids or the serenity of deep free flowing rivers, all in the name of the future.

So too, must we invest in the development of our natural resources to leave a lasting legacy of jobs, income, and productivity. And for a lasting benefit, I can think of no other with greater benefits than investment in the development of our water resources.

In the case of the coordinated operation agreement and the Central Valley project and the State water project, much of the investment has already been made, but to realize greater economic and environmental benefits, the projects must be operated together so as to make the best use of the available resource.

The Suisun Marsh Preservation Agreement, title II of H.R. 3113 as reported, is much more than simply an agreement. The title authorizes funding and construction of facilities to protect the water quality of the Suisun Marsh as well as related management activities. As most of my colleagues in the Senate know, I am an enthusiastic hunter and fisherman and I have a strong appreciation for the relationship between habitat and wildlife. Our efforts to preserve and enhance the wildlife habitat at Suisun Marsh will provide benefits for generations to come.

Title III of H.R. 3113 provides for an increase in the appropriations ceiling for the Small Reclamation Projects Act as well as a comprehensive restructuring of the program and related requirements. Quite frankly, I consider the opportunities for water conservation and benefits to wildlife as a result of the amendments made to the Small Reclamation Projects Act to be a real milestone in the management of our water resources. Testimony before my Subcommittee on Water and Power indicates that we have a real chance to be able to go back on older water resource projects and redress past oversights and adverse environmental impacts. This is an opportunity that must not be missed. Many of these projects have already provided benefits for generations of water users. We can not only continue those benefits, but expand the scope of the projects to include other beneficial uses as well.

Mr. President, the history of water resources development in our country has all too often been marred by conflicts between project advocates and the environmental community. This need not be so. Water projects can be beneficial to wildlife and adverse impacts mitigated.

Title III of H.R. 3113 strikes a fine balance between the concerns of the environmental community and the need to maintain a viable program. I would stress however, that if we are to address those concerns, we must maintain a program that will be used by the water resources community. I be-

lieve that the amendments as reported reflect a true spirit of compromise between all concerned in an effort to continue a proven and improved water resources program.

I am looking forward to working in the future with project supporters and the environmental community in the preparation and consideration of other legislation to continue the development of our Nation's water resources.

Mr. McCLURE. Mr. President, I move adoption of the committee amendment in the nature of a substitute.

The PRESIDING OFFICER. Do Senators yield back the remainder of their time on the committee substitute?

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time.

Mr. McCLURE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

Mr. McCLURE. 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.

□ 1250

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

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

AMENDMENT NO. 2204

Mr. METZENBAUM. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 2204.

Page 11, line 14, strike subparagraph 307(b)(A) and insert in lieu thereof the following:

"(A) which is attributable to furnishing irrigation benefits in each particular year to land held in private ownership by a qualified recipient or by a limited recipient, as such terms are defined in section 202 of the Reclamation Reform Act of 1982, in excess of 320 irrigable acres; or".

Mr. METZENBAUM. Mr. President, this amendment requires that all loan recipients whose farms are in excess of 320 acres shall be obligated to pay full cost for their water. In other words, whatever it costs the Government for the interest in connection with their loans shall be borne by those who make the loans, provided that their acreage is in excess of 320 acres.

Frankly, Mr. President, the amendment does not go as far as I would like to go. I believe that there is no reason to subsidize any portion of the interest and expect the rest of the taxpayers of this country to bear that burden. But I am realist enough to understand that sometimes you work out compromises and you work in the appropriate direction.

I believe we are establishing a precedent that all but the smallest farms should pay market interest. It is my firm belief that everyone should pay market interest. But I think that this first step is an important reform and I want to say that I appreciate the cooperation of the chairman, Senator JOHNSTON, and the minority and majority staff. It is my understanding that this amendment is now acceptable.

Mr. McCLURE. Mr. President, this amendment would serve to reduce the irrigable acreage eligible to receive the full benefits of the Small Reclamation Projects Act while at the same time retaining support for the small landowner. The amendment would provide that lands held in private ownership in excess of 320 irrigable acres would pay interest on that portion of the loan attributable to providing benefits to those lands. This means that those landowners in excess of the 320 acreage limitation would pay market interest as provided in the Small Reclamation Projects Act as amended by H.R. 3113.

An analysis of the seven loan applications now under review in the Bureau of Reclamation was made to determine the impact of the proposed amendment. Of the 9,895 ownerships, fully 9,801 are small landholders with less than 320 acres benefiting from the proposed loans: That constitutes over 99 percent of the beneficiaries of the program. As my colleagues can see, the benefits of the program go to the small landowner.

In turn, the amendment would provide an appreciable increase in the return to the Treasury. Under current law, for these seven projects, about $30,000 would be charged annually in interest on the irrigation portion of the loan. Under the terms of my amendment, comparable loans would pay in excess of $463,000; a more than fifteen-fold increase in annual interest returned to the Treasury.

Although this amendment does increase the costs to the water users, it is acceptable to them in a spirit of compromise and in an effort to maintain a viable program. The amendment is also strongly supported by the Environmental Policy Institute.

Mr. President, I join with the Senator from Ohio in commending this amendment to our body. It has been accepted on this side. I hope it will be approved very quickly.

Mr. JOHNSTON. Mr. President, I commend the Senator from Ohio. In his role as guardian of the taxpayer, he has found still another place where we can protect the interest of the taxpayers while, at the same time, preserving the small farmer. That is a pretty good compromise. I congratulate him for it. I join in asking for the passage of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2204) was agreed to.

Mr. METZENBAUM. Mr. President, I thank both the majority and the minority managers of the bill for their comments. I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

AMENDMENT NO. 2205

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. McCLURE, proposes an amendment numbered 2205.

Mr. METZENBAUM. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 13 after line 3 insert the following new section:

"SEC. 311. The Secretary of the Interior and the Secretary of Agriculture shall review the effect of the Small Reclamation Projects Act of 1956, as amended, on the operation and objectives of the programs of the Department of Agriculture dealing with the production of surplus commodities as determined by the Secretary of Agriculture pursuant to the Agriculture Act of 1949, as amended, and shall jointly submit a report on their findings to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House no later than 120 days from the date of enactment of this Act together with their recommendations, if any, for any changes to either or both programs to better achieve the objectives of such programs."

Mr. METZENBAUM. This amendment requires the Interior and Agriculture Departments to complete a

study in 120 days on limiting or prohibiting production of surplus crops.

The amendment requires the Departments of Agriculture and Interior to analyze the feasibility of limiting or prohibiting beneficiaries of Bureau of Reclamation loans from growing surplus crops.

The analysis shall include specific statutory options to accomplish the objectives of limiting or prohibiting beneficiaries of Bureau of Reclamation loans from growing surplus crops.

Finally, in making their report, the Departments shall consider the administrative feasibility or any options presented to Congress.

Mr. McCLURE. Mr. President, I commend the Senator from Ohio for this amendment. As all members of the committee are aware, this issue of surplus crops is one of the most difficult and potentially one of the most contentious that we face in the committee as we try to report legislation. I think this, in the form the Senator from Ohio is now offering it, gives us the opportunity to move toward the resolution of that question.

It certainly will provide us with better information and a better basis on which to make decisions regarding the future of this question.

I commend the Senator from Ohio. I commend the amendment to all Members of the Senate and hope that it will be adopted expeditiously.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the distinguished Senator from Idaho is correct on the difficulty and contentiousness of this issue. It is terribly complicated. We ended up realizing that we really did not have enough knowledge to be able to solve the problem even if we could solve the philosophical problems attenuating crop production because the knowledge base is simply not there. I commend the Senator from Ohio for coming up with at least a way to get that knowledge so that perhaps next year, the problem may be solved in light of better information. I urge my colleagues to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2205) was agreed to.

Mr. METZENBAUM. I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I might inquire of the Senator from Ohio that the unanimous-consent agreement states that the Senator from Ohio would be able to offer two more amendments. Does he wish that opportunity?

Mr. METZENBAUM. No, Mr. President, I do not. If the Senator from Idaho wishes to make a motion to vitiate that part of the unanimous-consent agreement, I have no problem with it.

Mr. McCLURE. Mr. President, if a Senator present on the floor states he does not wish to offer either of the other two amendments, I think that disposes of all the amendments that are available under the unanimous-consent agreement. I therefore make that request.

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

Mr. McCLURE. I ask unanimous consent that a letter dated June 25, addressed to me from the Environmental Policy Institute, be made a part of the RECORD at this point.

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

ENVIRONMENTAL POLICY INSTITUTE,
Washington, DC, June 25, 1986.

Senator JAMES McCLURE,
Chairman, Senate Energy and Natural Resources Committee, Washington, DC.

DEAR SENATOR McCLURE: The Environmental Policy Institute commends the work of the Senate Energy and Natural Resources Committee for its work in reauthorizing the Small Reclamation Projects Act of 1956 (H.R. 3113). In particular we are pleased that a greater emphasis is now placed on rehabilitation and betterment as opposed to the old approach of new dam construction to solve problems.

We note that the Committee has recognized the budgetary realities of today and has taken one more reform minded step by requiring 25% upfront financing for projects. We recognize this can prove to be a hurdle for some organizations where necessary work needs to take place and hence we agree with giving the Secretary of Interior the authority to reduce this to 10% in the case of hardship.

Concomitant with this, the principle of shortening the repayment period to 40 years and requiring market rates on the interest bearing portions of loans is a continued step in the right direction given the current economic and budgetary climate.

It is important to note that the Committee appears genuinely concerned with the problems the country is now facing with respect to toxic or hazardous return flows by requiring certification with each proposal of successful irrigability and whether their is a potential for these problems. As an institution, we feel the future water crisis is one of quality not quantity and your action is another step in meeting that challenge.

The question of equity has surrounded the discussions on the reauthorization of this program. In our review of the program we found that huge disparities existed as to where the benefits were being bestowed. Your proposal of not allowing 20% of the total amount of funds authorized to go to any one state is a critical element in restoring balance to this program. Your proposal is far more lenient than the one we advocated (15% to any one state in any one year) but we support you in the spirit of compromise.

Perhaps the most difficult question for all of us has been the issue of surplus crops. How to address this in terms of today's farm economy, the historical mission of the Reclamation program, the geographic and climatic variations in the 17 Reclamation states and the need to preserve agriculture and continue diversity in the food chain are difficult issues to balance in this program.

As you know, the Committee was not able to reach consensus on how to move forward in this area. I endorse the following proposal as to limits of where we can go in the spirit of moving the program and the other legislation in titles I and II forward. I recognize that staff and Committee Members have labored intensely over the most appropriate approach to take with this issue.

In reviewing the various proposals and the reforms advocated, along with the impact on the irrigated farms participating in the program, I agree with the Committee amendment to allow the first 320 acres to be interest free (so that surplus crops could continue to be grown) and that market interest rates be charged on acreage above that receiving benefits. I agree with the Committee that though this may be "punting" on the issue of surplus directly, the effect will be to discourage the large-scale production of surplus through this loan program. I feel that it meets the concerns raised in Committee with respect to the small family farmer in the non-agribusiness states being able to stay in business as well as alleviating the administrative programs associated with earlier proposals.

In conclusion, Mr. Chairman, it is my belief that the Committee has gone further in the reform area that it originally envisioned, while at the same time producing a legislative package that is a win/win situation for the nation as a whole.

Sincerely,

PETER CARLSON,
Director, Water Resources Project.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1300

Mr. CRANSTON. Mr. President, I ask that the quorum call be suspended.

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

Mr. HART. Mr. President, will the Senator yield for a brief colloquy?

Mr. McCLURE. I am pleased to yield to the Senator from Colorado.

Mr. HART. I thank the Senator from Idaho. It is my understanding that a number of important small reclamation projects would be eligible for funding under the terms of this measure. Many of these have significant value for water storage, irrigation, recreation, and wildlife enhancement throughout the West. As the Federal commitment to large-scale reclamation projects shrinks, the role of small rec-

lamation projects increases—particularly in the arid Western States.

In Colorado, for example, the Stagecoach Reservoir project has been mentioned as a particularly important water storage facility for residents of the Upper Yampa River Valley.

If it is eventually funded and proves to be both economically and environmentally sound, this project would enhance fishing and recreational opportunities for millions of visitors to western Colorado. The project is also designed to decrease streambank erosion along the Yampa River and provide needed irrigation water to farmers and ranchers in the area.

Is it my colleague's understanding that the Stagecoach project would be eligible for funding under this authorization bill?

Mr. McCLURE. That is my understanding.

Mr. HART. I thank the Senator and I yield the floor.

● Mr. ARMSTRONG. Mr. Chairman, I understand that H.R. 3113 includes amendments to the Small Reclamation Projects Act [SRPA] and increases the authorization ceiling for loans and grants under that act. I am concerned about a Colorado project, the Stagecoach project near Steamboat Springs, CO, which I believe you are familiar with. That project has a pending application under the Small Reclamation Projects Act, and I wanted to know whether the amendment increasing the ceiling for SRPA loans and grants would apply to this project.

● Mr. McCLURE. Yes; I am familiar with the project and am aware that its application has been pending for a SRPA loan/grant before the Bureau for some time, awaiting the ceiling increase on the SRPA. It is one of the projects that could be funded by the increase. Moreover, it is my understanding that this project is in its final stages of the Bureau of Reclamation application process and that the Bureau has listed it as one of the next projects to be approved for a loan or grant under the amended Small Reclamation Projects Act.

● Mr. ARMSTRONG. That is my understanding also. However, I am told that the Office of Management and Budget has refused to allocate funds for the project. For fiscal year 1987 the Bureau of Reclamation requested funds to start five specific projects under the SRPA, including Stagecoach, but the OMB apparently refused to approve more than three projects. When the Bureau resubmitted three recommendations, again including Stagecoach, OMB again refused to allocate funds for the project, in spite of the fact it offers 50 percent non-Federal financing, where two others accepted offer only 4 percent and 19 percent non-Federal participation. To date, the Upper Yampa Water Conservancy District, the project's sponsors, have spent well over $1,250,000 on the preparations and application process, and further delay of the project could increase the costs by up to $1,000,000. Because of this I ask the committee to clarify, perhaps in the conference report, that the amendment is intended to include the Stagecoach project, provided that it meets all the requirements of the Bureau in accordance with their standard application procedures. Such language would ensure that the Stagecoach project does not receive special treatment, only that it gets equal treatment.

● Mr. McCLURE. I believe that is a reasonable request, and I will do what I can to clarify the matter.●

Mr. CRANSTON. Mr. President, I rise in support of H.R. 3113, to authorize the coordinated operation agreement, the Suisun Marsh Preservation Agreement, and amendments to the Small Reclamation Projects Act.

The coordinated operation agreement, commonly known as the COA, is an historic, and tremendously important agreement between the Federal Government and the State of California regarding the operation of the Federal Central Valley project and the State water project.

After years of negotiation, the Federal Government has agreed to comply with State water quality standards for Sacramento-San Joaquin Delta and California has agreed to provide capacity in the State water facilities for conveyance of Federal project water.

In the past, the Bureau of Reclamation has insisted that the Federal Government need comply with State water quality standards for the Sacramento-San Joaquin Delta only to the extent that they did not conflict with the official project goals of the Federal Central Valley project. California has insisted that both projects have a responsibility to provide adequate flows of fresh water through the delta in order to keep saline water from moving into the delta from San Francisco Bay.

Now, after 15 years of negotiations, the Federal Government has accepted the State's position. Under the terms of the COA, the Federal Government would be obligated for the first time to abide by State water quality standards as they affect the Sacramento-San Joaquin Delta. The COA provides that both the Federal Government and the State will adopt a policy to protect the delta and limit water pumping diversions during drought years, even if it means reducing deliveries to their contract buyers, in order to maintain the delta standards.

The COA provides another important benefit to both the State and Federal Government through the coordination of the two huge water projects. Despite the proximity of their pump stations, a dependence on a common water source, and the shared use of a downstream reservoir, these projects have always operated independently. By coordinating pumping schedules and sharing reservoir and aqueduct systems, the CVP and State water project could serve their customers more efficiently and improve water quality in the delta. The Central Valley project has more water than it can deliver—1.1 million acre feet not under contract—and the State water project has excess capacity in its reservoirs and aqueducts. The COA would permit the Federal Government to sell its excess water to the State. And in return, the State would make its facilities available for the delivery of additional irrigation water to existing or new customers.

The House has included a number of additions to the COA in its version of H.R. 3113. Besides authorizing the Secretary of the Interior to implement the COA, the House bill requires the Federal Government to meet San Francisco Bay and delta standards unless the Secretary of the Interior determines that compliance is inconsistent with congressional directives and to operate the CVP so that water quality at the Contra Costa Canal intake at least meets the standards set by the State in August 1978. Finally, the bill makes the costs of providing water for the purpose of salinity control and meeting State water quality standards nonreimbursable. These additions represent a delicate compromise enabling all California interests—Federal Central Valley project contractors, State project contractors, Contra Costa County and delta water users, environmentalists, and the State itself—to support the legislation. Such broad support on a water issue is practically unprecedented in California.

I want to advise my Senate colleagues, and in particular those Senators who will serve as conferees on this bill, that I strongly support the House provisions on the COA. I am going to vote for the Senate bill today to advance the legislation and get the bill to conference. But I intend to fight for the House language there.

I would like to add, final action on the COA is even more urgent in light of the recent First District Court of Appeals decision ruling redefining the State water resources control board's powers. In that case, the court ruled the State board has more authority to maintain water standards than it has asserted and directed the board to take a broader view of its authority during the hearings scheduled to start next year on new delta water quality standards. The board is expected to hold three sets of hearings beginning July 1987 and ending mid-1989 for the adoption of a new set of water rights

and water quality standards by 1990. Approval of this bill will eliminate some of the issues the board would otherwise be forced to consider and resolve them amicably.

Mr. President, to sum up, passage of this bill is vital to California. I urge my colleagues to vote for H.R. 3113. It is helpful to the Nation. I thank those Senators who have been involved in advancing it and urge my colleagues to vote for H.R. 3113.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRANSTON. Mr. President, I ask that the quorum call be suspended.

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

Mr. CRANSTON. Mr. President, I should like to ask the manager of the bill, the distinguished Senator from Idaho, about his intentions regarding a rollcall. I know there has been some discussion that we might have one, some discussion we might not. In view of the fact that there seems to be no controversy over this, and as far as I know it is widely supported in the Senate, I personally, do not see any particular reason to have a rollcall.

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

Mr. CRANSTON. Yes, of course.

Mr. McCLURE. Mr. President, I thank the Senator for making the inquiry, and I think it is a useful exercise to at least state, if we do not have a rollcall, why not. We have been discussing the question of whether or not a rollcall should be asked to indicate the degree of support in the Senate for this measure. I think, to the best of my knowledge, there is the potential for one or two votes against it, and I think all the rest of the Members with whom I have had any contact or of which I am aware would support this measure.

I want the House to understand that the absence of a rollcall is not the absence of interest but the absence of opposition. This is widely supported in this body, and I do not intend to ask for a rollcall. But I do appreciate the Senator from California raising that issue because I would want everyone to understand it is based upon widespread support for this bill.

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

Mr. CRANSTON. Yes. I thank the Senator from Idaho very much for that clarifying and helpful statement. I, of course, yield to my friend from Louisiana.

Mr. JOHNSTON. Mr. President, this bill once was a very contentious bill, highly visible, highly controversial, but I am glad to say all the problems have been worked out, many at the behest of the Senator from California [Mr. CRANSTON]. I think it is widely understood and so far as I know there is no opposition. There may be, if you had a rollcall, one dissenting vote, perhaps two. Otherwise, it would be completely endorsed by the Members of the Senate, and I endorse the decision of the floor manager, the Senator from Idaho, not to have a rollcall vote because it is virtually unanimously approved.

Mr. CRANSTON. I thank the Senator very, very much. I think that is helpful. I must say that whatever controversy there has been over the bill is not related to the operating agreement in California; it is related to the other matters that do not affect the part in which I am particularly interested.

Mr. McCLURE. If the Senator will yield, I fully concur in that assessment.

Mr. CRANSTON. I thank the Senator very much.

Mr. WILSON. Mr. President, I rise in support of this legislation because it marks a very important development for the State of California. Today, we are considering what is perhaps one of the most important water bills for California in the last decade. It is a bill which memorializes an agreement that has been long in coming between the Federal Government and the State of California, one that will, to put it simply and not quite adequately, detail how both of these entities will operate major water projects in conjunction with one another in order to meet a multitude of objectives, the primary one being the maintenance of water standards in the Sacramento-San Joaquin Delta, and also the provision of surplus waters to thirsty southern California, a growing and already populous area that will increasingly be in need of water as it fulfills its predicted growth.

I commend the Bureau of Reclamation for its fine work in bringing these COA negotiations to a successful conclusion. The California water community has been clamoring for years for a COA, and it is only through the dogged determination of the Bureau of Reclamation and their counterparts in the State department of water resources that we have come this far.

I express my appreciation to the Energy Committee and in particular to its distinguished chairman for the efforts that they have made in bringing this bill to the floor. As was just developed in the colloquy between my senior colleague from California and the chairman of the committee, it is actually the collateral questions that have occupied so much of the time and energy of the Energy Committee rather than the Coordinated Operations Agreement itself. This is a relatively noncontroversial matter but one of enormous importance.

Title III of the bill, which relates to reauthorization of the Small Reclamation Projects Act, does contain an issue that I would comment on and not just in passing. It is proposed that there be a cap upon the participation by a single State in loans available from the fund created by the reauthorization of the Small Projects Act. I believe the 20-percent cap that has been proposed really is unrealistic in terms of the experience of the States participating in these Small Reclamation Projects Act projects. The fact is I think it would make much greater sense to have not an arbitrary cap but to provide for a formula that will allow fair participation to respond to the needs of all participating States. Clearly, it would be unfair for a single State to dominate by its participation to this money, to the detriment of those other States, and that is not at all what I would propose. Rather, it seems to me that what we have done in this language is to engage in an inflexible standard.

□ 1310

I hope that in the conference, the conferees will examine the experience and look to the reality of whether or not such a cap does not unfairly, without benefit to anyone, prejudice a State, a populous State like my own, which can expect to be an eager participant in these programs.

Mr. President, having made that comment, expressing my opposition to the cap, let me say that this entire effort has occupied some 4 months of committee markup. I am grateful that the committee persisted and persevered and elected to devote as much time and energy as they did to the resolution of all the collateral questions. What they have done in the process is to permit the underlying bill to become a high priority for passage in the 99th Congress. That is no small feat.

I am, however, opposed to the COA authorizing language agreed to by the Energy Committee. I will not attempt to improve upon the committee's language here on the floor only because I am convinced that my concerns will be adequately addressed in the forthcoming House/Senate conference, and that California's water needs will be best served by moving this bill to conference as expeditiously as possible.

Most of the language improvements that I speak of are embodied in the House-passed version of H.R. 3113, a bill that I support. I have reason to believe its language will survive relatively unchanged in the report of the House-Senate conference committee on H.R. 3113.

The COA is crucial to California for a number of reasons. The two most important features deal with improved water quality and supplemental water

supplies. Under the terms of this agreement, the State and Feds will be—for the first time ever—jointly committed to maintaining water quality standards in the San Joaquin-Sacramento River Delta which serves both the State and Federal water projects.

As a corollary to the water quality agreement, the Bureau of Reclamation will be free to begin contracting over 1 million acre-feet of water to potential customers. This much-needed water has remained unused since 1978 when the Bureau imposed a moratorium on new water contracts pending the outcome of the COA negotiations.

Finally, the COA authorizes the Secretary to commence negotiations with the State of California on the possible interim sale of Federal water to southern California. I do not think I have to remind anybody here how important new water supplies are to the heavily populated areas of southern California, and the prospect that some of the Federal water out of the Central Valley project may be made available to the cities of Los Angeles and San Diego is a new development.

The authorization of the COA is of overriding importance to California. Despite my objections to language contained in title I of the bill, I will not be offering any amendments, in the interests of moving this bill though the Senate and on to conference.

Mr. President, I cannot overstate the importance to California residents of the passage of this legislation in this Congress. While I would again have fault to find with the language of the Senate version in its simple statement of reauthorization, rather than detailing, as does the House version of H.R. 3113, all the requirements that are necessary in order to make the Coordinated Operations Agreement work, I look to the conference, and it is my expectation that the language contained in the House version, which I think is definitely preferable, will be the product of the conference, with little change.

Because of the importance of moving this legislation in this Congress, I do not intend to offer amendments to either title. Instead, it is much more important, and I think the interests of California water users will be better served, if we move this legislation as expeditiously as possible to conference, so that we can see it as a final product on the President's desk before this Congress adjourns sine die.

I urge my colleagues to take the same view of it. It seems to me that without amendment, we can go to conference with a record that clearly indicates what changes are necessary and allow the conferees to make those changes.

Mr. President, title III of H.R. 3113 reauthorizes the Small Reclamation Projects Act by providing $600 million in new loan and grant authority to the Bureau of Reclamation.

I strongly support the Small Reclamation Program because ever since 1956 when this program was first created, it has served as a valuable tool in California and all arid Western States for the conservation and wise use of scarce water resources. By assisting local entities to develop and maintain irrigation and multipurpose projects, communities dependent on a strong agriculture economy have thrived and helped make agriculture the number one industry in California.

As much as I support the reauthorization of this program, however, there is one provision in the bill before us that is particularly onerous for California.

Section 309(b) of H.R. 3113 provides that no State may receive more than 20 percent of the $600 million for loans and grants authorized by this bill for the Small Reclamation Projects Act.

For all but one State—California—this provision will have no meaning. Of the funds previously authorized since 1956 to implement this program, only California's share has consistently exceeded 20 percent. The respective shares of the next two closest States—Arizona and Texas—have been less than 15 percent.

The reason that California's participation in this program is greater than that of other Western States is simple: California has more needs that any other individual State. With a statewide population of 25 million people, it is by far the most populous of any western reclamation State and has more than 10 million acres of prime agricultural land under irrigation.

Many of the irrigation water systems that service these lands need rehabilitation, new conservation features, water quality improvements, supplemental supplies, new flood control works, fish and wildlife enhancement work—all of which qualify for loans under the Small Reclamation Projects Act.

Meeting these extensive needs in California, however, has not come at the expense of meeting the needs of any other water district in any other State. The fact is that no other water district has gone wanting because of California's participation in the Small Reclamation Projects Act.

It is true that in the past, water districts in other States have been denied small reclamation project loans. But these districts were denied because they did not meet certain qualifying loan criteria. They were not denied because the money they were asking for was given to a California water district instead.

Recognizing that California's past participation in the Small Reclamation Program has not been at the expense of any other State, why limit California's future participation to 20 percent? I have found no answer to this question in the committee report language.

First. Why cap California's participation in the Small Reclamation Projects Act at 20 percent?

Second. Is there any evidence that demonstrates that California has taken advantage of the program in the past at the direct expense of any water district in any other State?

Third. Has the committee or the Department of the Interior done any kind of scientific analysis which concludes that without a 20-percent cap for California, non-California water districts will be denied the opportunity to participate in this program under the new $600 million authorization that we are now considering?

Fourth. Is there any reason to believe that a 20-percent cap for California will somehow boost participation by non-California States in this loan program? Put differently, how will a 20-percent cap help qualify water districts for small rec loans when these same water districts are often hard-pressed to meet the terms of the loan criteria for this program?

In sum, notwithstanding my colleagues' assertions to the contrary, I remain unconvinced that a 20-percent cap for California will do anyone any good, and I do not believe anybody would disagree with me that it will do California a world of harm.

As far as I know, there are not any greater national issues at stake. This cap, for example, will not save the taxpayers any money and it will not help relieve our budgetary deficit woes.

However, in the interests of moving this important California water package before us today, I will refrain from belaboring this issue any further on the floor and will not offer any amendment to modify this bill with the hope—and the expectation—that this issue will be reasonably resolved in the upcoming conference committee on this bill.

With that, Mr. President, I thank the distinguished managers of the bill, and I urge expeditious passage of this measure.

Mr. McCLURE. Mr. President, I thank the junior Senator from California for his remarks, and I thank the distinguished senior Senator from California for his remarks with respect to this bill and the labor it took to bring it to the floor and to have the nearly unanimous support of this body for its several provisions.

In doing so, I want to recognize the hours that have been devoted by both the majority and minority professional staffs of the committee to the negotiations that brought about this result. It was not easily achieved; it did re-

quire a great deal of time on their part.

I think that sometimes the staffs go perhaps noticed but not noted with respect to the achievements as well as the contributions to a legislative result, and I sincerely appreciate the work done by the staffs on both sides of the aisle to achieve the result here today.

Mr. JOHNSTON. Mr. President, I join in that sentiment. Sometimes the finest work of staff is on a bill which on the floor has the least difficulty, takes the least time, and has no controversy, because all that controversy has been moderated by the staff and the difficulties have been settled and the language has been smoothed out. That is the case on this measure.

So, I particularly congratulate the staff on both side for excellent work.

Mr. McCLURE. I agree totally with the Senator from Louisiana. The fact that we have no controversy at this point illustrates the truth of his remarks.

Mr. President, I think we are ready for passage of the bill. I know of no request for a rollcall vote; therefore, I will not request one.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

The bill (H.R. 3113) was passed.

The title was amended so as to read:

An act to implement the coordinated operations agreement, the Suisun Marsh Preservation Agreement, and to amend the Small Reclamation Projects Act of 1956, as amended, and for other purposes.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1400

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

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

ORDER OF BUSINESS

Mr. DOLE. Mr. President, we are trying to bring to the floor the supplementary extradition treaty with the United Kingdom. I understand it may be possible to do that, even though Senator LUGAR has a conflict with a meeting with the Foreign Minister of Pakistan. I still hope we can do that today.

Then there is the Philippines economic aid authorization that I understand is being worked on. Risk retention—I am advised it is possible that we might work out a time agreement. But we would very much like to complete action this afternoon on the extradition treaty; also, the supplemental Philippines, and risk retention if we can.

There are also a number of nominations that have been around for some time. Robert Ortner, of New Jersey, to be Under Secretary of Commerce for Economic Affairs, has been on the calendar since May 25. Morton L. Abramowitz, of Massachusetts, a career member of the senior Foreign Service class of Career Minister, to be Assistant Secretary of State, reported May 20. In fact, Ortner was reported March 25, not May 25. George Salem, to be Solicitor for the Department of Labor, reported June 18. Clarence B. Gibbs, of Texas, to be Commissioner of Internal Revenue, which is a very important appointment.

I must say I hope Mr. Gibbs can be confirmed so that he can perhaps participate in the tax conference. In the past, we have had the IRS Commissioner present during the tax conference to help us on some of the questions we have. He has not been confirmed, so that is one I hope we might be able to do yet today.

For the Department of Defense, M.D.B. Carlisle—I understand we might be able to take that up this week, or it was my understanding before the recess—to be Assistant Secretary of Defense; Saundra Brown Armstrong, to be a Commissioner of the U.S. Parole Commission; Harry W. Shlaudeman to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Brazil; Jonathan Moore to be U.S. Coordinator for Refugee Affairs. They have been around since June 26.

And there are two others, Robie Marcus Hooker Palmer to be Ambassador to Hungary and Mary Kate Bush to be U.S. Alternate Executive Director of the International Monetary Fund. If those who have problems with those nominations could advise us on this side, it would help us as we plan the balance of the week.

I made a special plea for the IRS Commissioner, since he would, I hope, be represented or be there in person during the tax conference, which starts tomorrow morning at 10:30.

Mr. President, I understand the manager on the United Kingdom treaty cannot be here until 2:45 or 3 o'clock. It seems to me that since we cannot stir up any business and there is nothing for us to do at the moment, we should stand in recess.

Mr. MATSUNAGA. Will the distinguished majority leader yield for a question?

Mr. DOLE. I am happy to yield.

Mr. MATSUNAGA. Did I understand the majority leader to say we may be taking up the Manion confirmation today?

Mr. DOLE. I thought we did that earlier.

Mr. MATSUNAGA. I understand the majority leader's response.

RECESS UNTIL 2:50 P.M.

Mr. DOLE. Mr. President, I move that the Senate stand in recess until 2:50.

The motion was agreed to and, at 2:09 p.m., the Senate recessed until 2:50 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HECHT).

□ 1450

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

TEST BAN TREATY

Mr. KENNEDY. Mr. President, the decision to hold talks on test ban issues is a worthwhile development but it is regrettable that in the same breath the administration chose to reiterate its hardline opposition to a comprehensive test ban treaty which has been the goal of every American President since Eisenhower. The administration is painfully behind in the curb on arms control. U.S. scientists acting on their own achieved a significant breakthrough early in this month when they succeeded in placing sophisticated monitoring stations near the main Soviet nuclear test site. Their achievement is a major step toward resolving the problem of verifying a test ban agreement. Now the President says he is going to talk with the Russians about the verification issue but it is sad that an administration supposedly committed to arms control has to be shown the way by private citizens.

CONDEMNING THE GOVERNMENT OF CHILE FOR THE DEATH OF RODRIGO ROJAS DE NEGRI

Mr. KENNEDY. Mr. President, I send a resolution to the desk on behalf of myself, Mr. GORE, Mr. SIMON, Mr. HARKIN, and Mr. KERRY, and ask for its immediate consideration.

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KENNEDY. Mr. President, I think it is regrettable that Members of the Senate cannot even send a resolution to the desk.

Mr. President, I send a resolution to the desk and ask that it be appropriately referred.

The PRESIDING OFFICER. The Senator has that right.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The resolution has been received and appropriately referred.

Mr. KENNEDY. I would prefer to have the right to proceed to immediate consideration. But we will proceed as best we can.

Mr. President, I send a resolution to the desk and urge the Senate to act quickly and favorably on it. The resolution is a straightforward one: It commends the U.S. Ambassador to Chile, Mr. Harry Barnes, for attending the funeral of Rodrigo Rojas de Negri and condemns the Government of Chile for the brutal murder of this 19-year-old United States resident on the streets of Santiago.

Darkness is descending on the people of Chile. Hope for an early and peaceful return to democracy is fading. The virulent repression and inhumanity of the Chilean regime knows no bounds. From the day General Pinochet seized power in 1973, through the assassination of Orlando Letelier on the streets of Washington and now to the fiery execution of Rodrigo Rojas—a graduate of Woodrow Wilson High School in Washington who had just returned this spring to his native Chile—General Pinochet's reign of terror continues.

The violence and repression grow with each passing day as students, housewives, physicians, and lawyers are beaten and arrested on the streets of Santiago.

According to America's Watch, during March and April alone, the Government was responsible for 5 violent deaths, 22 attempted murders, 1,610 detentions for political activists, and 141 cases of torture and cruel, inhumane, or degrading treatment. Since April, the repression has grown worse. During the first 2 weeks of May, the Chilean security forces raided 39 shanty towns and rounded up over 94,000 individuals. Of that enormous group, only five were ever charged with criminal misconduct.

In the wake of these raids, which often leave the shanty towns in shambles, groups of university students have taken to visiting the towns to help their residents rebuild their destroyed homes, to stay and comfort them, to share meals with them.

On July 2, Rodrigo Rojas and a friend, Carmen Quintana Arancibia, went with a group of 60 university students to a shanty town in the outskirts of Santiago. The town had recently been ransacked by the Chilean military and the students were there to show support and to provide comfort to the residents.

Rodrigo's family is well acquainted with the horrors of the Pinochet regime. His mother disappeared in 1975 and was tortured and raped by the Chilean secret police. She fled to Washington in 1977, where she raised her two sons. She was barred from returning to Chile. Rodrigo decided to spend the summer in Chile to reaquaint himself with his Chilean roots. His visit to the shantytown was part of that effort. The only item he had with him was his camera.

According to eyewitnesses, on the morning of July 2, soldiers with blackened faces arrived in the shanty town and began to attack the students. They singled out Rodrigo and Carmen, brutally beat the two, poured a flammable liquid over their bodies and set them on fire. The two were then thrown into a vehicle, driven away and thrown in a roadside ditch. They were discovered wandering aimlessly later that day, incoherent, with burns over 60 percent of their bodies.

The two were taken to a local public hospital with poor facilities. Rodrigo's mother, Veronica de Negri, with the help of the U.S. Ambassador and Consul General, attempted to have her son moved to a hospital with a better treatment facility. She was told her son was under arrest, and the authorities refused to permit his transfer. With the help of Ambassador Barnes and Isabel Letelier, Dr. John Constable, a burn specialist at the Massachusetts General Hospital, flew to Santiago to offer treatment. But Rodrigo Rojas died on Suday July 6, and Ms. Quintana remains in critical condition.

Even in death, the Chilean Government persecuted Rodrigo. During his funeral procession on July 9, the Chilean authorities fired tear gas and water cannons into the crowd which included Ambassador Barnes.

Ambassador Barnes deserves to be commended for his commitment to human rights and democracy in Chile, and for his compassionate role in the Rojas case. He is serving in one of the world's most difficult posts, during one of Chile's most difficult times. He has had the courage to oppose the Pinochet regime and to align himself clearly with the forces of democracy in Chile. This country is privileged to have an envoy of the quality of Harry Barnes and his dedicated work in Chile brings credit to the United States.

The Chilean Government continues to deny any responsibility for the death of Rodrigo Rojas. Indeed, it maintains that Rodrigo set himself on fire. But many eyewitnesses accounts have confirmed that it was members of the Chilean security forces who actually set the youths on fire. Those eyewitness accounts have been documented by the Chilean Human Rights Commission.

The government of General Pinochet is clearly responsible for the death of Rodrigo Rojas. Throughout his years of power, Pinochet has actively encouraged his security forces to use whatever wanton violence is necessary to repress the people of Chile. The torture and inhumane treatment of the citizens of Chile continue today with the approval of Pinochet. This latest tragedy is simply an extraordinarily stark example of this dictator and his policy at work.

It is time the U.S. Senate spoke out against General Pinochet. There are some who continue to support this reprehensible regime in the name of fighting communism. But the surest way to bring the Communists to power in Chile is for General Pinochet and his murderous henchmen to cling to power. Without some lessening of the repression, without some movement toward democracy, the prospects for an increasing cycle of violence and repression are great. And without a dramatic shift in policy soon, the rise in the appeal of the Communists is inevitable. The best thing the Communists have going for them in Chile is the continuation of the cruel Pinochet dictatorship and the widespread perception that it is propped up by U.S. aid and U.S. moral support.

Make no mistake about it. In his speech of July 11, he made his position clear: General Pinochet has not moved, is not moving, and has no intention of moving his country toward democracy. Just 2 days after the disruption of Rodrigo Rojas' funeral, he declared that he intended to remain as dictator well into the 1990's. No country can move peacefully toward democracy while its dictator declares himself President for life.

It is time the United States put itself clearly on the side of democracy in Chile and distanced itself from the Pinochet regime. Over the past year the United States has supported international loans to Chile. That must end. Although Ambassador Barnes has expressed support for the National Accord, no branch of the Government in Washington has voiced support for that accord which is Chile's only real hope for democracy.

It is time for the United States Congress to repudiate the Pinochet regine and state its unequivocal support for the immediate restoration of democracy in Chile. And the place to begin is with the resolution before us today. No incident more clearly symbolizes the need for Pinochet to go than the senseless, savage murder of Rodrigo Rojas.

The United States alone may not be able to bring democracy back to Chile,

but without our help, democracy may never return to Chile.

This resolution is a step toward placing the United States where it ought to be—on the side of democracy in Chile. I urge the Senate to adopt it.

Mr. LUGAR. Mr. President, I appreciate the words of the distinguished Senator from Massachusetts.

Before proceeding to the consideration of the treaty that will be before the Senate, let me indicate that not only in response to his words, but simply as an affirmation of my own feeling, I have written to His Excellency Ricardo Garcia Rodriguez, Minister of Interior, Republic of Chile. I have indicated to the Minister that:

Like most Americans, I was deeply shocked by the brutal murder of Mr. Rodrigo Rojas de Negri who was, as you know, a U.S. resident, and also the information that a friend of his, Miss Carmen Quintana Arancibia, had been burned over 60 percent of her body in the same incident. I understand that a special investigator has been appointed to look into these events and to make a report to the judicial authorities. I assure you, Mr. Minister, that I shall be following the case with interest, up to and including the apprehension, indictment, trial and punishment of those persons responsible for these heinous acts.

I wish also to take advantage of this opportunity to share with you some of my broader concerns on U.S./Chilean relations. Over many years now we have received constant assurances from your government that it has serious plans for a democratic transition and a full return to the rule of law. We are still waiting—13 years now—for tangible proof that your government is prepared to take the kinds of steps which would lead to that consummation. I am personally aware of the fact that since 1973 there has been precisely one conviction and punishment for a human rights violation in Chile; others, including individuals found guilty of cutting the throats of three labor leaders last year, are still at large. It is frankly difficult to continue to grant credibility to any further verbal assurances; what are required are concrete acts. This case is your best opportunity, at least as far as I am concerned.

I also arises quite opportunely in the sense that I understand your government has just appointed an advisory commission on human rights. I am sure that the new commission will want to be involved in this case, and I look forward to its report to the commission.

I should add that I fully support President Reagan's policy of encouraging a return to democracy in Chile. In that sense, I and fifteen other members of the Committee not long ago voted in favor of a resolution which congratulated the parties of the National Accord for their fundamental charter, and urged your government to engage with it, so that an effective transition may take place as soon as possible. This is the policy which is being implemented in Chile by Ambassador Harry Barnes.

I think it would be a vast mistake to underestimate the depth of feeling which exists in many quarters in the United States, including the Senate, on the need for a genuine democratic transition in Chile. Incidents of the sort which occurred last week, in which two young people died needlessly and violently, serve as reminders, and contribute cumulatively to a serious deterioration in bilateral relations.

Sincerely,

RICHARD G. LUGAR,
Chairman.

□ 1510

Mr. President, I signed the letter and mailed it yesterday.

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

Mr. LUGAR. Yes.

Mr. KENNEDY. I want to express at least my appreciation and I am sure that of all Americans for the action which has been taken by the chairman of the committee. I see our ranking minority member, my good friend from Rhode Island [Mr. PELL] rising. I think it is useful to remind the Chilean officials of the strong bipartisan support for the resolution which came out of the Foreign Relations Committee with only one dissenting vote. I know, because I have had the opportunity to speak to both the chairman of the Foreign Relations Committee and the ranking member, about their strong support for that resolution. I had been hopeful that we would have the opportunity to address that on the Senate floor and permit the Senate to work its will. I still have not lost hope that that can be done.

I hope that the chairman of the Foreign Relations Committee would watch very carefully the investigation which now has been assigned to this special investigator, because there have been serious questions that have been raised about this individual's particular neutrality. It is worthwhile to have all of the facts out, which all of us want, so that we can have accountability. Certainly, nothing can be done to remedy the tragedy, the horrific tragedy that took place with this young man and this young woman.

There have been serious allegations about whether this can be an impartial investigation. I know that those issues have been raised with the chairman of the committee. I want to give him assurance that I shall work very closely with him and with the Senator from Rhode Island and others interested so that we are going to be able to obtain the facts and we will be able to get accountability.

I think the Government of Chile ought to heed well the words of the chairman of the Foreign Relations Committee of the Senate and also the words of the ranking minority member. I express my appreciation for their actions to date and I look forward to working closely with them in the future. Perhaps we might even get the successful passage of this resolution before the August recess.

Mr. PELL. Mr. President, I ask the Senator from Massachusetts that I be made a cosponsor of his resolution.

Mr. KENNEDY. Mr. President, I so ask unanimous consent.

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

Mr. PELL. I join him in urging the passage of this resolution, which is a very useful and very needed one.

ORDER OF BUSINESS

Mr. PELL. Mr. President, I wish to address a question to the Senator from Indiana. I understand that shortly, we shall take up the extradition treaty. Does the Senator know what the intention of the leadership is with regard to Irish aid as well?

Mr. LUGAR. Mr. President, I am pleased to advise my friend that we are ready to take up the supplemental treaty presently. Following that, it is our intention—and I have cleared this at least with the majority leader and perhaps the Senator would wish to do so with the distinguished minority leader—to take up the economic support for Ireland legislation, S. 2572, immediatly thereafter.

Mr. PELL. I am delighted to hear that, Mr. President. I thank the Senator for his response.

Mr. LUGAR. I thank the Senator.

I thank the Senator from Massachusetts for his generous comments.

EXECUTIVE SESSION

SUPPLEMENTARY EXTRADITION TREATY WITH THE UNITED KINGDOM

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate go into executive session to consider Treaty Document No. 99-8, the Supplementary Extradition Treaty with the United Kingdom.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The treaty will be stated.

The legislative clerk read as follows:

Treaty Document No. 99-8, Supplementary Extradition Treaty with the United Kingdom.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

1530

Mr. LUGAR. 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 treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The assistant legislative clerk read as follows:

TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Supplementary Extradition Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, with Annex, signed at Washington, June 25, 1985, subject to the following amendments:

(1) Amend article 1 to read as follows:

"For the purposes of the Extradition Treaty, none of the following shall be regarded as an offense of a political character:

(a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;

(b) murder, voluntary manslaughter, and assault causing grievous bodily harm;

(c) kidnapping, abduction, or serious unlawful detention, including taking a hostage;

(d) an offense involving the use of a bomb, grenade, rocket, firearm, letter or parcel bomb, or any incendiary device if this use endangers any person; and

(e) an attempt to commit any of the foregoing offenses or participation as an accomplice of a person who commits or attempts to commit such an offense."

(2) Amend article 2 to read as follows:

"Nothing in this Supplementary Treaty shall be interpreted as imposing the obligation to extradite if the judicial authority of the requested party determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty. The evidence of criminality must be such as, according to the law of the requested party, would justify committal for trial if the offense had been committed in the territory of the requested party.

"In determining whether an individual is extraditable from the United States, the judicial authority of the United States shall permit the individual sought to present evidence on the questions of whether:

(1) there is probable cause;

(2) a defense to extradition specified in the Extradition Treaty or this Supplementary Treaty, and within the jurisdiction of the courts, exists; and

(3) the act upon which the request for extradition is based would constitute an offense punishable under the laws of the United States.

"Probable cause means whether there is sufficient evidence to warrant a man of reasonable caution in the belief that:

(1) the person arrested or summoned to appear is the person sought;

(2) in the case of a person accused of having committed a crime, an offense has been committed by the accused; and

(3) in the case of a person alleged to have been convicted of an offense, a certificate of conviction or other evidence of conviction or criminality exists."

(3) Insert after article 2 the following new article:

"ARTICLE 3

"(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.

"(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for offenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a) shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration at every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision. In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process."

(4) Renumber the remaining articles 4, 5, 6, 7.

DECLARATION

The Senate of the United States declares that it will not give its advice and consent to any treaty that would narrow the political offense exception with a totalitarian or other non-democratic regime and that nothing in the Supplementary Treaty with the United Kingdom shall be considered a precedent by the executive branch or the Senate for other treaties.

Mr. LUGAR. Mr. President, I ask unanimous consent that second reading of the treaty be dispensed with.

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

Mr. LUGAR. Mr. President, today we begin debate on the question of whether the Senate should give its advice and consent to the ratification of the Supplementary Extradition Treaty with the United Kingdom. The Foreign Relations Committee has spent the better part of a year reviewing this treaty. In June it accepted a compromise resolution of ratification put forth by myself and the distinguished Senator from Missouri, Senator EAGLETON. The committee then voted 15-2 to recommend that the Senate consent to the ratification of the treaty with this compromise resolution.

The supplementary treaty was negotiated in order to assist both countries in the fight against terrorism. It is only one weapon in the struggle against terrorism but it is an important one. If we are serious about controlling terrorism, we must approve this treaty.

Mr. President, in the balance of my remarks I will discuss why the treaty is necessary and give an overview of the action taken by the Foreign Relations Committee. Later in this debate the distinguished Senator from Missouri [Mr. EAGLETON] will describe the committee approved compromise in more detail.

BACKGROUND

Article V of the current extradition treaty with the United Kingdom provides that extradition shall not be granted if "the offense for which extradition is requested is regarded by the requested party as one of a political character." Generally speaking, what constitutes an offense of a political character has been left to the courts to define. In the case of common crimes, such as murder or assault, courts have found them to be of a political character if: First, the act was committed during a political uprising; second, the uprising involved a group of which the accused was a member; and third, the act was incidental to the uprising. In three cases where the test has been applied, the Federal courts have denied requests by the United Kingdom for the extradition of members of the Provisional Irish Republican Army accused of committing acts of violence. Matter of Mackin; Matter of Doherty; and In re McMullen. In a fourth, a petition for certiorari, which seeks to overturn a finding of extraditability, was filed by the defendant on July 2. Quinn versus Robinson.

Mr. President, I ask unanimous consent that copies of these opinions and the petition for certiorari be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

EXHIBIT 1

[In the Matter of the Requested Extradition of Desmond MACKIN by the Government of the United Kingdom of Great Britain and Northern Ireland]

UNITED STATES OF AMERICA, PETITIONER-APPELLANT V. DESMOND MACKIN, RESPONDENT-APPELLE DESMOND MACKIN, PETITIONER GEORGE V. GRANT, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, RESPONDENT

NOS. 424, 335 AND 290, DOCKETS 81-1324, 81-3064 AND 81-3070

United States Court of Appeals, Second Circuit

Argued Oct. 30, 1981

Decided Dec. 23, 1981

United States appealed from a decision of a magistrate appointed by District Court for the Southern District of New York denying a request by the United Kingdom for the extradition of a number of the Provisional Irish Republican Army, and alternatively petitioned for mandamus relating to such decision. The Court of Appeals, Friendly, Circuit Judge, held that: (1) the decision by the magistrate to deny the extradition request was not appealable; (2) the magistrate did not exceed her jurisdiction by deciding that the offenses for which the IRA member's extradition was sought came within the political offense exception in the extradition treaty between the United States and the United Kingdom, and thus there was no basis for mandamus; and (3) the Court of Appeals had no jurisdiction to entertain the IRA member's petition for habeas corpus.

Ordered accordingly.

1. Extradition and Detainers (17)

Magistrate's decision denying extradition request made by the United Kingdom was not appealable. 18 U.S.C.A. § 3184; 28 U.S.C.A. § 1291.

2. Extradition and Detainers (9) Mandamus (61)

Magistrate did not exceed her jurisdiction by deciding that offenses for which extradition of member of the Provisional Irish Republican Army was sought by United Kingdom was a political offense under extradition treaty between United States and United Kingdom, and thus there was no basis for issuing mandamus to require magistrate to grant the extradition request. 18 U.S.C.A. § 3184; 28 U.S.C.A. § 1651.

3. Habeas Corpus (45(2))

Court of Appeals had no jurisdiction to entertain petition for habeas corpus. 28 U.S.C.A. § 2241.

Thomas H. Belote, Sp. Asst. U.S. Atty., New York City (John S. Martin, Jr., U.S. Atty. S.D. N.Y., Mark F. Pomerantz and Robert S. Litt, Asst. U.S. Attys., New York City, of counsel), for petitioner-appellant, the United States.

Keara M. O'Dempsey, New York City (Beldock, Levine & Hoffman, and Frank Durkan, O'Dwyer & Bernstein, James Gilroy, James P. Cullen, Shelia Donohue, The Brehon Law Society, New York City, of counsel), for respondent-appellee, Desmond Mackin.

Before FEINBERG, Chief Judge, and FRIENDLY and PIERCE,* Circuit Judges.

FRIENDLY, Circuit Judge:

This appeal by the United States and an alternative request by it for mandamus consolidation therewith [1] relate to a decision of United States Magistrate Naomi Reice Buchwald (the Magistrate) of the District Court for the Southern District of New York dated August 13, 1981. The decision denied a request by the Government of the United Kingdom of Great Britain and Northern Ireland for the extradition of Desmond Mackin pursuant to Article VIII of the Extradition Treaty (sometimes hereafter the Extradition Treaty or the Treaty) between the United States and the United Kingdom. The Treaty, which is the successor to the very limited provision in Article 27 of Jay's Treaty, 8 Stat. 116, 129 (1794), and Article X of the Webster-Ashburton Treaty of 1842, 8 Stat. 572, 576-77, was signed on June 8, 1972 and entered into force on January 21, 1977, 28 U.S.T. 227, T.I.A.S. 8468. After the request had been submitted to the United States through diplomatic channels, a Special Assistant United States Attorney for the Southern District of New York, acting for and on behalf of the United Kingdom, filed an appropriate complaint in the District Court for the Southern District of New York pursuant to 18 U.S.C. § 3184.[2] Mackin was arrested under authority of an order of a district judge under that statute and has been held in custody since then. The complaint was referred to the Magistrate by a judge of the District Court for the Southern District of New York pursuant to Rule 9 of that court's Magistrates Rules.

The requested extradition was based upon Mackin's indictment in Northern Ireland on charges of attempted murder, on March 16, 1978, of a British soldier, Stephen Wooton, in Andersonstown, Belfast, Northern Ireland; wounding Wooton with intent to do grievous bodily harm, contrary to Section 18 of the Offenses Against the Person Act of 1861; and possession of firearms and ammunition with intent, in contravention of Section 14 of the Firearms Act (Northern Ireland) 1969. Mackin was arrested in Northern Ireland after the incident but was released on bail and failed to appear for trial there, entered the United States illegally and was apprehended by the Immigration and Naturalization Service.[3]

After taking extensive evidence, receiving briefs and hearing argument, the Magistrate delivered a lengthy and thorough opinion. She concluded that the United Kingdom had satisfied its burden, under Article IX(1) of the Treaty, of producing evidence "sufficient according to the law of the requested Party . . . to justify the committal for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested Party . . ." with respect to the first and third of the offenses charged.[4] However, the Magistrate declined to issue the certificate to the Secretary of State provided for by 18 U.S.C. § 3184 on the ground that the offenses charged came within Article V(1)(c)(i) of the Treaty, which states:

(1) Extradition shall not be granted if:

(c)(i) the offense for which extradition is requested is regarded by the requested Party as one of a political character . . . ."

The Magistrate pointed to cases holding or indicating that the political offense exception is not limited to "purely" political offenses against a government, such as treason, sedition and espionage, but extends also to "relative" political offenses, to wit, crimes against persons or property which are incidental to a war, revolution, rebellion or political uprising at the time and site of the commission of the offense, see *Ornelas v. Ruiz*, 161 U.S. 502, 16 S.Ct. 689, 40 L.Ed. 787 (1896); *In re Castioni*, [1981] 1Q.B. 149 (1890); *In re Meunier*, [1894] 2 Q.B. 415 (1894); *In re Ezeta*, 62 F. 972, 977-1002 (N.D. Cal.1894); *Garcia-Guillern* v. *United States*, 450 F.2d 1189, 1192 (5 Cir. 1971), *cert. denied*, 405 U.S. 989, 92 S.Ct. 1251, 31 L.Ed.2d 455 (1972); *Abu Eain* v. *Wilkes*, 641 F.2d 504, 518-23 (7 Cir. 1981), *cert. denied*, —— U.S. ——, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981). She found that: (1) at the time of the offenses charged against Mackin the Provisional Irish Republican Army (PIRA) was conducting a political uprising in the portion of Belfast where the offenses were committed; (2) that Mackin was an active member of PIRA; and (3) that the offenses committed against the British soldier were incidental to Mackin's role in the PIRA's political uprising in Belfast. Accordingly, she concluded that the crimes for which Mackin was indicted were "of a political character" within the meaning of Article V(1)(c)(i) of the Treaty.

As indicated above, the United States has appealed from the Magistrate's decision to deny the request of the United Kingdom, and in the alternative has sought mandamus to require her to grant the request. In addition to challenging the Magistrate's conclusion that Mackin's crime was "of a political character", the Government contends that decision whether an offense falls within Article V(1)(c)(i) is committed exclusively to the executive branch. Mackin contends that the Magistrate's order is not appealable because it is not a final decision of a district court of the United States within 28 U.S.C. § 1291 and that this court lacks power to issue a writ of mandamus under 28 U.S.C. § 1651 because of the requirement in that section that such issuance must be "necessary or appropriate in aid of . . . [an issuing court's] jurisdiction[] and agreeable to the usages and principles of law." If a contrary view should be taken on either of these points. Mackin contends that the applicability of Article V(1)(c)(i) is a question for the judicial branch and that the Magistrate's decision on the merits of that issue was correct.

Appealability

[1] Discussion of the appealability of orders granting or denying requests for extradition must go back as far as *In re Metzger*, 46 U.S. (5 How.) 176, 12 L.Ed. 104 (1847)—a case decided just prior to enactment of the predecessor of the present extradition statute and which doubtless led to that statute's adoption, see notes 6 & 8, *infra*. Although the extradition treaty with France there at issue, 8 Stat. 580 (1848), unlike the Webster-Ashburton Treaty of the previous year with Great Britain, made no provision that the person whose extradition had been requested should be brought before a judge or magistrate "to the end that the evidence of criminality may be heard and considered", President Polk and Secretary of State Buchanan elected to submit the French Government's extradition request to Judge Betts of the District Court for the Southern District of New York, who, after a hearing, committed Metzger to custody to await the order of the President, see *In re Metzger*, 17 Fed. Cas. 232 (No. 9511) (D.C.S.D.N.Y.1847). Although the Supreme Court thought that in seeking a hearing before a judicial officer the executive had acted "very properly, as we suppose", 46 U.S. (5 How.) at 188-89, it concluded that the case "was heard and decided by the district judge at his chambers, and not in court" *id.* at 191. In that role the district judge was exercising "a special authority, and the law has made no provision for revision of his judgment. It cannot be

*When this appeal was heard, Judge Pierce was a District Judge for the Southern District of New York, sitting by designation. He was inducted as a judge of this court on November 30, 1981.

[1] Also consolidated were a petition by Mackin to this court for a writ of habeas corpus and a motion for immediate release.

[2] This provides:

Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge or a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

The statute goes back to the Act of August 12, 1848, 9 Stat. 302. It was continued as Rev. Stat. § 5270, appears as 18 U.S.C. § 651 (1940 ed.), and was codified in substantially its present form in 1948, 62 Stat. 822.

[3] Although Mackin is also subject to detention by the INS pending deportation, he has consistently indicated his willingness to be deported to the Republic of Ireland and detention pending deportation would thus be brief.

[4] The Magistrate's opinion does not specify which of the offenses that Mackin is charged with are supported by probable cause, *id.* at 20-21. However, for the purposes of this appeal the parties are in agreement that the Magistrate found probable cause existed only as to the first and third offenses. Government Brief at 7n.*; Appellee's Brief at 5.

brought before the District or Circuit Court; consequently it cannot, in the nature of an appeal, be brought before this court." *Id.* at 191-92. Since the Supreme Court thus had no appellate jurisdiction, under the most famous of constitutional decisions it likewise could not issue a writ of *habeas corpus* on Metzger's behalf. Thus the doctrine of the unappealability of extradition decisions by judges and magistrates was born.[5]

The prime purpose of the 1848 statute, 9 Stat. 302, which followed immediately on the *Metzger* decision, was to provide additional judicial officers to handle extradition requests.[6] Nothing on the face of the statute or in its legislative history shows an intention to alter the Supreme Court's ruling with respect to appealability.[7]

That question arose in *In re Kaine*, 55 U.S. (14 How.) 103, 120, 14 L.Ed. 345 (1852). Kaine was charged by the British Government with a murder in Ireland, apparently in a case having political overtones. *Id.* at 114-15. The request for extradition was made by the British Consul in New York and heard by a United States commissioner who ordered Kaine to be committed. The Circuit Court declined to issue *habeas corpus*, and Kaine sought to bring these rulings before the Supreme Court in a number of ways. Justice Curtis, concurring in a careful opinion, concluded that the Commissioner's action was unreviewable on appeal for the reason that, like the judge in *Metzger* and despite the 1848 statute, he was not exercising "any part of the judicial power of the United States", *id.* at 119; that the refusal of the Circuit Judge to issue a writ of *habeas corpus* could not be reviewed since it was not the cause of Kaine's commitment; and that the Supreme Court could not issue the writ on its own account since this would be a prohibited exercise of original jurisdiction.[8]

The decision in *Kaine* that the Act of August 12, 1848, was not intended to alter the holding in *Metzger* regarding the nonappealability of decisions granting extradition was recognized in a 1853 opinion of Attorney General Cushing to Secretary of State Marcy. The Attorney General stated, "Nor can appeal be taken from the decision of Mr. Justice Edmonds to any other court, so as to revise that decision. The judge or magistrate in this case acts by special authority under the act of Congress; no appeal is given from his decision by the act; and he does not exercise any part of what is, technically considered, the judicial power of the United States." 6 Op. Atty. Gen. 91, 96 (1853). Not long therefter, the common understanding with respect to the appealability of orders denying extradition requests was reflected in another opinion rendered by the Office of the Attorney General to Secretary of State Seward in 1863, 10 Op. Atty. Gen. 501, 506. This stated unequivocally, in response to an objection by a foreign government to a district judge's denial of extradition.

In cases of this kind, the judge or magistrate acts under special authority conferred by treaties and acts of Congress; and though his action be in form and effect judicial, it is yet not an exercise of any part of what is technically considered the judicial power of the United States. No appeal from his decision is given by the law under which he acts, and therefore no right of appeal exists. (*Ex parte Metzger*, 46 U.S. (5 How.), 176 [12 L.Ed. 104]; *U.S. v. Ferreira*, 54 U.S. (13 How.), 40-48 [14 L.Ed. 42]; in *re* Kane [sic], 55 U.S. (14 How.), 103, 119 [14 L.Ed. 345], Curtis J.) The decision of Judge Leavitt is thus beyond the reach of correction either by executive or judicial power.[9]

and suggested that the foreign government submit a new request. Further evidence of the nonappealability of orders granting extradition can be found in a Report of the Senate Judiciary Committee on the nation's extradition laws. S. Rep. No. 82, 47th Cong., 1st Sess. (1882).

The Government suggests that the basis for the nonappealability of extradition orders was altered by the creation of the courts of appeals by the Act of March 3, 1891, 26 Stat. 826, since these courts are not subject to the constitutional limitations confining them to appellate jurisdiction which played a part in the *Metzger* decision and in Justice Curtis' opinion in *Kaine*. This, however, relates to the ability of the courts of appeals to exercise original jurisdiction over petitions for writs of *habeas corpus*, and not to the appealability of decisions under § 3184. It is thus not surprising that courts at every level have continued to state that decisions, even when made by district courts, denying or granting requests for extradition are not appealable under 28 U.S.C. § 1291. *Collins* v *Miller*, 252 U.S. 364, 369, 40 S.Ct. 347, 349, 64 L.Ed. 616 (1920); *Caplan* v. *Vokes*, 649 F.2d 1336, 1340 (9 Cir. 1981); *Abu Eain* v. *Wilkes*, 641 F.2d 504, 508 (7 Cir. 1981), *cert, denied*, ——U.S. ——, 102 S. Ct. 390, 70 L.Ed.2d 208 (1981); *Antumes* v. *Vance*, 640 F.2d 3, 4 n.3 (4 Cir. 1981); *Matter of Assarsson*, 635 F.2d 1237, 1240 (7 Cir. 1980), *cert. denied*, 451 U.S. 938, 101 S.Ct. 2017, 68 L.Ed.2d 325 (1981): *Gusikoff* v. *United States*, 620 F.2d 459, 461 (5 Cir. 1980); *Brauch* v. *Raiche*, 618 F.2d 843, 847 (1 Cir. 1980); *Hooker* v. *Klein*, 573 F.2d 1360, 1364 (9 Cir.), *cert. denied*, 439 U.S. 932, 99 S.Ct., 323, 58 L.Ed.2d 327 (1978); *Jhirad* v. *Ferrandina*, 536 F.2d 478, 482 (2 Cir.), *cert. denied*, 429 U.S. 833, 97 S.Ct. 97, 50 L.Ed.2d 98 (1976); *Greci* v. *Birknes*, 527 F.2d 956, 958 (1 Cir. 1976); *United States ex rel Sakaguchi* v. *Kaulukukui*, 520 F.2d 726, 729-30 (9 Cir. 1975); *Shapiro* v. *Ferrandina*, 478 F.2d 894, 901 (2 Cir.), *cert. dismissed*, 414 U.S. 884, 94 S. Ct. 204, 38 L.Ed.2d 133 (1973); *Sayne* v. *Shipley*, 418 F.2d 679, 685 (5 Cir. 1969), *cert. denied*, 398 U.S. 903, 90 S.Ct. 1688, 26 L.Ed.2d 61 (1970); *Wacker* v. *Bisson*, 348 F.2d 602, 607 (5 Cir. 1965); *Jimenez* v. *Aristeguieta*, 290 F.2d 106, 107 (5 Cir. 1961). To quote from the most notable example, Justice Brandeis said in *Collins v. Miller, supra*, 252 U.S. at 369, 40 S.Ct. at 349, that "the proceeding before a committing magistrate in international extradition is not subject to correction by appeal".[10] Although none of the cases cited above squarely holds that an order denying a request for extradition is not appealable, these statements are not merely dicta, as the Government argues. Along with their statements as to the nonappealability of orders granting or denying extradition requests, courts have made clear that the extraditee in cases of grant and the requesting party in cases of denial have alternative, albeit less effective avenues of relief. The extraditee may seek a writ of *habeas corpus*, the denial or grant of which is appealable, see note 8, *supra*, and the requesting party may refile the extradition request. *Collins v. Loisel*, 262 U.S. 426, 43 S.Ct. 618, 67 L.Ed. 1062 (1923); *Hooker v. Klein, supra*, 573 F.2d at 1365-66; *in re Gon-*

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[5] Metzger turned out to have the last laugh, see Swisher, History of the Supreme Court—the Taney Period 1836-64, 179-80 (1974).

[6] The principal purpose of the bill as stated by Representative Ingersoll was "to enlarge the facilities to comply with our obligations" under extradition treaties. "It often happened that an individual came to this country where the crime was obvious, and the application for the fugitive regular; but there was no such officers in the part of the country where the fugitive was found as were authorized or were willing to take on themselves the burden and the weighty responsibility of issuing a warrant to arrest and to take the preliminary proceedings toward handing over the individual to the properly authorized officer. The object of this bill was to appoint officers and to authorize others to carry out the provisions of the treaties with France and England, at all times without delay and the denial of justice. It provided for the appointment of commissioners, or authorized the courts of the United States to appoint commissioners to take the preliminary steps, and to procure the authority of the Secretary of State, to whom the treaties give authority to deliver up fugitives to foreign countries, for the accomplishment of the desired object." Cong. Globe, June 23, 1848.

[7] During the floor debates of the proposed extradition act Senator Dayton referred to the Supreme Court's decision in the *Metzger* case, but did not intimate that the bill would alter the result of that case. Cong. Globe, July 28, 1848.

[8] The majority, speaking through Justice Catron, was at pains to make clear that its refusal of *habeas corpus* was on the merits, 55 U.S. (14 How.) at 117-18, without deigning to answer the jurisdictional problems developed by Justice Curtis. However, the stress laid by the majority on the need for employing magistrates "to issue the warrant, cause the arrest and adjudge the criminality", particularly in the case of criminals fleeing from Canada and caught "in hot pursuit" without any need of transmission of an extradition request through diplomatic channels in Washington since otherwise "in the entire range of country, west of the Rocky mountains, and for more than five hundred miles on this side of it, throughout the great western plains, no arrests could be made, nor would they be attempted", suggests agreement with Justice curtis that a magistrate's action under the 1848 was not within the judicial power of the United States.

Justice Nelson's lengthly dissent, joined by Chief Justice Taney and Justice Daniel, apparently predicated jurisdiction on the Circuit Court's refusal to issue a writ of *habeas corpus;* he thought that decision to be "a proper subject to review by this court, by virtue of the writ of habeas corpus." 55 U.S. (14 How.) at 148. On the merits he held that the request must be presented through diplomatic channels and that the Commissioner had no power to act because he had not been specially authorized to do so by a court of the United States.

Again the extraditee had the last laugh. Justice Nelson, sitting as Circut Judge, later ordered Kaine's release on the grounds, *inter alia*, that there had been insufficient evidence of Kaine's criminality. *Ex parte Kaine*, 14 Fed. Cas. 78 (No. 7597) (C.C.S.D.N.Y.1853).

The Act of February 5, 1867, 14 Stat. 385 ultimately vindicated Justice Nelson's position on *habeas corpus* appealability by providing for an appeal from final decisions of the circuit courts on petitions for *hebeas corpus. See Benson v. MacMahon*, 127 U.S. 457, 8 S.Ct. 1240, 32 L.Ed. 234 (1888); *In re Luis Oteiza cortes*, 136 U.S. 330, 10 S.Ct. 1031, 34 L.Ed. 464 (1890).

[9] In *United States v. Ferreira*, 54 United States (13 How.) 40, 14 L.Ed. 42 (1851)), the Court had held that a United States District Judge, acting on a claim arising under the treaty with Spain for the cession of Florida, was not exercising the judicial power of the United States and that an appeal from his decision to the Supreme Court would not lie.

It is notable that the citation of *In re Kaine, supra*, in the Attorney General's opinions was to Justice Curtis' concurring opinion, which the Department of Justice evidently regarded as embodying the correct view. 6 Op. Atty. Gen. 91, 96, 10 Op. Atty. Gen. 501, 506.

[10] Under English law, an extraditing magistrate's decision denying extradition has been held unappealable. *Atkinson v. United States of America Government*, [1971] AC 197 at 213, [1969] 3 ALL ER 1317, HL. Lord Reid was of the view that this was "settled law" reaching back to the early 19th century, *id.* at 1324.

zalez, 217 F.Supp. 717 (S.D.N.Y.1963): *Ex parte Schorer*, 195 F. 334 (E.D.Wis. 1912). Both these remedies are inconsistent with the notion that the original orders were appealable. If the grant of a request were appealable, *habeas corpus* would not lie since that writ cannot be used as a substitute for an appeal. *Stone v. Powell*, 428 U.S. 465, 477 n.10, 96 S.Ct. 3037, 3044 n.10, 49 L.Ed.2d 1067 (1976); *Sunal v. Large*, 332 U.S. 174, 178-79, 67 S.Ct. 1588, 1590-91, 91 L.Ed. 1982 (1947). If denial of a request were appealable, a second request would ordinarily be defeated by the principle of *res judicata*. See *Hooker v. Klein, supra*, 573 F.2d at 1367-68.

Despite the Government's argument in this case, the general belief with respect to the unappealability of extradition orders has been very recently shared by the Department of Justice and the Department of State. On September 19, 1981, Senator Thurmond, along with several colleagues, introduced "a bill developed over the past 2 years in close cooperation with the Department of Justice and the Department of State to modernize the extradition laws of the United States." 127 Cong. Rec. S9952. Among many other features, the proposed Extradition Act of 1981 confines to the Attorney General the right to file a complaint charging that a person is extraditable to a foreign country, § 3192(a), provides that this may be done only in a United States district court, *id.*, directs that the court certify to the Secretary of State its findings with respect to extraditability, § 3194(e), provides for appeals of such findings to the appropriate United States court of appeals, § 3195(a), and limits the extraditee's rights to seek review by other means, § 3195(c). Secretary of State Haig expressed the particular pleasure of the Department over several provisions of the bill, including one "which for the first time permit[s] appeal from a district court's decision on an extradition request (section 3195)", 127 Cong. Rec. S9953. A legal memorandum accompanying the proposed bill stated in unequivocal terms, 127 Cong. Rec. S9957:

"Under present Federal law, there is no direct appeal from a judicial officer's finding in an extradition hearing. A person found extraditable may only seek collateral review of the finding, usually through an application for a writ of habeas corpus. The foreign government that is dissatisfied with the results of the hearing must institute a new request for extradition. The lack of direct appeal in extradition matters adds undesirable delay, expense, and complication to a process which should be simple and expeditious." (Footnotes omitted)

At a hearing held on October 14, 1981, before the Senate Judiciary Committee, Michael Abbell, Director, Office of International Affairs, Criminal Division, Department of Justice, praised the bill because, among other things

"It permits both a fugitive and the United States, on behalf of the requesting country, to directly appeal adverse decisions by an extradition court. Under present law a fugitive can only attack an adverse decision through habeas corpus, and the only option available to the United States, on behalf of a requesting country, is to refile the extradition complaint."

Daniel W. McGovern, Deputy Legal Adviser of the Department of State, said

"Under present law there is no direct appeal from a judicial officer's finding in an extradition proceeding. A person found extraditable may only seek collateral review of the finding, usually through an application for a writ of habeas corpus. The foreign government that is dissatisfied with the results of the hearing must institute a new request for extradition. The lack of direct appeal in extradition matters adds undesirable delay, expense and complication to a process which should be simple and expeditious. Section 3195 [of the proposed bill] remedies this defeat in current procedure by permitting either party in an extradition case to appeal directly to the appropriate United States court of appeals from a judge or magistrate's decision."

It is true, of course, that efforts by the Government to resolve an ambiguity in legislation in its favor should not preclude it from arguing, if the efforts have not yet succeeded, that the legislation should be construed in the manner which it asked Congress to make clear. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 47, 70 S.Ct. 445, 452, 94 L.Ed. 616 (1950); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 169-70, 88 S.Ct. 1994, 2000-2001, 20 L.Ed.2d 1001 (1968); Sands, 2A Sutherland Statutory Construction § 49.10 at 261 (1973). But here the executive branch did not tell Congress that the law was uncertain and would benefit from clarification; it said flatly that the law was the exact opposite from what it contends in this case and that the law needed to be changed. Beyond this, and apart from the massive authority we have cited, what the Government told Congress was right and what it argues to us is wrong.

The only conceivable basis for appellate jurisdiction over orders granting or denying extradition is section 1291 to Title 28 which authorizes appeals to the courts of appeals from "fiscal decisions of the district *courts* of the United States". In contrast § 3184 proceedings are to be conducted by "any *justice* or *judge* of the United States, or any *magistrate* authorized so to do by courts of the United States or any *judge* of a court of record of general jurisdiction of any State". Decisions have noted the difference between § 3184's references to "judges", "justices", and "magistrates" and 1291's reference to "district courts". *Jimenez v. Aristeguieta*, 290 F.2d 106, 107 (5 Cir. 1961); *Shapiro v. Ferrandina*, 478 F.2d 894, 901 (2 Cir.), *cert. dismissed*, 414 U.S. 884, 94 S.Ct. 204, 38 L.Ed.2d 133 (1973). Even when the decision to grant or deny is by a district judge, this still is not a decision of a district court within 28 U.S.C. § 1291. See *Jimenez v. Aristeguieta, supra*, 290 F.2d at 107. Although the distinction was criticized by the dissenting judge in that case, it goes back to the Supreme Court's 1847 decision in *In re Metzger, supra*, and we approved of it in *Shapiro v. Ferrandina, supra*, 478 F.2d at 901 & n.3. It is even clearer that the decision of a magistrate is not a final decision of a district court; when Congress has desired to permit an appeal from a decision of a magistrate directly to a court of appeals, it has said so. 28 U.S.C. § 636(c)(3). There is still greater difficulty in considering the decision of a state judge to be a final decision of a district court. Yet it would be curious if such decisions were nonappealable whereas the decision of a United States judge or magistrate was.[11]

There are similar problems in reading 28 U.S.C. § 1291 to include the decision of a judge of a court of appeals or a justice of the Supreme Court. It is instructive, in this regard, to examine the statutory provisions applicable to writs of *habeas corpus*, 28 U.S.C. §§ 2241-55. Section 2241 provides, *inter alia*, that writs of *habeas corpus* may be granted by "any circuit *judge*". Evidently fearing that, without more, the action of a circuit judge would not be reviewable, Congress provided in § 2253 for an appeal from the decision of circuit judge pursuant to § 2241: "In a *habeas corpus* proceeeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is held." Congress' failure to adopt a similar statutory provision with respect to an extradition order of a circuit judge under 18 U.S.C. § 3184 is evidence that it did not intend such a decision to be appealable to a court of appeals. Yet the Government has suggested no rational basis for a state of the law wherein an extradition decision of a United States district judge or magistrate would be appealable but that of a United States circuit judge would not be. When we add these considerations to the historical background of 18 U.S.C. § 3184 and the many decisions we have cited,[12] we think it clear that no appeal lies under 28 U.S.C. § 1291 from the Magistrate's decision here.[13]

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[11] The Government suggested at argument that such a decision might be appealable through the hierarchy of state courts and would ultimately be reviewable by the Supreme Court under 28 U.S.C. § 1257. We find nothing in the long history of international extradition in the United States which suggests that Congress intended state courts to have a role beyond the initial commitment proceedings; the sparsity of federal judges and commissioners in 1847 doubtless made that limited resort necessary, see note 6, *supra*. The parties cited us no state court case dealing with extradition under § 3184, and our research has found none more recent than the mid-19th century. In saying this we are aware that in naturalization cases where 8 U.S.C. § 1421 vests jurisdiction in both the district courts and "all courts of record in any State of Territory", 8 U.S.C. § 1421, courts of appeals have routinely heard appeals from district court naturalization decisions, e.g., *Jubran v. United States*, 255 F.2d 81 (5 Cir. 1958); *Taylor v. United States*, 231 F.2d 856 (5 Cir. 1956); *Hing Lowe v. United States*, 230 F.2d 664 (9 Cir. 1956); *Brukiewicz v. Savoretti*, 211 F.2d 541 (5 Cir. 1954); *Ralich v. United States*, 185 F.2d 784 (8 Cir. 1950); *Marcantonio v. United States*, 185 F.2d 934 (4 Cir. 1950), whereas appeals from state court decisions proceed through the state systems. In *re Ramadass*, 455 Pa. 86, 284 A.2d 133 (1971) (and cases cited therein); *In re Marque's Petition*, 341 Mass. 715, 172 N.E.2d 262 (1961); *Calo v. United States*, 400 Ill. 329, 79 N.E.2d 619 (1948); *In re Bogunovic*, 18 Cal.2d 160, 114 P.2d 581 (1941). However, extradition has international aspects far more serious than naturalization. Moreover, the naturalization decisions occur in a statutory framework that differs in an important respect from that governing extradition. Section 1421 of Title 8 vests "the district *courts*" with jurisidiction over naturalization proceedings, and thus, there is little question but that § 1291—which permits appeal from "*all*" final decisions of the "district courts"—is applicable. In contrast, as noted above, § 3184 vests individual judges with jurisdiction over extradition requests.

[12] The Government relies heavily on the decision in *Application of United States*, 563 F.2d 6376, 641 (4 Cir. 1977), upholding § 1291 jurisdiction over a district court's denial of an application under 18 U.S.C. § 2518 for interception of wire or oral communications, enacted as part of the Omnibus Crime Control and Safe Streets Act of 1968, which can be made to any "judge of competent jurisdiction", with successive applications also a possibility, § 2518(1)(e), as in the case of extradition. Such orders lack the long history of nonappealability of those in extradition proceedings. Consequently we have no occasion to consider whether the court was correct in finding § 1291 jurisdiction.

[13] The Magistrate suggested that an order upholding the political offense exception might be appealable whereas orders denying extradition for lack of sufficient evidence of probable cause were not, since the latter were akin to a preliminary

Mandamus

[2] The Government's alternative petition for mandamus under 28 U.S.C. § 1651 encounters, as an initial obstacle, the argument that issuance of the writ is not "necessary or appropriate in aid" [14] of our jurisdiction since the Magistrate's decision is unappealable and we thus have no jurisdiction to aid. The Government replies, in part, that if we were to issue the writ and require the Magistrate to grant extradition, such a grant would almost certainly become the subject of a *habeas corpus* proceeding in the district court and its order in such a proceeding would be reviewable here under 28 U.S.C. § 2253. Compare *Ex parte United States*, 287 U.S. 241, 53 S.Ct. 129, 77 L.Ed. 283 (1932) (Supreme Court has power to grant mandamus requiring a district court to issue a bench warrant for the arrest of an indicted defendant since a conviction would be reviewable by a court of appeals and, on *certiorari*, by the Supreme Court.)

We have considered somewhat similar questions in *United States v. Dooling*, 2nd Cir., 406 F.2d 192, 197, *cert. denied*, 395 U.S. 911, 89 S.Ct. 1744, 23 L.Ed.2d 224 (1969) and *United States v. Weinstein*, 2d Cir., 452 F.2d 704, 708-13 (1971), *cert. denied*, 406 U.S. 917, 92 S.Ct. 1766, 32 L.Ed.2d 116 (1972). In *Dooling* we issued a writ to compel a district judge to sentence convicted defendants rather than to pursue a course, indicated by him, of dismissing the indictment upon grounds which were in part considered and rejected without leave to renew before trial by another district judge. We considered it not to be a fatal obstacle to issuance of the writ that the Government might not have been able to appeal if the judge had proceeded as he had intended, 406 F.2d at 198. In *Weinstein* we issued mandamus requiring a district judge to vacate an order dismissing an indictment after having entered a judgment of conviction although the Government could not have appealed under then existing law and the defendant obviously would not. We concluded "that the phrase 'in aid of their respective jurisdictions' should not be read so as to prohibit [the courts of appeals] . . . from vacating orders, in actions generally subject to their supervision, that were beyond the power of the lower court to make, even though in the particular case there was no frustration of an appeal." 452 F.2d at 711. Quite recently the Third Circuit has upheld its power to issue a writ of mandamus to consider whether the District Court of the Virgin Islands lacked, as it thought, legal authority to convene an investigatory grand jury although no case arising from action of the putative grand jury was or, in the nature of things, could be before the court. *United States v. Christian*, 3rd Cir., 660 F.2d 892. We thus assume, at least *arguendo*, that mandamus could issue here if other tests with respect to that extraordinary remedy were met.[15]

We have discussed the standards governing issuance of the writ in a number of recent cases, e.g., *American Express Warehousing, Ltd. v. Transamerica Insurance Co.*, 380 F.2d 277, 280-82 (2nd Cir. 1967); *Investment Properties International, Ltd. v. IOS, Ltd.*, 459 F.2d 705, 707 (2nd Cir. 1972); *Kaufman v. Edelstein*, 539 F.2d 811, 816-19 (2nd Cir. 1976); *National Super Spuds, Inc. v. New York Mercantile Exchange*, 591 F.2d 174, 181 (2nd Cir. 1979); and *In re Attorney General of the United States*, 596 F.2d 58 (2nd Cir. 1979). While some of these cases granted the writ and others denied it, all the opinions agree that mandamus is reserved for "exceptional cases," whatever that may mean, and, more informatively, that "the touchstones are usurpation of power, clear abuse of discretion and the presence of an issue of first impression." *American Express Warehousing, supra*, 380 F.2d at 283.

The only issue here raised by the Government which might qualify under these standards is its claim that the Magistrate exceeded her jurisdiction by deciding whether the offenses for which Mackin's extradition was sought came within Article V(1)(c)(i) of the Treaty rather than deferring that decision to the executive branch. If she was correct in rejecting that contention, the case would not be appropriate for mandamus since there was nothing any more "extraordinary" in her decisions as to conditions in Northern Ireland in 1978 or as to the nexus between the offenses and what she found those conditions to be than there would be in any extradition case where the political offense exception was advanced[16] and, whether right or wrong, she clearly did not abuse her discretion in deciding as she did. We will now consider whether the Magistrate's decision of the jurisdictional issue was correct.

The Magistrate's jurisdiction to decide the political offense question

The Government's argument that the Magistrate had no jurisdiction to decide the political offense question begins with the language of the Treaty. Article V(1)(c)(i) speaks of an offense which "is regarded by the requested Party as one of a political character." As a matter of the ordinary meaning of language, "the requested Party" would seem in this case to be the Government of the United States, represented, as is uniformly true in matters of foreign relations, by the President, *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-20, 57 S.Ct. 216, 220-21, 81 L.Ed. 255 (1936); L. Henkin, Foreign Affairs and the Constitution 45-50, 93 (1972), and not by a judicial officer. The Government asserts that this construction is reinforced by other provisions of the Treaty, notably Articles XIV(1) and XI(1), where it claims the term "requested Party" must mean the Government of the United States and not the courts.[17] It tells us further that the phrase "regarded by the requested Party as one of a political nature" represents a change from the language of older treaties and argues that by calling for the subjective opinion of the requested Party, the Treaty thus refers to the Secretary of State.

The Government's argument ignores the fact that the "new" language or an equivalent has been used in United States treaties at least since the turn of the century. The Extradition Treaty with Peru, 31 Stat. 1921 (1900), at issue in *Garcia-Guillern v. United States, supra*, 450 F.2d 1189, contained a provision stating "[i]f any question shall arise as to whether a case comes within . . . [the political offense exception] the decision of the authorities of the government on which the demand for surrender is made . . . shall be final." Identical language was contained in a 1901 treaty with Servia, 32 Stat. 1890, Art. VI. If anything, reference to the "authorities" of the United States Government is more suggestive of the executive branch than is the broader phrase, "requested Party", at issue in this case, thus undercutting the Government's theory that the "requested Party" language was intended to change existing law. Moreover, the phrase "requested Party" was used in the 1963 Extradition Treaty with Israel, 14 U.S.T. 1707, Art. VI(4), as to which the Seventh Circuit has rejected an argument by the Government similar to that here considered, see *Abu Eain v. Wilkes, supra*, 641 F.2d at 517. See also Extradition Treaty with Brazil, 15 U.S.T. 2093 (1961).

The Government's textual argument also ignores the existence of numerous treaties whose language explicitly envisions that courts will decide the political offense question. For example, a 1932 extradition treaty with Greece provides that "[t]he State applied to, or courts of such State, shall decide

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hearing or a refusal of a grand jury to indict, in both of which circumstances the Government's remedy is to try again. In contrast, a ruling on the political offense exception is more like a judicial one applying law to the facts. We find nothing in the statutory language or the cases to support this distinction. Beyond this. If the Government were allowed to appeal the Magistrate's adverse finding with respect to the political offense exception, it would be hard to deny Mackin a cross-appeal from her finding of probable cause.

[14] The words "or appropriate" were added, apparently without explanation, in the revision of 1948. *Compare* Judiciary Act of 1789, § 13 & 14, 1 Stat. 80-82; Judicial Code of 1911, § 262, 36 Stat. 1162; and 28 U.S.C. § 1651. See 28 U.S.C. § 1651 Historical and Revision Notes.

[15] One reason for our assuming this only *arguendo* stems from our discussion with regard to appealability. If the Magistrate was not in fact exercising the judicial power of the United States, query whether a writ of mandamus can be issued to her by a court of appeals under 28 U.S.C. § 1651, contrast 28 U.S.C. § 1361.

[16] It is noteworthy that, despite the claims in the Government's brief, at 25-26, that a failure to obtain the extradition of Mackin would have "the potential for causing a significant interference in our relations with the United Kingdom", no affidavits from State Department or other Government officials attesting to this danger were submitted to the Magistrate, as was done in *In re Attorney General, supra*, 596 F.2d at 64 (affidavit of the Attorney General that "the failure to recognize the privilege would adversely affect the entire law enforcement and intelligence-gathering apparatus of the United States.")

[17] Article XI(1) of the treaty provides that "[t]he requested Party shall promptly communicate to the requesting Party through the diplomatic channel the decision on the request for extradition." This provision hardly establishes that "requested Party" "can refer only to the Government (i.e., the State Department)", as the Government's brief asserts, p. 28. The term "requested Party" is most naturally interpreted as a reference to the government of the United States or Great Britain, as the case may be, without any intent to refer to particular branch of those governments. The separate reference to "the diplomatic channel" would be unnecessary if "requested Party" did in fact mean the State Department.

Article XIV(1) of the treaty provides "[t]he requested Party shall make all necessary arrangements for and meet the cost of the representation of the requesting Party in any proceedings arising out of a request for extradition." It does this provision no violence to read it as fixing the international legal obligations of the United States and Great Britain without speaking to the manner in which each nation goes about meeting these obligations as a domestic matter.

Against this Mackin argues that the Government's equation of "the requested Party" with the executive branch does not fit Article V(2) which provides that extradition may be refused on any ground specified by "the law of the requested Party". This same argument applies to the numerous references in the treaty to "the territory of the requested Party", e.g., Arts. VI, VII, VIII, and IX. Likewise, Article VII(5)(a) speaks of certification of arrest warrants by "a judge, magistrate or other competent authority of the requesting Party", a usage inconsistent with the notion that "requested Party" refers specifically to the executive branch.

whether the crime or offense is of a political character", 47 Stat. 2185. See also Treaty Concerning the Mutual Extradition of Criminals with Czechoslovakia, 44 Stat. 2367 (1925); Treaty of Extradition with Albania, 49 Stat. 3313 (1935); Treaty for the Extradition of Fugitives from Justice with Austria, 46 Stat. 2779 (1930). The Government has suggested no reason, and we are unable to envision any, why courts should determine political offense questions under some treaties, but not under others. If the State Department had wanted to change the rule reflected in the above treaties and in the cases cited *infra*, it would hardly have done so on a piecemeal basis in treaties with individual foreign states and without disclosing its intention to the Senate.[18] Rather it would have adopted the more open and decisive approach of seeking legislation, as it is currently attempting to do, see p. 137, *infra*. It seems much more likely that the language was intended to preclude a foreign state from arguing that the United States was bound by a definition of political offense derived from international law or the law of the requesting state.

The Government seeks to buttress its textual argument with arguments of policy and analogy. It calls attention to decisions that determination whether a case falls within the exception provided by Article V(i)(c)(ii), to wit, that "the person sought proves that the request for his extradition has in fact been made with a view to try or punish him for an offense of a political character" lies solely with the executive branch. See *In re Lincoln*, 228 F. 70, 73-74 (E.D.N.Y.1915), *aff'd per curiam*, 241 U.S. 651, 36 S.Ct. 721, 60 L.Ed. 1222 (1916); *Garcia-Guillern v. United States*, *supra*, 450 F.2d at 1192; *In re Gonzalez*, 217 F.Supp. 717, 722 (S.D.N.Y.1963). Recognizing the latter principle, the Seventh Circuit in *Abu Eain*, *supra*. 641 F.2d at 516-17, perceived no inconsistency between confiding to the courts a decision with respect to past facts and refusing to allow them to probe the motives of a requesting government—a conclusion with which we agree. The Government notes that a judicial decision on the political offense exception may cause difficulties in this country's foreign relations; such difficulties would exist also, indeed might be heightened, if decision were placed solely in the executive branch, unless the political offense exception were to be eviscerated in practice in the case of extradition treaties with nations with which we are allied or whose favor we especially desire. See also I. A. Shearer, Extradition in International Law 197-98 (1971). The Government relies on cases such as *The Three Friends*, 166 U.S. 1, 17 S.Ct. 495, 41 L.Ed. 897 (1897), and *Underhill v. Hernandez*, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897), holding that determination when a state of war or belligerency exists in a foreign country is solely for the executive; these are adequately distinguished in the Seventh Circuit's opinion in *Abu Eain*, 641 F.2d at 514 n.14. That court likewise sufficiently answered, *id.* at 514-15, the arguments made here by the Government, on the basis of *United States v. Curtiss-Wright Export Corp.*, *supra*, and *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 33 U.S. 103, 111, 68 S.Ct. 431, 436, 92 L.Ed. 568 (1948), as to the special ability of the executive branch to acquire the facts with respect to conditions in foreign countries.

Moreover, whatever we might decide if we were writing on a clean slate, the rock on which the Government's arguments shatter is the long-standing recognition that courts shall determine whether a particular offense comes within the political offense exception. This principle was in existence at least as long ago as when *In re Kaine*, *supra*, was decided in 1852. Four years after enactment of the Act of August 12, 1848, Justice Catron, speaking for four members of the Supreme Court, wrote that "extradition without an unbiased hearing before an independent judiciary . . . [is] highly dangerous to liberty, and ought never to be allowd in this country", *In re Kaine*, *supra*, 55, U.S. (14 How.) at 113. Although this statement is directed at extradition proceedings in general and not specifically at the political offense issue, Justice Catron's opinion gives no indication that the political offense issue ought to be treated differently from other issues at the extradition hearing. More importantly, an example cited by Justice Catron, relating to the alleged mistreatment of one Jonathan Robbins, suggests that the members of the Court joining in his opinion were of the view that "an unbiased hearing before an independent judiciary" was particularly necessary in cases where the political offense exception is at issue.

In 1799 Jonathan Robbins (also variously referred to as Thomas Nash and Nathan Robbins) was surrendered by the United States to British naval officials, pursuant to Article 27 of Jay's Treaty. The British sought Robbins' extradition for a murder allegedly committed aboard a British naval vessel. Jay's Treaty contained no provision regarding the procedure to be followed in extradition cases, and at the time there was no legislation on the subject. Believing he had a relatively free hand, President Adams arranged the delivery of Robbins by instructing District Judge Bee of South Carolina to hand the extraditee over to the British. Adams' action caused an extraordinary national outcry. See, e.g., 10 Annals of Congress 580-640 (1800). As Professor Moore notes, "[t]he case created great excitement, and was one of the causes of the overthrow of John Adams' administration." 1 Moore, Extradition 550-51 (1922); see also *In re Kaine*, 55 U.S. (14 How.) at 111-12. The outcry against Adams' action seems to have arisen, in large part, from the widespread perception that Robbins was an American seaman who had been impressed into the British navy and that the murder for which he was charged had occurred either in the course of a mutiny or while fleeing from the British in an escape attempt. See Speech of John Marshall, 10 Annals of Congress 613 (1800), reprinted in, 18 U.S. at 5 Wheat, App. 201, 204-05, 215 (1820). Robbins' supporters apparently conceded that he had committed a murder, yet argued that a murder committed in fleeing from illegal impressment should not be extraditable.

Although the term "political offense" was not current at the time, and apparently was not used in the debates surrounding the Robbins case, 10 Annals of Congress 580-640 (1800), the argument made on Robbins' behalf bears many resemblances to the political offense doctrine. In both instances an otherwise extraditable crime is thought to be rendered nonextraditable by the circumstances surrounding its commission and by the motives of the criminal. Significantly, in later years the Robbins case came to be regarded as centering on the political offense question. As Justice Nelson wrote in *Ex parte Kaine*, 14 Fed. Cas. 78, 81 (No. 7597) (C.C.S.D.N.Y.) (1853), "It was the apprehension of the people of this country, at the time, that the offense of Jonathan Robbins, who was delivered up under the treaty with Great Britain of 1794, was a political offense. . . ."

The circumstances of the Robbins case described above assume importance because, as Justice Catron noted in *In re Kaine*, *supra*, "[t]hat the eventful history of Robbins' case had a controlling influence on our distinguished negotiator [Daniel Webster], when the Treaty of 1842 was made; and especially on Congress, when it passed the Act of 1848, is, as I suppose, free from doubt." 55 U.S. (14 How.) at 112. With the Robbins case thus firmly in the legislature's mind, it is difficult to avoid the conclusion that when Congress charged commissioners and judges with determining whether evidence exists to "sustain [a] charge under the provisions of . . . [a] treaty", 9 Stat. 302, sec. 1, it had no intention of silently excepting the political offense issue from the magistrates' consideration. Rather, the combination of the view that the Robbins case involved the political offense question, and the perception that extradition without judicial oversight was "highly dangerous to liberty and ought never to be allowed in this country", *In re Kaine*, *supra*, 55 U.S. (14 How.) at 113, strongly suggests that it was precisely the political offense question that was of the greatest concern to Congress in passing the Act of August 12, 1848. This view is buttressed by the references to the political offense issue in the debates on the act, see Cong. Globe, July 28, 1848 (remarks of Mr. King and Mr. Bedger).

We recognize that Justice Nelson's later opinion as a Circuit Judge in *Ex parte Kaine*, *supra*, 14 Fed.Cas. at 81, contained language suggesting that decisions concerning the political offense exception are solely for the executive branch. Justice Nelson wrote "the surrender, in such cases, involves a political question, which must be decided by the political, and not by the judicial, powers of the government. It is a general principle, as it respects political questions concerning foreign governments, that the judiciary follows the determination of the political power, which has charge of its foreign relations, and is, therefore, presumed to best understand what is fit and proper for the interest and honor of the country." We think Justice Nelson misunderstood the import of the Robbins incident, and that Justice Catron's view of the mistrust of exclusion of the judiciary from the extradition process is a far sounder interpretation of the views of the times. Moreover, this view is more consistent with the concern with individual liberties that formed the basis for Justice Nelson's dissenting opinion in *In re Kaine*, *supra*, 55 U.S. (14 How.) at 141-42, 147. If there is to be a change in this, the alteration should come from Congress.

The doctrine that decisions with respect to the political offense exception is for the courts was also recognized in *In re Castioni*, *supra*, [1891] 1 Q.B. 149, although, as the Government points out, there was no need to address the question there since the British Extradition Act of 1870 provided a defense to any person who could "prove to the satisfaction of the . . . magistrate or the Court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact

[18] As far as we are aware, following Justice Nelson's opinion in *Ex parte Kaine*, *supra*, the argument that the "requested party" language made the political offense decision solely for the executive branch was not made again until 1980 in *Abu Eain*, *supra*.

been made with a view to try or punish him for an offense of a political character." 33 & 34 Vict., c. 52, § 3(1). In *In re Ezeta*, 62 F. 972 (N.D.Calif.1894), the court assumed that it had power to determine whether the offense was political. It evidently regarded this as part of its duty, imposed by 18 U.S.C. § 3184, to hear and consider the evidence of criminality and to determine whether there is evidence "to sustain the charge under the provisions of the treaty". In *Ornelas v. Ruiz*, 161 U.S. 502, 16 S.Ct. 689, 40 L.Ed 787 (1896), the Supreme Court reversed a ruling by a district judge discharging, as a political offender, a person whom a magistrate had found not to be one; the Court expressed no disapproval at the magistrate's having decided the question, although saying, *id.* at 512, 16 S.Ct. at 692, that "[t]he contention that the right of the executive authority to determine what offenses charged are or are not purely political is exclusive is not involved in any degree." The principle that the judicial officers named in § 3184 are to determine whether or not the crime charged is a political offense has been sustained in a number of other reported cases, *Jimenez* v. *Aristeguieta*, 311 F.2d 547 (5 Cir. 1962), *cert. denied*, 373 U.S. 914, 83 S.Ct. 1302, 10 L.ED.2d 415 (1963); *Garcia-Gullern* v. *United States*, 450 F.2d 1189 (5 Cir. 1962); *Shapiro* v. *Ferrandina*, 478 F.2d 894 (2 Cir.), *cert. dismissed*, 414 U.S. 884, 94 S.Ct. 204, 38 L.Ed.2d 133 (1973); *Jhirad* v. *Ferrandina*, 536 F.2d 478 (2 Cir.), *cert. denied*, 429 U.S. 833, 97 S.Ct. 97, 50 L.Ed.2d 98 (1976); *Abu Eain* v. *Wilkes*, 641 F.2d 504 (7 Cir. 1981), *cert. denied*,——U.S.——, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981); *In re Lincoln*, 228 F.70, 74 (S.D.N.Y.1915) (dicta); *United States ex rel. Karadzole* v. *Artukovic*, 170 F.Supp. 383 (S.D.Cal.1959); *Ramos* v. *Diaz*, 179 F.Supp. 459 (S.D.Fla.1959); *In re Gonzales*, 217 F.Supp. 717 (S.D.N.Y.1963), although only *Abu Eain* and *In re Lincoln* contain discussion of the issues.

One reason for the lack of discussion is that the position that the judicial officers designated in § 3184 lack power to determine whether the offense was political is a new one for the executive branch. In 1908, a foreign ambassador wrote to the Secretary of State, proposing that a provision be included in the extradition treaty about to be entered into, whereby the political offense determination would be made by the courts of the requested country. In response, Secretary Elihu Root wrote:

"According to the system of jurisprudence obtaining in the United States, the *question as to whether or not an offense is a political one is always decided in the first instance by the judicial officer* before whom the fugitive is brought for commitment to surrender. If the judicial authorities refuse to commit the fugitive for surrender on the ground that he is a political offender, or for any other reasons, the matter is dead. . . . Bearing in mind, therefore that under our system of jurisprudence, it is not possible for any fugitive who claims to be a political offender to be extradited, it is hoped that your Government will be satisfied without insisting upon the insertion of an express stipulation providing that the question as to whether an offense is political shall be decided by the judicial authorities." (Emphasis added.)

Letter from Secretary of State Root, dated June 12, 1908; quoted in 4 G. Hackworth, Digest of International Law 46 (1942). In 1960 the Assistant Legal Adviser to the Department of State wrote a United States Attorney:

"With regard to the assertion that Mylonas' extradition is being sought for acts connected with crimes of offenses of a political character, it should be noted that this is a matter for decision, initially, by the extradition magistrate on the basis of the evidence submitted to him." (Emphasis added.)

Letter of State Department Assistant Legal Advisor to U.S. Attorney, dated June 22, 1960, concerning *In re Mylonas*, 187 F.Supp. 716 (N.D.Ala.1960); cited in 6 M. Whiteman, Digest of International Law 842-853 (1968).[19] The view of the Department of Justice and the Department of State with respect to the existing law appears also in the materials recently presented to the Senate in connection with S. 1639, § 3194(a) of which would remove from the court's jurisdiction "to determine whether the foreign state is seeking the extradition of the person for a political offense, for an offense of a political character, or for the purpose of prosecuting or punishing the person for his political opinions." The Senate was told in the Legal Memorandum accompanying the bill, 127 Cong.Rec. S9956 (Sept. 18, 1981):

"Under the present law, the courts decide whether the crime for which extradition has been requested is a political offense . . .

citing in n.56 four of the cases cited above. An almost identical statement was made by Deputy Legal Adviser McGovern, p.4.

It follows that, as the law now stands, both the judicial and the executive branches have recognized that under § 3184, decision whether a case falls within the political offense exception is for the judicial officer. The Government cites us to no overriding principle which dictates a contrary result. The Court said in *Baker* v. *Carr*, 369 U.S. 186, 211, 212, 82, S.Ct. 691, 706, 707, 7 L.Ed.2d 663 (1962), that "It is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance" and "a court can construe a treaty and may find it provides the answer." While the policy arguments made by the Government are not without force, particularly in an age of spreading terrorism they are not so overwhelming as to justify us in concluding that the 1848 statute and its successors did not mean that the judicial officer should decide whether the offense for which extradition is sought is political. Whether the national interests would be better served by the position here advocated by the executive branch, which it has asked Congress to adopt in S. 1639, is for that body to determine. We therefore conclude that the Magistrate correctly sustained her own power to decide the political offense question and thus, for reasons heretofore explained, there is no basis for our issuing mandamus.

Mackin's Habeas Corpus Petition

[3] Immediately after the Magistrate's decision the Government refiled its extradition request before District Judge Sand in accordance with the procedure recognized in *Hooker* v. *Klein*, *supra*, 573 F.2d 1360, and applied for a new warrant of arrest. Believing that the question of appealability should be resolved before action by him the judge held this request in abeyance pending a request for a stay to the Magistrate. She granted such a stay pending application to this court for a stay pending expedited appeal, which this court granted. Before we granted the stay, Mackin filed a petition for *habeas corpus* with this court and a motion for immediate release. Since our stay of the Magistrate's decision will terminate upon the coming down of the mandate, unless the Government should request and we should see fit to grant an extension of the stay pending application for certiorari or the decision of the renewed application before Judge Sand,[20] we must consider the petition for *habeas corpus*.

This need not detain us long. The statute, 28 U.S.C. § 2241, provides that writs of *habeas corpus* may be granted by "the Supreme Court, any justice thereof, the district courts, and any circuit judge within their respective jurisdictions." A court of appeals is conspicuously absent from this list. It has repeatedly been held that courts of appeals have no jurisdiciton to entertain petitions such as Mackin's. *Posey* v. *Dowd*, 134 F.2d 613 (7 Cir. 1943); *Jensen* v. *Teets*, 219 F.2d 235 (9 Cir. 1955); *Loum* v. *Alvis*, 263 F.2d 836 (6 Cir. 1959); *Parker* v. *Sigler*, 419 F.2d 827 (8th Cir. 1969). See also FRAP 22(a) and accompanying Notes of Advisory Committee on Appellate Rules.

The government's appeal is dismissed for lack of jurisdiction. Its alternative application for mandamus is entertained solely on the issue of the Magistrate's jurisdiction to rule on the political offense exception and is otherwise dismissed; the portion entertained is denied on the merits. Mackin's petition for *habeas corpus* is dismissed for want of jurisdiction. Mackin may recover his costs.

[In the Matter of the Requested Extradition of Joseph Patrick Thomas DOHERTY by the GOVERNMENT of the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND]

(No. 83 Cr. Misc. 1)

UNITED STATES DISTRICT COURT, S.D. NEW YORK

Dec. 12, 1984

United States, acting on behalf of Great Britain, requested extradition of member of Provisional Irish Republican Army. The District Court, Sprizzo, J., held that murder for which Great Britain sought extradition from United States of member of Provisional Irish Republican Army was "political offense" within meaning of exception to extradition treaty between United States and Great Britain for offense regarded by requested party as political offense where the victim was a British army captain and killing occurred in context of attempted ambush of British army patrol in area in which political change was to be effected.

Extradition denied.

1. Extradition and Detainers (5)

Under exception to extradition treaty between United States and Great Britain for offense regarded by requested party as political offense, no act may be regarded as political where nature of act is such as to be violative of international law and inconsistent with international standards of civilized conduct.

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[19] The word "initially" refers to the fact that when the judicial officer on a *habeas* court decides that the offense is not political, the Secretary of State may still decline to order extradition. See Note, *Executive Discretion in Extradition*, 62 Colum.L.Rev. 1313, 1315 & cases cited in note 18 (1962); 1 Moore, *Extradition* 549-76 (1891); Hyde, *International Law*, 606-08 (1922).

[20] Judge Sand should consider the renewed application on the record before the magistrate and such other relevant evidence as the United States or Mackin may introduce and give such weight to the Magistrate's conclusions as he deems appropriate. See *Hooker* v. *Klein*, *supra*, 573 F.2d at 1369-70 (concurring opinion of Judge Chambers).

2. Extradition and Detainers (5)

Under exception to extradition treaty between United States and Great Britain for offense regarded by requested party as political offense, political offense exception is not limited to actual armed insurrections or more traditional and overt military hostilities and it is not for the courts in defining parameters of the exception to regard as dispositive factors such as likelihood that politically dissident group will succeed or ability of that group to effect changes in government by means other than violence.

3. Extradition and Detainers (5)

Under exception to extradition treaty between United States and Great Britain for offense regarded by requested party as political offense, fact that violence is used in itself is not dispositive; instead, court must assess nature of act, context in which it is committed, status of party committing act, nature of organization on whose behalf it is committed, and particularized circumstances of place where act takes place.

4. Extradition and Detainers (5)

Murder for which Great Britain sought extradition from United States of member of Provisional Irish Republican Army was "political offense" within meaning of exception to extradition treaty between United States and Great Britain for offense regarded by requested party as political offense where the victim was a British army captain and killing occurred in context of attempted ambush of British army patrol in area in which political change was to be effected.

See publication Words and Phrases for other judicial constructions and definitions.

5. Extradition and Detainers (5)

Under exception to extradition treaty between United States and Great Britain for offense regarded by requested party as political offense, it is proper for court to consider nature of organization, its structure, and its mode of internal discipline in deciding whether act of its members can constitute political conduct.

6. Extradition and Detainers (5)

Under exception to extradition treaty between United States and Great Britain for offense regarded by rquested party as political offense, offense of member of Provisional Irish Republican Army would not be regarded as political merely because Great Britain had recognized necessity to enact special legislation and to create special courts to deal with problems created by escalating violence in Northern Ireland.

7. Extradition and Detainers (5)

Escape from prison of member of Provisional Irish Republican Army pending verdict in murder prosecution was offense political in character within meaning of exception to extradition treaty between United States and Great Britain for offense regarded by requested party as political offense where the escape was organized and planned under direction of the PIRA to effectuate its purposes rather than those of member himself.

Rudolph W. Giuliani, U.S. Atty., S.D. N.Y., New York City, for petitioner; Thomas E. Moseley, Sp. Asst. U.S. Atty., New York City, of counsel.

Somerstein & Pike, New York City, for respondent; Mary Boresz Pike, Stephen A. Somerstein, New York City, of counsel.

SPRIZZO, District Judge:

Petitioner United States of America, acting on behalf of the United Kingdom of Great Britain and Northern Ireland, has requested the extradition to the United Kingdom of respondent Joseph Patrick Thomas Doherty. This request is made pursuant to 18 U.S.C. § 3184 and the Treaty of Extradition between the United States of America and the United Kingdom of Great Britain and Northern Ireland, 28 U.S.T. 227, T.I.A.S. No. 8468 (effective Jan. 21, 1977) ("the Treaty"). The Government of the United Kingdom seeks Doherty's extradition on the basis of his conviction in Northern Ireland on June 12, 1981 for murder, attempted murder, and illegal possession of firearms and ammunition, and for offenses allegedly committed in the course of his escape from H.M. Prison, Crumlin Road, Belfast, on June 10, 1981.

Doherty was arrested by the United States Immigration and Naturalization Service on June 18, 1983, in New York City. A provisional warrant of arrest was issued by Chief Judge Constance Baker Motley on June 27, 1983, pursuant to Article VIII of the Treaty. A formal request for extradition was filed in accordance with Article VII of the Treaty in the Southern District of New York on August 16, 1983. A hearing was held by the Court in March and April 1984 pursuant to 18 U.S.C. § 3184.

The facts of this case are not in substantial dispute. The incidents giving rise to the extradition request are briefly as follows. Respondent Doherty was a member of the provisional Irish Republican Army ("PIRA"). On May 2, 1980, at the direction of the IRA, Doherty and three others embarked upon an operation "to engage and attack" a convoy of British soldiers. Transcript of Hearing ("Tr.") at 631.

Doherty testified that he and his group took over a house at 371 Antrim Road in Belfast, and awaited a British Army convoy. Some three or four hours later, a car stopped in front of 371 Antrim Road and five men carrying machine guns emerged. There men, members of the Special Air Service of the British Army ("SAS"), and Doherty's group fired shots at each other.

In the exchange of gunfire Captain Herbert Richard Westmacott, a British army captain, was shot and killed. Doherty was arrested, charged with the murder, among other offenses, and held in the Crumlin Road prison pending trial. On June 10, 1981, after the trial was completed but before any decision by the Court, Doherty escaped from the prison along with seven others. He was convicted *in absentia* on June 12, 1981 of murder, attempted murder, illegal possession of firearms and ammunition, and belonging to the Irish Republican Army, a proscribed organization.

Pursuant to Article IX of the Treaty, the Court must be satisfied that probable cause exists with respect to the offenses for which the requesting party seeks Doherty's extradition. *See Sidona v. Grant*, 619 F.2d 167, 175 (2d Cir.1980). Petitioner produced a Certificate of Conviction for the offenses related to the death of Captain Westmacott, and a Warrant for Arrest of Doherty with respect to the escape from the Crumlin Road prison. *See* Request for Extradition. Doherty has not contested that he is, in fact, the person named in those documents, or named as respondent herein. Indeed, he testified as to his involvement in both the May 2, 1980 incident which resulted in the death of Captain Westmacott and the June 10, 1981 prison escape. *See* Tr. at 631-45, 654-67. Therefore, the Court finds that probable cause clearly exists.

Doherty asserts that the extradition request must be denied, however, pursuant to Article V(1)(c)(i) of the Treaty, which provides:

(1) Extradition shall not be granted if:

* * * * * *

(c)(i) the offense for which extradition is requested is regarded by the requested Party as one of a political character; . . .

Petitioner denies that this so-called "political offense" exception to the Treaty is applicable in this case. The Court must determine, therefore, whether the offenses for which Doherty was convicted in relation to the May 2, 1980 incident, and those for which he is accused in connection with the escape from prision, are of a political character.

It seems clear, as the evidence established, that the centuries old hatreds and political divisions which were spawned by England's conquest of Ireland in medieval times continue to resist any permanent resolution. Instead they have smoldered, sometimes during long periods of quescience, only to repeatedly erupt with tragic consequences. The offenses which give rise to this proceeding are but the latest chapters in that unending epic. *See In Re Mackin*, 80 Cr.Misc. 1, p. 54 at 49-74 (S.D. N.Y. Aug. 13, 1981), *appeal dismissed*, 668 F.2d 122 (2d Cir.1981).

The Provisional Irish Republican Army, of which respondent is a member, claims to be a contemporary protagonist in that ancient struggle. The evidence established that the Irish Republican Army and more particularly the PIRA, had for a time lost much public support and had indeed become dormant, while other groups, emulating the pattern of civil rights groups, emulating the pattern of civil rights groups in this country, sought to achieve an amelioration of alleged political and economic deprivations by peaceful means. It is indeed unfortunate that those efforts failed, but fail they did. Perhaps, given the long standing enmities, anxieties, and fears that exist between the Unionists and Republicans in Ireland, it was too much to expect that they would succeed. Nevertheless it was the collapse of those peaceful efforts that ironically led to a resurgence of the PIRA.

On January 30, 1972 in Londonderry, what started out as a peaceful demonstration ended in a bloody confrontation in which 13 civilians were killed. *See* Tr. at 61, 133-34. Since British troops were regarded as at least in part responsible for that tragedy, their presence which had been initially welcomed, became a subject of increasing antipathy and concern.[1] The result was a fresh impetus for the PIRA, and increasing support for those who would resolve Ireland's political problems by violence.[2]

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[1] It was clear from the testimony that by August 1969, a state of civil disorder had been reached that had threatened the viability of the Northern Irish government. As a consequence, the Prime Minister requested assistance from the United Kingdom and British troops were sent to maintain order. It is also clear that they were initially well received. *See* Tr. at 60, 130-31.

[2] While the Court is not persuaded that the methods and objectives of the PIRA are in fact shared by a majority of the people in Ireland, or indeed by a majority of the Catholics in Northern Ireland, that circumstance is not dispositive of the issue of whether respondent, as a member of that group is entitled to rely upon the political offense exception to the Treaty. Indeed, at the time of the American Revolution, there were a large number of colonists who not only desired a continued union with England, but regarded the thought of armed opposition to the Crown as both treasonous and abhorrent. *See, e.g.*, J.R. Alden, *The American Revolution 1775-1783* (1954); S.E. Morison, *The Oxford History of the American People* (1905); C.H. Van Tyne, *Loyalists in American Revolution* (1902).

Following the resurgence of the PIRA, the level of violence both by the PIRA and armed Loyalist groups continued to escalate in a continuing and seemingly inexorable series of events that between 1972 and 1979 claimed the lives of over 1,770 persons, nearly 1,300 of whom were civilian casualties, and injured hundreds of others. See Review of the Operation of the Northern Ireland (Emergency Provisions) Act 1978 (the "Baker Report") (P.Ex. 18) at 152; see also New Ireland Forum, The Cost of Violence arising from the Northern Ireland Crisis since 1969 (R.Ex. UU) at ¶2.1 This alarming and at times wanton destruction of life and property necessitated the enactment of special laws, see Northern Ireland (Emergency Provisions) Act 1973 (R.Ex.BB); Prevention of Terrorism (Temporary Provisions) Act 1976 (R.Ex. CC); Northern Ireland (Emergency Provisions) Act 1978 (R.Ex. DD); see also Report of the Commission to consider procedures to deal with terrorist activities in Northern Ireland (the "Diplock Report") (R.Ex. AA); Suppression of Terrorism Act 1978 (P.Ex. 15), including the creation of special Diplock Courts to try political offenders, and transformed the Catholic areas of Belfast and Londonderry into zones of military occupation.

Were the Court persuaded that all that need be shown to sustain the political offense exception is that there be a political conflict and that the offense be committed during the course of and in furtherance of that struggle, the respondent would clearly be entitled to the benefits of that exception. However, that conclusion is but the beginning and not the end of the analysis that must be made to determine whether in fact Doherty may be properly extradited.

While it is true that some of the older English cases, *see, e.g., In re Meunier* [1894] 2 Q.B. 415, 419; *In re Castioni* [1891] 1 Q.B. 149, 156, 159, 166, and some of the American cases that have relied upon them, *see, e.g., In re Mackin, supra,* 80 Cr. Misc. 1 at 24-25; *In re Gonzalez,* 217 F.Supp. 717 720-21 (S.D.N.Y.1963); *In re Ezeta,* 62 F. 972, 999 (N.D.Cal.1894), have assumed that that is all that need be shown, such an approach is hardly consistent with either the realities of the modern world, or the need to interpret the political offense exception in the light of the lessons of recent history. Nor is it reflective of the more recent English precedents which have, relying upon that experience, adopted a more restrictive view of that exception, *see, e.g., Regina v. Governor of Pentonvill Prison, Ex parte Cheng* [1973] W.L.R. 746, 753; *Regina v. Governor of Brixton Prison, Ex parte Schtraks* [1964] A.C. 556, 591-92, a view shared by at least one American court. *See Eain v. Wilkes,* 641 F.2d 504, 518-21 (7th Cir.1981), *cert. denied,* 454 U.S. 894, 102 S. Ct. 390, 70 L.Ed.2d 208 (1981). But *see Karadzole v. Artukovic,* 247 F.2d 198, 204-05 (9th Cir. 1957), *affg, Artukovic v. Boyle,* 140 F.Supp. 245 (S.D.Calif.1956), *vacated,* 355 U.S. 393, 78 S.Ct. 381, 2 L.Ed.2d 356 (1958); *Quinn v Robinson,* No. C-82-6688 RPA, slip op. at 22-23, 29-32 (N.D.Cal. Oct. 3, 1983), *appeal pending,* 83-2455 (9th Cir. Oct 14, 1983); *In re McMullen,* Magistrate No. 3-78-1099 MG, slip op. at 3 (N.D.Cal. May 11, 1979).

How then is the political exception doctrine to be construed and what factors should limit its scope? Not every act committed for a political purpose or during a political disturbance may or should properly be regarded as a political offense. Surely the atrocities at Dachau, Aushwitz, and other death camps would be arguably political within the meaning of that definition. The same would be true of My Lai, the Bataan death march, Lidice, the Katyn Forest Massacre, and a whole host of violations of international law that the civilized world is, has been, and should be unwilling to accept. Indeed, the Nuremberg trials would have no legitimacy or meaning if any act done for a political purpose could be properly classified as a political offense. Moreover, it would not be consistent with the policy of this nation as reflected by its participation in those trials, for an American court to shield from extradition a person charged with such crimes.

[1] The Court concludes therefore that a proper construction of the Treaty in accordance with the law and policy of this nation, requires that no act be regarded as political where the nature of the act is such as to be violative of international law, and inconsistent with international standards of civilized conduct. Surely an act which would be properly punishable even in the context of a declared war or in the heat of open military conflict cannot and should not receive recognition under the political exception to the Treaty. Cf. McGlinchey v. Wren, 3 Lr.L.Rep. Monthly 169 (Irish Sup.Ct.1982) (political offense exception of Treaty between Northern Ireland and the Republic of Ireland limited by the highest court of the Republic to "what reasonable, civilised people would regard as political activity.")

[2] The Court rejects the notion that the political offense exception is limited to actual armed insurrections or more traditional and overt military hostilities. The lessons of recent history demonstrate that political struggles have been commenced and effectively carried out by armed guerillas long before they were able to mount armies in the field. It is not for the courts, in defing the parameters of the political offense exception, to regard as dispositive factors such as the likelihood that a politically dissident group will succeed, or the ability of that group to effect changes in the government by means other than violence, although concededly such factors may at times be relevant in distinguishing between the common criminal and the political offender.

[3] Nor is the fact that violence is used in itself dispositive.[3] Instead the Court must assess the nature of the act, the context in which it is committed, the status of the party committing the act, the nature of the organization on whose behalf it is committed, and the particularized circumstances of the place where the act takes place.

[4] Considering the offenses for which extradition is sought in the light of these precepts, the Court is constrained to conclude that the political offense exception clearly encompasses those offenses. We are not faced here with a situation in which a bomb was detonated in a department store, public tavern, or a resort hotel, causing indiscriminate personal injury, death, and property damage. Such conduct would clearly be well beyond the parameters of what and should properly be regarded as encompassed by the political offense exception to the Treaty. Whatever the precise contours of that elusive concept may be, it was in its inception an outgrowth of the notion that a person should not be persecuted for political beliefs[4] and was not designed to protect a person from the consequences of acts that transcend the limits of international law.

Nor is this a case where violence was directed against civilian representatives of the government, where defining the limits of the political offense exception would be far less clear. Similarly, this is not a case where the alleged political conduct was committed in a place other than the territory where political change was to be effected, a circumstance that would in all probability render the political offense exception inapplicable. *See, e.g., Cheng, supra,* [1973] W.L.R. at 752-53, 755-56, 771; *Schtraks, supra,* [1964] A.C. at 591. Finally, the Court is not presented with facts which establish that hostages were killed or injured or where the principles embodied in the Geneva Convention have clearly been violated.

Instead, the facts of this case present the assertion of the political offense exception in its most classic form. The death of Captain Westmacott, while a most tragic event, occurred in the context of an attempted ambush of a British army patrol. It was the British Army's response to that action that gave rise to Captain Westmacott's death. Had this conduct occurred during the course of more traditional military hostilities there could be little doubt that it would fall within the political offense exception. The only issue remaining, therefore is, does the political exception become inapplicable because the PIRA is engaged in a more sporadic and informal mode of warfare.

[5] The court is not unmindful of the fact that it would be most unwise as a matter of policy to extend the benefit of the political

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Many loyalists suffered the consequences of these beliefs both before and after independence. Given the nature of that history it would indeed be anomalous for an American court to conclude that the absence of a political consensus for armed resistance in itself deprives such resistance of its political character.

[3] In England the law may indeed be reaching the point where any violent conduct will not be regarded as political when peaceful means are available. See testimony of David J. Bentley, Legal Advisor to the Home Office of the United Kingdom, Tr. at 1270-74. However, even a recent English case suggests that a political assassination committed in the country where political change is sought to be effected may be protected political conduct. See Cheng, supra, [1973] W.L.R. at 755-56.

[4] The concept was first enunciated during an era when there was much concern for and sympathy in England for the cause of liberation for subjugated peoples. *See Schtraks, supra,* [1964] A.C. at 582-83; *see also Cheng, supra,* [1973] W.L.R. at 754-56. Nevertheless, even then there was a concern that the term "political offense" should not be defined too precisely or too formalistically lest it unduly restrict proper modes of political conduct or impermissibly sanction every act committed during the cause of a political struggle. In any event, it seems fair to conclude that the Victorian and post-Victorian climate in which the doctrine arose would hardly have been sympathetic to the kind of paramilitary terrorism that has become the plague of the modern age.

It is also significant that even at an early stage in the development of the political offense exception, the English courts found means to limit the concept by excluding from its definition anarchistic activity directed at all governments in general rather than at a particular regime. *See In re Meunier, supra,* 2 Q.B. at 419. Some American courts have resorted to a similar rationale, *see Eain, supra,* 641 F.2d at 521-22. *Eain* is explicit in recognizing that the best approach may be to balance the policy considerations which underline that exception against those which make it necessary to limit that exception to insure that it does not afford a haven for persons who commit the most heinous atrocities for political ends. *See Eain, supra,* 641 F.2d at 519-20; *See also In re Quinn,* Criminal No. CR-81-146-MISC, slip op. at 107-11 (N.D.Cal. Sept. 29, 1982) (Magistrate's Opinion).

offense exception to every fanatic group or individual with loosely defined political objectives who commit acts of volence in the name of those so called political objectives. Therefore it is proper for the Court to consider the nature of an organization, its structure, and its mode of internal discipline, in deciding whether the act of its members can constitute political conduct under an appropriate interpretation of the Treaty.

However, the PIRA, as the evidence showed, while it may be a radical offshoot of the traditional Irish Republican Army, has both an organization, discipline, and command structure that distinguishes it from more amorphous groups such as the Black Liberation Army or the Red Brigade. Indeed, as the testimony established, its discipline and command structure operates even after its members are imprisoned and indeed, as Doherty testified, it was at the direction of the PIRA that he escaped and then came to the United States. *See* Tr. at 650-73, 830; *see also In Re Mackin, supra,* 80 Cr.Misc. 1 at 78-80.

Given that defined structure, the fact that the PIRA may not be likely to achieve its objectives does not deprive its acts of their political character. This Court cannot, in interpreting the Treaty, make the political exception concept turn upon the Court's assessment of the likelihood of a movement's success. History is replete with examples of political and insurrectionary movements that have succeeded in effecting political changes that were believed to be improbable if not impossible.

[6] The Court is not, however, persuaded by the argument that respondent's offense must or should be regarded as political merely because the United Kingdom has recognized the necessity to enact special legislation and to create special courts to deal with the problems created by the escalating violence between Republicans and Unionists in Northern Ireland. If that were the case, any lawless group could create political status for itself by merely escalating the level of this lawlessness to a point where the government is constrained to deal with it by special remedies.

The Court also specifically rejects respondent's claim that the Diplock Courts and the procedures there employed are unfair, and that respondent did not get a fair trial and cannot get a fair trial in the courts of Northern Ireland. The Court finds the testimony of the Government witnesses as to this issue both credible and persuasive. The Court concludes that both Unionists and Republicans who commit offenss of a political character can and do receive fair and impartial justice and that the courts of Northern Ireland will continue to scrupulously and courageously discharge their responsibilities in that regard. Nevertheless, the fairness of the administration of justice in those courts does not and cannot deprive respondent's offenses of their essentially political character.[5]

Finally, the Court does not accept as dispositive the view expressed by David J. Bentley, Assistant Legal Advisor to the United Kingdom Home Office, which indicates that in England the political offense exception to extradition is now believed to encompass only those situations in which the sovereign has some interest over and above that of enforcing peace and public order in prosecuting an alleged political offender. *See* Tr. at 1232-33, 1245-53. The fact that a sovereign may be neutral in punishing violent conduct designed to achieve political ends does not in itself transform offenses that would otherwise be clearly political in nature into ordinary common law crimes.

Moreover, were the Court to accept such a view, it would be placed in the delicate situation of having to assess the neutrality and indirectly the good faith of the sovereign seeking extradition,[6] a circimstance that could adversely affect the conduct of foreign relations and might well be inconsistent with the Treaty's structure, which clearly places such determinations in the hands of the Secretary of State. *See In re Mackin,* 668 F.2d 122, 133-34 (2d Cir. 1981); *Eain, supra,* 641 F.2d at 513, 516-17. *See also Sindona, supra,* 619 F.2d at 174-76. That possibility is obviously present here where it is certainly at least arguable that the United Kingdom may not be entirely neutral with respect to the issue of Irish independence because it is the end of British rule in Ireland that has been and continues to be the principal objective of the Irish Republican movement.

[7] In sum, the Court concludes for the reasons given that respondent's participation in the military ambush which resulted in Captain Westmacott's death was an offense political in character. The Court further concludes that his escape from Crumlin Road prison, organized and planned as the evidence established that it was, under the direction of the PIRA and to effect its purposes rather than those of Doherty himself, was also political. That conduct and all of the various and sundry charges which are connected therewith and for which extradition is sought are not extraditable offenses under Article V(1)(c)(i) of the Treaty.[7] The request for extradition is therefore denied.

It is SO ORDERED.

[5] It is significant of course that the discretion vested in the prosecution by the emergency legislation to try offenders in the Diplock Courts is indeed exercised on the basis of a determination that what would otherwise be common law offenses are politically motivated. *See* Northern Ireland (Emergency Provisions) Act 1978 (R.Ex. DD) at §§ 29, 31.-(1), Schedule 4 Notes 1 & 2; Northern Ireland (Emergency Provisions) Act 1973 (R.Ex. BB) at §§ 26.-(1), 28.-(1), Schedule 4 Notes 1 & 2; Diplock Report (R.Ex. AA) at ¶¶3-11 & Appendix; Tr. 409, 414-18, 519, 918-20.

[6] The Court is not persuaded by the fact that the current political administration in the United States has strongly denounced terrorist acts and has stated that to refuse extradition in this case might jeopardize foreign relations. *See* Affidavit of Terrell E. Arnold ¶ 3 (June 14, 1984). The Treaty vests the determination of the limits of the political offense exception in the courts and therefore reflects a congressional judgment that that decision not be made on the basis of what may be the current view of any one political administration. *See, e.g., In re Mackin,* 668 F.2d 122, 132-37 (2d Cir. 1981), *Eain, supra,* 641 F.2d at 513.

[7] Of course it is clear that where an offense otherwise political in character is committed for purely personal reasons such as personal vengence or vindictiveness, that circumstance might well deprive the offense of its political character. In this case there is no suggestion that Doherty had any personal hostility to Captain Westmacott. There is some suggestion that the physical attack upon one of the guards may have had some retaliatory aspects, *see* R.Ex. Y at 2. However, on balance the Court is persuaded that that guard was assaulted because he sought to prevent the escape.

WILLIAM JOSEPH QUINN, PETITIONER-APPELLEE, v. GLEN ROBINSON, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF CALIFORNIA, RESPONDENT-APPELLANT

[No. 83-2455]

United States Court of Appeals,

Ninth Circuit

Argued and Submitted July 11, 1984.

Decided Feb. 18, 1986.

Accused, who had been found extraditable to the United Kingdom for murder of police constable and conspiracy to cause explosions likely to endanger human life, filed petition for habeas corpus. The United States District Court for the Northern District of California, Robert P. Aguilar, J., granted relief, and the United States, on behalf of the United Kingdom, appealed. The Court of Appeals, Reinhardt, Circuit Judge, held that: (1) political offense exception to extradition was inapplicable, and (2) issue whether conspiracy charge was time barred and thus not extraditable under applicable treaty, would not be addressed on appeal.

Vacated and remanded.

Duniway, Circuit Judge, filed an opinion concurring in the judgment.

Fletcher, Circuit Judge, filed a concurring and dissenting opinion.

1. Extradition and Detainers (2)

Right of foreign sovereign to demand and obtain extradition of accused criminal is created by treaty.

2. Extradition and Detainers (2)

In absence of treaty, there is no duty to extradite.

3. Extradition and Detainers (6)

United States citizenship does not bar extradition by the United States.

4. Extradition and Detainers (5)

Under doctrine of dual criminality, accused person can be extradited only if conduct complained of is considered criminal by jurisprudence or under laws of both requesting and requested nations; in addition, there must be evidence that would justify committing accused for trial under law of nation from whom extradition is requested if offense had been committed within territory of that nation.

5. Extradition and Detainers (19)

Doctrine of "specialty" prohibits nation requesting extradition from prosecuting extradited individual for any offense other than that for which surrendering state agreed to extradite.

6. Extradition and Detainers (17)

Because of limited function of extradition proceeding, there is no appeal from extradition order by government or by defendant.

7. Extradition and Detainers (14(1))

Res judicata does not apply to extradition orders, and government is free to reinstate extradition request after it has been denied in first extradition proceeding.

8. Habeas Corpus (21)

Petition for writ of habeas corpus is only mechanism by which defendant can seek review of extradition order.

9. Extradition and Detainers (14(1))

Authority of magistrate to determine whether crime is extraditable under provisions of treaty includes consideration of whether crime is nonextraditable because it falls within political offense exception. 18 U.S.C.A. § 3184.

10. Constitutional Law (68(1))

Political question doctrine did not preclude federal court from determining whether political offense exception to extradition was applicable. 18 U.S.C.A. § 3184.

11. Habeas Corpus (92(2))

Scope of district court's review of magistrate's extradition order on petition for writ of habeas corpus is limited to whether magistrate had jurisdiction, whether offense charged is within treaty, and whether there was any evidence warranting finding that there was reasonable ground to believe accused guilty.

12. Extradition and Detainers (14(1))
Habeas Corpus (92(2))

Preliminarily, magistrate must determine in extradition proceeding and district court must review on petition for writ of habeas corpus whether extradition treaty was in effect and applicable to case and whether person named in complaint is individual before the magistrate.

13. Habeas Corpus (92(2))

Political offense question is reviewable on habeas corpus as part of question whether offense charged in extradition request is within extradition treaty.

14. Habeas Corpus (92(2))

Question whether offense comes within extradition treaty ordinarily involves determination of whether it is listed as extraditable crime and whether conduct is illegal in both countries; these are purely legal questions that habeas court may review de novo.

15. Extradition and Detainers (17)

Purely factual questions in extradition cases are reviewed under "clearly erroneous" standard.

16. Habeas Corpus (92(2))

Because magistrate's probable cause finding in extradition proceeding is not finding of fact in the sense that the court has weighed evidence and resolved disputed factual issues, it must be upheld on habeas review if there is any competent evidence to support it.

17. Habeas Corpus (92(2))

Political offense issue in extradition proceedings is mixed question of law and fact.

18. Extradition and Detainers (17)

District court must review magistrate's determination in extradition proceeding of political offense issue in same manner that appellate court reviews district court's findings on mixed fact and law question: review of application of law to fact depends on whether determination is essentially factual, in which case it is reviewed under "clearly erroneous" standard, or whether it requires court to consider legal concept in mix of fact and law and to exercise judgment about values that animate legal principles, in which case issue is reviewed de novo.

19. Habeas Corpus (92(2))

On habeas review of extradition order, district court must review magistrate's purely factual findings underlying application of political offense exception under "clearly erroneous" standard while mixed determination at issue, such as question whether crime was incidental to political uprising, must be reviewed de novo.

20. Extradition and Detainers (17)

There is no question that Court of Appeals reviews legal questions and mixed questions in extradition cases de novo.

21. Habeas Corpus (113(12))

Court of Appeals must determine in extradition case whether habeas court erred, as matter of law, in overruling magistrate's factual findings on extradition requests and will defer to extradition tribunal's factual findings unless it agrees with district court that they are clearly erroneous.

22. Extradition and Detainers (5)

Two distinct categories of political offenses, for which extradition is unavailable, are pure political offenses, those acts aimed directly at the government, and relative political offenses, otherwise common crimes committed in connection with political act or committed for political motives or in political context.

23. Extradition and Detainers (5)

Pure political offenses, including treason, sedition, and espionage, are not extraditable.

24. Extradition and Detainers (5)

Political offense exception to extradition, even if meant to protect acts of representatives of former government, does not extend to protect those carrying out governmental policy calling for acts of destruction whose nature and scope exceed human imagination; thus, crimes against humanity are to be excluded from coverage under political offense exception.

25. Extradition and Detainers (5)

American version of incidence test for determining whether offense is of political nature and thus not extraditable, when properly applied, serves purposes and objectives of political offense exception well and should continue to be used.

26. Extradition and Detainers (5)

Test for determining whether offense is of political nature and thus not extraditable, as traditionally articulated by American courts, is idealogically neutral, and it is inappropriate to make qualitative judgment regarding foreign government or struggle designed to alter that government in applying the test.

27. Extradition and Detainers (5)

It is fact that insurgents are seeking to change their governments that makes political offense exception to extradition applicable, not their reasons for wishing to do so or nature of acts by which they hope to accomplish that goal.

28. Extradition and Detainers (5)

Tactics that are used in internal political struggles as part of effort to gain right to self-government are simply irrelevant to question whether political offense exception to extradition is applicable.

29. Extradition and Detainers (5)

Application of political offense exception to extradition to acts of domestic political violence comports in every respect with both original justifications for exception and traditional requirements of incidence test for determining application of the exception; however, application of exception to acts of international terrorism would comport with neither.

30. Extradition and Detainers (5)

Not every offense of political character is nonextraditable.

31. Extradition and Detainers (5)

Traditional United States incidence test for determining application of political offense exception to extradition by its terms protects acts of domestic violence in connection with struggle for political self-determination but was not intended to and does not protect acts of international terrorism.

32. Extradition and Detainers (5)

Uprising component of incidence test for determining application of political offense exception to extradition makes exception applicable only when certain level of violence exists and when those engaged in that violence are seeking to accomplish particular objective; thus, exception does not apply to political acts that involve less fundamental efforts to accomplish change or that do not attract sufficient adherents to create requisite amount of turmoil.

33. Extradition and Detainers (5)

Uprising component of incidence test for determining application of political offense exception to extradition serves to exclude from coverage criminal conduct that occurs outside the country or territory in which uprising is taking place.

34. Extradition and Detainers (5)

Term "uprising," as component of incidence test for determining application of political offense exception to extradition, refers to revolt by indigenous people against their own government or occupying power.

See publication Words and Phrases for other judicial constructions and definitions.

35. Extradition and Detainers (5)

Persons committing acts of piracy, terrorism, or other crimes on the high seas are unable to invoke protection of political offense exception to extradition.

36. Extradition and Detainers (5)

Uprising can exist, for purposes of uprising component of incidence test for determining application of political offense exception to extradition, only when turmoil that warrants that characterization is created by nationals of land in which disturbances are occurring.

37. Extradition and Detainers (5)

In applying traditional American incidence test for determining whether offense is of political nature and thus not extraditable, courts may not determine whether particular forms of conduct constitute acceptable means or methods of engaging in uprising, rejecting *Eain v. Wilkes*, 641 F.2d 504 (7th Cir.).

38. Extradition and Detainers (5)

Incidental to component of incidence test for determining application of political offense exception to extradition is not satisfied by any connection, however feeble, between common crime and political disturbance; act must be causally or idealogically related to uprising.

39. Extradition and Detainers (5)

Traditional liberal construction of requirement of incidence test for determining application of political offense exception to extradition that there be nexus between act and uprising is appropriate.

40. Extradition and Detainers (5)

Under liberal nexus standard for incidental to component of incidence test for determining application of political offense exception to extradition, neither proof of potential or actual effectiveness of actions in achieving group's political ends nor proof of motive of accused or of requesting nation is required, nor is organization or hierarchy of uprising group or accused's membership in any such group determinative.

41. Extradition and Detainers (5)

Incidental to component of incidence test for determining application of political offense exception to extradition, like incidence test as a whole, must be applied in objective, nonjudgmental manner, and all that courts should do is determine whether conduct is related to or connected with insurgent activity.

42. Extradition and Detainers (5)

Incidence test for determining application of political offense exception to extradition has never required that accused prove his political motivations directly, or establish that acts were ordered by leadership of uprising group or were effective in obtaining group's objective, nor need accused prove membership in uprising group.

43. Extradition and Detainers (5)

Murder of police officer is related to uprising, for purposes of incidence test for determining application of political offense exception to extradition, whether reason for act is to avoid discovery of munitions or to avoid reduction of forces by capture.

44. Extradition and Detainers (5)

Uprising component of incidence test for determining application of political offense exception to extradition was not established with respect to alleged member of Irish Republican Army, whose extradition was sought for murdering police constable and for conspiring to cause explosions likely to endanger human life, where the offenses occurred in England, not Northern Ireland, and any violence in England was not being generated by English citizens or residents.

45. Federal Courts (612)

As general rule, federal appellate court does not consider issue not passed upon below; however, federal appellate court has discretion to decide whether to address issue that district court did not reach where question is purely legal one and record has been fully developed prior to appeal.

46. Federal Courts (611)

In deciding whether to exercise its discretion to decide to address issue that district court did not reach, federal appellate court should consider whether resolution of issue is clear and whether injustice might otherwise result.

47. Extradition and Detainers (14(2))

Probable cause to believe that defendant committed murder of police constable, for which his extradition was sought, was established by competent evidence, despite defendant's contention that irregularities in the evidence made the evidence unreliable and thus incompetent.

48. Extradition and Detainers (14(2))

Country seeking extradition is not required to produce all its evidence at extradition hearing and it is not court's role to determine whether there is sufficient evidence to convict accused.

49. Extradition and Detainers (17)

Magistrate in extradition hearing does not weigh conflicting evidence and make factual determinations but, rather, determines only whether there is competent evidence to support belief that accused has committed charged offense, and, on review, Court of Appeals can determine only whether, because of absence of competent evidence, magistrate's determination is wrong as matter of law.

50. Extradition and Detainers (17)

Credibility of witnesses and weight to be accorded their testimony is solely within province of extradition magistrate.

51. Extradition and Detainers (14(1))

Although there is no explicit statutory basis for ordering discovery in extradition hearings, extradition magistrate has right, under court's inherent power, to order such discovery procedures as law and justice require.

52. Extradition and Detainers (14(1))

In exercising its discretion to order discovery in extradition hearing, magistrate should consider both well-established rule that extradition proceedings are not to be converted into dress rehearsal trial and whether resolution of contested issue would be appreciably advanced by requested discovery.

53. Habeas Corpus (92(2))

Habeas court on review of extradition proceeding can determine whether extradition magistrate's decision to deny discovery constituted abuse of discretion that deprived accused of due process.

54. Habeas Corpus (113(11))

Court of Appeals would not resolve, on appeal in extradition case, whether conspiracy charge against accused was time barred, thereby making the offense nonextraditable under the applicable treaty, where the multiple legal issues involved in the issue were complicated, their resolution was not clear, and determination of the issue could lead to introduction of additional facts.

Mark N. Zandies, Asst. U.S. Atty., San Francisco, Cal, for petitioner-appellee.

Patrick Sarsfield Hallinan, Colleen Mary Rohan, Dale A. Drozd, Hallinan, Osterhoudt & Poplack, San Francisco, Cal., for respondent-appellant.

Appeal from the United States District Court for the Northern District of California.

Before DUNIWAY, FLETCHER, and REINHARDT, Circuit Judges.

REINHARDT, Circuit Judge:

Pursuant to 18 U.S.C. § 3184 (1982) and the governing treaty between the United States and the United Kingdom of Great Britain and Northern Ireland ("United Kingdom"), Extradition Treaty of June 8, 1972, United States—United Kingdom, 28 U.S.T. 227, T.I.A.S. No. 8468 [hereinafter cited as *Treaty*], the United Kingdom seeks the extradition of William Joseph Quinn, a member of the Irish Republican Army ("IRA"), in order to try him for the commission of a murder in 1975 and for conspiring to cause explosions in London in 1974 and 1975. After a United States magistrate found Quinn extraditable, Quinn filed a petition for a writ of habeas corpus. The district court determined that Quinn cannot be extradited because a long-standing principle of international law which has been incorporated in the extradition treaty at issue—the political offense exception—bars extradition for the charged offenses. The United States government, on behalf of the United Kingdom, appeals.

This case requires us to examine the parameters of a foreign sovereign's right to bring about the extradition of an accused who maintains that the offenses with which he is charged are of a political character. Ultimately we must determine whether the political offense exception is applicable to the type of violent offenses Quinn is alleged to have committed. We undertake this task with the aid of very little helpful precedent. The United States Supreme Court has discussed the political offense exception only once, and then during the nineteenth century. See *Ornelas v. Ruiz*, 161 U.S. 502, 16 S.Ct. 689, 40 L.Ed. 787 (1896). The only time we considered the subject, *see Karadzole v. Artukovic*, 247 F.2d 198 (9th Cir.1957), the Supreme Court vacated our opinion, *see Karadzole v. Artukovic*, 355 U.S. 393, 78 S.Ct. 381, 2 L.Ed.2d 356 (1958) (mem.), an opinion which, in any event, has subsequently been roundly and uniformly criticized, *see Eain v. Wilkes*, 641 F.2d 504, 522 (7th Cir.), *cert. denied*, 454 U.S. 894, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981); Garcia-Mora, *The Nature of Political Offenses: A Knotty Problem of Extradition Law*, 48 Va.L.Rev. 1226, 1246 (1962); Lubet & Czackes, *The Role of the American Judiciary in the Extradition of Political Terrorists*, 71 J.Crim.L. & Criminology 193, 205 (1980). Only one circuit has previously considered in any detail how or whether the exception applies when the accused person or persons have engaged in conduct involving the use of some of the more violent techniques or tactics that have come to mark the activities of contemporary insurgent or revolutionary movements. *Eain v. Wilkes*, 641 F.2d 504 (7th Cir), *cert. denied*, 454 U.S. 894, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981). The few opinions of other circuits that have considered the exception shed no light on the difficult questions we must resolve here.[1] Therefore, we must carefully examine the historic origins of the political offense exception, analyze the various underpinnings of the doctrine, trace its development in the lower courts and elsewhere, and seek to apply whatever principles emerge to the realities of today's political struggles.

In the case before us, we find, for reasons we will explain in full, that the charged offenses are not protected by the political offense exception. We vacate the writ of habeas corpus and remand to the district court. We hope that Quinn may be extradited on the murder charge but that the district court must consider Quinn's remaining defense to the conspiracy charge before extradition is permitted for that offense.*

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[1] *See In re Mackin*, 668 F.2d 122 (2d Cir.1981) (determining that magistrate had jurisdiction to decide the applicability of the political offense exception, but declining to review the merits of the magistrate's decision on appeal or writ of mandamus); *Escobedo v. United States*, 623 F.2d 1098 (5th Cir.) (determining in one paragraph that charges arising out of the kidnapping of Cuban Consul in Mexico in 1976 were not within political offense exception because of absense of any violent political disturbance to which they could have been incidental), *cert. denied*, 449 U.S. 1036, 101 S.Ct. 612, 66 L.Ed.2d 497 (1980); *Sindona v. Grant*, 619 F.2d 167 (2d Cir.1980) (determining that charge of fraudulent bankruptcy was not within political offense exception because of absence of any political disturbance to which the act could have been incidental; that there was no evidence that the requesting nation sought accused's extradition on fraudulent bankruptcy charge in order to try him covertly for a political offense; and that degree of risk to accused's life from extradition was an issue that properly fell within purview of executive branch); *Garcia-Guillern v. United States*, 450 F.2d 1189 (5th Cir.1971) (determining that charge of embezzlement by public official was not within political offense exception because of absence of political disturbance to which the offense could have been incidental), *cert. denied*, 405 U.S. 989, 92 S.Ct. 1251, 31 L.Ed.2d 455 (1972); *Jimenez v. Aristeguieta*, 311 F.2d 547, 558-60 (5th Cir.1962) (determining that potentially political character of alleged murders did not bar extradition on separate charges of fraud and embezzlement when those acts were not incidental to a violent political disturbance).

* I have been authorized to include this footnote on behalf of the full panel.

We are unanimous in our decision that the writ of habeas corpus issued by the district court must be vacated. We reach this difficult decision by somewhat different routes.

Judge Duniway concurs in the result but not for the reasons that are set forth in this opinion. His reasons appear in his separate concurring opinion.

Judge Fletcher concurs in the reasoning set forth in this opinion with the exception of the part that treats England and Northern Ireland as separate entities for purposes of applying the "uprising" component of the political offense doctrine. Her disagreement on that point causes her to dissent from the holding that Quinn may be extradited on the murder charge. As her concurring and dissenting opinion states, she would remand in order to permit the district court to determine the extent of Quinn's ties to Northern Ireland. I do not find it necessary to reach that issue, *see* page 68 *infra*, but believe that Judge Fletcher's argument regarding the necessity for such ties has considerable merit.

We are unanimous in our holding that a remand to the district court is required with respect to the conspiracy charge. We also are unanimous that extradition on that count would not be proper in the absence of an appropriate resolution of the statute of limitations issue, a decision that must be made initially by the district court.

I. BACKGROUND

A. The Extradition Treaty

[1,2] The right of a foreign sovereign to demand and obtain extradition of an accused criminal is created by treaty. *Ramos v. Diaz*, 179 F.Supp. 459, 460-61 (S.D. Fla. 1959). In the absence of a treaty there is no duty to extradite, *see Factor v. Laubenheimer*, 290 U.S. 276, 287, 54 S.Ct. 191, 193, 78 L.Ed. 315 (1933); Epps, *The Validity of the Political Offender Exception in Extradition Treaties in Anglo-American Jurisprudence*, 20 Harv.Int' L.J. 61, 74 (1979); *cf.* Bassiouni, *International Extradition: A Summary of Contemporary American Practice and a Proposed Formula*, 15 Wayne L.Rev. 733, 734 (1969) (in Western world, "extradition is a matter of favor or comity rather than a legal duty"), and no branch of the United States government has any authority to surrender an accused to a foreign government except as provided for by statute or treaty. *Factor v. Laubenheimer*, 290 U.S. 276, 287, 54 S.Ct. 191, 193, 78 L.Ed. 315 (1933); *Ramos*, 179 F.2d at 460-61.

The extradition treaty between the United States and the United Kingdom provides for the reciprocal extradition of persons found within the territory of one of the nations who have been accused or convicted of certain criminal offenses committed within the jurisdiction of the other nation. *Treaty, supra* p. 1, at art. I. Murder and conspiracy to cause explosions, the offenses with which Quinn has been charged, are extraditable offenses under the Treaty. *Id.* art. III(1), (2).

[3-5] United States citizenship does not bar extradition by the United States. *See Charlton* v. *Kelly*, 229 U.S. 447, 467, 33 S.Ct. 945, 952, 57 L.Ed. 1274 (1913); *Escobedo* v. *United States*, 623 F.2d 1098, 1104-07 (5th Cir.), *cert. denied*, 449 U.S. 1036, 101 S.Ct. 612, 66 L.Ed.2d 497 (1980). However, under the doctrine of "dual criminality," an accused person can be extradited only if the conduct complained of is considered criminal by the jurisprudence or under the laws of both the requesting and requested nations. *Factor*, 290 U.S. at 293, 54 S.Ct. at 195; *Caplan* v. *Vokes*, 649 F.2d 1336, 1343 (9th Cir. 1981); *see, e.g., Treaty, supra* p. 1, at art. III(1)(a). In addition, there must be evidence that would justify committing the accused for trial under the law of the nation from whom extradition is requested if the offense had been committed within the territory of that nation. *Hooker* v. *Klein*, 573 F.2d 1360, 1367 (9th Cir.), *cert. denied*, 439 U.S. 932, 99 S.Ct. 323, 58 L.Ed.2d 327 (1978); 18 U.S.C. § 3184 (1982); *see, e.g., Treaty, supra*, p. 1, at art. VII(d). United States courts have interpreted this provision in similar treaties as requiring a showing by the requesting party that there is probable cause to believe that the accused has committed the charged offense. *See, e.g., Glucksman* v. *Henkel*, 221 U.S. 508, 512, 31 S.Ct. 704, 705, 55 L.Ed. 830 (1911); *United States ex rel. Sakaguchi* v. *Kaululukui*, 520 F.2d 726, 729-31 (9th Cir. 1975). The doctrine of "specialty" prohibits the requesting nation from prosecuting the extradited individual for any offense other than that for which the surrendering state agreed to extradite. *United States* v. *Rauscher*, 119 U.S. 407, 420-21, 7 S.Ct. 234, 241, 30 L.Ed. 425 (1886); *Caplan* v. *Vokes*, 649 F.2d at 1343; *see, e.g., Treaty, supra* p. 1, at art. XII.

The treaty between the United States and the United Kingdom provides certain exceptions to extradition, notwithstanding the existence of probable cause to believe that the accused has committed the charged offense. In particular, the treaty specifies that "[e]xtradition shall not be granted if . . . the offense for which extradition is requested is regarded by the requested party as one of a political character. . . ." *Treaty, supra* p. 1, at art. V(1)(c).

B. Factual Background

Quinn, a United States citizen, was arrested on September 30, 1981 in Daly City, California pursuant to a provisional arrest warrant issued by a United States magistrate upon application of the United States acting for an on behalf of the United Kingdom. On November 4, 1981, the United Kingdom formally requested Quinn's extradition to face charges of the murder of Police Constable Stephen Tibble and conspiracy to cause explosions of a nature likely to endanger human life.[2]

The duration of the conspiracy with which Quinn is charged is from January 1, 1974 to April 3, 1975, the day before Quinn was arrested for questioning regarding separate 1974 offenses of kidnapping and assault. Quinn was, in fact, charged, tried, and convicted at that time in Ireland, in a special court utilized for the trial of political cases, of membership in an outlawed organization—the IRA. He was imprisoned in Dublin as a "special category prisoner"—a political prisoner incarcerated in a manner akin to prisoner-of-war status—until January 2, 1976.

The evidence before the United States magistrate regarding the conspiracy centered around six specific bombing incidents:

1. On January 18, 1974, a hollowed-out copy of the Bible containing a bomb was mailed to and received by Bishop Gerard William Tickle in London. At that time, Bishop Tickle was the Roman Catholic Bishop to the British Armed Forces. Quinn's fingerprints were found on the wrapping paper around the bomb, which was defused without causing any harm.

2. On January 30, 1974, a letter bomb was sent to the Surrey, England home of Crown Court Judge John Huxley Buzzard who, at that time, was a senior Treasury Prosecuting Counsel. When Judge Buzzard began to open the package, it partially exploded, lacerating his face, hands, and wrist and causing the loss of the ends of two fingers on his left hand. Quinn's fingerprints were on the wrapping around the bomb.

3. On February 4, 1974, a letter bomb was sent to the offices of Max Aitken, Chairman of the Daily Express newspaper in London. Aitken's assistant secretary, who partially opened the package, believed it looked suspicious and called a security guard. As the security guard picked up the package, it partially exploded and the officer lost most of the fingers on his left hand. Quinn's fingerprints were found on the book in which the bomb was concealed.

4. On December 20, 1974, a bomb was found in the foyer adjacent to the loading platform at Aldershot Railway Station in Hampshire County, England. The bomb was defused without causing any harm, and the fingerprints of a number of Quinn's alleged co-conspirators were found on the wrapping paper and bomb mechanisms.

5. On December 21, 1974, a bomb was discovered in an attache case in the archway entrance to the Kings Arms Public House in Warminster, England. The bomb was defused and the fingerprints of Gilhooley, a fugitive who was not indicted as a co-conspirator, were found on its timing mechanism.

6. On January 27, 1975, a bomb was found in a black bag on the front step of the Charco-Burger Grill on Heath Street in London. The bomb was defused and Quinn's fingerprints were found on the Irish newspaper that had been used to wrap the bomb.

Searches of two flats in the London area conducted during this time period revealed explosives, detonators, fuses, and diagrams of bomb construction. Fingerprints matching those of Quinn, his alleged co-conspirators, and Gilhooley were each found on at least one item at each location.

The murder with which Guinn is charged took place in February 26, 1975. On that day, Police Constables Adrian Blackledge and Leslie White were patrolling the West Kensington area of London on foot, looking for burglary suspects. Blackledge saw a man engaged in "suspicious" behavior, such as looking around and changing directions. Blackledge lost sight of the man but later, while White was on lunch break, saw the suspect reappear from one of a number of houses on Fairholme Road. Blackledge approached the man while he waited at a bus stop, identified himself as a police office, and asked the man where he had been. The suspect was unable to give Blackledge the address of the house he had emerged from and gave his name as William Rogers. The suspect said he would take Blackledge to the home he visited, began to walk away, then ran.

A chase ensued, and other plainclothes police officers, including Temporary Detective Constable Derek Hugh Tibble, who was on a motorcycle dressed in civilian clothes, caught up to the suspect, got off his motorcycle, and assumed a crouched position. The suspect shot Tibble three times and ran, evading the other officers. Tibble died that afternoon.

Blackledge described the suspect as 25-30 years old, with straight, short, light brown hair of about collar length, a heavy build, a slightly tanned complexion, and a "mellow" Irish accent. Wilson estimated the suspect's height at five feet ten inches. He offered a description of the suspect that differed in only two respects from Blackledge's. Wilson described the suspect as slimly built, and said he had dark brown hair. Quinn speaks with an American accent but has been reputed to have assumed an Irish accent on occasion. He normally has a pale complexion. He has a slim build and dark brown hair.

On December 12, 1975, British police arrested Quinn's alleged co-conspirators after a six-day siege with hostages in a flat in London. In the flat they discoverd, among other things, a revolver. Bullets fired from this revolver revealed rifling characteristics similar to those on the bullets recovered from Tibble's body.

Quinn's alleged co-conspirators became known as the "Balcombe Street Four" during their trial under the British Prevention of Terrorism Act on charges stemming from their activity as members of an Active Service Unit ("ASU") of the Provisional Irish Republican Army ("PIRA"), a more violent offshoot of the IRA. ASUs are small

[2] Quinn was originally charged with one count of murder of a police constable, three counts of sending letter bombs in the London area, two counts of causing explosions in the London area, one count of placing an explosive device in the London area, and one count of conspiracy with six other persons to cause explosions in the United Kingdom. The request for extradition on all but the murder and conspiracy charges was withdrawn by the United Kingdom prior to the hearing before the magistrate.

groups of PIRA members who conducted a series of violent actions in England, including bombings designed to pressure the British government into negotiating independence for Northern Ireland. Quinn's alleged co-conspirators were tried in a special criminal court in London utilized only for prosecution of "political cases," and the prosecution at their trial argued that the motive in setting the bombs was purely political.

On May 14, 1975, Constable Blackledge was taken to the Special Criminal Court in Dublin, where Quinn was appearing on the charge of being a member of the IRA. Blackledge pointed Quinn out to Rollo Watts of the Special Branch of New Scotland Yard and identified Quinn as the man who had shot Tibble. On October 8, 1981, Watts was shown a photograph of Quinn taken in San Francisco on September 29, 1981, at the time of Quinn's arrest by the FBI. Watts identified Quinn as the man that Blackledge had identified in Ireland six years earlier.

C. Decisions Under Review

After the United Kingdom formally requested Quinn's extradition, a United States Magistrate conducted preliminary proceedings and a hearing to determine extraditability pursuant to 18 U.S.C. § 3184 (1982). Quinn contended that the conspiracy charge was time barred, that the evidence was insufficient to establish probable cause to believe he had committed the alleged crimes, and that all the offenses for which the United Kingdom seeks his extradition are "offenses of a political character" upon which extradition cannot be based. At the hearing, Quinn introduced evidence regarding activities of the IRA and the PIRA in Northern Ireland and in England that were designed to cause the overthrow of British rule in Northern Ireland. Quinn did not testify at the hearing or otherwise offer any evidence of his own motivation for his alleged participation in the charged crimes.

On September 29, 1982, the magistrate rejected Quinn's defenses and issued a Certification of Extraditability and Order of Commitment to the Secretary of State. The magistrate held that in order to qualify for the protection afforded by the political offenses exception, Quinn had to show three elements: that there was a violent political uprising, that he was a member of the uprising group, and that the crimes were committed in furtherance of the uprising. The magistrate concluded that there was a violent political uprising in the United Kingdom at the time of the alleged crimes sufficient to bring into play the political offense exception. However, he found that Quinn had not proved the other two elements of a political offense.

According to the magistrate, Quinn's evidence of his membership in the IRA was of little weight since he had failed to demonstrate that he was a member of the PIRA or of the Active Service Unit that allegedly conducted the bombings. The magistrate also determined that Quinn failed to show that the charged crimes were "in furtherance of" PIRA political goals. According to the magistrate, because the ASUs often acted without guidance from superiors, their targets may have been chosen for personal reasons—such as spite or revenge—rather than out of political motivations. Second, the magistrate determined that the bombings could not be "in furtherance" of the uprising because there was no evidence that any hierarchy within the PIRA had considered their potential effectiveness in promoting the group's political goals. Third, relying in part on *Eain v. Wilkes*, 641 F.2d 504 (7th Cir.), *cert. denied*, 454 U.S. 894, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981), the magistrate found that the bombings failed to meet the "direct link" test because they were directed at civilians rather than the government the IRA was attempting to displace and they did not take place in Northern Ireland. Quinn contended that the murder of Officer Tibble was a political offence because it was motivated by the killer's fear that, if captured, he would be questioned and forced to reveal information about PIRA activities. The magistrate rejected this argument as well, finding that the murder was motivated by a simple desire to escape capture.

[6-8] Quinn filed a Petition for Writ of Habeas Corpus commanding Glen E. Robinson, the United States Marshal, to release him.[3] The district court did not address all of Quinn's arguments[4] because it determined that the offenses for which extradition is being sought are non-extraditable political offenses.[5]

In granting Quinn's petition, the district court identified three legal errors in the magistrate's analysis and found that the magistrate erred in its factual findings regarding Quinn's membership in the PIRA and the killer's motive for the Tibble murder. First, the district court held that the magistrate was wrong in requiring Quinn to show, as a separate element, membership in an uprising group. Second, the district court concluded that the magistrate erred in imposing a requirement that the acts potentially be politically efficacious or directed by a hierarchy within the PIRA in order to meet the requirement of being "incidental to" the uprising. Third, the court disagreed with the magistrate's application of *Eain* to this case, noting that the motive of the petitioner in *Eain*, a member of the Palestinian Liberation Organization ("PLO"), in bombing civilians was to drive them out of Israel. Here, in contrast, the court found that the motive was to influence the British government in its relationship with the PIRA and Northern Ireland and that the potential harm to civilians was merely a consequence of the activities designed to influence the government. As to the Tibble murder, the district court determined that the magistrate erred in finding no political motive. Although it agreed that the killing was the result of an effort to avoid immediate capture, the court said that it was incidental to the uprising because Quinn was trying to avoid a capture that could lead to the discovery of the bomb factory.

II. JURISDICTION TO CONSIDER THE POLITICAL OFFENSE EXCEPTION

As it has in other recent extradition cases, *see, e.g., In re Mackin*, 668 F.2d 122 (2d Cir. 1981); *Eain v. Wilkes*, 641 F.2d 504 (7th Cir.), *cert. denied*, 454 U.S. 894, 102 S.Ct. 390, 70 L. Ed.2d 208 (1981), the government contends that both the magistrate and the district court lacked jurisdiction to determine whether the political offense exception bars extradition. According to the government, the language of both the jurisdictional statute and the treaty precludes a judicial determination of whether the exception applies. Moreover, the government contends, such a determination involves political questions that only the executive branch of the government can resolve. Like every court before us that has considered these arguments, *see, e.g., Mackin*, 668 F.2d at 135-37; *Eain*, 641 F.2d at 512-18; *In re Ezeta*, 62 F. 972, 996-97 (N.D.Cal.1894), and like those that have not explicitly considered them but have proceeded to determine whether the exception applies, *see, e.g., Ornelas v. Ruiz*, 161 U.S. 502, 510-12, 16 S.Ct. 689, 692-93, 40 L.Ed. 787 (1896); *In re Doherty*, 599 F.Supp. 270 (S.D.Y.1984), we believe the government's contentions to be meritless.

A. The Language of the Statute and the Treaty

The government contends that the jurisdictional statute, 18 U.S.C. § 3184, fails to authorize the magistrate to determine whether the political offense exception applies and that the treaty explicitly contemplates an executive branch resolution of the question. According to the government, section 3184's command that the magistrate consider whether "the evidence [is] sufficient to sustain the charge under the provisions of the proper treaty" authorizes the magistrate to determine only whether there is possible cause to believe the accused committed the offense. The government further notes that the treaty calls for the "requested party" to determine if it regards the offense as one of a political character. *See Treaty, supra* p. 1, at art. V(1)(c)(ii). According to the government, the term "requested party" refers to the Secretary of State, not the judiciary.

[9] The government's construction of both the statute and the treaty is in error. The "requested party" language has been used in treaties since at least the turn of the century, *see Mackin*, 668 F.2d at 132-33 (citing treaties), and has consistently been interpreted to refer to the country, not any particular branch of its government. The language does not undermine the well-established responsibility of the extradition magistrate—and the judiciary on habeas review—to determine whether the charged offense is or is not extraditable. *Id.; Caplan v. Vokes*, 649 F.2d 1336, 1342-44 (9th Cir.1981); *Eain*, 641 F.2d at 517-18. The determination whether a crime is extraditable "under the provisions of the treaty" includes consideration of whether the crime is

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[3] Quinn followed the proper procedure for seeking review of the magistrate's extradition order. Because of the limited function of an extradition proceeding, *see Charlton v. Kelly*, 229 U.S. 447, 461, 33 S.Ct. 945, 949, 57 L.E.d. 1274 (1913) (analogizing extradition hearing to a preliminary hearing in a criminal case), there is no appeal from an extradition order by the government or by the defendant, *Collins v. Miller*, 252 U.S. 364, 369-70, 40 S.Ct. 347, 349, 64 L.Ed. 616 (1920); *In re Mackin*, 668 F.2d 122, 125-27 (2d Cir. 1981); *Eain v. Wilkes*, 641 F.2d 504, 508 (7th Cir.) *cert denied*, 454 U.S. 894, 102 S. Ct. 390, 70 L.Ed.2d 208 (1981); *Hooker v. Klein*, 573 F.2d 1360, 1368 (9th Cir.), *cert. denied*, 439 U.S. 932, 99 S.Ct. 323, 58 L.Ed.2d 327 (1978). *But cf.* Proposed Extradition Act of 1984, H.R. 3347, 98th Cong., 2d Sess. § 3195(a)(1) (making extradition decision appealable), *printed in* H.Rep. 998, 98th Cong., 2d Sess. 54 (1984). However, res judicata does not apply, *Hooker*, 573 F.2d at 1368, and the government is free to reinstitute an extradition request after it has been denied in a first extradition proceeding, *Mackin*, 668 F.2d at 128; *Hooker*, 573 F.2d at 1368. A petition for a writ of habeas corpus is the only mechanism by which the defendant can seek review. *Mackin*, 668 F.2d at 128; *Eain*, 641 F.2d at 508; *Hooker*, 573 F.2d at 1364. *See generally* Lubet & Czackes, *supra* p. 3, at 199.

[4] Quinn raised the same arguments before the district court that he had presented to the magistrate, *see supra* p. 12, except that he no longer contended that there was insufficient evidence to find probable cause to believe he had engaged in a conspiracy to cause explosions.

[5] Quinn remains in custody because we granted the United Kingdom's motion for a stay of release pending appeal.

nonextraditable because it falls within the political offense exception. *See Ezeta*, 62 F. 996-97. We fail to see how the magistrate could determine whether there is probable cause that the defendant committed an extraditable crime without determining whether the charged offense is one for which extradition is prohibited. Nor can we conclude in the absence of explicit language that Congress, in enacting 18 U.S.C. § 3184, intended to restrict the ability of the judiciary to carry out its role in protecting the liberty interests of individuals by requiring us to review extradition orders without considering all aspects of the pertinent question—whether there is probable cause to believe that the accused committed an extraditable offense.

B. The Political Question Doctrine

[10] The government next argues that because three of the factors enumerated in *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 710, 7 L.Ed.2d 663 (1962), are present in this case, the judiciary should abstain, under the political question doctrine, from determining whether the political offense exception applies. The government contends that determinig whether the exception applies requires a policy determination of a kind clearly inappropriate for the exercise of judicial discretion, that different pronouncements from the executive and judiciary on matters necessary to a determination of the applicability of the exception could embarrass the government, and that the issue does not lend itself to resolution through judicially discoverable manageable standards. Other circuit courts have considered and rejected the precise arguments advanced by the government in this case. *See Mackin*, 668 F.2d at 132-37; Eain, 641 F.2d at 513-18; *cf. Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 796-98 (D.C. Cir. 1984) (Edwards, J., concurring) (political question doctrine is a very limited basis for nonjusticiability and does not bar review of a tort claim for damages consequent to terrorist activities), *cert denied*, —— U.S. ——, 105 S.Ct. 1354, 84 L.Ed.2d 377 (1985). *But see id.* at 826 (Robb, J., concurring) ("[T]here is simply 'no justiciable standard to the political offense.' ") (quoting *Extradition Reform Act of 1981: "Hearings on H.R. 5227 Before the Subcommittee on Crime of the House Committee on the Judiciary*, 97th Cong., 2d Sess. 24-25 (testimony of Roger Olson, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice)). Like these courts, we recognize the executive branch's interest in matters that touch on foreign policy. However, as did Judge Friendly in *Mackin*, 668 F.2d at 134, we also recognize the individual liberty concerns at stake in cases of this nature and note the Supreme Court's long accepted conclusion that "extradition without an unbiased hearing before an independent judiciary . . . [is] highly dangerous to liberty, and ought never to be allowed in this country." *In re Kaine*, 55 U.S. (14 How.) 103, 112, 14 L.Ed. 345 (1852).

In identifying the specific *Baker v. Carr* factors that it claims are present in this case, the government begins by noting that in order to consider whether the political offense exception applies, a court must determine whether a political uprising was in progress in the foreign land when the offense occurred. *See infra* p. 41. The government contends that such a factual finding requires a policy determination. We disagree. We need not determine whether the uprising was "justified" or was motivated by political forces of which we approve.[6] Rather, we must determine simply whether an uprising was in progress. "The existence of a violent political uprising is an issue of past fact: either there was demonstratable, violent activity tied to political causes or there was not." *Eain*, 641 F.2d at 514. Furthermore, like the Seventh Circuit, we believe that even if unique, sensitive information that is available to the State Department bears on this factual issue, there are adequate mechanisms—such as *in camera* disclosure—for ensuring that the material can be produced for judicial consideration. *See id.* at 514-15.

The government also contends that the presence of a second factor enumerated in *Baker v. Carr* counsels judicial abstention. The government argues that a judicial determination that Quinn's extradition is precluded by the political offense exception would "recognize" political terrorists and would thus constitute a potentially embarrassing pronouncement different than the pronouncements of the executive branch. Like the Seventh Circuit, *see Eain*, 641 F.2d at 515, we do not believe the executive branch has refused to recognize the existence of terrorists. Rather, in some cases, it may have refused to recognize the *legitimacy* of these groups. We fail to see why a judicial acknowledgment that terrorist groups exist would constitute a "recognition" of those groups in the sense of legitimizing their actions. *Cf. Tel-Oren*, 726 F.2d at 822 (Bork, J., concurring) (noting the judicial acknowledgment of effect of PLO on the foreign relations of the United States does not grant the PLO any form of "official recognition" and its similar to the executive branch's commenting on the subject of the PLO while continuing to maintain that the group is not deserving of recognition).

Far from embarrassing the executive branch, assigning to the judiciary the responsibility for determining when the exception applies actually affords a degree of protection to the executive branch. As a political branch, the executive could face undue pressure when public and international opposition to the activities of an unpopular group create conflicts with the treaty obligation created by the political offense exception. *See* Epps, *supra* p. 4, at 84 ("[T]he requesting state is much more likely to be irate if a court deems the fugitive extraditable but the executive reverses that decision."); *cf. Eain*, 641 F.2d at 513 (assignment of this determination to judiciary allows executive branch to avoid risk of political and economic sanctions that could result from discretionary executive refusal to extradite) (quoting Lubet & Czackes, *supra* p. 3, at 200; citing I.A. Shearer, *Extradition in International Law* 192 (1971); Note, *Bringing the Terrorist to Justice: A Domestic Law Approach*, 11 Cornell Int'l L.J. 71, 74 (1978)). By assigning the initial determination of when the exception applies to the impartial judiciary—particularly life-tenured Article III judges—Congress has substantially lessened the risk that majoritarian consensus or favor due or not due to the country seeking extradition will interfere with individual liberty. *See* C. Van den Wijngaert, *The Political Offense Exception to Extradition* 100 (1980) ("[A]dministrative decisions with respect to extradition are much more likely to be influenced by political elements than the decisions of the courts."). The treaty's assignment to the judiciary of the task of determining the applicability of the political offense exception "reflects a congressional judgment that that decision not be made on the basis of what may be the current view of any one political administration." *In re Doherty*, 599 F.Supp. 270, 277, n. 6 (S.D.N.Y. 1984).[7]

Nor does the assignment to the judiciary of the initial determination of the applicability of the political offense exception deprive the executive branch of all discretion to determine that a person claiming the protection of that exception should not be extradited. The executive branch has the ultimate authority to decide whether to extradite the accused after a judicial determination that the individual is, in fact, extraditable. *Eain*, 641 F.2d at 516 (citing *In re Ezeta*, 62 F. 972 (N.D.Cal.1894)); 18 U.S.C. § 3186 (1982). Although the Secretary of State's authority to refuse extradition is presumably constrained by our treaty obligations, the contours of executive branch discretion in this area have never been expressly delineated. Bassiouni, *supra* p. 4, at 756 ("[T]he statute should probably be interpreted to grant the Secretary only limited discretion to differ from the courts in the matter of treaty interpretation. In fact, the Secretary has always based his refusal to surrender upon a determination that the treaty did not require extradition in that instance. . . . [T]he Secretary apparently considers his discretion only coextensive with the issues presentable at the extradition proceedings . . . [and] has refused surrender infrequently (only twice between 1940 and 1960). . . ."). Nevertheless, it is clear that the Secretary of State has sole discretion to determine whether a request for extradition should be denied because it is a subterfuge made for the purpose of punishing the accused for a political crime, *see In re Lincoln*, 228 F. 70 (E.D.N.Y.1915), *aff'd*, 241 U.S. 651, 36 S.Ct. 721, 60 L.Ed. 1222 (1916) (per curiam), or to refuse extradition on humanitarian grounds because of the procedures or treatment that await a surrendered fugitive, *Arnbjornsdottir-Mendler v. United States*, 721 F.2d 679, 683 (9th Cir. 1983); *Escobedo v. United States*, 623 F.2d 1098, 1105 (5th Cir.), *cert. denied*, 449 U.S. 1036, 101 S.Ct. 612, 66 L.Ed.2d 497 (1980); 18 U.S.C. § 3186 (1982).

Finally, the government points out the difficulty of defining which offenses are of a political character. It suggests that this difficulty demonstrates an absence of judicially discoverable manageable standards, another factor that, according to *Baker v. Carr*, counsels for judicial abstention. As in many areas of the law, and as we discuss further in the remainder of this opinion,

[6] Clearly, if application of the exception required us to approve of the political goals of an uprising group, executive discretion in granting protection from extradition would be more appropriate than judicial reviews. *See e.g.*, Note, *Terrorist Extradition and the Political Offense Exception: An Administrative Solution*, 21 VaJ. Int'l L. 163, 182 (1980).

[7] We note that since this case was argued, Congress has enacted the 1984 Act to Combat International Terrorism, Pub. L. 98-533, 98 Stat. 2706 (to be codified in scattered sections of 18 U.S.C., 22 U.S.C., & 41 U.S.C.). Section 201(a) of that Act, 98 Stat. 2709, urges the President "to seek more effective international cooperation in combating international terrorism, including . . . extradition of all terrorists." This mandate supports some of the substantive conclusions we reach below. *See infra* pp. 64-65. However, it does not assign to the executive initial responsibility for determining when the exception applies or suggest that the relationship between the United States and the requesting nation should be considered when a judicial determination is made regarding whether the exception applies.

there has always been debate about the precise contours of the political offense exception. But the absence of perfect predictive ability in discerning whether a given act falls within the exception is not synonymous with an absence of manageable standards. Rather, as with other complex legal problems, the basic standards that guide us in deciding whether the exception applies are refined on a case-by-case basis as new situations arise. The determination whether there was a violent political disturbance in the requesting country at the time of the alleged acts and whether the acts were incidental to the disturbance, *see infra* pp. 62-72, are mixed questions of law and fact, *see Ornelas v. Ruiz*, 161 U.S. 502, 509, 16 S. Ct. 689, 691, 40 L.Ed. 787 (1896), that do not require a political judgment. *See Eain*, 641 F.2d at 516. We fail to see how the judicial construction of 18 U.S.C. § 3184 and the applicable treaty, and the application of these laws to the facts of a given case, differs from all other judicial decisionmaking.

As the Supreme Court noted in *Baker v. Carr*, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." 369 U.S. at 211, 82 S.Ct. at 706-07.[8] The magistrate properly considered the applicability of the political offense exception to the offenses charged against Quinn, and we as well have a responsibility to construe the treaty and to determine whether "it provides the answer." *Id.* at 212, 82 S.Ct. at 707.

III. STANDARD OF REVIEW

A. District Court Review of The Magistrate's Order

[11-13] The scope of the district court's review of a magistrate's extradition order on a petition for writ of habeas corpus is limited to "whether the magistrate had jurisdiction, whether the offence [sic] charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Fernandez v. Phillips*, 268 U.S. 311, 312, 45 S.Ct. 541, 542, 69 L.Ed. 970 (1925); *accord Zanazanian v. United States*, 729 F.2d 624, 626 (9th Cir.1984). Preliminarily, the magistrate must determine, and the court must review whether the extradition treaty was in effect and applicable to the case and whether the person named in the complaint is the individual before the magistrate. *See Ivancevic v. Artukovic*, 211 F.2d 565 (9th Cir.), *cert. denied*, 348 U.S. 818, 75 S.Ct. 28, 99 L.Ed. 645 (1954). As discussed *supra* Section II., the political offense question is reviewable on habeas corpus as part of the question of whether the offense charged is within the treaty. *See Eain*, 641 F.2d at 513-18.

[14-16] The question whether the offense comes within the treaty ordinarily involves a determination of whether it is listed as an extraditable crime and whether the conduct is illegal in both countries, *Factor v. Laubenheimer*, 290 U.S. 276, 54 S.Ct. 191, 78 L.Ed. 315 (1933); *see supra* p. 5; these are purely legal questions that the habeas court may review *de novo*. *Kamrin v. United States*, 725 F.2d 1225 (9th Cir.1984); *Cucuzzella v. Keliikoa*, 638 F.2d 105 (9th Cir.1981). Purely factual questions in extradition cases are reviewed under the clearly erroneous standard. *See, e.g., Caplan v. Vokes*, 649 F.2d 1336, 1342 (9th Cir.1981) (finding that accused was a fugitive reviewed under clearly erroneous standard). The magistrate's probable cause determination "serve[s] only the narrow function of indicating those items of submitted evidence on which the decision to certify extradition is based." *Caplan v. Vokes*, 649 F.2d at 1342 n. 10. Because the magistrate's probable cause finding is thus not a finding of fact "in the sense that the court has weighed the evidence and resolved disputed factual issues," *id.*, it must be upheld if there is any competent evidence in the record to support it. *See Fernandez*, 268 U.S. at 312, 45 S.Ct. at 542; *Zanazanian*, 729 F.2d at 626; *Valencia v. Limbs*, 655 F.2d 195, 197 (9th Cir.1981).

[17-19] The political offense issue, in contrast to the determinations discussed above, is a mixed question of law and fact. *See Ornelas v. Ruiz*, 161 U.S. at 509, 16 S.Ct. at 691. Accordingly, the district court must review the magistrate's determination on this issue in the same manner that an appellate court reviews a district court's findings on mixed fact and law questions. Review of the application of law to fact depends on whether the determination is "essentially factual"—in which case it is reviewed under the clearly erroneous standard, *United States v. McConney*, 728 F.2d 1195, 1203 (9th Cir.) (en banc), *cert, denied*,—U.S.—, 105 S. Ct. 101, 83 L.Ed.2d 46 (1984)—or whether it requires the court to consider "legal concepts in the mix of fact and law and to exercise judgment about values that animate legal principles"—in which case the issue is reviewed *de novo, id.* at 1199-1204. Accordingly, a district court must review the magistrate's purely factual findings underlying the application of the political offense exception under the clearly erroneous standard, while the mixed determinations at issue—such as the question whether the crime was incidental to a political uprising—must be reviewed *de nove*.[9]

B. Appellate Review of the District Court's Decision

[20] As discussed *supra* Section I.B., the district court disagreed with some of the magistrate's factual findings and legal determinations, as well as its ultimate conclusion on the mixed questions of whether the charged crimes were political offenses. There is no question that we review the legal questions and mixed questions *de novo*. *McConney*, 728 F.2d at 1199-1204. Quinn contends, however, that we should uphold the *district court's* factual findings unless they are clearly erroneous, while the government urges us to defer to the factual findings made by the *magistrate* unless they are clearly erroneous. In support of his argument, Quinn contends that *Hooker v. Klein*, 573 F.2d 1360 (9th Cir.), *cert. denied*, 439 U.S. 932, 99 S.Ct. 323, 58 L.Ed. 2d 327 (1978), requires us to focus on "the findings of fact and conclusions of law made by the district court in granting or denying habeas relief." *See id.* at 1368. In that case, however, the habeas court affirmed the extradition court[10] without making specific findings. We focused on the findings of the court that had ordered extradition, which were adopted by the district court that heard the petition for writ of habeas corpus. *See also Caplan v. Vokes*, 649 F.2d 1336 (9th Cir. 1981) (clearly erroneous standard applied to factual findings of district court that had both ordered extradition and denied petition for habeas corpus).

[21] It would make little sense for us to ignore the factual findings of the judicial tribunal that made the initial factual determinations and defer, instead, to the differing factual findings made by a similar tribunal that merely reviewed the record of the earlier proceedings and held no evidentiary hearing of its own. Rather, we must determine whether the habeas court erred, as a matter of law, in overruling the magistrate's factual findings. Accordingly, we will defer to the extradition tribunal's factual findings unless we agree with the district court that they are clearly erroneous.

IV. THE DEVELOPMENT OF THE POLITICAL OFFENSE EXCEPTION

A. Origin of the Exception

The first-know extradition treaty was negotiated between an Egyptian Pharaoh and a Hittite King in the Thirteenth Century B.C. *See* I.A. Shearer, *supra* p. 22, at 5. However, the concept of political offenses as an exception to extradition is a rather recent development. In the centuries after the first know extradition treaty, and throughout the Middle Ages, extradition treaties were used primarily to return political offenders, rather than the perpetrators of common crimes, to the nations seeking to try them for criminal acts. *See* I.A. Shearer, *supra* p. 22, at 166; Recent Decisions, *The Political Offense Exception to Extradition: A 19th Century British Standard in 20th Century American Courts*, 59 Notre Dame L.Rev. 1005, 1008 (1984) [hereinafter cited as *20th Century American Courts*]. It was not until

[8] Whether the political offense exception applies in a particular case requires an inquiry not unrelated to and somewhat less intrusive than that required to determine if the Attorney General is prohibited from deporting or returning an alien to a country if "such alien's life or freedom would be threatened in such country on account of . . . political opinion," 8 U.S.C. § 1253(h) (1982). *See Bolamas-Hemandez v. INS*, 767 F.2d 1277, 1283 (9th Cir.1984) (evaluating whether threatened persecution is based on political opinion). We note that, rather than considering such a determination as one properly left to the executive branch, Congress has recently amended this section of the Immigration and Nationality Act to *remove* the Attorney General's discretion in making the determination that an alien is likely to be persecuted on the basis of political opinion. *See INS v. Stevic*, 467 U.S. 407, 104 S.Ct. 2489, 2496 n. 15, 81 L.Ed.2d 321 (1984) (discussing effect of section 203(e) of the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, which amended 8 U.S.C. § 1253(h)).

[9] In *Ornelas v. Ruiz* 161 U.S. 502, 16 S.Ct. 689, 40 L.Ed. 787 (1896), in reviewing a determination that a raid on a Mexican town was not protected by the political offense exception, the Court considered whether the extradition court "had no choice on the evidence" but to conclude that the acts were politically motivated. *Id.* at 511. Although this standard of review is substantially the same as the clearly erroneous standard's requirement that the reviewing court have "the definite and firm conviction that a mistake has been committed," *United States v. United States Gypsum Co.*, 333 U.S. 364, 68 S.Ct. 525, 92 L. Ed. 746 (1948), earlier in its opinion the Court noted that the magistrate's judgment that the charged offense is an extraditable crime should be reversed if "palpably erroneous in law," *id.* at 509, suggesting a *de novo* review of the legal aspects of the magistrate's mixed fact and law determination. We note that since *Ornelas* was decided in 1896, the Supreme Court has held that various mixed question of law and fact are reviewed *de novo, see, e.g. Ker v. California*, 374 U.S. 23, 33-34, 83 S.Ct. 1623, 1629-30, 10 L.Ed.2d 726 (1963) (reasonableness of searches and seizures), a standard of review we adopted for all mixed questions of fact and law in *United States v. McConney*, 728 F.2d 1195, 1203 (9th Cir.) (en banc), *cert. denied*,—U.S.—, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

[10] Under current practice extradition hearings are generally conducted by magistrates. However, 18 U.S.C. § 3184 grants jurisdiction to conduct extradition hearings to "any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State."

the early nineteenth century that the political offense exception, now almost universally accepted in extradition law, was incorporated into treaties.

The French and American revolutions had a significant impact on the development of the concept of justified political resistance, *see* Declaration des droits de l'homme et du Citoyen du 26 aout 1789, art. 2(Fr.) *incorporated as* La preamable de la Constitution de 1791 (Fr.) *reprinted in Les Constitutions de la France Depuis 1789*, at 33, 33 (S. Godechot ed. 1970) (declaring as an inalienable right "la resistance a l'oppression"); La Constitution de 1793, art. 120 (Fr.) *reprinted in Les Constitutions de la France Depuis 1789, supra*, at 79, 91 (France "donne asile aux etrangers bannis de leur patrie pour la cause de la liberte."); The Declaration of Independence para. 1 (U.S. 1776) ("[W]henever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it . . ."), as did the political philosophers of the time, *see* J. Locke, *The Second Treatise of Civil Government* ch. XIX (T. Cook ed. 1947); J.S. Mill, *On Liberty and Considerations on Representative Government* (R. McCallum ed. 1948). In 1834, France introduced the political offense exception into its treaties, *see* I.A. Shearer, *supra* p. 22, at 166-67, and by the 1850's it had become a general principle of international law incorporated in the extradition treaties of Belgium, England, and the United States as well. *See* C. Van den Wijngaert, *supra* p. 22, at 5-14; Epps, *supra* p. 4, at 62-63.

The political offense exception is premised on a number of justifications. First, its historical development suggests that it is grounded in a belief that individuals have a "right to resort to political activism to foster political change." Note, *American Courts and Modern Terrorism: The Politics of Extradition*, 13, N.Y.U.J.Int'l L. & Pol. 617, 622 (1981) [hereinafter cited as *Politics of Extradition*]; *see also In re Doherty*, 599 F.Supp. 270, 275 n. 4 (S.D.N.Y.1984) ("The concept was first enunciated during an era when there was much concern for and sympathy in England for the cause of liberation for subjugated peoples.") (citation omitted). This justification is consistent with the modern consensus that political crimes have greater legitimacy than common crimes. *Politics of Extradition, supra* p. 31, at 623. Second, the exception reflects a concern that individuals—particularly unsuccessful rebels—should not be returned to countries where they may be subjected to unfair trials and punishments because of their political opinions. *See* M. Bassiouni, *International Extradition and World Public Order* 425 (1974); C. Van den Wijngaert, *supra* p. 22, at 3; Garcia-Mora, *supra* p. 3, at 1226, 1238. Third, the exception comports with the notion that governments—and certainly their nonpolitical branches—should not intervene in the internal political struggles of other nations. *See* C. Van den Wijngaert, *supra* p. 22, at 3, 158, 204; *Politics of Extradition, supra* p. 31, at 622.[11]

B. Comparative Legal Standards

None of the political offense provisions in treaties includes a definition of the word "political." I.A. Shearer, *supra* p. 22, at 168. Thus, the term "political offense" has received various interpretations by courts since the mid-nineteenth century. Garcia-Mora, *supra*, p. 3 at 1230-31; Wise, *Book Review*, 30 Am.J.Comp.L. 362, 363 (1982) (reviewing C. Van den Wigngaert, *The Political Offense Exception to Extradition* (1980)); *cf.* M. Bassiouni, *supra* p. 32, at 371-72 (inability to define precisely the term "political offense" promotes a necessary flexibility of the concept). Not every offense that is politically motivated falls within the exception. Instead, courts have devised various tests to identify those offenses that comport with the justifications for the exception and that, accordingly, are not extraditable.

[22, 23] Within the confusion about definitions it is fairly well accepted that there are two distinct categories of political offenses: "pure political offenses" and "relative political offenses." *See Karadzole v. Artukovic*, 247 F.2d 198, 203 (9th Cir.1957), *vacated*, 355 U.S. 393, 78 S.Ct. 381, 2 L.Ed.2d 356 (1958) (mem.); *see generally* Garcia-Mora, *supra* p. 3, at 1230; *20th Century American Courts, supra* p. 30, at 1009. Pure political offenses are acts aimed directly at the government, *see* Lubet & Czackes, *supra*, p. 3, at 200, and have none of the elements of ordinary crimes, Garcia-Mora, *supra* p. 3, at 1230. These offenses, which include treason, sedition, and espionage, Garcia-Mora, *supra* p. 3, at 1234; Lubet & Czackes, *supra* p. 3, at 200, do not violate the private rights of individuals, Garcia-Mora, *supra* p. 3, at 1237. Because they are frequently specifically excluded from the list of extraditable crimes given in a treaty, *see 20th Century American Courts, supra* p. 30, at 1009, courts seldom deal with whether these offenses are extraditable, *see id.*, and it is generally agreed that they are not, *see* Lubet & Czackes, *supra* p. 3, at 200 (citing *In re Ezeta*, 62 F. 972(1894)).

The definitional problems focus around the second category of political offenses—the relative political offenses. These include "otherwise common crimes committed in connection with a political act," Lubet & Czackes, *supra* p.3, at 200, or "common crimes . . . committed for political motives or in a political context," *20th Century American Courts, supra* p. 30, at 1009. Courts have developed various tests for ascertaining whether "the nexus between the crime and the political act is sufficiently close . . . [for the crime to be deemed] not extraditable," Lubet & Czackes, *supra* p. 3, at 200. The judicial approaches can be grouped into three distinct categories: (1) the French "objective" test; (2) the Swiss "proportionality" or "predominance" test; and (3) the Anglo-American "incidence" test. *See generally* Carbonneau, *The Political Offense Exception to Extradition and Transnational Terrorists: Old Doctrine Reformulated and New Norms Created*, 1 Assoc. of Student Int'l L. Societies Int'l L.J. 1, 11-31 (1977); Garcia-Mora, *supra p. 3*, at 1239-56; *20th Century American Courts, supra* p. 30, at 1009-17. More recent developments allow for further distinctions between the British test and the test employed in the United States. *See generally* Lubet & Czackes, *supra* p. 3, at 201-10.

The early French test, most clearly represented in *In re Giovanni Gatti*, [1947] Ann.Dig. 145 (No. 70) (France, Ct.App. of Grenoble), considered an offense non-extraditable only if it directly injured the rights of the state. *See 20th Century American Courts, supra* p. 30, at 1010. Applying this rigid formula, French courts refused to consider the motives of the accused. Garcia-Mora, *supra p. 3*, at 1249-50. The test primarily protects only pure political offenses, *see id.* at 1235-36 (discussing cases), and is useless in attempting to define whether an otherwise common crime should not be extraditable because it is connected with a political act, motive, or context. *Id.* at 1252. Because politically motivated and directed acts may injure private as well as state rights, the objective test fails to satisfy the various purposes of the political offense exception. *Politics of Extradition, supra* p. 31, at 629-30. Nevertheless, this test has one benefit: because it is so limited it is not subject to abuse; perpetrators of common crimes will not be protected because of alleged political motivations. *Id.* at 630; Garcia-Mora, *supra* p. 3, at 1251.[12]

In contrast to the traditional French test, Swiss courts apply a test that protects both pure and relative political offenses. The Swiss test examines the political motivation of the offender, *see* Garcia-Mora, *supra* p. 3, at 1251, but also requires (a) a consideration of the circumstances surrounding the commission of the crime, *see* Carbonneau, *supra* p. 34, at 23-26, and (b) either a proportionality between the means and the political ends, *see 20th Century American Courts, supra* p. 30, at 1010-11, or a predominance of the political elements over the common crime elements, *see* Garcia-Mora, *supra* p. 3, at 1254.

At least one commentator has suggested that the first condition of the Swiss test is a requirement of a direct connection between the crime and the political goal—a condition that essentially requires the presence of a political movement. *See* Garcia-Mora, *supra* p. 3, at 1253 (citing Swiss cases). Others point out that the early Swiss requirement that a crime be incident to a political movement has been explicitly rejected in later cases. *See, e.g.*, Carbonneau, *supra* p. 34, at 26-28 (citing Swiss cases). More recent Swiss cases concentrate less on the accused's motive, relying instead almost entirely on an ends-means test under which politically motivated conduct is protected by the exception only if the danger created by the conduct is proportionate to the objectives, *i.e.*, if the means employed are the only means of accomplishing the end and the interests at stake are sufficiently important to justify the danger and harm to others. *See* Carbonneau, *supra* p. 34, at 28-29 (citing Swiss cases).

The comprehensiveness and flexibility of the "predominance" or "proportionality" test allows it to be conformed to changing realities of a modern world. *See* Garcia-Mora, *supra* p. 3, at 1255. But because the relative value of the ends and the necessity

[11] The differing justifications partially explain the differences between the test we apply in determining whether the political offense exception applies and the analysis we make when determining whether an alien is entitled to relief from deportation because of a threat of political persecution. *See supra* note 8 & *infra* note 15. The Refugee Act of 1980, Pub.L. No. 96-212, 94 Stat. 102 (codified in scattered sections of 8 U.S.C. (1982)), responded to a "national commitment to human rights and humanitarian concerns." S.Rep. No. 256, 96th Cong., 2d Sess. 1, *reprinted in* 1980 U.S. Code Cong. & Ad.News 141, 141. The political offense exception, in contrast, is justified by an acceptance of the right to political self-determination as well as by humanitarian concerns.

[12] French courts have more recently begun to follow a less rigid approach, first set forth in *In re Rodriguez*, 2 Gaz. Palais 113 (Ct.App. Parts Fr. 1953). The new French test is similar to the Swiss test in considering the context in which the crime was committed and the motivations of the accused, *see* Carbonneau, *supra* p. 34, at 19-22, but French courts have not incorporated a rigid ends-means test, *id.* at 30.

of using the chosen means must be considered, the criteria applied by Swiss courts incorporate highly subjective and partisan political considerations within the balancing test. *See* C. Van den Wijngaert, *supra* p. 22, at 158; *Politics of Extradition, supra* p. 31, at 631.[13] The test explicitly requires an evaluation of the importance of the interests at stake, the desirability of political change, and the acceptability of the means used to achieve the ends. The infusion of ideological factors in the determination which offenses are non-extraditable threatens both the humanitarian objectives underlying the exception and the concern about foreign non-intervention in domestic political struggles. Moreover, it severely undermines the notion that such determinations can be made by an apolitical, unbiased judiciary concerned primarily with individual liberty. *See supra* pp. 20-22.[14]

The "incidence" test that is used to define a non-extraditable political offense in the United States and Great Britain was first set forth by the Divisional Court in *In re Castioni,* [1891] Q.B. 149 (1890). In that case, the Swiss government requested that Great Britain extradite a Swiss citizen who, with a group of other angry citizens, had stormed the palace gates and killed a government official in the process. *Id.* at 150-51. Castioni did not know the victim or have a personal grudge against him. The habeas court considered:

[W]hether, upon the facts, it is clear that the man was acting as one of a number of persons engaged in acts of violence of a political character with a political object, and as part of the political movement and [up]rising in which he was taking part.

Id. at 159 (per Denman, J.). The court denied extradition, finding that Castioni's actions were "incidental to and formed a part of political disturbances," *id.* at 166 (per Hawkins, J.), and holding that common crimes committed "in the course" and "in the furtherance" of a political disturbance would be treated as political offenses, *id.* at 156 (per Denman, J.).

Although both the United States and Great Britain rely explicitly on *Castioni,* each has developed its own version of the incidence test. British courts proceeded first to narrow the exception in 1894. In *In re Meunier,* [1894] 2 Q.B. 415, the court extradited a French anarchist charged with bombing a cafe and military barracks, *id.* at 415, concluding that anarchist action is not incident to a two-party struggle for political power, *id,* at 419 (per Cave, J.). The court held that the political offense exception protects those who seek to substitute one form of government for another, not those whose actions disrupt the social order and whose "efforts are directed primarily against the general body of citizens." *Id.*

The rigid "two-party struggle" requirement of the British incidence test has not survived. More recently, British courts have taken other factors into account, noting that political offenses must be considered "according to the circumstances existing at the time." *Regina v. Governor of Brixton Prison (ex parte Kolczynski),* [1955] 1 Q.B. 540, 549 (1954) (per Cassels, J.). In *Kolczynski,* a British court refused to extradite Polish soldiers who were at risk of being punished for treason although the Polish government officially sought their extradition for common crimes. *See id.* at 543, 545. No political uprising existed at the time the crimes were committed. *Id.* at 544. Instead of a distinct uprising, the new British incidence test requires some "political opposition . . . between fugitive and requesting State," *Schtraks v. Government of Israel,* [1964] A.C. 556, 591 (1962) (per Viscount Radcliffe), and incorporates an examination of the motives of the accused and the requesting country in those situations in which the offense is not part of an uprising, *see* Lubet & Czackes, *supra* p. 3, a 202-03.[15]

C. Original Formulation of the United States Incidence Test

The United States, in contrast to Great Britain, has adhered more closely to the *Castioni* test in determining whether conduct is protectd by the political offense exception. The seminal United States case in this area is *In re Ezeta,* 62 F. 972 (N.D. Cal.1894), in which the Salvadoran government requested the extradition of a number of individuals accused of murder and robbery. The fugitives maintained that the crimes had been committed while they unsuccessfully attempted to thwart a revolution. *See id.* at 995. Extradition was denied because the acts were "committed during the progress of actual hostilities between contending forces," *id.* at 997, and were "closely identified" with the uprising "in an unsuccessful effort to suppress it," *id.* at 1002. However, an alleged act that occurred four months prior to the start of armed violence was held not to be protected by the incidence test despite the accused's contention that El Salvador's extradition request was politically motivated. *Id.* at 986.[16]

As we noted at the outset, the Supreme Court has addressed the political offense issue only once. In *Ornelas v. Ruiz,* 161 U.S. 502, 16 S.Ct. 689, 40 L.Ed. 787 (1896), Mexico sought the extradition of an individual for murder, arson, robbery, and kidnapping committed in a Mexican border town, at or about the time revolutionary activity was in progress. *Id.* at 510, 16 S.Ct. at 692. The Court allowed extradition on the basis that the habeas court had applied an improper, non-deferential standard of review to the extradition court's findings. *Id.* at 511-12, 16 S.Ct. at 692-93. It continued by listing four factors pertinent to the political offense inquiry in the case: (1) the character of the foray; (2) the mode of attack; (3) the persons killed or captured; and (4) the kind of property taken or destroyed. *Id.* at 511, 16 S.Ct. at 692. It found that although the raid (in December 1892) may have been contemporaneous with the revolutionary movement (in 1891), it was not of a political character because it was essentially unrelated to the uprising. The Court noted that the purported political aspects of the crimes were negated "by the fact that immediately after this occurrence, though no superior armed force of the Mexican government was in the vicinity to hinder their advance into the country, the bandits withdrew with their booty across the river into Texas." *Id.*

Since *Ornelas,* lower American courts have continued to apply the incidence test set forth in *Castioni* and *Ezeta* with its twofold requirement: (1) the occurrence of an uprising or other violent political disturbance[17] at the time of the charged offense, *see, e.g., Garcia-Guillern v. United States,* 450 F.2d 1189, 1192 (5th Cir. 1971), *cert. denied,* 405 U.S. 989, 92 S.Ct. 1251, 13 L.Ed.2d 455 (1972); *Ramos v. Diaz,* 179 F.Supp. 459, 462 (S.D.Fla. 1959),[18] and (2) a

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[13] The Swiss, aware that their test incorporates factors that preclude ideological neutrality, allow only their highest court to determine when the political offense exception applies. *See Politics of Extradition, supra* p. 631 (citing 1 L. Oppenheim, *International Law* 579 (4th ed. 1928).

[14] A number of commentators have suggested that perhaps the most useful test for when the exception should apply can be derived from the theory of "ideological self-preservation." *See, e.g.,* M. Bassiouni, *International Extradition: United States Law & Practice* ch. VIII, at § 2-74 to § 2-77 (1983); C. Van den Wijngaert, *supra* p. 22, at 157-58. The premise of this theory is that a political crime is justified if it is a form of self-defense, in that the means used to attempt to secure a fundamental right were limited to the least harmful means available. The commentators suggest that an objective test could be derived from this theory and would weigh (a) the nature of the rights violated by the state; (b) the nature of the state conduct that violated these rights; and (c) the nature of the individual conduct that violated the law of the state in an attempt to defend these rights. As one commentator has noted, *see* C. Van den Wijngaert, *supra* p. 22, at 158, this test resembles the Swiss proportionality test but, in addition to the balancing required by that test, it requires an evaluation of the conduct of the requesting nation. Despite the initial appeal of the theory of ideological self-preservation, we believe it is an inappropriate test. It is subject to all the criticisms to which the Swiss test is subject. Moreover, it requires the kind of evaluation of the conduct of another nation that violates the principle of non-intervention in the internal affairs of another state. *See id.* It thus runs counter to one of the primary tenets underlying the political offense exception, *see supra* pp. 31-32, and requires the judiciary to undertake a task for which it is particularly ill-suited, *see supra* pp. 20-21 & note 6.

[15] The British refusal to extradite those who are at risk of persecution parallels the United States' standards for asylum, *see* 8 U.S.C. § 1158(a) (1982), and for prohibiting the Attorney General from returning an alien to a country in which the alien's life or freedom would be threatened, *see* 8 U.S.C. § 1253(h) (1982). However, in contrast to the British standard, United States courts hesitate to evaluate either the accused's motives when applying the political-offense incidence test, *see infra* pp. 42, 69, or the alien's subjective fears when determining whether the Attorney General is prohibited from returning an alien to a specified country, *see Bolanos-Hernandez v. INS,* 767 F.2d 1277, 1283 (1984). *But see id,* at 1321 n. 11 (courts consider subjective fear in determining whether alien qualifies for grant of asylum). In the United States in the extradition context the Secretary of State evaluates the risks that an accused will be persecuted if extradited. *See supra* pp. 23-24.

[16] The court referred that issue to the executive branch. 62 F. at 986; *see supra* pp. 23-24.

[17] Although unnecessary to the resolution of the cases before them, a number of courts have stated that a "war" could qualify as the violent political disturbance for purposes of the incidence test. *See, e.g., Eain v. Wilkes,* 641 F.2d 504, 518 (7th Cir.), cert. denied, 451 U.S. 894, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981); *Sindona v. Grant,* 619 F.2d 167, 173 (2d Cir. 1980). Although the terms "rebellion," "revolution," "uprising," and "civil war" may for our purposes be treated as synonymous, none is for any purpose synonymous with the term "war." As we discuss further below, *see infra* note 33, we question the propriety of applying the incidence test in the same manner in the case of crimes occurring during wars as in the case of crimes occurring during uprisings.

[18] American courts generally will take judicial notice of a state of uprising. *See e.g., Karadzole v. Artukovic,* 247 F.2d 198, 204 (9th Cir. 1957) (noting that district court properly took judicial notice of struggle for political control in Croatia), *vacated and remanded,* 355 U.S. 393, 78 S.Ct. 381, 2 L.Ed.2d 356 (1958) (mem.); *Ramos v. Diaz,* 179 F.Supp. 459, 462 (S.D.Fla. 1959) (extradition court took judicial notice of revolutionary movement in Cuba); *In re McMullen,* No. 3-78-1099 MG, slip op. at 4 (N.D.Cal. May 11, 1979) (magistrate took judicial notice of uprising in Northern Ireland). *But see In re Abu Eain,* No. 79 M 175, slip op. at 13-14 (N.D.Ill. Dec. 18, 1979) (magistrate refused to take judicial notice of Middle East hostilities), *reprinted in ABU Eain v. Adams,* 529 F.Supp. 685, 688-95 (N.D.Ill. 1980).

charged offense that is "incidental to" "in the course of," or "in furtherance of" the uprising, *see, e.g., Eain*, 641 F.2d at 518; *Sindona v. Grant*, 619 F.2d 167, 173 (2d Cir. 1980); *Garcia-Guillern*, 450 F.2d at 1192. While the American view that an uprising must exist is more restrictive than the modern British view and while we, unlike the British, remain hesitant to consider the motives of the accused or the requesting state, *see* Lubet & Czackes, *supra* p. 3, at 203, 205, American courts have been rather liberal in their construction of the requirement that the act be "incidental to" an uprising, *see* Garcia-Mora, *supra* p. 3, at 1244.

The American approach has been criticized as being "both underinclusive and overinclusive," *see* Lubet & Czackes, *supra* p. 3, at 203, and as "yield[ing] anomalous . . . results," *see 20th Century American Courts, surpa* p. 30, at 1013-14. Although these criticisms have some merit, neither flaw in the American incidence test is serious. Some commentators have suggested that the test is underinclusive because it exempts from judicially guaranteed protection all offenses that are not contemporaneous with an uprising even though the acts may represent legitimate political resistance. *See, e.g.*, Lubet & Czackes, *supra* p. 3, at 203-04. For example, the attempted kidnapping of a Cuban counsul, allegedly for the purpose of ransoming the consul for political prisoners held in Cuba, was held by a court not to be a political offense because the act was not "committed in the course of and incidental to a violent political disturbance." *Escobedo* v. *United States*, 623 F.2d 1098, 1104 (5th Cir.), *cert. denied*, 449 U.S. 1036, 101 S.Ct. 612, 66 L.Ed.2d 497 (1980).

There are several responses to the charge of underinclusiveness. First, in their critiques, the commentators fail to give sufficient weight to the existence of a number of ameliorative safeguards. For example, review of certifications of extradition by the Secretary of State, *see supra* pp. 23-24, serves partially to remedy any underinclusiveness problem. If a court finds the accused extraditable, the Secretary has, at the very least, broad discretion to review the available record and conduct a *de novo* examination of the issues and, if necessary, to consider matters outside the record in determining whether to extradite. *See* Lubet & Czackes, *supra* p. 3, at 199. The potential underinclusiveness dangers of the uprising requirement are also mitigated by the fact that purely political offenses are never extraditable. *See id*, at 206; *supra* pp. 33-34. Additionally, because of the rule of dual criminality, *see supra* p. 5, individuals accused of offenses that constitute protected activity under the First Amendment will not be extradited. *See* Lubet & Czackes, *supra* p. 3, at 206. Second, it is questionable whether the incidence test is, in fact, underinclusive. While it does not protect all politically motivated offenses, it protects those acts that are related to a collective attempt to abolish or alter the government—the form of political offense that the exception was initially designed to protect, *see supra* pp. 31-32. Third, any effort to protect all crimes that are in some way politically motivated would either require the abandonment of the objective test for determining which offenses fall within the exception—in our view a most undesirable result—or would result in the protection of innumerable crimes that fall far outside the original purposes underlying the exception.

A number of commentators suggest, on the other hand, that the American test is overbroad because it makes non-extraditable some offenses that are not of a political character merely because the crimes took place contemporaneously with an uprising. *See* Garcia-Mora, *supra* p. 3, at 1246; Lubet & Czackes, *supra* p. 3, at 205; *Politics of Extradition, supra* p. 31, at 628. We think these commentators misunderstand the test. They all cite *Karadzole v. Artukovic*, 247 F.2d 198 (9th Cir. 1957)—"one of the most roundly criticized cases in the history of American extradition jurisprudence," *Eian v. Wilkes*, 641 F.2d 504, 522 (7th Cir.), *cert. denied*, 454 U.S. 894, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981)—to support their argument.[19] In *Artukovic*, the Yugoslavian government sought the extradition of a former Minister of the Interior of the puppet Croatian government which took over a portion of Yugoslavia following the German invasion in April 1941. Artukovic was charged with directing the murder of hundreds of thousands of civilians in concentration camps between April 1941 and October 1942. Prior to a hearing by an extradition magistrate, the district court granted habeas relief, concluding that the charged offenses were non-extraditable political offenses. *Artukovic v. Boyle*, 140 F.Supp. 245, 246 (S.D.Cal.1956). We affirmed, applying the *Castioni* language and noting that the offenses occurred during the German invasion of Yugoslavia and subsequent establishment of Croatia. *Karadzole v. Artukovic*, 247 F.2d 198, 202-04 (9th Cir. 1957). We considered but were unpersuaded by the agrument that because war crimes are so barbaric and atrocious they cannot be considered political crimes, *see id.* at 204, and that United Nations resolutions called for the extradition of war criminals, *see id.* at 205.

The Supreme Court vacated our opinion in a one paragraph per curiam opinion and remanded for an extradition hearing pursuant to 18 U.S.C. § 3184. *See* 355 U.S. 393 (1958). The Court did not comment on the substantive issues and may well have based its order solely on the fact that the habeas court considered the legal questions involved in Artukovic's extradition before an extradition court had an opportunity to make the preliminary findings mandated by section 3184. *See United States v. Artukovic*, 170 F.Supp. 383, 393 (S.D.CAl.1959). In his subsequent decision the magistrate denied extradition on the ground that there was insufficient evidence to establish probable cause of Artukovic's guilt, *see id.* at 392, but in dicta he adopted our vacated political offense analysis, *see id.* at 393.[20]

We do not believe that *Artukovic* adequately supports the commentators' suggestion that the incidence test is overinclusive. We think it more likely that the problem lies not in the test itself but in the fact that we erred by applying it in that case.

The offenses with which Artukovic was charged fall within that very limited category of acts which have been labeled "crimes against humanity." In *Artukovic* we erroneously assumed that "crimes against humanity" was synonymous with "war crimes," and then concluded in somewhat irrelevant fashion that not all war crimes automatically fall outside the ambit of the political offense exception. *See* 247 F.2d at 204. Our analysis was less than persuasive. We did not need then, and do not need now, to reach a conclusion about whether all war crimes fall outside the bounds of the exception. *Cf.* C. Van den Wijngaert, *supra* p. 22, at 143 (suggesting that, under international law, states remain free to consider war crimes as political offenses). The offenses with which Artukovic was charged were crimes against humanity; it matters not whether or not they were also war crimes; either way, crimes of that magnitude are not protected by the exception.

Crimes against humanity, such as genocide, violate international law[21] and consti-

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[19] The extradition question in this case originally went up and down the federal court system for almost a decade. *See Artukovic v. Boyle*, 107 F.Supp 11 (S.D.Cal.1952), *rev'd sub nom. Ivancevic v. Artukovic*, 211 F.2d 565 (9th Cir.), *cert. denied*, 348 U.S. 818, 75 S.Ct. 28, 99 L.Ed. 645, *reh. denied*, 348 U.S. 889, 75 S.Ct. 202, 99 S.Ct. 645 (1954), *on remand*, 140 F.Supp. 245 (S.D.Cal.1956), *aff'd sub nom. Karadzole v. Artukovic*, 247 F.2d 198 (9th Cir. 1957), *vacated and remanded*, 355 U.S. 393, 78 S.Ct. 381, 2 L.Ed.2d 356 (1958) (mem.), *surrender denied on remand sub nom. United States v. Artukovic*, 170 F.Supp. 383 (S.D.Cal.1959). After Congress removed protection from alleged Nazi war criminals who claimed to be at risk of persecution if deported, *see* Immigration and Nationality Act—Nazi Germany, Pub.L. No. 95-549, 92 Stat. 2065 (codified at 8 U.S.C. §§ 1251, 1253-54 (1982)), deportation proceedings that had been initiated in 1951 on the basis of Artukovic's 1948 illegal entry into the United States were reinstated. *See Artukovic v. INS*, 693 F.2d 894, 896 (9th Cir. 1982). We held that the stay of Artukovic's deportation, granted in 1959 on the ground that Artukovic would be subject to persecution if deported to Yugoslavia, *see id.* at 896, could not be revoked without a hearing, *see id.* at 899. Then, in 1984, Yugoslavia filed a new extradition request; a magistrate determined that there was probable cause to believe Artukovic committed the charged offenses. *See Extradition of Artukovic*, CV 84-8743-R(B) (C.D.Cal. May 1, 1985). The district judge denied the habeas petition, *see Artukovic v. United States*, No. CV 85-3611-R (C.D.Cal. February 6, 1986), and Artukovic was extradited a few days later.

[20] Because the Supreme Court vacated the judgment in *Artukovic* without discussion of the merits, *see* 355 U.S. 393, 78 S.Ct. 381, 2 L.Ed.2d 356 (1958), we cannot reach any conclusion about whether it believed Artukovic's acts were protected by the political offense exception. However, it is clear that our opinion has no precedential value. *See County of Los Angeles v. Davis*, 440 U.S. 625, 634 n. 6, 99 S.Ct. 1379, 1384-85 n. 6, 59 L.Ed.2d 642 (1979) ("Of necessity our decisions 'vacating the judgment of the Court of Appeals deprives that court's opinion of precedential effect . . . .'") (quoting *O'Connor v. Donaldson*, 422 U.S. 563, 577-78 n. 12, 95 S.Ct. 2486, 2494-95 n. 12, 45 L.Ed.2d 396 (1975)).

[21] *See* M. Bassiouni, *supra* note 14, at ch. VIII, §§ 2-80, 2-83 (1983); C. Van den Wijngaert, *supra* p. 22, at 44, 140-41; Garcia-Mora, *Crimes Against Humanity and the Principle of Nonextradition of Political Offenders*, 62 Mich.L.Rev. 832, 939 (1964) (citing Convention on the Prevention and Punishment of the Crime of Genocide, *adopted* Dec. 9, 1948, T.I.A.S. No. 1021, 78 U.N.T.S. 277); *see also* I.A. Shearer, *supra* p. 22, at 186 (Genocide Convention imposes extradition obligation on parties thereto).

Courts have heretofore, on the few occasions when conduct by former governmental officials was involved, *see, e.g., Jimenez, v. Aristeguieta*, 311 F.2d 547 (5th Cir.1962); *In re Ezeta*, 62 F. 972 (N.D.Cal.1894), simply assumed without discussion or analysis that the political offense exception was applicable and that the incidence test constituted the proper standard. That is what we did in *Artukovic*. Because all acts of government officials that carry out a government policy are, by definition, political, applying the incidence test makes little sense and leads to paradoxical results. It gives special protection to officials when they are suppressing an uprising and strips them of protection at all other times. Conceptually, the appropriate analogy to individuals acting in furtherance of an uprising is government officials acting in furtherance of a government policy, not in connection with an uprising. Thus, a serious question exists as to whether we should apply the incidence test where extradition is requested of persons who commit crimes while officials of a government.

Since the political offense exception is rooted in a desire to protect those rebelling against autocratic

tute an "abuse of sovereignty" because, by definition, they are carried out by or with the toleration of authorities of a state.[22] While some of the same offenses that violate the laws and customs of war[23] are also crimes against humanity, crimes of the latter sort most notably include "murder, extermination, enslavement, . . . or persecutions on political, racial or religious grounds . . ." of entire racial, ethnic, national or religious groups. *The Nurnberg (Nuremberg) Trial*, 6 F.R.D. 69, 130 (Int'l Military Tribunal 1946). Various "inhumane acts . . . committed after the beginning of [World War II] did not constitute war crimes, [but] . . . constituted crimes against humanity." *Id.* at 131.

[24] Wholly aside from the *Artukovic* court's confusion of "war crimes" and "crimes against humanity," we do not believe that the political offense exception, even if meant to protect the acts of representatives of a former government,[24] should have been extended to protect those carrying out a governmental policy calling for acts of destruction whose "nature and scope . . . exceeded human imagination," *Excerpts from Speech by German President*, N.Y. Times, May 9, 1985, at 10, col. 1, 3 (excerpts from Speech to Parliament on May 8, 1985 by President Richard von Weizsacker, as translated by the West German Foreign Ministry) (noting that the Nazi genocide is "unparalled in history"). These crimes are simply treated differently and are generally excluded from the protection of many normally applicable rules. *See, e.g., The Nurnberg (Nuremberg) Trial*, 6 F.R.D. at 107-11 (individuals accused of these offenses can be tried before international tribunal because offenses violate international law). They are certainly in our view to be excluded from coverage under the political offense exception.

[25] Accordingly, we do not consider the "underinclusiveness" and "overinclusiveness" problems of the incidence test to have been as severe as has been suggested by some of the commentators. Rather, we believe that the incidence test, when properly applied, has served the purposes and objectives of the political offense exception well. More recently, a number of courts have begun to question whether, in light of changing political practices and realities, we should continue to use the traditional American version of that test. They have suggested that basic modifications may be required and, specifically, that certain types of conduct engaged in by some contemporary insurgent groups, conduct that we in our society find unacceptable, should be excluded from coverage. For the reasons we explain below, we believe that the American test in its present form remains not only workable but desirable; that the most significant problems that concern those advocating changes in the test can be dealt with without making the changes they propose; and that efforts to modify the test along the lines suggested would plunge our judiciary into a political morass and require the type of subjective judgments we have so wisely avoided until now.

D. The Recent Political Offense Cases

Recently, the American judiciary has split almost evenly over whether the traditional American incidence test should be applied to new methods of political violence in two categories—domestic revolutionary violence and international terrorism—or whether fundamental new restrictions should be imposed on the use of the political offense exception.

In both *In re McMullen*, No. 3-78-1099 MG (N.D.Cal. May 11, 1979), and *In re Mackin*, No. 80 Cr. Misc. 1 (S.D.N.Y. Aug. 13, 1981), *appeal dismissed*, 668 F.2d 122 (2d Cir.1981), extradition magistrates applied the traditional United States incidence test despite expressing serious concern over the nature of the charged offenses. In *McMullen*, the United Kingdom sought the extradition of a former PIRA member accused of murder in connection with the bombing of a military barracks in England. Finding that McMullen's acts took place during a state of uprising throughout the United Kingdom and were incidental to the political disturbance, the magistrate denied extradition noting that "[e]ven though the offense be deplorable and heinous, the criminal actor will be excluded from deportation if the crime is committed under these pre-requisites." Slip op. at 3.[25] The magistrate's formulation of the test for the political offense exception in *Mackin* was similar.[26] In that case, the United Kingdom's request for the extradition of an IRA member accused of murdering a British soldier in Northern Ireland was denied.[27]

In contrast, although asserting that the existing incidence test "is sufficiently flexible to avoid [the] abuses [noted by commentators]," 641 F.2d at 519, and while ostensibly applying the traditional test, *see id*, at 515-16, 518, the Seventh Circuit in *Eain v. Wilkes*, 641 F.2d 504 (7th Cir.), *cert, denied*, 454 U.S. 894, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981), superimposed a number of limitations on the exception that had not previously been a part of United States law. Abu Eain, a resident of the occupied West Bank and a member of the PLO, was accused by the State of Israel of setting a bomb that exploded in the Israeli city of Tiberias in 1979, killing two boys and injuring more than thirty other people. A magistrate granted Israel's extradition request, the district court denied habeas corpus relief, and the Seventh Circuit affirmed.

First, the *Eain* court distinguished between conflicts that involved "on-going, organized battles between contending armies," 641 F.2d at 519, and conflicts that involved groups with "the dispersed nature of the PLO," *id.*, nothing that in the former case, unlike the latter, a clear distinction can be drawn between the activities of the military forces and individual acts of violence. Second, although acknowledging that motivation is not determinative of the political character of an act, *see id.* at 520 (citing Lubet & Czackes, *supra* p. 3, at 203 n. 102), and characterizing its next requirement as that of a "direct link" between the offense and the conflict, *id.* at 521, the court examined the motivation for and political legitimacy of the act. The court appears to have concluded that, according to the evidence presented, the PLO's objectives were not politically legitimate: the PLO sought changes in "the Israeli political structure as an incident of the explusion of a certain population from the country," *id.* at 520, and its activities were therefore more properly characterized as aimed at Israel's "social structure" rather than its "political structure," *id.* Third, the court held simply that regardless what the political objective is, "the indiscriminate bombing of a civilian population is not recognized as a protected political act." *Id.* at 521.

Thus, the Seventh Circuit in *Eain* redefined an "uprising" as a struggle between organized, non-dispersed military forces; made a policy determination regarding the legitimacy of given political objectives;[28]

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regimes, there is, as we have suggested, some question whether the doctrine is applicable at all in the case of former government officials. There are, however, two policies in addition to the protection of those who engage in political uprisings that underlie the political offense exception. They are concerned about the safety and welfare of those who have engaged in political activity that is offensive to the government now in power and a commitment to nonintervention in the internal affairs of foreign countries. Both these policies would be applicable in the case of former government officials who have fled their native land. Thus, it can be argued that while the incidence test may be inappropriate for evaluating the extraditability of former government officials, the exception itself is applicable and a different test should be devised for use in such cases. *See also infra* note 33 (discussing application of the incidence test to wars between nations). However, we leave these questions for resolution in future cases.

[22] *See* Bassiouni, *International Law and the Holocaust*, 9 Cal.W.Int'lL.J. 201-56 (1971) ("Crimes against humanity" including genocide "involve wholesale human depredation which could not occur without the state's instigation or acquiescence.") Garcia-Mora, *supra* note 21, at 933-34 (quoting Draft Code of Offenses Against the Peace and Security of Mankind art. 2, para. 11, Report of the International Law Commission to the General Assembly, 9 U.N. GAOR Supp. (No. 9) at 9-11, U.N. Doc. No. A/2693 (1954)); *cf. The Nurnberg (Nuremberg) Trial*, 6 F.R.D. 69, 108 (Int'l Military Tribunal 1946) (holding that international tribunal had jurisdiction to hold individual defendants responsible for aggressions, crimes against humanity, and war crimes because these individuals, who occupied responsible positions in the German government, must have known that their acts violated Germany's responsibilities under international law); M. Bassiouni, *International Criminal Law: A Draft International Criminal Code* 65 (1980) (pointing out that various war crimes necessarily involve a policy level government decision).

[23] War crimes include "devastation not justified by military necessity." *See The Nurnberg (Nuremberg) Trial*, 6 F.R.D. at 130.

[24] The incidence test was originally intended to afford protection to individuals engaged in political resistance; the test was designed to identify a set of protestors, namely, those engaged in an uprising designed to change the existing government. *See supra* pp. 31-32. It is unclear whether this test applies to former government officials, *cf. In re Ezeta*, 62 F. 972, 1000 (N.D. Cal.1894) (noting that most extradition cases involve acts committed against the government, and that such cases are only of *some* value when the pending case concerns acts that were committed by representatives of the then-existing government), and even whether the political offense exception is applicable at all to such individuals.

[25] The United States government subsequently sought to deport McMullen because of his illegal entry into this country and his undocumented status. We found that McMullen had established that, because he had deserted the PIRA, his life or freedom would be threatened if he returned to the United Kingdom. *McMullen v. INS*, 658 F.2d 1312 (9th Cir.1981).

[26] The magistrate in *Mackin* also evaluated whether Mackin was a member of a group engaged in an uprising. We do not find any support in the case law for imposing this requirement. *see* discussion *infra* pp. 69-70.

[27] In contrast to the *McMullen* magistrate, the *Mackin* magistrate suggested that sufficiently "anarchistic" acts, such as those directed at civilians, would be extraditable. However, the fact that a group that engaged in dispersed political violence frequently directed at civilians carried out the bombing was, in the magistrate's view, insufficient to remove the acts from the exception's protection.

[28] The Seventh Circuit did not characterize the PLO's efforts to expel Jews from Israel as a part of a plan to commit a "crime against humanity." We express no view here as to whether the PLO's actions might constitute such a crime. See *supra* p. 47

and excluded violent acts against innocent civilians [29] from the protection afforded by the exception. *Cf.* Note, *Terrorist Extradition and the Political Offense Exception; An Administrative Solution,* 21 Va. J.Int'l L. 163, 177-78 (1980) (criticizing *Eain* Magistrate's test because it invites ideological and foreign policy determinations by extradition courts). As part of its justification for the new limitations it imposed on the applicability of the exception, the *Eain* court expressed concern that, in the absence of these restrictions nothing would prevent an influx of terrorists seeking a safe haven in America. . . . Terrorists who have committed barbarous acts elsewhere would be able to flee to the United States and live in our neighborhoods and walk our streets forever free from any accountability for their acts. We do not need them in our society. . . . [T]he political offense exception . . . should be applied with great care lest our country, become a social jungle. . . . *Id.* at 520.

The District Court for the Southern District of New York has recently rejected portions of the *Eain* analysis but accepted some of the new restrictions propounded by the Seventh Circuit. In *In re Doherty,* 599 F. Supp. 270 (S.D.N.Y. 1984), the court denied the United Kingdom's request that a PIRA member accused of attacking a convoy of British soldiers in Northern Ireland be extradited. The extradition court rejected the notion that the exception protects only "actual armed insurrections or more traditional and overt military hostilities." *Id.* at 275. Noting that "political struggles have been . . . effectively carried out by armed guerillas," *id.,* the court concluded that a dissident group's likelihood of success and its ability to effect changes by other than violent means were not determinative factors. *Id.* Nevertheless, the court agreed with the Seventh Circuit's tacit conclusion that the traditional incidence test is "hardly consistent with . . . the realities of the modern world," *id.* at 274.

The *Doherty* court continued by approving of the *Eain* court's willingness to balance policy considerations so that the exception "does not afford a haven for persons who commit the most heinous atrocities for political ends." *Id.* at 275 n. 4. Although such issues were not raised in *Doherty,* the court stated explicitly that the exception would not protect bombings in public places, *id.* at 275; acts that "transcend the limits of international law," *id.;* acts "inconsistent with international standards of civilized conduct," *id.* at 274; harm to hostages, *id.* at 276; violations of the Geneva convention, *id.;* or the acts of "amorphous" or "fanatic" groups without structure, organization, or clearly defined political objectives, *id.* Thus, the *Doherty* court, like the *Eain* court, concluded that the traditional incidence test is insufficient to determine which offenses are protected by the exception. Both courts felt it necessary and appropriate to judge the political legitimacy of various ends and means and to exclude "illegitimate" acts from protection even if the incidence test were met. While not identifying their new limitations as such, both incorporated significant aspects of the Swiss ends-means or proportionality test into Anglo-American jurisprudence.

V. THE POLITICAL OFFENSE EXCEPTION AND THE REALITIES OF CONTEMPORARY POLITICAL STRUGGLES

A. The Political Reality: The Contours of Contemporary Revolutionary Activity

The recent lack of consensus among United States courts confronted with requests for the extradition of those accused of violent political acts committed outside the context of an organized military conflict reflects some confusion about the purposes underlying the political offense exception. *See supra* pp. 31-32. The premise of the analyses performed by modern courts favoring the adoption of new restrictions on the use of the exception is either that the objectives of revolutionary violence undertaken by dispersed forces and directed at civilians are by definition, not political, *see, e.g., Eain,* 641 F.2d at 519 ("Terrorist activity seeks to promote social chaos."), or that, regardless of the actors' objectives the conduct is not politically legitimate because it "is inconsistent with international standards of civilized conduct," *Doherty,* 599 F.Supp. at 274. Both assumptions are subject to debate.

A number of courts appear tacitly to accept a suggestion by some commentators that begins with the observation that the political offense exception can be traced to the rise of democratic governments. *See* I.A. Shearer, *supra* p. 22, at 166; G. Van den Wijngaert, *supra* p. 22, at 100; Carbonneau, *supra* p. 34, at 5. Because of this origin, these commentators argue, the exception was only designed to protect the right to rebel against tyrannical governments, *see e.g.,* Epps, *supra* p. 4, at 65, and should not be applied in an ideologically neutral fashion, *see e.g., Carbonneau, supra p. 34, at 44; see also In re Gonzales,* 217 F.Supp. 717, 721 n. 9 (S.D.N.Y. 1963) (evaluating whether acts in question "were blows struck in the cause of freedom against a repressive totalitarian regime"). *But see* C. Van den Wijngaert, *supra* p. 22, at 102 (noting that democratic states may also suppress political conduct in the guise of criminality).

These courts then proceed to apply the exception in a non-neutral fashion but, in doing so, focus on and explicitly reject only the *tactics,* rather than the true object of their concern, the political *objectives. See* C. Van den Wijngaert, *supra* p. 22, at 102. The courts that are narrowing the applicability of the exception in this manner appear to be moving beyond the role of an impartial judiciary by determining tacitly that particular political objectives are not "legitimate."

[26] We strongly believe that courts should not undertake such a task. The political offense test traditionally articulated by American courts, as well as the text of the treaty provisions, *see e.g., Treaty, supra* p. 1, at art. V(1)(c), is ideologically neutral. We do not believe it appropriate to make qualitative judgments regarding a foreign government or a struggle designed to alter that government. *Accord In re Doherty,* 599 F.Supp. 270, 277 (S.D.N.Y.1984); *see generally supra* note 6. Such judgments themselves cannot be other than political and, as such, involve determinations of the sort that are not within the judicial role. *See supra* Section II.B.

A second premise may underlie the analyses of courts that appear to favor narrowing the exception, namely, that modern revolutionary *tactics* which include violence directed at civilians are not politically "legitimate." This assumption, which may well constitute an understandable response to the recent rise of international terrorism, skews any political offense analysis because of an inherent conceptual short-coming. In deciding what tactics are acceptable, we seek to impose on other nations and cultures our own traditional notions of how internal political struggles should be conducted.

The structure of societies and governments, the relationships between nations and their citizens, and the modes of altering political structures have changed dramatically since our courts first adopted the *Castioni* test. Neither wars nor revolutions are conducted in as clear-cut or mannerly a fashion as they once were. Both the nature of the acts committed in struggles for self-determination, *see* M. Bassiouni, *International Extradition: United States Law & Practice,* ch. VIII, at §§ 2-71 to 2-72, and the geographic location of those struggles have changed considerably since the time of the French and American revolutions. Now challenges by insurgent movements to the existing order take place most frequently in Third World countries rather than in Europe or North America. In contrast to the organized, clearly identifiable, armed forces of past revolutions, today's struggles are often carried out by networks of individuals joined only by a common interest in opposing those in power.

[27] It is understandable that Americans are offended by the tactics used by many of those seeking to change their governments. Often these tactics are employed by persons who do not share our cultural and social values or mores. Sometimes they are employed by those whose views of the nature, importance, or relevance of individual human life differ radically from ours. Nevertheless, it is not our place to impose our notions of civilized strife on people who are seeking to overthrow the regimes in control of their countries in contexts and circumstances that we have not experienced, and with which we can identify only with the greatest difficulty. It is the fact that the insurgents are seeking to change their governments that makes the political offense exception applicable, not their reasons for wishing to do so or the nature of the acts by which they hope to accomplish that goal.

[28] Politically motivated violence, carried out by dispersed forces and directed at private sector institutions, structures, or civilians, is often undertaken—like the more organized, better disciplined violence of preceding revolutions—as part of an effort to gain the right to self-government. *See Politics of Extradition, supra* p. 31, at 632-33. We believe the tactics that are used in such internal political struggles are simply irrelevant to the question whether the political offense exception is applicable.

B. Relationship Between the Justifications for the Exception, the Incidence Test, and Contemporary Political Realities

One of the principal reasons our courts have had difficulty with the concept of affording certain contemporary revolutionary tactics the protection of the political offense exception is our fear and loathing of international terrorism. *See, e.g., Eain,* 641

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for a discussion of the meaning of the term "crimes against humanity." Our comments are limited to the form of analysis actually employed by the *Eain* court.

[29] The distinction between "innocent" and "guilty" civilians may not be as simple as it may first appear and is not always an ideologically neutral distinction. C. Van den Wijngaert, *supra* p. 22, at 156 & n. 839. Similarly, we question how a court is to define "indiscriminate," as opposed to "defensible," bombings of civilians. Any such effort would probably directly involve the court in the types of political judgments that the American version of the political offense exception has always sought to avoid.

F.2d at 520. The desire to exclude international terrorists from the coverage of the political offense exception is a legitimate one; the United States unequivocally condemns all international terrorism.[30] However, the restrictions that some courts have adopted in order to remove terrorists activities from coverage under the political offense exception are overbroad. As we have noted, not all politically-motivated violence undertaken by dispersed forces and directed at civilians is international terrorism and not all such activity should be exempted from the protection afforded by the exception.

Although it was not accepted as international law, the position of the United States, not only on international terrorism but also on the extradition of international terrorists, was made clear in 1972 when it introduced its Draft Convention on Terrorism in the United Nations. *See* U.N. Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism: United States Working Paper, U.N. Doc. A/C.6/L.850 (September 25, 1972), *reprinted in* 1 R. Friedlander, *Terrorism: Documents of International and Local Control* 487 (1979). The Draft Convention calls either for trial of international terrorists in the State where found or for their extradition. *See id*, at art. 3; *see also* 1984 Act to Combat International Terrorism § 201, Pub.L. 98-533, 96 Stat. 2706, 2709 (to be codified at 18 U.S.C. § 3077) (reaffirming United States' position on the extradition of international terrorists).

[29] The policy and legal considerations that underlie our responses to acts of international terrorism differ dramatically from those that form the basis for our attitudes toward violent acts committed as a part of other nations' internal political struggles. The application of the political offense exception to acts of domestic political violence comports in every respect with both the original justifications for the exception and the traditional requirements of the incidence test.[31] The application of that exception to acts of international terrorism would comport with neither. First, we doubt whether the designers of the exception contemplated that it would protect acts of international violence, regardless of the ultimate objective of the actors. Second, in cases of international terrorism, we are being asked to return the accused to the government in the country where the acts were committed: frequently that is not a government the accused has sought to change. In such cases there is less risk that the accused will be subjected to an unfair trial or punishment because of his political opinion.[32] Third, the exception was designed, in part, to protect against foreign intervention in internal struggles for political self-determination. When we extradite an individual accused of international terrorism, we are not interfering with any *internal* struggle; rather, it is the international terrorist who has interfered with the rights of others to exist peacefully under their chosen form of government.

There is no need to create a new mechanism for defining "political offenses" in order to ensure that the two important objectives we have been considering are met: (a) that international terrorists will be subject to extradition, and (b) that the exception will continue to cover the type of domestic revolutionary conduct that inspired its creation in the first place. While the precedent that guides us is limited, the applicable principles of law are clear. The incidence test has served us well and requires no significant modification. The growing problem of international terrorism, serious as it is, does not compel us to reconsider or redefine that test. The test we have used since the 1800's simply does not cover acts of international terrorism.

1. *The "Incidence" Test*

[30, 31] As all of the various tests for determining whether an offense is extraditable make clear, not every offense of a political character is non-extraditable. In the United States, an offense must meet the incidence test which is intended, like the tests designed by other nations, to comport with the justifications for the exception. We now explain the reasons for our conclusion that the traditional United States incidence test by its terms (a) protects acts of domestic violence in connection with a struggle for political self-determination, but (b) was not intended to and does not protect acts of international terrorism.

2. *The "Uprising" Component*

The incidence test has two components—the "uprising" requirement and the "incidental to" requirement. The first component, the requirement that there be an "uprising," "rebellion," or "revolution," has not been the subject of much discussion in the literature, although it is firmly established in the case law, *see supra* note 1. Most analyses of whether the exception applies have focused on whether the act in question was in furtherance of or incidental to a given uprising. Nevertheless, it is the "uprising" component that plays the key role in ensuring that the incidence test protects only those activities that the political offense doctrine was designed to protect.

As we have noted, the political offense doctrine developed out of a concern for the welfare of those engaged in a particular form of political activity—an effort to alter or abolish the government that controls their lives—and not out of a desire to protect all politically motivated violence. *See In re Ezeta*, 62 F. 972, 998 (N.D.Cal.1894) ("'Any offense committed in the course of or furthering of civil war, insurrection, or political commotion.'") (quoting John Stuart Mill); *In re Castioni* [1891] 1 Q.B. 149, 156 (1890) ("a sort of overt act in the course of acting in a political matter, a political rising, or a dispute between two parties in the State as to which is to have the government in its hands") (per Denman, J.).

[32] The uprising component serves to limit the exception to its historic purposes. It makes the exception applicable only when a certain level of violence exists and when those engaged in that violence are seeking to accomplish a particular objective. The exception does not apply to political acts that involve less fundamental efforts to accomplish change or that do not attract sufficient adherents to create the requisite amount of turmoil. *See Escobedo v. United States*, 623 F.2d 1098 (5th Cir.), *cert. denied*, 449 U.S. 1036, 101 S.Ct. 612, 66 L.Ed.2d 497 (1980). Thus, acts such as skyjacking (an act that has never been used by revolutionaries to bring about a change in the composition or structure of the government in their own country) fall outside the scope of the exception.

[33, 34] Equally important, the uprising component serves to exclude from coverage under the exception criminal conduct that occurs outside the country or territory in which the uprising is taking place. The term "uprising" refers to a revolt by indigenous people against their own government or an occupying power. That revolt can occur only within the country or territory in which those rising up reside. By definition acts occurring in other lands are not part of the uprising. The political offense exception was designed to protect those engaged in internal or domestic struggles over the form or composition of their own government, including, of course, struggles to displace an occupying power. It was not designed to protect international political coercion or blackmail, or the exportation of violence and strife to other locations—even to the homeland of an oppressor nation. Thus, an uprising is not only limited temporally, it is limited spatially. *See 20th Century American Courts, supra* p. 30, at 1021 n. 115.

[35] In his concurring opinion, Judge Duniway points out that the limitation to acts occurring within the territory in which there is an uprising means that persons committing acts of piracy, terrorism, or other crimes on the high seas will be unable to invoke the protection of the political offense exception. His observation is correct. Just as skyjackers and other international terrorists are not protected under the exception, neither are persons who commit or threaten to commit violent crimes on the high seas. The political offense exception was never intended to reach such conduct.

While determining the proper geographic boundaries of an "uprising" involves a legal issue that ordinarily will be fairly simple to resolve, there may be some circumstances under which it will be more difficult to do so. We need not formulate a general rule that will be applicable to all situations. It is sufficient in this case to state that for purposes of the political offense exception an "uprising" cannot extend beyond the borders of the country or territory in which a group of citizens or residents is seeking to change their particular government or governmental structure.

[36] It follows from what we have said that an "uprising" can exist only when the turmoil that warrants that characterization is created by nationals of the land in which the disturbances are occurring. Viewed in that light, it becomes clear that had the traditional incidence test been applied in *Eain*, discussed *supra* pp. 50-52, the result would have been identical to that reached by the Seventh Circuit. When PLO members enter Israel and commit unlawful acts, there is simply no uprising for the acts to be incidental to. The plain fact is that the Israelis

[30] *See Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 795 (D.C.Cir.1984) (Edwards J., concurring), *cert. denied*, — U.S. —, 105 S.Ct. 1354, 84 L.Ed.2d 377 (1985); 1984 Act to Combat International Terrorism, Pub.L. 98-533, 98 Stat. 2706 (to be codified in scattered sections of 18 U.S.C., 22 U.S.C., & 41 U.S.C.); *cf.* European Convention on the Suppression of Terrorism art. 1, *done* Jan. 27, 1977, *reprinted in Control of Terrorism: International Documents* 87 (Y. Alexander ed. 1979) (Council of Europe declares terrorist acts excluded from political offense exception to treaties between members of that Council); Protocol I to the Geneva Conventions art. 51, *adopted* June 8, 1977, U.N. Doc. A/32/144 annex I, *reprinted in* 16 Am. Society Int'l L., *Int'l Materials* 1391, 1431-32 (1977) (condemning violence designed to spread terror among civilian populations).

[31] *See, e.g.*, G.A.Res. 3103, 28 U.N. GAOR Supp. (No. 30) at 142, U.N. Doc. A/9030 (1974) (armed struggles for independence and self-determination are "in full accordance with the principles of international law").

[32] In cases where it appears that a fair trial is unlikely, the Secretary of State retains discretion to refuse extradition even if a court determines that the incidence test is not met. *See supra* pp. 23-24.

are not engaged in revolutionary activity directed against their own government. They are not seeking to change its form, structure, or composition through violent means. That the PLO members who commit crimes are seeking to destroy Israel as a state does not help bring them within the political offense exception. In the absence of an uprising, the violence engaged in by PLO members in Israel and elsewhere does not meet the incidence test and is not covered by the political offense exception. To the contrary, the PLO's worldwide campaign of violence, including the crimes its members commit in the state of Israel, clearly constitutes "international terrorism."

Moreover, Eain's conduct may have fallen outside the political offense exception for an additional, though related, reason. Not only was there no uprising in Israel, but Eain himself was not a national of that country. It is not clear whether, even when the violence is primarily conducted by nationals and thus an uprising may properly be found to exist, a foreign citizen who voluntarily joins the fray is protected by the exception. The exception was designed to protect those seeking to change their own government or to oust an occupying power that is asserting sovereignty over them. We question whether it should apply when the accused is not a citizen of the country or territory in which the uprising is occurring. In the absence of a tangible demonstration that he or she has more than a transitory connection with that land, the acts of a foreign national may simply not qualify for protection.

Although we find substantial merit to the argument that foreign nationals should be excluded from coverage under the political offense exception, the incidence test has never previously been analyzed in a manner that considers the question in any detail. Because of the conclusion we reach with respect to other issues in the case before us, there is no need for us to answer the question here. Accordingly, we leave its resolution to a subsequent time. It is enough for our purposes merely to note that the fact that Eain was not an Israeli might well have constituted another basis for holding that his conduct was not protected under the incidence test.

[37] In short, the *Eain* and *Doherty* courts' objective that this country not become a haven for international terrorists can readily be met through a proper application of the incidence test. It is met by interpreting the political offense exception in light of its historic origins and goals. Such a construction excludes acts of international terrorism. There is no reason, therefore, to construe the incidence test in a subjective and judgmental manner that excludes all violent political conduct of which we disapprove. Moreover, any such construction would necessarily exclude some forms of internal revolutionary conduct and thus run contrary to the exception's fundamental purpose.[33] For that reason, we reject the *Eain* test and especially the concept that courts may determine whether particular forms of conduct constitute acceptable means or methods of engaging in an uprising.

3. *The "Incidental to" Component*

When describing the second requirement of the incidence test, the "incidental to" component, American courts have used the phrases "in the course of," "connected to," and "in furtherance of" interchangeably. We have applied a rather liberal standard when determining whether this part of the test has been met and have been willing to examine all of the circumstances surrounding the commission of the crime. *Garcia-Guillern v. United States*, 450 F.2d 1189, 1192 (5th Cir.1971), *cert denied*, 405 U.S. 989, 92 S.Ct. 1251, 31 L.Ed.2d 455 (1972); *Ramos v. Diaz*, 179 F.Supp. 459, 463 (S.D. Fla.1959).

[38] Commentators have criticized United States courts for applying the "incidental to" component too loosely or flexibly. *See supra* p. 42. We disagree with this criticism. To put the matter in its proper context, it is necessary to bear in mind that the offense must occur in the context of an "uprising." Acts "incidental to" an uprising are, as we have noted, limited by the geographic confines of the uprising. In addition, the act must be contemporaneous with the uprising. Moreover, the "incidental to" component is not satisfied by "any connection, however feeble, between a common crime and a political disturbance," Garcia-Mora, *supra* p. 3, at 1244. The act must be causally or ideologically related to the uprising. *See, e.g., Ornelas v. Ruiz*, 161 U.S. 502, 511, 16 S.Ct. 689, 692, 40 L.Ed. 787 (1896) (concluding that rapid withdrawal of bandits after foray, in absence of threatening armed forces, suggested that acts were not incidental to uprising).

[39] We believe the traditional liberal construction of the requirement that there be a nexus between the act and the uprising, *see supra* p. 42, is appropriate. There are various types of acts that, when committed in the course of an uprising, are likely to have been politically motivated. There is little reason, under such circumstances, to impose a strict nexus standard. Moreover, the application of a strict test would in some instances jeopardize the rights of the accused.

[40] Under the liberal nexus standard, neither proof of the potential or actual effectiveness of the actions in achieving the group's political ends, *In re Castioni*, [1891] 1 Q.B. 149, 158-59 (1890) (refusing to consider whether the act was a wise mode of promoting the cause) (per Denman, J.), nor proof of the motive of the accused, *Eain*, 641 F.2d at 519, or the requesting nation, *Garcia-Guillern*, 450 F.2d at 1192; *Ramos v. Diaz*, 179 F.Supp. at 463, is required. Nor is the organization or hierarchy of the uprising group or the accused's membership in any such group determinative. *See Eain*, 641 F.2d at 519.

When extradition is sought, the "offender" at this stage in the proceedings has ordinarily only been accused, not convicted, of the offense. It would be inconsistent with the rights of the accused to require proof of membership in an uprising group. For example, the accused might be able to show that the acts were incidental to the uprising but might be unable to prove membership because he or she did not commit the offense or was not a member of the group. Furthermore, requiring proof of membership might violate the accused's Fifth Amendment rights both because it might force him to supply circumstantial evidence of guilt of the charged offense and because membership in the group itself might be illegal. Also, we question how one proves membership in an uprising group. Uprising group often do not have formal organizational structures or document membership. In addition, it is entirely possible to sympathize with, aid, assist, or support a group, help further its objectives and its activities, participate in its projects, or carry on parallel activities of one's own, without becoming a member of the organzation. Still, one may be acting in furtherance of an uprising.

On the other hand, a number of factors, though not necessary to the nexus determination, may play a part in evaluating the circumstances surrounding the commission of the offense. For example, proof of membership in an uprising group may make it more likely that the act was incidental to the uprising. *See, e.g., Ramos* v. *Diaz*, 179 F.Supp. at 463; *Castioni*, 1 Q.B. at 157-59 (per Denman, J.). The similarity of the charged offense to other acts committed by the uprising group, and the degree of control over the accused's acts by some hierarchy within the group, may give further credence to the claim that the act was incidental to the uprising. And while evidence of the accused's political motivation is not required and is usually unavailable, evidence that an act was "committed for purely personal reasons such as vengeance or vindictiveness," *In re Doherty*, 599 F.Supp. 270, 277 n. 7 (S.D.N.Y. 1984), may serve to rebut any presumption that a nexus exists. The exception is not designed to protect mercenaries or others acting for nonpolitical motives.

[41] Under the liberal nexus test we have traditionally applied, or even under a strict nexus standard, there is no justification for distinguishing, as *Doherty* suggests, between attacks on military and civilian targets. The "incidential to" component, like the incidence test as a whole, must be applied in an objective, non-judgmental manner. It is for the revolutionaries, not the courts, to determine what tactics may help further their chances of bringing down or changing the

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[33] A number of courts have suggested that the incidence test is applicable whether it occurs during a violent political disturbance such as an uprising, rebellion, or *war*. *See supra* note 17. If, by using the term "war" these courts meant a civil war, *see e.g., In re Ezeta*, 62 F. 972 (N.D. Cal. 1894), we have no difficulty with their characterization of the test; we see no difference between an uprising, a rebellion, a revolution, and a civil war. In contrast, if these courts used the term to refer to violent conflicts between nations that transcend national boundaries, we question whether the protections afforded by the exception should be available and, if so, whether the incidence test should apply.

First, we note that wars between nations are the manifestation of hostilities between two or more governments and that those who participate in these wars typically are representatives of one of the involved governments. Thus, the questions regarding the political offense exception's applicability to government officials arise. *See supra* note 24. Second, we note that one of the primary purposes of the exception is to protect revolutionary activity. *See supra* pp. 31-32. Although the two other justifications for the exception, *see id.*, suggest that perhaps offenses incidental to wars should receive some protection, the absence of the primary justification cautions against applying the same test to transnational military conflicts as is applied to uprisings. Third, the application of the incidence test to international conflicts is inconsistent with the tranditional formulation of the test and the jurisprudence in this area. With the exception of the *Artukovic* case, *see* discussion *supra* pp. 44-48 & notes 19-24, (in which the offenses were not, in any event, necessarily incidental to World War II) courts do not appear to have applied the incidence test to offenses engaged in during the course of military conflicts between nations. Rather, they have followed the *Castioni* formulation that the offense must be related to "a political rising," 1 Q.B. at 165 (per Hawkins, J.), or the *Ezeta* formulation that it must be related to a "civil war, insurrection, or political commotion," 62 F. at 998.

As in the case of other acts by government representatives, we need not decide whether acts committed in the course of hostilities between nations should be protected by the exception. We need only note that if they are we question the applicability of the incidence test in such circumstances.

government. All that the courts should do is determine whether the conduct is related to or connected with the insurgent activity. It is clear that various "non-military" offenses, including acts as disparate as stealing food to sustain the combatants, killing to avoid disclosure of strategies, or killing simply to avoid capture, may be incidental to or in furtherance of an uprising. To conclude that attacks on the military are protected by the exception, but that attacks on private sector institutions and civilians are not, ignores the nature and purpose of the test we apply, as well as the realities of contemporary domestic revolutionary struggles. *See supra* pp. 57-59.

We should add that the spatial limitations imposed under the "uprising" component may not be circumvented by reliance on the "incidental to" component. As we said earlier, for the political offense exception to be applicable at all, the crime must have occurred in the country or territory in which the uprising was taking place, not in a different geographic location. *See supra* pp. 64-65.

VI. THE INCIDENCE TEST APPLIED TO THE CHARGED OFFENSES

A. The Magistrate's Factual Findings and Legal Conclusions

In disposing of this case, the extradition magistrate first made a legal determination that the incidence test has three prongs, the latter two of which are "flip sides of the same question": (a) the existence of an uprising; (b) that the charged offense be in furtherance of that uprising; (c) and that the accused be a member of the uprising group. In evaluating the applicability of the first prong to the instant case, the magistrate made a number of factual findings, a legal determination, and a conclusion based on the mixed fact and law determinations. First, the magistrate found that there was a violent political uprising in Northern Ireland at the time of the commission of the crimes with which Quinn is charged. He also noted that, were his inquiry limited to conditions in London, he would "find that the severity of the political disturbance [in London] was insufficiently grave to bring into play the political offense exception." The magistrate then made a legal determination that because Northern Ireland and London are both constitutionally a part of the United Kingdom, and because offenses committed in both geographic areas are directed against the same sovereign, he must consider the United Kingdom as a whole. Accordingly, he determined that a political uprising existed throughout the United Kingdom.

In applying the second and third prongs of his test the magistrate made the factual finding that Quinn was a member of a conspiracy involving the Balcombe Street Four, who were convicted on nineteen counts of bombing and shooting attacks, and that the case against the four was based on the theory that they were members of an Active Service Unit. The magistrate concluded, however, that this was an insufficient basis for considering the offenses to be "in furtherance of" the uprising. First, the magistrate held that membership in the uprising group is a necessary component of the incidence test, and that Quinn's IRA membership and involvement in an ASU conspiracy were insufficient to establish that he was a member of the PIRA, the group that the magistrate labeled the uprising group in this case. Next, the magistrate held that Quinn had failed to establish that the bombings were in furtherance of the PIRA's political goals (a) because he failed to show that they were ordered by the command within the PIRA hierarchy, (b) because he failed to show that the PIRA considered their efficacy in advancing its objectives; and (c) because he failed to introduce any evidence of his own political motivations. Third, the magistrate adopted the holding of the Seventh Circuit in *Eain v. Wilkes*, and concluded that "[b]y definition, there can be no direct link between [these bombing directed against innocent civilians] and the political goal of the IRA to force British withdrawal from Northern Ireland, as these actions neither took place in Northern Ireland nor were they directed against the government the IRA was attempting to displace."

B. Our Areas of Agreement With the District Court: The "Incidental To" Prong

[42] Like the district court, we believe the magistrate reached a number of erroneous legal conclusions. The incidence test has never required that an accused prove his political motivations directly, or establish that the acts were ordered by the leadership of the uprising group or were effective in obtaining the group's objectives. Nor need an accused prove membership in the uprising group; the magistrate's hairsplitting distinction between Quinn's proven IRA membership and his involvement in a conspiracy with ASU members on the one hand, and his failure to prove conclusively PIRA membership on the other makes apparent the logical absurdity of requiring proof of membership in a specific group.

Quinn is accused of having been a member of a conspiracy involving the Balcombe Street Four and he does not challenge the probable cause finding on this charge; his fingerprints were found on the bombs and within the flats where bombs were constructed. Quinn has already been convicted of and has served a prison sentence for his membership in the IRA. There is no evidence that he was involved in the conspiracy for other than political reasons, and his alleged co-conspirators, the Balcombe Street Four, were convicted of politically motivated bombings. Moreover the PIRA's use of bombing campaigns as a political tactic is well-documented. Accepting the magistrate's factual findings, which are not clearly erroneous, and applying the legal standards we have explained above, we think it quite clear that if an uprising, as that term is defined for purposes of the political offense exception, existed at the time the offenses were committed, the bombings were incidental to that uprising.

[43] Furthermore, because various disparate acts may be incidental to an uprising, we agree with the district court's conclusion that the Tibble murder would be incidental to the uprising, although we believe the analysis performed by both the magistrate and the district court is in error with respect to this incident. It does not matter if the killer's motivation in killing Officer Tibble was to conceal a bomb factory or to avoid capture. A murder of a police office is related to an uprising whether the reason for the act is to avoid discovery of munitions or to avoid reduction of "forces" by capture. Regardless which of these goals motivated the killer, if an uprising existed at the time, this offense as well was incidental to it.

C. Our Area of Disagreement With the District Court: The "Uprising" Prong

With regard to the uprising prong of the incidence test, we must again review the magistrate's factual findings under the clearly erroneous standard and his legal conclusions *de novo*. The district court failed to do this, construing the magistrate's conclusion that there was an uprising throughout the United Kingdom solely as a finding of fact. The district court summarized the magistrate's factual findings as to the levels of violence that existed in Northern Ireland and elsewhere in the United Kingdom at the time Quinn allegedly committed the charged offenses, and properly adopted them. However, the district court failed to analyze the magistrate's legal conclusion that because the requisite level of violence existed in Northern Ireland and because Northern Ireland is "in a constitutional sense" a part of the United Kingdom, an uprising existed in the United Kingdom as a whole.

The magistrate traced the history of the constitutional relationship between Ireland and England, the Irish nationalist movement in opposition to British rule in Northern Ireland, and the history of violent political disturbances concomitant with the struggle to liberate Northern Ireland from British rule. During the 1700's, economic and political differences between the Catholics in the south of the one, unified, colonized country of Ireland and the Protestants in the north grew, and in 1800 Ireland's parliament was dissolved and the country became a part of the United Kingdom. Many Catholics continued to demand liberty through the period in the late 1800's when "home rule"—under which Ireland would have remained a part of the United Kingdom but with local control of domestic affairs—was contemplated. In 1914 the British Parliament passed a bill instituting home rule but it was not implemented because of the outbreak of World War I.

After increased violence between Irish rebels—including the IRA—and British forces broke out in 1919, the British Parliament passed the Government of Ireland Act in 1920. That Act divided Ireland into two partially self-governing countries. Most of Ireland's political leaders initially rejected the proposed division, demanding complete independence for all of Ireland. Eventually partition was accepted and in 1921 southern leaders and Great Britain signed a treaty creating the Irish Free State in the south (which became the independent Republic of Ireland in 1949) and Northern Ireland in the north. Under the treaty, Northern Ireland separated from Great Britain. Although it remained a part of the United Kingdom with representation in the British Parliament, it had its own governor, parliament, prime minister, and cabinet and controlled most domestic matters independently. Certain powers, such as levying income taxes and maintaining a militia, were reserved for the British Parliament. The Ulster Unionist Party, the Protestant party, retained control of the parliament in Northern Ireland and Catholics were excluded from political power and subjected to civil discrimination.

IRA-organized violence, with the objective of separating Northern Ireland from the United Kingdom and reuniting the northern and southern parts of Ireland, continued in Northern Ireland. In 1969, the PIRA split off from the IRA, which adopted the view that violence was not the best means to achieve its goals at that time. The PIRA advocated armed insurrection and after one campaign of violence in 1969, British troops were sent into Northern Ireland. PIRA bombing campaigns continued between 1970 and 1972. In 1971, the British passed the

Special Powers Act, which provided for internment without trial. In 1972, the British dissolved the Parliament of Northern Ireland and once again established direct rule. PIRA bombings continued through 1973, when the Special Powers Act was replaced by the Emergency Provisions Act. The Emergency Provisions Act abolished jury trials for certain offenses, relaxed standards of admissibility for confessions, and provided special tribunals for the trials of those accused of political crimes.

The PIRA was responsible for a number of bombing campaigns again in 1974 and 1975. These campaigns were designed to "bomb the British government to the bargaining table" and to force the withdrawal of British troops from Northern Ireland. The PIRA took responsibility for the bombings of both military and civilian targets in both Northern Ireland and England. In 1974 the Prevention of Terrorism (Temporary Provisions) Act, which applies to the entire United Kingdom, was passed. The Act extended the length of time police could detain those suspected of political violence; made it illegal to refuse to give to the authorities information about those suspected of committing acts of political violence; suspended habeas corpus rights for detainees; and proscribed the IRA and the Irish National Liberation Army and formal support for them.

The magistrate correctly concluded that there was an uprising in Northern Ireland at the time of the offenses with which Quinn is charged. PIRA members, although a minority faction, sought to change the structure of the government in that country, the country in which they lived. Criminal activity in Northern Ireland connected with this uprising would clearly fall within the political offense exception.

[44] We cannot conclude, however, that the uprising extended to England. We do not question the fact that throughout the time of the alleged conspiracy, some politically motivated violence was taking place in England as well as in Northern Ireland. *See, e.g.,* J. Bell, *The Secret Army: The IRA 1916-1979,* at 403-24 (1980). However, as the magistrate noted, in general the violent attacks and the responses to them were far less pronounced outside of Northern Ireland. It is clear from the record that the magistrate correctly concluded that the level of violence outside Northern Ireland was insufficient in itself to constitute an "uprising."[34]

There is a second and even more significant reason why the "uprising" prong is not met in this case. As the magistrate found, what violence there was was not being generated by citizens or residents of England. In fact, the magistrate determined that a large percentage of the bombing incidents in England were attributable to the Balcome Street Four. The critical factor is that nationals of Northern Ireland, seeking to alter the government in that territorial entity, exported their struggle for political change across the seas to a separate geographical entity—and conducted that struggle in a country in which the nationals and residents were not attempting to alter their own political structure.

We do not ignore the constitutional, legal, and military relationship between England and Northern Ireland. The ties are so well established, *see generally* 1 *Europa Year Book 1984,* at 991-96; 14 *World Book Encyclopedia* 403-06b (1985 ed.), that had evidence of the relationship not been presented to the magistrate, judicial notice would have been appropriate. It is beyond dispute that during the time of the conspiracy with which Quinn is charged, Northern Ireland was, in essence under British rule: the British government had dissolved the Northern Ireland Parliament, declared a state of emergency, and made the Secretary of State for Northern Ireland directly answerable for the government of Northern Ireland to the United Kingdom Parliament at Westminster.[35]

We do not question whether the PIRA sought to coerce the appropriate sovereign. Nor do we pass judgment on the use of violence as a form of political coercion or the efficacy of the violent attacks in England. But, as we have already said, *see supra* pp. 62-68, the word "uprising" means exactly that: it refers to a people *rising up,* in their own land, against the government of that land. It does not cover terrorism or other criminal conduct exported to other locations. Nor can the existence of an uprising be based on violence committed by persons who do not reside in the country or territory in which the violence occurs.

In light of the justifications for the political offense exception, the formulation of the incidence test as it has traditionally been articulated, and the cases in which the exception has historically been applied, we do not believe it would be proper to stretch the term "uprising" to include acts that took place in England as a part of a struggle by nationals of Northern Ireland to change the form of government in their own land.[36] Accordingly, we need not decide whether had an uprising occurred, the protection afforded by the exception would have been extended to one who, like Quinn, is a citizen of a different and uninvolved nation. *See supra* pp. 66-67. Because the incidence test is not met, neither the bombing conspiracy nor the murder of Police Constable Tibble is a non-extraditable offense under the political offense exception to the extradition treaty between the United States and the United Kingdom.

VII. ISSUES NOT ADDRESSED BY THE DISTRICT COURT

In addition to contending that all the crimes with which he is charged are protected by the political offense exception, Quinn argued to the district court that the magistrate erred in concluding (1) that the conspiracy charge was not time barred and (2) that there was sufficient competent legal evidence to establish probable cause to believe that he murdered Police Constable Tibble. Because it held that the political offense exception barred extradition, the district court did not reach either of these issues.

A. Appellate Discretion to Resolve These Issues

[45, 46] As a general rule, "a federal appellate court does not consider an issue not passed upon below." *Singleton v. Wulff,* 428 U.S. 106, 120, 96 S.Ct. 2868, 2877, 49 L.Ed.2d 826 (1976). But this rule is not inflexible. *Youakim v. Miller,* 425 U.S. 231, 234, 96 S.Ct. 1399, 1401, 47 L.Ed.2d 701 (1976). We have discretion to decide whether to address an issue that the district court did not reach if the question is a purely legal one and the record has been fully developed prior to appeal; in deciding whether to exercise this discretion we should consider whether the resolution of the issue is clear and whether injustice might otherwise result. *See Lien Ho Hsing Steel Enterprise Co. v Weihtag,* 738 F.2d 1455, 1461 (9th Cir.1984); *In re Howell,* 731 F.2d 624, 627 (9th Cir.1984).

The government suggests in a footnote in its appellate brief that we should exercise our "pendent" jurisdiction and resolve the issues not addressed by the district court, yet it failed to brief those issues on appeal. Quinn argues on appeal that the two remaining issues are not properly before us; he also did not brief either of these issues on appeal. We do have before us the parties' memoranda to the district court and the full factual record developed before the magistrate and, at this point, the questions appear to be purely legal. Accordingly, we evaluate the remaining factors to determine whether to reach these issues.

Clearly, in considering the risk that injustice might result, we must be more concerned about the possible unjust deprivation of Quinn's liberty than about any other source of justice. The delay that could result from a remand on these issues affects both parties; we cannot see any other manner in which a remand might cause injustice to the government. However, because Quinn has asked us not to reach these issues, the fact that a remand might prolong his pretrial detention is unsufficient, in itself, to convince us that we should resolve issues that have not been addressed on appeal.

The crucial factor, then, appears to be whether the resolution of either of these issues is clear. We believe that the probable cause issue is clear and we thus resolve it. The statute-of-limitations issue, in contrast, is quite complex and involves a discovery request as well. Accordingly, we do not reach that issue at this time.

B. Probable Cause: The Tibble Murder

[47] Although he accepts the magistrate's conclusion that there is probable cause to believe that Police Constable Tibble was murdered, Quinn contends that the magistrate erred in concluding that there was any competent evidence to support the belief that he was the murderer. Quinn points to alleged procedural irregularities in the circumstances surrounding Constable Blackledge's identification, the "double hearsay" method of presenting this evidence through Inspector Watts, *see supra* pp. 11-12, the six year delay between Blackledge's identification in Ireland and Watts' photo identification after Quinn's arrest in San Francisco, and some contradictions between the description of the assailant Blackledge originally gave the police and Quinn's actual physical characteristics, *see supra* p. 10. Quinn contends that because of these irregularities the evidence is unreliable and cannot be considered "competent," *see supra* pp. 25-27, and that it thus cannot sup-

[34] In his discussion, the magistrate considered separately the level of violence in Great Britain and in Northern Ireland. It is not clear whether in referring to Great Britain he meant England or England, Scotland, and Wales. In any event, his conclusion that the requisite level of violence existed only in Northern Ireland was correct.

[35] The Secretary of State did not gain parliamentary consent to establish a new parliament until 1982. *See* 1 *Europa Year Book 1984, supra* p. 81, at 991-92, 996.

[36] In one other case, *In re McMullen,* No. 3-78-1099 MG (N.D.Cal. May 11, 1979), the extradition magistrate also concluded that, because the PIRA violence was not confined to Northern Ireland, the uprising extended throughout the entire United Kingdom. For the same reasons that we find that there was no uprising in England or Great Britain at the time of the acts with which Quinn is charged, we believe the uprising determination in *McMullen* was in error.

port the probable cause finding. We disagree.

[48, 49] Clearly the evidence introduced before the magistrate for the purpose of linking Quinn with the Tibble murder is not overwhelming. If that were all the evidence introduced at a murder trial, Quinn could not be convicted. But the country seeking extradition is not required to produce all its evidence at an extradition hearing and it is not our role to determine whether there is sufficient evidence to convict the accused. The magistrate does not weigh conflicting evidence and make factual determinations but, rather, determines only whether there is competent evidence to support the belief that the accused has committed the charged offense. *See supra* p. 27. And on review we can determine only whether, because of an absence of competent evidence, the magistrate's determination is wrong as a matter of law. *Cf. Ker v. California*, 374 U.S. 23, 33-34, 83 S.Ct. 1623, 1629-30, 10 L.Ed.2d 726 (1963) (reasonableness of search and seizure is mixed question of law and fact which is reviewed *de novo*); *United States v. McConney*, 728 F.2d 1195, 1203 (9th Cir.) (en banc) (probable cause determination is mixed question of law and fact which is reviewed *de novo*), *cert. denied*, —— U.S. ——, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984).

[50] The credibility of witnesses and the weight to be accorded their testimony is solely within the province of the extradition magistrate. *See Garcia-Guillern v. United States*, 450 F.2d 1189, 1192 (5th Cir.971). The magistrate was free to determine the weight to be accorded to the various descriptions of the killer. In addition, although the magistrate may take the circumstances of an identification into account in assessing its reliability, there is no *per se* rule that specifies which identification procedures are "competent" for probable cause purposes. An identification does not fail to constitute competent evidence merely because the required United States procedures for admissibility of the identification at trial were not followed. *See Zanazanian v. United States*, 729 F.2d 624, 627 (9th Cir.1984) (multiple hearsay method of presenting evidence may decrease reliability of evidence but evidence may nevertheless be sufficiently reliable to be "competent"); *Escobedo v. United States*, 623 F.2d 1098, 1102 & n. 10 (5th Cir.) (single photograph identified by witness sufficient to support probable cause finding), *cert. denied*, 449 U.S. 1036, 101 S.Ct. 612, 66 L.Ed2d 497 (1980). Barring hearsay from extradition proceedings would thwart one of the objectives of bilateral extradition treaties by requiring the requesting nation to send its citizens to the extraditing country to confront the accused. *Zanazanian*, 729 F.2d at 626-27.

Because the magistrate properly determined that there is competent legal evidence to support the belief that Quinn murdered Officer Tibble, the habeas petition cannot be granted for lack of probable cause. *See Fernandez v. Phillips*, 268 U.S. 311, 312, 45 S.Ct. 541, 542, 69 L.Ed. 970 (1925); *Valencia v. Limbs*, 655 F.2d 195, 197 (9th Cir.1981).

C. The Statute of Limitations on the Conspiracy Charge

In addition to the political offense exception, the extradition treaty between the United States and the United Kingdom provides that "[e]xtradition shall not be granted if . . . the prosecution for the offense for which extradition is requested has become barred by lapse of time according to the law of the requesting or requested Party. . . ." *Treaty, supra* p. 1, at art. V(1)(b). Neither the United States nor the United Kingdom imposes a statute of limitations on murder charges. Since the United Kingdom has no relevant limitations period, the applicable statute of limitations on the conspiracy charge is that which is set forth in 18 U.S.C. § 3282 (1982).

Under section 3282, prosecution on a conspiracy charge is barred "unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." The United Kingdom does not follow the same criminal procedures as the United States; no indictment is issued for a conspiracy charge, and the extradition magistrate determined that the United Kingdom's "laying of an information" is not analogous to the United States procedures mandated by section 3282.

Quinn contends that the conspiracy charge is time-barred because the conspiracy terminated on April 3, 1975, and the United Kingdom's extradition request was not filed until November 1981, well over five years later. However, the magistrate concluded that the statute of limitations was tolled when Quinn became a fugitive from justice after the murder of Officer Tibble,[37] and that the tolling continued through the time of Quinn's Daly City arrest, notwithstanding the British government's fairly consistent knowledge of his whereabouts from the time that Blackledge identified him in 1975 through the time he was incarcerated in Ireland and the years that he subsequently lived openly and notoriously in San Francisco.[38] The government, which originally specified that it would not contend that Quinn was a fugitive at any time and which addressed the issue only after the magistrate *sue sponte* ordered the parties to do so, asks that the magistrate's findings on the fugitive issue be affirmed. In the alternative, it contends that the habeas court should affirm the magistrate's conclusion that the extradition request is timely by concluding that the United Kingdom's "laying of an information" satisfies the United States' statute of limitations.[39]

[51-53] Each of these questions is complex. Complicating them further, Quinn contends that the magistrate erred as a matter of law in refusing his request for discovery on the fugitive issue. He seeks documents that would demonstrate that the United Kingdom knew his whereabouts and was dilatory in initiating proceedings. He also contends that, because the standard of proof for the fugitive issue is a preponderance standard,[40] he is entitled to discovery in order to test the credibility of the Blackledge identification that serves as the premise for the theory that his absence from the United Kingdom was due to a desire to avoid arrest or prosecution.[41]

[54] The multiple legal questions involved in the statute of limitations issue are complicated; their resolution is not clear and could even lead to the introduction of additional facts. Accordingly, it would not be proper for us at this time to decide this issue which the district court did not reach and the parties have not briefed on appeal. Nor would it be appropriate to indicate any view as to its ultimate outcome. Shoud the United Kingdom continue to be interested in pursuing Quinn's extradition on the conspiracy charge so that he may be tried for that offense, it will have to await the district court's determination whether the charge is time-barred, and possibly our subsequent review.[12]

VII. CONCLUSION

For extradition to be denied for an otherwise extraditable crime on the basis that it falls within the protective ambit of the political offense exception, the incidence test must ordinarily be met. (We reserve the question whether offenses committed by government officials or in connection with wars between nations are covered by the exception and, if so, a different test would be appropriate.) The incidence test can components, designed so that the exception comports with its original justification and protects acts of the kind that inspired its inclusion in extradition treaties. First, there must be an uprising—a political disturbance related to the struggle of individuals to alter or abolish the existing govenment in their country. An uprising is both temporally and spatially limited. Second, the charged of-

[37] The magistrate determined that an individual who flees from the scene of the crime is, by definition, a fugitive. We do not believe the issue is quite that simple. *See United States v. Parrino*, 180 F.2d 613, 616 (2d Cir.1950) (Learned Hand, C.J.).

[38] The magistrate determined that Quinn must have known that he was wanted by the authorities in question, a requirement for being determined to be a fugitive, *see United States v. Gonsalves*, 675 F.2d 1050, 1053 (9th Cir.1982). In contrast, in its memorandum in opposition to the writ, the government does not argue that there is sufficient evidence to demonstrate that Quinn acted from 1975 until 1981 with the intent of avoiding arrest or prosecution for this offense, as required by *United States v. Wazney*, 529 F.2d 1287 (9th Cir.1976), and its progeny. Rather, the government suggests that the Ninth Circuit's intent rule be abandoned in favor of a "mere absence from the jurisdiction" rule, a suggestion we have previously rejected in an extradition case, *see Caplan v. Vokes*, 649 F.2d 1336, 1341 (9th Cir.1981).

[39] Quinn argues that the limited scope of habeas review of an extradition order precludes a reversal of the magistrate's finding on this point. In order to determine the appropriate standard of review, the district court must decide on remand what portion of the magistrate's determination of this issue was based on factual findings and what portion was based on legal conclusions.

[40] *See Jhirad* v. *Ferrandina*, 536 F.2d 478, 485 (2d Cir.1976).

[41] Although there is no explicit statutory basis for ordering discovery in extradition hearings, *see Merino* v. *United States Marshal*, 326 F.2d 5, 12-13 (9th Cir. 1963), the extradition magistrate has the right, under the court's "inherent power," *see First National City Bank of New York* v. *Aristeguieta*, 287 F.2d 219, 226 (2d Cir. 1960), *vacated as moot*, 375 U.S. 49, 84 S.Ct. ,144, 11 L.Ed.2d 106 (1963), to order such discovery procedures "as law and justice require," *Jhirad* v. *Ferrandina*, 536 F.2d at 484. In exercising discretion, the magistrate should consider both "the well-established rule that extradition proceedings are not to be converted into a dress rehearsal trial," *id.*, and whether the resolution of the contested issue would be appreciably advanced by the requested discovery, *id.* Although the accused is not entitled to introduce evidence that goes to his defense, "he may offer limited evidence to explain elements in the case against him". *Jimenez* v. *Aristeguieta*, 311 F.2d 547, 556 (5th Cir. 1962). Needless to say, a habeas court can determine whether the magistrate's decision to deny discovery constituted an abuse of discretion that deprived the accused of due process. *See Id.; Jhirad*, 536 F.2d at 484.

[12] In the alternative, the United Kingsom is free to withdraw its request for extradition on the conspiracy charge, in which case Quinn could be extradited to and tried in the United Kingdom on the murder charge. *See supra* p. 6.

fense must have been committed in furtherance of the uprising; it must be related to the political struggle or be consequent to the uprising activity. Neither the objectives of the uprising nor the means employed to achieve those objectives are subject to judicial scrutiny. And while the nature of the uprising group and any evidence of the accused's motivations may be relevant, proof on these elements is not required or necessarily determinative. Acts of international terrorism do not meet the incidence test and are thus not covered by the political offense exception. Crimes against humanity also are beyond the scope of the exception.

The conspiracy to cause explosions and the murder with which Quinn is charged do not fall within the political offense exception. Although an uprising existed in Northern Ireland at the time the charged offenses were committed, there was no uprising in England. The crimes did not take place within a territorial entity in which a group of nationals were seeking to change the form of the government under which they live; rather the offenses took place in a different geographical location. We do not decide whether Quinn's status as a citizen of an uninvolved nation would also preclude him from receiving the protection of the exception.

We conclude that the magistrate did not err in finding probable cause in connection with the charge that Quinn murdered Officer Tibble. However, we cannot properly determine at this point whether the conspiracy charge is time-barred. That matter must first be considered by the district court.

We vacate the writ of habeas corpus and remand to the district court. We hold that Quinn may be extradited on the murder charge but that the district court must consider whether the conspiracy charge is time-barred before extradition is permitted for that offense.

Vacated and remanded.

Duniway, Circuit Judge (concurring in the judgment):

I concur in the judgment, but I cannot concur in the lengthy opinion of Judge Reinhardt and the very extensive dicta that it expounds.

I agree that the magistrate had jurisdiction, including jurisdiction to determine whether the offenses with which Quinn is charged were of a political character. I agree that the district court had jurisdiction on habeas corpus to decide that question and that we have jurisdiction on appeal to consider it. I have no doubt that the evidence is sufficient to enable, indeed, to require, the magistrate, the district court, and this court to say that the offenses charged against Quinn are extraditable offenses, and that the only basis upon which extradition could be denied is the treaty provision that "extradition shall not be granted if . . . the offense . . . is regarded by the requested party, [the United States], as one of a political character."

My principal difficulty is with part V of Judge Reinhardt's thoughtful and careful opinion, and especially with part V, B, 2, and the geographical limitation announced there, reading as follows:

Equally important, the uprising component serves to exclude from coverage under the exception criminal conduct that occurs outside the country or territory in which the uprising is taking place. The term "uprising" refers to a revolt by indigenous people against their own government or an occupying power. That revolt can occur only within the country or territory in which those rising up reside. By definition acts occurring in other lands are not part of the uprising.

The limitation may be useful to us in this case, but I doubt that it is a valid one. To consider an old example, let us suppose that the treaty was in effect immediately following the revolutionary war, and his majesty's government sought to extradite John Paul Jones for piracy in British waters. Would we grant extradition because there was no uprising in Great Britain? Assume that we had a comparable treaty with the government of Nicaragua. Suppose that, today, a citizen of Nicaragua, active in the so-called contras, were to sink a vessel owned by the Sandinista government on the high seas, and flee to this country. Would we grant extradition because his act did not take place within the territorial waters of Nicaragua?

Particularly today, with the airplane, the helicopter, the high speed motor vehicle, the railroad, the speedboat and submarine, genuinely revolutionary activities can take place outside the geographic boundaries of the requesting state. I fear that if we adopt the geographic limitation propounded in the opinion today, we will find ourselves trying to work our way around it tomorrow.

I much prefer the rationale of the Seventh Circuit in *Eain v. Wilkes*, 7 Cir., 1981, 641 F.2d. 504. There, the court held that the political character of the offense provision does not apply to "the indiscriminate bombing of the civilian population" (p. 521). I cannot believe that the framers of the treaty intended that the exception would embrace the kind of activities that the record in this case reveals. As the *Eain* court said, "We recognize the validity and usefulness of the political offense exception, but it should be applied with great care lest our country become a social jungle and an encouragement to terrorists everywhere." (p. 520)

This case does not involve the "random bombing" that *Eain* involved. But every letter bomb to which Quinn was connected was directed to an innocent, albeit influential, civilian who had no direct connection to the troubles in Northern Ireland. Nor does the fact that Tibble was a policeman make any difference. The evidence does not indicate that Quinn knew or believed that he was a policeman. Moreover, it would make no difference if he did either know it or believe it. The killing of Tibble was an attempt to avoid arrest for extraditable offenses. The fact that Tibble was a policeman cannot metamorphose that killing, which, on its face, was a murder to escape arrest, into an offense regarded by the United States as one of a political character.

I concur in part VII C of the opinion, and in the judgment.

FLETCHER, Circuit Judge, concurring and dissenting:

I respectfully dissent from my colleagues' conclusion that Quinn may now be extradited on the murder charge. The decision facing this court is excruciatingly difficult. Quinn is accused of hideous crimes—violent and cruel and some of them cowardly. Innocent victims were targeted for receipt of letter bombs mailed anonymously. A decision that the full force of the law should not be invoked to punish persons found guilty of such acts seems inconceivable. However, the political offense exception to the treaty of extradition has a long history of protecting persons rebelling against their governments.

This longstanding tradition among western nations is an acknowledgment of the right of the governed to oppose unjust governments. Although the nations, ours included, have acknowledged the heinous nature of violent political crimes, they have nonetheless, under treaties and statutes, denied extradition when an individual's conduct falls within the narrow exception for the "political offense."

I find that I can concur in much of Judge Reinhardt's opinion. In part I, Judge Reinhardt simply and eloquently outlines the facts and the difficult dilemma that confronts us. In Part II he rightly concludes that the determination as to what constitutes a political offense within the meaning of the treaty and the statute is a task for the court. I also agree with his discussion of the standard of review to be applied by both the district court and our court.

In Part IV, Judge Reinhardt ably documents the evolution of the political offense exception, paying particular attention to the development of the incidence test in the United States. His description of the conflicting approaches taken by various United States courts grappling with issues similar to ours highlights the difficult nature of our charge. In Part V, I wholly agree with his condemnation of international terrorism and his conclusion that acts of international terrorism not be protected under the political offense exception. I believe, as does Judge Reinhardt, that the traditional incidence test applied by courts of this country since the 1800's accommodates the exclusion of acts of international terrorism from protection. The new limitations imposed by the courts in *Eain v. Wilkes* and *In re Doherty* unnecessarily break from the traditional test by inquiring into and evaluating the legitimacy of given political objectives and the conduct of internal political struggles. The political offense exception should be applied in an ideologically neutral fashion; it is neither necessary nor appropriate for courts to balance policy considerations. I believe the Seventh Circuit in *Eain* improperly rested its decision on its conclusion that only organized forms of aggression are afforded protection under the political offense exception and on its distinction between attacks on military and civilian targets. These limitations run counter to the reasons that originally supported creation of the political offense exception. I agree with Judge Reinhardt that the incidence test neither requires proof of membership in an uprising group nor recognizes a distinction between attacks on military and civilian targets. For these reasons I join Judge Reinhardt in rejecting the *Eain* test.

I concur in Judge Reinhardt's conclusion in Part VI that if an uprising existed at the time the offenses were committed, the bombings and the Tibble murder were incident to that uprising. I disagree, however, with his further conclusion that because the level of violence in Northern Ireland far exceeded that in England, the uprising did not extend to England.

I find persuasive the magistrate's and district court's findings that a severe political uprising existed in the United Kingdom, including England, at the time the acts of which Quinn is accused took place. The magistrate recognized the constitutional unity of Northern Ireland and Great Britain, and noted the numerous violent incidents that occurred in areas outside Northern Ireland, particularly in and around London. I cannot agree with Judge Reinhardt's conclusion that when PIRA members revolt against their British rulers in Northern Ireland, such acts are protected

under the political offense, exception, whereas the identical violent acts carried out against the same British rulers in London lose their protected status.

I disagree that this interpretation of the "uprising"component of the political offense exception sanctions previously extraditable violent acts. Judge Reinhardt is rightly concerned that "uprising" not encompass "terrorism or other criminal conduct exported to other locations." I share his concern. But in my view, the acts of Irish nationalists against the British in London are not international "terrorism or other criminal conduct exported to other locations." The longstanding ties between England and Northern Ireland, which Judge Reinhardt acknowledges are "well established," cannot be avoided or ignored. Although Northern Ireland may have been "separated" from Great Britain by treaty when the Irish Free State was created, it remained a part of the United Kingdom with representation in the British Parliament and it has been occupied by British troops all these many years. The acts of terrorism in England by members of the PIRA can hardly be termed acts of international terrorism.

The magistrate in another extradition case involving a PIRA member charged with bombing a British military barracks in England reached this same conclusion. McMullen was found not extraditable because his acts fell within the political offense exception. *See In re McMullen*, No. 3-78-1899 MG (N.D.Cal. May 11, 1979), *Reprinted in Extradition Act of 1981: Hearings on S. 1639 Before the Senate Comm. on the Judiciary*, 97th Cong., 1st Sess. 294, 294-96 (1981). I likewise conclude that Quinn's actions in London were part of an overall uprising in Northern Ireland and England.

Given my conclusion that the offenses of which Quinn is accused are protected under the political offense exception, I must address whether this protection extends to one who, like Quinn, is a citizen of a different nation from that in which the uprising is occuring. I do not believe that mercenaries or volunteers in a foreign conflict can claim protection under the political offense exception. I deduce from Judge Reinhardt's views on international terrorism that he would agree. To be entitled to protection, an individual would have to demonstrate tangible and substantial connections with the country in which an uprising occurs. It could be short of citizenship, but there must be a showing of substantial connection—for example, that he or she had lived in the country or territory and planned to continue to live there under a changed regime.

In Quinn's case, we lack sufficient information with which to make any such evaluation. We know that Quinn is a United States citizen, and that he resided in San Francisco during the years immediately preceding his arrest. In an Order Denying Bail, the magistrate noted Quinn's long standing family roots and ties in this [San Francisco] local community. He has a father and uncles and aunts here, he was educated here, and was employed in a family business at the time of his arrest. Except for a sojourn abroad, during which the alleged events occurred which resulted in the charges filed in the United Kingdon, he has for the most part resided in this community.

Because we do not know the extent of Quinn's ties to Northern Ireland, I would remand the case for an initial determination by the district court as to whether Quinn should be treated as an Irish national and afforded the protection of the political offense exception. Accordingly, I dissent from the holding that Quinn may now be extradited on the murder charge.

I agree with my colleagues that Quinn may not be extradited on the conspiracy charge at least until after the district court considers the question of the statute of limitations. However, I believe that the district court should not be required to reach that question unless it first concludes that Quinn's ties to Northern Ireland were insufficient to invoke the protection of the political offense exception. For the reasons I have explained, I concur in the holding remanding the conspiracy count.

UNITED STATES OF AMERICA, ET AL., PLAINTIFFS-APPELLEES, v. J.B. STRINGFELLOW, JR., ET AL., DEFENDANTS-APPELLEES, CONCERNED NEIGHBORS IN ACTION AND PENNY NEWMAN, INTERVENORS-APPELLANTS

[No. 84-5682]

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

Argued and Submitted March 6, 1985—Decided Feb. 18, 1986.

Citizens groups sought to intervene in Government's action against parties allegedly responsible for release of hazardous wastes. The United States District Court for the Central District of California, Malcolm M. Lucas, J., granted permissive intervention with conditions, and group appealed. After initial reversal without opinion, 755 F.2d 1383, the Court Appeals, Reinhardt, Circuit Judge, held that citizens group was entitled to intervene as of right, inasmuch as intervention was necessary to protect group's interests, which were not adequately represented by existing parties.

Reversed and remanded.

1. Federal Court (587)

Order denying intervention as of right was final appealable order, even though permissive intervention had been granted. 28 U.S.C.A. § 1291.

2. Federal Courts (544)

Citizens group's participation in litigation as permissive intervenor did not estop it from timely appealing that portion of district court's order denying it intervention as of right; although group unwillingly participated in litigation, it made clear that it was not consenting to denial of intevention as of right. Fed.Rules Civ. Proc.Rule 24, U.S.C.A.

[United States District Court—Northern District of California]

IN THE MATTER OF THE EXTRADITION OF PETER GABRIEL JOHN MCMULLEN

MAGISTRATE NO. 3-70-1099 MG

MEMORANDUM DECISION

Having denied extradition of Peter Gabriel John McMullen by an oral order made at the conclusion of argument on May 9, 1979, and having dismissed the extradition proceeding against Mr. McMullen, the Court is taking this means of setting forth in detail the facts and legal authorities which lead to our ruling that the defendant came within the political offenses exclusion provided in Article V, 1 C(i) and (ii) of the extradition treaty between the United States and Great Britain.

At the outset, it must be stated that in ruling, we make no finding that the defendant would not be subject to extradition because of Treaty Article V, 2, which in this case, is the possibility of physical or mental mistreatment the defendant could suffer should he be incarcerated in a British prison in either England or Northern Ireland.

The government concedes that should the facts meet the requirements of the political offense in the treaty provisions, it is mandatory that the Court deny extradition.

This has been a unique extradition proceeding. It cannot be characterized as the usual type of extradition normally which has it source in either a bank embezzlement, robbery, extortion, fraud or murder, all absent political overtones.

The background of this litigation could relate back to the early turn of this century and at least to the year 1921 when the conflict between the Irish people and Great Britain was partially resolved with the creation of the Republic of Ireland. Sporadically since 1921 and particularly in the decade commencing in 1970 the conflict, politically and nationalistic in concept and objective has flared and erupted between certain groups in Northern Ireland and Her Majesty's government. Not all the Ulster inhabitants seek freedom from British rule and unification with the Irish Free State. One organization within and without the borders of Northern Ireland has continued to press and to this day continues to fight for Northern Ireland's independence from British rule. This is the Provisional Irish Republican Army (PIRA) which has since 1970, engaged in various sorts of terrorist or guerrilla activities, covert in execution in its quest for nationalization of Northern Ireland.

The standards that must be established to bring what otherwise would be common law crime (e.g., murder) within the political offense exception of the treaty are two-fold. One, the act must have occurred during an uprising and the accused must be a member of the group participating in the uprising. Second, the accused must be a person engaged in acts of political violence with a political end. Although these are not the verbatim standards set out in the British decision of *In Re Castioni*, 1 QB, 148 (1891), they are, in essence, what is required to be proved by the accused in order to avoid extradition, where this treaty exception is asserted by way of defense. *In Re Castioni*, supra, was cited by the Ninth Circuit in 1957 in its decision of *Karadzole* v. *Artukovic*, 247 F.2d 198 in affirming a District Court decision denying extradition involving a World War II war crime. In *Artukovic*, the Ninth Circuit speaking through Circuit Judge Stevens acknowledged that American courts have more or less adopted the standards of *Castioni* in political offense cases (pg. 203) The treaty provides the political character of an otherwise criminal offense for which extradition is sought must be so regarded or determined as such by the requested party, in this instance, the United States of America. We do not look to the Executive arm of the government, particularly the State Department for a determination as what this government considers as an act of political offense relative to criminal activity occurring on the soil of a foreign nation. Extradition is a judicial proceeding. The decisional law of the courts of the United States is the source in answering this question: "What is a crime of a political character"? The language in *Artukovic* is of assistance when it quotes *Castioni* as to what is a politically motivated crime. The political offense crime must be incidental to or formed as a part of a political disturbance and committed as furthering a political uprising. Even though the offense be deplorable and heinous, the criminal actor will

be excluded from deportation if the crime is committed under these pre-requisites.

Was there in 1974 a disturbance in Northern Ireland that meets the first of these steps? In executing a derogation with respect to the International Covenant in Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (Government Exhibit 4c) and (RT 10) the British government recognizes there existed a "public emergency" as defined in the covenant due to violent civil disturbance or disruption concerning the United Kingdom's conduct of its affairs in Northern Ireland. The record in this case shows that highly placed officials in the British government made direct admissions that an insurrection was occurring in Northern Ireland in 1970 and 1974.

Aside from these admissions by the British government of a public emergency or an insurrection existing in Northern Ireland, we cannot shut our eyes as to what has occurred in Northern Ireland since 1970 through 1979 with respect to the activities of PIRA in its insurgent and terrorist activities, seeking independence for the six countries that comprise Northern Ireland (Ulster). The PIRA's terrorist/guerrilla activities were not and are not confined to these six counties, but extend to Great Britain. This, together with the presence of British troops in Northern Ireland since 1972, and the termination of Home Rule, leads the Court to the obvious inescapable conclusion that an insurrection and a disruptive uprising of a political nature did, in fact, existed in Northern Ireland in 1970 and particularly in 1974, when Mr. McMullen is charged with the crimes against Claro Barracks, a British Army installation. We find this necessary atmosphere or condition existed as one of the steps necessary in the application of the political exception defense. *In Re Ezeta*, 69 F.2d 972; *Ramos* v. *Diaz*, 179 F.Supp. 454.

The government attempts to brush aside McMullen's bombing barrack activities, in this era of insurrection, killing, bombing and other underground covert terrorist activities by the PIRA, as being personally motivated, hit and run and isolated from PIRA's terrorist campaign. The government further argues that there is no proof that on the date of McMullen's alleged crime there was any open activity by the PIRA against the British government. This argument is novel and totally unacceptable. Because PIRA guns may have been silent, that it did not throw nor ignited bombs on the day of McMullen's bombing, although they may have been very active in terrorist conduct the day prior and the day after test the Court's credibility. A political disturbance, with terrorist activity spanning a long period of time cannot be disregarded even if, in fact, the PIRA lifted not one single finger in either Northern Ireland or Great Britain to further its cause of nationalism of Ulster on the day Claro Barracks were bombed.

The evidence in this case considering allegation of the British Government, in its complaint filed against the defendant, and the statement which McMullen gave to the New Scotland Yard in May 1977, irrefutably establishes the defendant was a member of the PIRA in 1974. At that time, he was a deserter from the British Army. The detachment from which he deserted took part in the Bloody Sunday firing in Derry in 1972.

Expert testimony, documentation, literature, and the reports and findings, international groups and organizations concerning civil rights which in the record clearly establish the PIRA in 1970 and in 1974 was a political terrorist organization with an objective of nationalizing Northern Ireland. No one disputes this. The proof before us more than adequately establish from British sources and defense evidence that prior to 1974 and in 1974, McMullen was a member of the PIRA, an organization existing in an era of political upheaval, which was engaged in and conducted political violence, of the most extreme nature with a solely political objective. The record is likewise well documented the British Army and its facilities were prime targets for the PIRA's guerrilla warfare. To say McMullen's activities in entering England, seeking out a British military barrack, clandestinely securing the necessary explosives to complete the bombing the premises and executing the bombing, was a product of his own vengeance or personal motivation free of any political consideration, is not supported by the record. We must reject the government's assumption or speculation that McMullen was solely, personally motivated in the bombing of the barracks. There is too much evidence to the contrary supportive of a finding that he acted as a member of PIRA, his activities were directed by persons in authority in the PIRA, and that the bombing was a crime incidental to and formed as part of a political disturbance, uprising or insurrection and in furtherance thereof.

With this evidence before us the burden shifts to the government to offer evidence that contradicts circumstances or activities which make the political exception applicable. *Ramos* v. *Davis*, supra. None was offered to meet this burden. The government suggests we disregard the testimony of Dr. Jeffrey Prager and Dr. Rona M. Fields, on the grounds that they were unqualified to give expert testimony on the subject of political offenses. The cross-examination of these two experts was brief and in no way discredited their expertise nor soiled their opinions regarding political offenses in Northern Ireland. We accept their opinions and conclusion.

We find that the defendant has established by evidence, which we most conclude as preponderating that the act of bombing the Claro Barracks was political in character. Thus, all the two requisites of establishing the political offense exception of the Treaty having been met, we find that Peter Gabriel John McMullen is therefore not extraditable under the provisions of the Extradition Treaty in force between the United States of America and the United Kingdom as of 1974.

□ 1540

Mr. LUGAR. Mr. President, it was because of these cases that on June 25, 1985, the United States and the United Kingdom signed the Supplementary Extradition. Its purpose is to reverse the three cases where extradition was denied and put an end to this development in the law. It was submitted to the Senate for advice and consent to ratification July 17, 1985.

COMMITTEE ACTION

The principal focus of the Foreign Relations Committee's deliberations was the political offense exception. Article 1 of the treaty, as submitted, excluded from treatment as a political offense all serious violent crimes. Accordingly individuals sought for extradition to the United Kingdom would have no longer been able to interpose a defense based on political considerations at their extradition hearing. Their only recourse would have been to appeal to the Secretary of State to exercise his discretion to deny the extradition request notwithstanding a court ruling.

Tesimony at the committee's hearings revealed that in recent years suspected IRA terrorists had been able to escape extradition by asserting that their acts fell within the political offense exception to extradition. It was also shown that these cases had the effect of encouraging political violence in Northern Ireland by signaling, however erroneously, that there was broad support in America for acts of political terrorism committed in Ireland.

All committee members were critical of these cases. No member supports the political offense exception as a shield to protect terrorists.

On the other hand, members were mindful of the tradition in the United States of providing a haven for political refugees. As the hearing testimony revealed, this tradition runs deep in American thought and jurisprudence. To discard it altogether because of a few unfortunate cases struck several members as an extreme solution.

Two principal reasons were advanced for limiting the scope of the political offense exception in extradition requests from the United Kingdom. First, in a democracy such as the United Kingdom violence should never be deemed an acceptable part of the political process. To even permit courts in the United States to consider political motives as justifiying murder or other violent crimes showed a lack of respect for the domocratic process. Where the individual can bring about political change through the ballot box, the bomb and the bullet have no place.

Second, to refuse to extradite even a few terrorists undermines U.S. antiterrorism policy. That policy is bottomed on the proposition that cooperation with our democratic allies is an essential element in the war against international terrorism. For the United States to refuse to extradite suspected terrorists makes it that much more difficult to enlist the allies in antiterrorism efforts. This perceived inconsistency in United States policy has made all the more apparent after the assistance the United Kingdom extended to the United States in connection with the retaliation against Libya for the terrorist attack on the West Berlin disco.

The importance of international cooperation in the fight against terrorism was underlined at the May 1986 Tokyo Summit. There, the leaders of the seven industrial democracies, including the United States and the

United Kingdom, issued a strong statement pledging themselves:

To make the maximum efforts to fight against the scourge [of terrorism]. Terrorism must be fought effectively through determined, tenacious, discreet, and patient action combining national measures with international cooperation.

Set against these very strong arguments were concerns about the precedential effect that would result from a change in the political offense exception. The fear was expressed that in the rush to deal with the problem of the moment, international terrorism, a valued American tradition, the right of political sanctuary, would be lost. Furthermore, taking the political offense exception away from the courts left the executive branch with the sole discretion to determine whether to extradite when political issues were involved. Individual justice might be sacrificed to broader foreign policy issues.

After considerable discussion, the committee reconciled these competing concerns through adoption of a compromise resolution of ratification sponsored by Senator EAGLETON and myself. This resolution takes the unusual, although not unprecedented, step of making Senate consent to ratification conditioned on the acceptance by the Government of the United Kingdom and the executive branch of the United States of amendments to the text of the treaty. These amendments were developed in close consultation with the administration and the British Government. While both governments would have preferred that the Senate approve the treaty as submitted, both are willing to accept the committee's changes.

Should the Senate consent to the treaty with the committee's amendments, these amendments will become an actual part of the compact between the two governments. For ease of reference the text of the treaty, revised to reflect the committee's proposed amendments, is reprinted in the appendix to the committee's report.

The essence of the committee's compromise if found in what are now articles 1 and 3 of the supplementary treaty. Article 1 narrows the list of offenses which a court may treat as political offenses. In effect, those who commit serious acts of violence, or attempt to commit, or participate as an accomplice in these acts, can no longer escape extradition by claiming their offenses were political. Thus, in each of the four cases I described earlier, had the supplementary treaty been in effect the political offense issue would, without question, have been decided against the defendant.

Article 3, on the other hand, gives the courts the opportunity to refuse extradition to the United Kingdom when the request is a pretext or when the individual would be subject to political or religious persecution. Article 3 allows an individual wanted for an offense listed in article 1 to show that he is in fact being sought, not for the crime he allegedly committed, but because of his race, religion, nationality, or political opinions. Alternatively, the individual sought may try to establish that were he surrendered, he would be prejudiced or punished by reason of any of these factors. If he can prove either by a preponderance of the evidence, he can defeat the extradition request.

This approach has precedents in both United States and foreign law. In the United States the courts have undertaken to narrow the political offense for certain violent crimes and have suggested in dicta that extradition can be denied for humanitarian reasons.

In the United Kingdom, fugitives sought for extradition are precluded from claiming that violent acts should be considered political offenses. However, these individuals are able to avail themselves of humanitarian safeguards similar to that found in article 3. The same is true for those states party to the European Convention on the Suppression of Terrorism. Articles 1 and 2 of that convention narrow the political offense exception, but article 5 gives to the state from which extradition is sought the right to refuse a request for humanitarian reasons.

Senate approval of the committee's compromise will not bring United States practice into complete conformity with British and European law, however. In the United Kingdom, if extradition is denied for humanitarian reasons, the individual's case must be submitted for prosecution in accord with British law. Likewise, article 7 of the European Convention on the Suppression of Terrorism requires any party denying extradition for humanitarian reasons to submit the case for prosecution. In the United States, however, if an individual wanted for extradition to the United Kingdom successfully invokes the humanitarian exception contained in article 3 of the supplementary treaty, he will, given the current state of United States law on jurisdiction over acts committed abroad, most likely escape prosecution for his acts.

Because the consequence of an individual prevailing under a humanitarian exception differs so greatly in the United States from that in the United Kingdom or elsewhere in Europe, the committee added a second part to article 3, which will be applicable only to extradition requests from the United States. Article 3(b) provides that either party to a United States extradition proceeding commenced by a request from the United Kingdom may appeal a finding relating to the humanitarian exception. As the individual already has an effective right of appeal by way of filing a petition for a writ of habeas corpus, this section gives the Government a right of appeal it does not have under current extradition law. In view of the effect of a finding under article 3(a) in favor of the defendant, I believe the grant of appeal rights to the Government is warranted.

The committee made a second major change in the supplementary treaty as submitted as well. It has included, as article 2 of the amended treaty, a restatement of the procedures that govern the consideration of an extradition requests in U.S. courts. This article reaffirms that the magistrate or Federal judge is to permit the individual to present evidence in connection with the request. It insures that no individual is to be extradited without a fair hearing.

The committee also gave considerable attention to the issue of retroactivity. What is now article 5 of the supplementary treaty provides that the treaty will apply to offenses committed before the treaty becomes effective. This makes it retroactive. For example, if some of those who participated in the attempt to murder Mrs. Thatcher and her cabinet at Brighton in 1984 were found in the United States after the supplementary treaty came into force, article 5 would insure that they could not escape extradition by relying on the cases I cited above.

The courts have examined the question of the retroactivity of extradition treaties on several occasions. They have found no constitutional problem with retroactivity. Indeed, they have held that absent an express provision to the contrary, extradition treaties will be construed to be retroactive. Moreover, the Senate has approved a retroactive clause identical to that in article 5 in treaties with France in 1970 and Sweden in 1983. Twenty-three other supplementary treaties in recent years have been approved with some types of retroactive clause.

The committee also made several other changes in the supplementary treaty as submitted. The list of crimes in article 1 has been shortened by deleting acts involving the mere possession of firearms and conspiracy offenses. Article 2 of the treaty, as submitted, would have made the statute of limitations of the requesting state applicable. The committee approved an amendment offered by Senator Helms deleting this provision.

Finally, the committee recommends that the Senate approve the resolution of ratification with a declaration. This declaration states that the Senate will not approve treaties with totalitarian or nondemocratic regimes. It also makes clear that neither the supplementary treaty nor any particular provision of it is to be considered a precedent for the treaties. The executive branch and foreign governments

are therefore on notice that the Committee on Foreign Relations will conduct a searching review of any new supplementary extradition treaties. Each will be considered on its own merits.

The supplementary treaty has been one of the most difficult and contentious issues the committee faced this Congress. The committee has worked long and hard to develop a compromise that could win broad, bipartisan support. I believe that the package it has approved meets this need. I urge the Senate to approve it.

□ 1550

Mr. PELL. Mr. President, I join the chairman of the Foreign Relations Committee, Senator LUGAR, in urging the Senate to give its advice to the supplementary extradition treaty with the United Kingdom with the amendments and declaration proposed by the committee.

This treaty has been one of the most contentious and divisive issues to come before the committee during this Congress. It has been contentious and divisive because it presented the committee with two apparently irreconcilable choices—to make it easier for Britain to bring fugitive terrorists to justice or to preserve the American tradition of barring extradition if a judicial determination has been made that the offense involved is political in nature.

Extradition can be a potent weapon in the war against terrorism, and make no mistake about it—it is a war. At the same time, it is a very major step to abandon more than a century of law and practice regarding the political exception to extradition. Our country refused to enter into extradition treaties at all for the first 50 years or so of our existence, because we harbored a great distrust of foreign legal systems. When we did enter into extradition treaties, it was on the condition that political offenses would be excluded and that U.S. courts would decide what constituted a political offense. This approach was grounded in the belief that rebels and political dissidents should not be turned over for trial to the very government they opposed.

All of the more than 100 extradition treaties that the United States has concluded have included a provision excluding political offenses—and that includes the treaty that has been in force with the United Kingdom since 1977. Last year, concerned about the denial by U.S. courts of British extradition requests in three cases involving members of the Provisional Irish Republican Army, the administration submitted to the Senate a supplementary treaty. The supplementary treaty, as submitted, would have eliminated the political exception for acts of violence, and with it, the traditional role of U.S. courts to deny extradition in connection with alleged political offenses.

That struck many on the committee as a remedy disproportionate to the problem at hand. There was broad agreement that the current treaty must be strengthened in order better to combat terrorism; but there was also considerable concern about the extent to which it would be prudent to depart from over a century of law and practice on the political exception.

When the committee first considered the treaty in April, I, and others on the Democratic side, made an effort to respond to the administration's concerns while at the same time preserving a meaningful role for U.S. courts. We tabled a proposal that was a sincere effort to reconcile these two objectives.

The administration, however, did not accept our proposal, and I regret very much that the administration chose to mount a public campaign of misrepresentation and distortion of what we were trying to accomplish. I have had two personal friends murdered by the IRA—The Irish Republican Army; so I feel as strongly about terrorism and the IRA as anybody, and I want to ensure that the murderers of my friends and others in similar circumstances are extradited if they ever come to the United States.

The search for a compromise went on, however, and it is a tribute to the efforts of Senators LUGAR and EAGLETON that a way was found to reconcile the seemingly irreconcilable. They developed a compromise that consists of two paired elements. First, article 1 sets forth a list of violent crimes for which the political defense could no longer be claimed. The list is not as extensive as the one the administration had proposed, but it nevertheless covers all typically terrorist acts. Second, article 3(a) provides that notwithstanding article 1, a U.S. court may deny extradition based on a persuasive factual showing that trumped-up charges are involved or that the person sought could not get a fair trial because of his race, religion, nationality, or political opinions. This latter provision establishes an affirmative right of inquiry into the justice system in Northern Ireland.

Thus, article 1 considerably narrows the applicability of the political exception; but that action is balanced by article 3(a) which preserves a meaningful role for U.S. courts in two important areas of individual rights. This is an excellent compromise, and I urge my colleagues to support adoption of the resolution of advice and consent.

Mr. THURMOND. Mr. President, I rise today in support of the Supplementary Extradition Treaty between the United States and Great Britain. This treaty will make it easier to extradite terrorists and members of the outlawed Irish Republican Army accused of violent crimes. It would do that by narrowing the "political exception" test that presently allows persons accused of violent acts to escape extradition by claiming that their crimes were politically motivated.

Opponents of the treaty have said the United States should not abandon its long tradition of exempting political acts from extradition. Mr. President, we are not abandoning a long tradition. Rather, we are now distinguishing between political rebels—to whom the United States has traditionally offered safe haven—and terrorists, who should be speedily extradited.

Approval of this treaty will greatly assist the British Government in bringing terrorists to justice. This treaty will substantially narrow the scope of those crimes which qualify for the "political exception" test. No longer will the crimes of murder, voluntary manslaughter, kidnaping, abduction, and serious unlawful detention—hostage-taking—be regarded as political offenses. In addition, offenses which involve the use of a bomb, grenade, rocket, firearm, letter bomb, parcel bomb, or any incendiary device whose use endangers any person shall no longer be regarded as political offenses. People who commit any of the previously mentioned crimes in Great Britain or Northern Ireland and then seek safe haven in the United States would be subject to extradition.

Finally, this treaty contains due process safeguards.

First, it requires the judicial authority of the United States to permit the individual sought to present evidence on the questions of whether: There is probable cause; a defense to extradition exists; and the act upon which the request for extradition is based would constitute an offense punishable under the laws of the United States.

Second, extradition shall not occur if a person establishes by a preponderance of the evidence that he is being extradited for punishment on account of his race, religion, nationality, or political opinions.

Third, if the judicial authority determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty, then there is no obligation to extradite.

Mr. President, I urge my colleagues to support this treaty.

Mr. LUGAR. Mr. President, at this moment, I ask unanimous consent—and this follows clearance by the majority leader, the distinguished minority leader, and by Senator PELL—I ask unanimous consent that, after disposition of the pending business, the Senate return to legislative session; and I further ask unanimous consent that upon return to legislative session the Senate turn to Calendar item No.

696, S. 2572, the Economic Support for Ireland and the United Kingdom bill.

The PRESIDING OFFICER (Mr. EVANS). Is there objection? Without objection, it is so ordered.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair for recognizing me, Mr. President.

Mr. President, a short while ago, when Senator KENNEDY, the able Senator from Massachusetts, was on the floor, I was involved in some work relating to the Agriculture Committee. I could not get here in time to hear the Senator's remarks in person. I did hear them, most of them, on the intercom.

I feel obliged to mention a few matters to the Senate at this time relating to a view that I have of Chile that is contrary to that of the distinguished Senator from Massachusetts.

Let me say at the outset that I do not pretend to be an expert on Chile. I have been there twice—once 10 years ago; the second time last week. Nor do I present myself as a pro-Pinochet Senator or anti-Pinochet Senator. I want democracy for Chile, just like everybody else.

But, I am firmly anti-Communist and I cannot support anybody or anything tending to force Chile into a situation which will result in another communistic takeover of that country. The country survived Salvador Allende, a Marxist, who brought the country to ruin. Now they have a military government about which much is written and broadcast but very little of which is complete or accurate.

I say that not in defense of the Government. I should say, however, that it is the only military government I ever heard of that has voluntarily given up its powers to a constitutional system. There may be many things that I do not know about Chile, but I can perceive from the broad statements made by the Senator from Massachusetts, he does not know very much about it either.

I do not present myself as an expert, I will say again, but at least I have been there and I have met with the people of Chile, including about 50 or 60 American citizens who live in Chile. And I can tell you, Mr. President, that they present an entirely different picture from that which I heard Senator KENNEDY discuss just a few minutes ago.

Now, having said that, Mr. President, I am very pleased that I have given a shot of adrenalin to the news media of the United States. Nothing exhilarates them more than to launch an attack upon the distinguished President of the United States, Mr. Reagan, or to launch an attack on JESSE HELMS. Sometimes they are accurate. I cannot remember the last time they were accurate, but sometimes they are.

But let us discuss just for the record precisely what happened during my visit last week for 4 days in Chile.

□ 1600

And I say again for the purpose of emphasis that I do not present myself today or at any time as an expert on Chile.

The facts are, Mr. President, that some months back I was invited to visit Chile by the National Agricultural Society of Chile, which is a private organization that has been devoted to the improvement of agriculture in that country for 148 years. It does not have the remotest connection with the Government. It never has. As chairman of the Senate Agriculture Committee, I accepted that invitation 3 or 4 months ago because I had heard of the enormous strides Chile was making in agriculture production since it instituted a no-subsidy, free-market policy in the agricultural sector.

So last week I spent 4 days, as I say, in Santiago, which is the capital city. While I was there I was constantly besieged by the free press of that country. We hear constantly that Chile is an oppressed country, and pictures are painted of dead bodies lying all over the streets. I walked the streets of Chile daytime and nighttime. I saw no dead body. I brought mine back to the United States alive. So, so much for that. I suspect there is more violence in some sections of New York City than there is in Santiago.

But in any case, while I was there I met constantly with the press, not by my design but by theirs. For example, I went to see the distinguished president of the supreme court. They do not call him the chief justice. He is the president of the supreme court, and a delightful man. The judiciary in Chile is separate from and independent of the executive branch of Government. At every stop, Mr. President, 30 or 40 newspapermen and newspaperwomen rushed forward with their notebooks and tape recorders, TV cameras, and so forth, and from their questions it was obvious that they represented every section of the political spectrum—a fact that was also attested to by the publications displayed on every newsstand.

So Chile has a free press, free to criticize the Government, which it does. And I heard of no editor being beheaded down there. I have heard of no newspaper being shut down as is the case in Nicaragua. Several times I thought I might be back in Washington when I saw all of those news people. But there is one difference. There, when I picked up the papers the next morning and had them translated for me—I do not read Spanish—I found that I was quoted accurately. That does not happen in the United States. It was a unique and pleasant experience.

On one such occasion I happened to say that I was ashamed of the press in the United States because the major media had not presented both sides of the question relating to Chile. In fact, by my own knowledge—this nonexpert who spent 4 days there, and only 4 days—the facts presented in the United States media about the current situation in Chile are not correct. Nevertheless, I was not prepared for the outburst of ignorance which has blared forth in the U.S. press since I returned to Washington.

This is the same press, Mr. President, that so eagerly anticipated the coming of Mao Tse-tung in China, Fidel Castro in Cuba, the downfall of the Shah of Iran, the triumph of Mugabe in Zimbabwe, the defeat of the United States in Vietnam, and the defeat of the Sandinistas in Nicaragua. Now look at our media today. They are shocked that I have expressed concern, and, yes, dismay as to whether the State Department's policies in Chile will bring about a democratic transition to freedom, or not.

I have been in the Senate since January 1973, a little over 13½ years. But before that, I was involved in the news business. I ran a broadcasting company, a television station, and some radio stations. Even then, I did what little I could to warn the American people that the media and the Marxists and the U.S. State Department were in an unholy, if unintentional, alliance. I do not retreat from that one inch.

I remember doing an editorial on our television and radio stations about this fellow, Fidel Castro. And the newspapers jumped all over me, said this guy HELMS is pro-Batista. He embraces tyrants. It is not so. It was not so then, and it is not so now. But what I was trying to say is, you had better watch out because this fellow, Fidel Castro, no matter what the New York Times or CBS says, is a Marxist. They said, oh, no, he is an agrarian reformer. He is a nice guy. He is for liberty, freedom, peace, serenity and tranquility for the united people of Cuba.

Who was right?

What about my position on Mao? I talked about that. Again I was castigated. "You are an old Chiang Kai-shek supporter." No. I was an anti-Communist then, and I am an anti-Communist now.

And what about the Shah's successor? How do you like him? There were some of us around who said, oh, boy, you had better watch out. For all of his warts and for all of his defects, the Shah of Iran is at least anti-Communist, and he is a friend of the United States. They said, no, no, no, HELMS, you embrace dictators. Now look at Iran.

I remember Zimbabwe, and my friendship with a Methodist minister who was elected as the first black Prime Minister of Zimbabwe. His name is Abel Muzorewa. The U.S. State Department undermined Prime Minister Muzorewa and made it possible for Mr. Robert Mugabe to become the Prime Minister, a Marxist. Now look at the violence in Zimbabwe. How about that, Mr. President?

Whatever the faults of their predecessors in these countries, the citizens of those unfortunate nations now look back to the period when they had the Shah of Iran, and Bishop Muzorewa and, yes, Somoza, as the good old days. It was clear even then that the successors of these gentlemen were about to institute tyrannies far beyond anything the world had ever imagined.

So, was JESSE HELMS wrong about these great reformers like Castro, Mugabe, and all the rest of them? I will leave that to the judgment of the American people, but they will not be able to judge because they are not getting both sides of it. All they get is that JESSE HELMS and anybody else who puts up a warning finger is a guy who embraces despots.

How about the Vietnamese Communists? Those of us who said, "Whoa, wait a minute, we ought to go ahead and take a stand against communism, unequivocal, to not try pussyfoot, be on both sides." We were the guys who were in favor of the despots.

Mr. President, I remember the debate on the Senate floor about Argentina and the United Kingdom, and the Malvinas, or the Falklands, as they are better known here.

□ 1610

Frankly, I doubted that there was any wisdom to our encouraging Great Britain to come across around the world to get involved over a piece of worthless real estate called the Falkland Islands, and I said so. I was immediately condemned as being anti-British, turning against an ally, and that sort of thing.

But what I had in mind, Mr. President, was, I asked myself, how many lives is that little piece of worthless real estate worth? In fact, I wanted the British and the Argentines to sit down and work out the question of sovereignty, because history is on the side of the Argentines, whether you like it or not. So I was accused of embracing the dictators of Argentina.

But, you know, Mr. President, 1,200 young men gave their lives in a useless war that need not have ever happened. Yes, I voted against the resolution on this floor because I thought that the British and Argentines ought to sit down and talk this thing out.

But here I am advertised as a guy who loves dictators.

Mr. Herblock had his cartoons, bless his heart. He is always positive, but he is only sometimes right.

In any case, the citizens of Chile, to get back to that subject, are in the unique position of having overthrown a Communist dictatorship.

How many times has that happened? The people of Chile have a vivid memory of what happens when a Communist coalition takes control, ignoring the laws, ignoring the constitution, ignoring the Congress, ignoring the judiciary. That all happened under the Marxist Salvador Allende.

The Chilean people have not forgotten what it means to have every one of their human rights abrogated by the arbitrary whim of a Communist regime. So I think that it is safe to say that they have a very different point of view from that of the major media of the United States and the State Department.

Yes, sir, the people had their fill of communism. The women of Chile got in the streets and beat on their casseroles, their pots and pans, and demanded that the government be ousted, and it was.

I heard the distinguished Senator from Massachusetts lament the fact that Allende was overthrown. Well, the people overthrew him. It was not the CIA, not ITT. I remember when the late Senator Church looked into the matter. He would have loved to prove that the CIA overthrew Allende. But after weeks of hearings, he could not.

Since returing from Chile on Sunday, I have encountered many self-styled experts on Chile, but, unfortunately, most of them fall into one of two categories.

The first category consists of the Marxists and the crypto-Marxists who would like nothing better than to have another Allende-style government in control of Chile.

The second category consists of experts who have never been to Chile.

Well, I am not embarrassed to say I have been to Chile because I have only been there for 4 days, but I will say again I do not pretend to say here on the floor this afternoon that I am an expert on Chile. However, that visit enabled me to see the great gulf between the imaginary Chile and the real Chile that exists in the fevered reports in our newspapers and on our television screens.

Surely, very few of those writing and broadcasting about Chile care very much about the facts. I do not suppose they want to know them. They would not look at the facts if the facts were put right under their noses. But just in case there are even two or three who may have a qualm or two about what they are writing or broadcasting, let me offer just a few facts. Later on, I will give a more comprehensive review of things that I perceived while in Chile.

First, in referring to what the distinguished Senator from Massachusetts said, I must ask the question: Is the Chilean Government there trying to cover up the Rojas case, the case of the young man who was burned to death? The answer is definitely no.

On the very day that the incident occurred, the government realized that the circumstances were far beyond that capability of a normal criminal investigation and, therefore, the court of appeals was petitioned to establish what we, in this country, would call an independent prosecutor to investigate the case and bring the perpetrator to justice.

Bear in mind, this is not the Government. This is the independent court.

The court, almost immediately, appointed such a prosecutor chosen from the ranks of the judiciary, and the investigation was begun.

For the purpose of emphasis, let me say again that this is not an investigation by the Government. It is an investigation by the independent judiciary.

Second, is the Chilean judiciary really independent?

The answer to that, I believe, is "Yes." As I say, I visited with the president of the supreme court, the equivalent of our Chief Justice. All Chilean judges are chosen from a career service and cannot be dismissed by the Government. In other words, if Mr. Pinochet does not like a judge, he cannot do anything about it.

The judicial service itself selects a panel of nominees from which the Government must choose.

By the way, many of the judges serving today in Chile were appointed by the Allende government. They have not been dismissed.

The proof of the judiciary's independence is that a number of Chilean military and security personnel have been convicted of human rights abuses and imprisoned, and in two cases the death penalty was imposed.

You do not hear that from the distinguished Senator from Massachusetts.

Incidentally, the anomaly: One of the international human rights groups condemned Chile about an episode. In Chile, the judiciary investigated and found the two men who did it and put them to death, and then the same human rights group condemned Chile for executing them. So the judiciary cannot suit this human rights group at all.

A third question, Was the special prosecutor in Chile appointed because of pressure from the U.S. State Department?

Absolutely not. The special prosecutor had been appointed before that sanctimonious press conference of the State Department called for an inves-

tigation. The investigation was already underway.

Surely, wherever you think of Chile, surely sometimes the State Department ought to mention that and maybe even say, "We commend the Chileans."

No; they pretended they had to call for an investigation when, in fact, the investigation and the request for a special prosecutor occurred on the very day of the death of this young man.

A special prosecutor was appointed and he was working the day before the State Department in its press conference made the demand.

I asked the distinguished U.S. Ambassador to Chile why he was not aware of this and why he had not reported it to the U.S. State Department. He said, "Well, I was out of town." I said, "Good Lord, man, didn't you have a No. 2 man who could have picked up the telephone?"

□ 1620

He did not answer.

Now, fourth, Mr. President, did the Chilean Government try to block the transfer of Roja—this is the burned young man—to a better equipped hospital? On the contrary. As soon as Rojas and his friend Carmen Quintana were discovered, they were taken to the nearest medical facility. When it was seen how badly burned they were, they were immediately taken to the largest public hospital, which was specially equipped to treat burn victims.

How does that square with what we have been reading and what we have been hearing?

When the family asked for a transfer to a private hospital, the private hospital sent its staff doctor to examine the patients, the young man and the young woman and the private doctor found that Rojas was so severely burned over 60 percent of this body, that his vital signs were failing so rapidly, and that he had respiratory complications, that any move would be highly dangerous to the patient. This was only 30 hours after the incident occurred.

In his medical report, this private doctor stated that there would be no benefit to the patient from the move. Meanwhile, the young woman, who was less severely burned, was transferred.

Question No. 5. Is it true that there is good evidence that Rojas and Quintana were beaten and burned by military personnel? The answer to that is, nobody knows. The alleged witnesses have not come forward. They have not been identified by the distinguished Senator from Massachusetts or anybody in Chile that I know of. Yet the flat statement is made that these were soldiers, with blackened faces. How do they know?

This much is known about the young man and the young woman: Both families come from the far left end of the political spectrum, no question about that, persons who were supporters of the Allende government. But the point I am trying to make, Mr. President, is until the testimony of sworn witnesses can be taken in court, should not statements by unidentified individuals be laid aside and given no credibility?

I could say that statements were made, if they were made, by people who have a political interest in making accusations against the Government. But I am not going to say that. I do not know that. I do not know who they are. But neither does the Senator from Massachusetts, nor does any other Member of the Senate, nor does the U.S. Department of State.

There are some alternative explanations about which I have no knowledge as to their credibility. It was suggested to me, for example, that the killings were a provocative act by the Communists themselves, or that the revolutionary couple, the young man and the young woman, were carrying incendiary devices that exploded accidentally. I do not know. But officials of the Government and the press, the free press in Chile, have stated that the parka, the coat worn by the young man, Rojas, was burned only on the inside, not on the outside.

So what does that do to the statement that was made here this afternoon in this Chamber, as a matter of fact, when it is not a known fact, that whoever assaulted these people doused them with gasoline. How do you douse somebody on the inside of a coat? In any case, I do not know and I do not claim to know. But I say this: Elementary fairness would indicate to the U.S. Department of State and to every Senator that we wait until there is some credible testimony, sworn testimony, by identified witnesses.

I could comment on the young woman who was burned. She had been arrested previously on the university campus there for inciting a riot. Experts have identified the young woman passing out incendiary devices on the tape as Carmen Quintana, the woman burned in this incident. I do not know it is true, but it should give pause to those anxious to rush to judgment. I have a videotape that one of the television stations—not the Government—voluntarily gave me.

Finally, question 6. Reference was made to the funeral for the young man, Mr. Rojas, and the fact that Ambassador Barnes attended that event. The record ought to be made clear, but it will not—you will not read about this in the paper; you will not see it on television. But not one leader of the democratic—let me say it again for emphasis—not one leader of the democratic opposition was present.

The only people who were present were representatives of the Communist Party, the MIRista revolutionaries, and the Marxist-Leninist elements of the Socialist Party. Their flags, their banners, their wreaths with the hammer and sickle were present everywhere. That is why, Mr. President, I said Ambassador Barnes, whether intentionally or not, had planted the U.S. flag right in the middle of a Communist rally. Because that is what it was.

Why, Mr. President, do you suppose that the U.S. Department of State has not mentioned the fact that this rally crowd began roughing up the police who were there, and those nice little people who just came to the funeral just happened to have their sledgehammers with them and they went over and destroyed the tomb of the Pinochet family?

Whatever you may think of President Pinochet, I think his dead parents and his dead mother-in-law deserve more respect. But they took their sledgehammers and they destroyed that tomb. Not once mentioned in the press here or on television, not once referred to by the U.S. Department of State.

I talked to Ambassador Barnes. At his own request, not mine, because I was not going to bother the Ambassador while I was in Chile. I went there, as I said at the outset of my remarks, at the invitation of an agricultural society, a commitment that I had made 3 or 4 months ago. But the Ambassador requested to come see me at my hotel.

We had a candid discussion. He did not agree with me and I did not agree with him. But, you know, Mr. President, the Ambassador said that he saw no politician from the democratic left or the democratic center. He mentioned only one personality—this is the Ambassador himself speaking, not JESSE HELMS. The Ambassador himself said he saw only one personality, a man who has been identified as belonging to the Marxist-Leninist wing of the Socialist Party.

□ 1630

The only other Ambassador who went to this rally was the French Ambassador, and the presence of these two Ambassadors supporting the antidemocratic cause has been of great concern in Chile.

A couple more points and I will conclude with great gratitude to my friend from Indiana for indulging me.

The morning after my visit with the Chief Justice or president of the Supreme Court, there was an item in El Mercurio, an independent newspaper, and the oldest in the Western Hemisphere, and I was struck by the fact that almost immediately, beginning about 8 o'clock, we could not handle the telephone calls coming in. There

proved to be about 40 to 50 American citizens living in Chile who called, and they said, "Praise the Lord for somebody coming down here and looking at both sides of it." The head of the American Chamber of Commerce, for example, the head of the computer section of the United Nations in Santiago, and many, many housewives and others called saying the same thing. But in any case, Mr. President, let me set my own position straight and then I will conclude.

One. I believe that the United States Government, the United States State Department, should have taken public notice of the quick action of the Chilean Government to seek a special prosecutor. Only fairness dictates that.

Two. The U.S. Government should not have and should never prejudge any case before the evidence is in, but that is precisely what happened—a condemnation, an assumption of facts that certainly had not been established.

Three. The U.S. Government should have been wary about giving public support to a case involving antidemocratic political figures. I believe—and you may disagree with me, Mr. President—that the U.S. Ambassador made an error of judgment to lend the dignity of his office and the American flag to a politicized demonstration which even the democratic opposition in Chile avoided.

I have a great deal of other things which must be said about Chile, but I will talk about those at a later time. But I will summarize by saying what I have said earlier, that I am not pro-Pinochet or anti-Pinochet. I just want to see our Government do whatever it can to stand against communism, and I do not see how you are helping the anti-Communist cause when such activities as I witnessed and learned about occur. We can disagree on this act or that act, but after talking to leaders of all of the political factions and parties one at a time—once or twice we had two at a time. I did not have any Communists or their allies there. I do not want to spend my time with them. However, the uniformity of the resentment of all political sectors against the U.S. State Department and the major media of the United States was an enlightening matter to me. I hope we can do better, and in any case I have to say to my friends at the State Department, if I have any, I am never going to hesitate to disassociate myself, wherever I am, from what I think are foolhardy activities.

Mr. President, I thank the distinguished Senator from Indiana for his patience with me. I wish I could have gotten over here earlier, but I know he understands the circumstances. I thank the Senator for yielding to me, and I thank the Chair.

AMENDMENT NO. 2206

(Purpose: To strike out article 5 relating to retroactivity of the treaty)

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself, Mr. DODD, Mr. HATCH, Mr. KERRY, Mr. DECONCINI, and Mr. HELMS, proposes an amendment numbered 2206.

Mr. D'AMATO. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike out Article 5 of this Treaty and insert in lieu thereof the following:

"ARTICLE 5

"This Supplementary Treaty shall apply to any offense committed before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply, (1) to an individual whose extradition was sought prior to the entry into force of this Supplementary Treaty, or (2) to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission."

Mr. D'AMATO. Mr. President, I rise to offer this amendment to modify article 5 of the Supplementary Extradition Treaty between the United States and the United Kingdom. Senators DODD, HATCH, KERRY, DECONCINI, and HELMS are cosponsors of this amendment. Although I have serious reservations about the whole treaty, I am particularly concerned over the retroactive provision found in article 5 of the Foreign Relations Committee reported treaty.

This amendment is quite simple. It modifies the provision in section 5 that allows this extradition treaty with the United Kingdom to be retroactive. My amendment will except individuals whose extradition was sought prior to the entry into force of this supplementary treaty.

The supplementary treaty emasculates the political offense exception, which the United States has historically used as a cornerstone of its extradition policy.

Although most supplementary extradition treaties are retroactive, few specifically state that crimes committed before or after enactment are retroactively covered. No other treaty retroactively changes the political offense exception.

I commend the administration's effort to draft a treaty with an ally in an attempt to combat terrorism. It is vitally important that nations victimized by terrorist acts work closely together to better prevent and respond to future terrorist attacks. I also commend the Foreign Relations Committee's efforts to improve upon the language of the supplemental treaty that was originally submitted to the Senate.

However, while the Supplemental Extradition Treaty as amended in committee is an improvement, it is still unacceptable.

Mr. President, I yield to no one in my abhorrence of terrorism. Last August, legislation I introduced was incorporated into the International Security and Development Cooperation Act of 1985, which called upon the President to negotiate a viable treaty among those nations plagued by terrorism to effectively prevent and respond to terrorist attacks. I sincerely want to promote cooperation with our allies to battle terrorism.

I am not concerned that the provisions of this treaty will be retroactive. Our courts have a distinguished record in extraditing terrorists. We should not sweepingly overrule their carefully considered judgments that deny extradition in certain cases. Yet that is precisely what this treaty seeks to do. Approving this treaty in its present form may well result in the extradition of certain individuals who American courts have refused to extradite after the most careful consideration.

Such a result would be similar to the enactment of a bill of attainder or an ex post facto law in violation of the principle contained in article I, section 9, clause 3, of our Constitution: "No Bill of Attainder or ex post facto Law shall be passed."

I cannot support a bilateral international document that contradicts the general prohibition in American law against ex post facto laws and bills of attainder. Although there may be an exception to this rule in some cases, it is extremely questionable that we can justify breaking this rule in the cases of individuals whose extradition has already been denied by American courts.

I note that the report the Foreign Relations Committee filed explains that there is no definition in the United Kingdom treaty of what constitutes a political offense. The supplemental treaty is touted as a blow against terrorism, but neither the term terrorism, nor any definition of terrorism, is to be found in the treaty. The fact that we have come to no common definition of terrorism is another disability of this proposed new treaty.

I ask whether our courts have behaved irresponsibly in refusing to extradite certain individuals so that it becomes necessary to overturn their decisions by legislative act? Have our courts failed to distinguish between the terrorist and the person deserving

the protections of the political offense exception? The answer is no.

Our courts, operating within the context of current law and existing treaties, have served us well. The accused innocents have been protected, and the proven guilty have been extradited.

Another problem I have with this treaty is that it singles out Irish people, and subjects them to much narrower rules than affect any other nationality. Under this treaty, virtually all "relative" political offenses are eliminated. The political offense exception is firmly entrenched in American extradition practice.

The United States is a party to nearly 100 bilateral extradition treaties. Each one has a provision that exempts political offenders from extradition. No other treaty, even those which have been recently concluded, contains the narrow political offense exception provision found in the proposed United States-United Kingdom Supplemental Extradition Treaty.

I agree with the opinion in the 1984 extradition case, in the matter of Doherty, which stated that:

> A proper construction of the treaty in accordance with the law and policy of this Nation, requires that no act be regarded as political where the nature of the act is such as to be violative of international law.

Recent bilateral extradition treaties, such as those with Italy, the Republic of Ireland, Jamaica, and others, limit the political offense exception by excluding those crimes which violate international law. The supplemental treaty, on the other hand, seems to be other than a forthright effort to combat terrorism. It seems to be an attempt to address one nation's particular political problem—and to do so unfairly.

Offenses that fall within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft; the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents; and the International Convention Against the Taking of Hostages, should be, and in most recent extradition treaties are, included in U.S. extradition treaties.

A better way for the United States to combat terrorism would be to initiate broader treaties on terrorism among nations that are victims of terrorism. A general multilateral agreement on terrorism would ease the way for bilateral extradition treaties.

Certain parts of the proposed Supplemental Extradition Treaty are welcome additions to the original treaty. Certain crimes, such as hijacking and crimes against internationally protected persons, are acts of terrorism that are covered by multilateral treaties and should be excluded from the political exception rule. As for those accused of certain other crimes listed in the treaty, I feel it is important that the question of whether they should be extradited should continue to be decided upon by our independent judicial system.

The courts have soundly applied the existing treaty. I cite the case of *Abu Eain* v. *Wilkes*, 614 F.2d 504 (7th Cir. 1981), as an example of how responsibly our courts have behaved and of how effective they have been in combating terrorism. In that case, the seventh circuit granted an extradition request by Israel. The court approved the extradition of a Palestinian who had set off a bomb in a crowded marketplace, killing five people and injuring many more. The court clearly stated that the political exception doctrine does not protect outrages against humanity such as random bombing "intended to result in the coldblooded murder of civilians."

Yet another major reservation I have about this supplementary treaty is based on my lack of faith in the court system used in Northern Ireland, particularly the infamous Diplock courts. These courts were created in 1973 under the Northern Ireland—Emergency Provisions—Act. Even before this act, the Government introduced a new system of detention without trial. This controversial court systems does not provide for jury decisions. Instead, one judge determines, on questionably gathered evidence, the fate of a defendant. Some say that the defendant's fate is predetermined. Some say that these are nothing but kangaroo courts. From the information I have seen, it would be hard to disagree. I am concerned that the proposed treaty will expose the innocent to the highly questionable practices of these courts.

Mr. President, this Supplementary Extradition Treaty between the United States and the United Kingdom needs much work before I can support it. The Committee on Foreign Relations has made several helpful changes, including those that strike the British preference in the statute of limitations provisions; allow U.S. courts discretion to deny extradition if the accused would be prejudiced by reason of race, religion, nationality or political opinions; provide a rule of inquiry by U.S. courts; and allow defendants to submit evidence on conditions in the home nation and its court system.

Unfortunately, these changes do not go far enough. It is imperative that we remove the retroactivity clause and correct the other deficiencies I have cited. I strongly urge my colleagues to support this fair and reasonable amendment.

□ 1640

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LUGAR. Mr. President, in response to the distinguished Senator from New York, let me attempt to set the record straight, to begin with, on a suggestion that the treaty we are considering would operate as ex post facto law. This is not the case.

I cite *Calder* v. *Bull*, 3 U.S., 386, 390 (1798), the Supreme Court defined an ex post facto law as:

> "1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender."

I make this point, Mr. President: The fact is that murder is a criminal act which takes place quite apart from the extradition process or the extradition treaty. In trying to make a case of ex post facto law or of retroactivity, the assumption, I suspect, on the part of the proposers of this amendment or others that were considered by our committee is that, somehow or other, we are imposing extraordinary penalties or new penalties or augmenting the hazard for the individual.

As a matter of fact, the acts have been committed and the fugitives are in one place, and the hope of a country is that they might be somewhere else so that they might face the consequences, have at least some court of justice take a look at their situations.

As I pointed out in my opening statement—but I want to reiterate because it is pertinent to the argument on this matter—article 5, which the distinguished Senator from New York has cited, of the supplementary treaty we are considering today, provides that the treaty will apply to offenses committed before the treaty becomes effective.

□ 1650

For example, if some of those who participated in the attempt to murder Mrs. Thatcher and the Cabinet in Brighton were found in the United States in 1987, next year, article 4 would insure that they could not escape extradition by taking advantage of the case law as it now stands, the point being that the deed has already occurred.

There is a law in the United States and in Great Britain against murder

and against attempted murder. This is not really a change in the situation at that point.

Mr. D'AMATO. Mr. President, I wonder if my colleague will yield for a question?

Mr. LUGAR. Yes. I am happy to respond.

Mr. D'AMATO. Mr. President, would my colleague be willing to support an amendment that said that there would be no retroactive effect covering those people who have already been sought for extradition and the courts have turned down? That is really what my amendment does. So anyone who has attempted to undertake an attack against Prime Minister Thatcher or any of the other acts would not be covered. We say, "whose extradition was sought." In other words, the extradition had to be sought and there was a determination. What we really are saying is to go back where a case has been tried, where the request for extradition has been denied lawfully and now pass a law that would allow that person to be sought again and not have the protection of the political section heretofore because we have changed it in the truest sense, certainly goes back to violating what I think our forefathers and the Constitution said we should not be undertaking.

Mr. LUGAR. I would have to respond to my distinguished friend that I would object to the exception that he makes. I appreciate that he narrows the scope very substantially and almost narrows it specifically to the case of Doherty and perhaps to the case of Quinn, which is cited, these being, I think, the two cases in point.

Let me say simply as a part of my answer that debate in the committee considered these cases carefully.

I indicated in my opening statement that advice and counsel was sought from our Government and from the British Government for a number of reasons which the Senator will understand. These two cases are celebrated and they have a very important content in the relationship of the United States and Great Britain because of their celebration. They are not unknown situations.

Therefore, I would have to resist the amendment on the basis that it is such an important aspect of the relationship of the countries and of our consideration with them that it would destroy much of the value of this treaty.

Mr. D'AMATO. I point out to my distinguished colleague that basically it would seem to me we are talking about really one case. That would be Doherty. Inasmuch as the courts have already ruled against Quinn, there is little likelihood, even though he has sought to go to the Supreme Court, that they will overrule. If anything they may not even hear that case.

Really what we speak about is a situation where we may be violating an established principle of law so well engrained in this country, in our Constitution, that in order to keep good relationships with an important ally one person is sacrificed.

It seems to me that that is a very dear price for us to pay and for our ally to say we seek good faith by turning over the well-established principles of law to go back so that we may retry this person who is literally given the protection of the court under the existing laws so that we are going to change these laws and now apply them in an ex post facto fashion. I think that it may be a price that even though it involves maybe one individual is something that we should not be paying.

I thank the distinguished colleague again for having yielded for me to make that observation.

Mr. LUGAR. I appreciate as always the comments. The distinguished Senator from New York makes important points.

As I admitted in my comments, these are tough cases of law and the fact that the Senator has reduced his focus really to the single case is an important consideration.

I respond again that a single case has been given a great deal of consideration and we have had testimony before our committee that the treatment to Doherty, specifically, under the treaty we are now talking about today, would not be unconstitutional.

Let me simply cite testimony from Prof. Steve Lubet, of Northwestern Law School, presented to the Foreign Relations Committee on October 22 of last year.

> The necessity of such a rule is made clear by recent events in the Republic of Ireland. There, a judge ruled in the last few weeks that the extradition treaty between the United States and Ireland was invalid because it had not properly been ratified by the Irish parliament, or Dail. Consequently, the judge ruled that James Gilliland, who is wanted in the United States for financial crimes, could not be extradited. This ruling would appear also to apply to one Joseph Maloney, who is wanted in the United States for the murder of his wife. One can say with relative confidence that any technical defect in the ratification of the extradition treaty between the United States and Ireland will eventually be remedied. Nonetheless, in the absence of a rule allowing retrospective treaty application, any subsequent rectification would not apply to Gilliland and Maloney. Consequently, these men would never be required to face trial in the United States, notwithstanding the clear illegality of the alleged offenses at the time of commission.

Mr. D'AMATO. Mr. President, will my distinguished colleague yield for an observation?

Mr. LUGAR. I am happy to yield.

Mr. D'AMATO. I am most appreciative.

The arguments put forth by the distinguished law professor as it relates to this amendment would not really be the case because we have crafted this amendment in such a way to say that this supplementary treaty shall apply to any offense committed before or after the supplementary treaty enters into force, provided that this supplementary treaty shall not apply, first, to an individual whose extradition was sought prior to the entry into force of this treaty and, second, to an offense committed before this supplementary treaty enters into force which was not an offense under the laws of both contracting parties.

The murder of one's wife, the planting of a bomb, and the bombing of civilian targets clearly are offenses and would be covered and people could be extradited.

So really what we come down to is, one, an individual whose extradition was sought prior.

So, therefore, the professor argues that this would open the door to the wholesale inability to bring murderers, and to bring terrorist, in the truest sense, to justice. As a result of our limiting the force of this amendment, limiting it quite narrowly, what we are really saying is, the rule of law that exists today as it relates to people who had their day in court, have been tried, who, in essence, have been acquitted, should be continued, where it has been ruled that they should not be extradited. It just seems to me that we should look at this because this is politics. What we are talking about is the policital relationship between the United States and England.

I am wondering if we really want to pay an extraordinary price in maybe being able to extradite one individual who has been refused extradition and have that case come again before our courts and work its way through the Federal system with all attendant furor and emotions that will come from both sides. Are we at that point, during the process of fighting to eliminate terrorism, seeing to it that we use our resources as best as possible, that we cooperate with our allies; serving that interest by making it possible for one individual who the courts have already said should be extradited to be charged again, to be brought up again for possible extradition?

I think that the political consequences and fallout from an attempt, first of all for passing this treaty in this manner with this section 5 as it presently exists, will be something that will bring irreparable harm and far outweighs the benefits of a treaty that makes it easier to bring terrorists to justice. If that is what we seek, I support that.

But it seems to me that we may be voting and I have no doubt that the chairman may have the votes, but that is only the first hurdle.

A far larger issue then comes in as to whether or not this truly is going to

prove that we are truer friends to the English, to the United Kingdom, by doing this. And the furor attendant with an attempt to try Mr. Doherty thereafter I think is one that will not inure to the benefit of our strong relationship between the United States and the United Kingdom and also Prime Minister Thatcher who has been a true ally during some very difficult times, not the least of which was allowing our planes the accommodation that made possible our strike against terrorism in Libya, our steadfastness of purpose in conjunction with that.

□ 1700

I think we jeopardize the total picture by allowing this kind of deviation of the rule of law. I ask my distinguished friend, my chairman, and colleague, who has labored so well in this area, if he might not look to reevaluate it. Is it worthwhile to seek one man, retry him, and how that will be perceived in terms of the United States bending the rule of law because we wish to demonstrate our friendship, our solidarity, with the English people, with the United Kingdom, in the battle against terrorism?

I do not think we need to do it in that fashion. I think we could still be that strong ally in the battle against terrorism, no matter who provokes it or who brings it about. I think we cloud the issue and we do damage to the very purpose that we are attempting to do, to fight international terrorism wherever it is spawned from. Because that is what I know my distinguished colleague seeks to do. That is what he has been about, what the committee has been about.

That is why I crafted an amendment so narrow in purpose that it does not, in my opinion, do damage to the basic tenets of what we seek to do here, to deal with terrorism effectively, but yet to preserve the rule of law.

I do not believe that we serve that cause that you have worked so hard on by opening this door to bring back possibly one individual whose case has already been heard and adjudicated in the courts of this country.

Again, I thank my chairman. I hope that my colleagues and the distinguished chairman of the Foreign Relations Committee, possibly in the time that may elapse before a vote, that possibly there is a way to deal with this situation so that we do not create, if anything, maybe the martyrdom syndrome which I believe would really be kind of self-defeating in terms of the purposes that you and others have worked to achieve.

Mr. LUGAR. Mr. President, I am pleased to respond to the overall question and comment of my distinguished colleague from New York by saying simply that I must resist the amendment. The effect of this amendment would be to protect two individuals, who are admitted terrorists and who are now in the United States, from further extradition proceedings.

Now, it is important to consider the specific individuals we are talking about, since the distinguished Senator from New York has, as he pointed out, narrowed the amendment.

Joseph Doherty was born in Belfast on January 20, 1955, and, as a teenaged member of a youth gang, was sentenced to youth custody for a number of burglaries. At 17, he joined the Provisional IRA and held various low level positions within that organization. In 1974, as a result of his activities, he was arrested and convicted for transporting some 80 pounds of explosives in a hijacked car. He received a 10-year sentence, of which he served 5 years and 9 months.

On May 2, 1980, soon after his release, Doherty met PIRA members, Robert "Fats" Campbell, Paul Patrick "Dingis" McGee, and Angelo Fusco. According to Doherty, they planned to ambush an Army convoy from a house in Belfast. Armed with an M-60 machinegun and a Heckler Koch rifle, Doherty and the others took over 371 Antrim Road, Belfast, a private dwelling. They took hostage at gunpoint an innocent woman who was living in the house. Her husband and sister were also taken hostage when they entered the house later. While they were holding these three hostages, Doherty and the others prepared for an ambush which they intended to carry out with powerful weapons in this residential area. When a plainclothes Army unit arrived outside, the terrorists fired immediately killing an officer, Captain Westmacott. He left a widow and a young daughter. Doherty admitted that he fired on his own initiative and that he shot to kill and avoid capture, without being entirely certain about just who his targets actually were.

Doherty was brought to trial on April 27, 1981, in open court, legally represented at public expense. On June 12, he was found guilty of the murder of Captain Westmacott and related offenses. He was sentenced to life imprisonment and the court recommended that he serve a minimum of 30 years. In the meantime, however, Doherty and his codefendants had arranged their escape. This took place on June 10, 1981, using weapons smuggled into prison. As part of this escape plan, Campbell pointed an automatic pistol at Prison Officer Richard Kennedy. The prison officer tried to prevent the escape but was struck from behind with a blunt instrument and then kicked and punched while prone on the ground. He sustained severe lacerations to the head which required 28 sutures. Another prison officer who was there said that he saw Kennedy lying on the floor, with three prisoners, including Doherty, beating him.

After their escape, Doherty and the others entered the Republic of Ireland secretly where Doherty remained in hiding before being given a false passport by Provisional IRA. He entered the United States on or about February 1, 1982, lying about his identity and purpose at his immigration inspection.

Now, those are the facts with regard to Mr. Doherty.

Let me just cite the law so that we are clear, really, with regard to the allegations on retroactivity.

I cite from Collins against Loisel, U.S. marshal for the eastern district of Louisiana, an appeal from the District Court of the United States for the Eastern District of Louisiana. It is No. 880, argued May 4, 1923; decided June 4, 1923.

The provision of the Fifth Amendment against double jeopardy does not prevent the commitment of a person for extradition on new affidavits after he has been discharged on others identical in form and substance.

Under the extradition treaty with Great Britain, a fugitive may be arrested a second time upon a new complaint charging the same crime, when he has been discharged by the magistrate on the first complaint or the first complaint has been withdrawn.

Refusal of the State Department to issue a warrant of extradition because of the pendency of *habeas corpus* proceedings, does not bar further proceedings for the same cause on a new complaint.

A discharge in *habeas corpus* based on mere irregularities in extradition proceedings, does not operate as *re judicata* against a new proceeding for the same offense.

I make these points, Mr. President, because of the well-established point of law and this has been faced by at least courts in this country before.

I pointed out in my opening statement that 23 other countries have found a similar situation with regard to retroactivity. I would further cite the facts with regard to Mr. Doherty indicate clearly a record of criminal activity, offenses which have been adjudged prior to the time he came to the United States under a false passport and lied to immigration officials.

So, Mr. President, I am forced to resist the amendment of the distinguished Senator from New York. At this point, I am prepared to proceed to a final resolution of it, although I understand my distinguished colleague from Rhode Island wishes to speak on the amendment.

Mr. PELL. Mr. President, I thank the chairman.

I also listened carefully to the arguments of the Senator from New York which were well-reasoned and had merit, but I believe, on balance, we are better off leaving this treaty the way we worked it out in the committee with a great deal of effort. We considered these questions. I think, on balance, we ought to support the treaty

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the way it was drafted and I intend to support our chairman.

(Mr. PRESSLER in the chair.)

Mr. LUGAR. Mr. President, I see no other Senator wishing to debate, unless my distinguished colleague wishes to speak.

Mr. D'AMATO. Mr. President, I know several other of my colleagues would like to speak on this matter.

In the case of Mr. Doherty—and I do not mean to be arguing his case, but rather I think it is important because really what we are saying here is: let us not violate the well-documented established principle of law in terms of retroactivity and possibly then have the opportunity to avail the British Government, if they wished to seek extradition and reopen this case, so to speak, the case of the People against Doherty.

□ 1710

When the court, in the rather well-reasoned decision that has been sustained by none other than Justice Friendly—Henry Friendly—one of the great jurists of America—I might read what Justice Friendly said. I will read part of it. This is Justice Friendly, when he heard the appeal of the lower court, a court which denied extradition.

Justice Friendly said, "The case was not fairly distinguishable from one in which Captain Westmacott's death occurred during a clash between two fully-organized military forces," and held that the acts committed, the ambush, and those committed in the prison escape were political in character and did not constitute extraditable offenses under the treaty.

If we were to look to the trial court judge, Judge Sprizzo.

We are not faced here with a situation in which a bomb was detonated in a department store, public tavery, or resort hotel causing indiscriminate personal injury, death, property damage, such conduct would clearly be well beyond the parameters of * * * the political offense exception.

So the court in its decision clearly stated we are not condoning terrorism and—

Nor is this a case where violence was directed against civilian representatives of the government * * *. Finally, the court is not presented with facts which establish that hostages were killed or injured or where the principles of the Geneva Convention have been violated.

This is what the court goes on to say, talking about the facts.

Are we willing to change a well-established principal of law to get out one man?"

Boy, I think that is a rather sorry spectacle. Let us get out one man, let us say it is the political process, and change well-established rules of law to get out one man.

Instead the facts of this case present the assertion of the political offense exception in the most classic form. The death of Captain Westmacott, while a most tragic event, occurred in the context of an attempted ambush of a British patrol. It was the British Army's response to that action that gave rise to Captain Westmacott's death.

The court goes on. This is the court. The court goes on to say,

It would be most unwise as a matter of policy to extend the political offense exception to every fanatic group or individual with loosely defined political objectives who commit acts of violence in the names of those so-called political objectives. Therefore, it is proper for the court to consider the nature of an organization's structure and its mode of internal discipline, in deciding whether the act of its members can constitute political conduct under an appropriate interpretation of the treaty.

The court concludes that respondent's participating in the military ambush which resulted in the captain's death was an offense political in character.

I think it is important that we distinguish this and then say do we really jeopardize going back, changing the law so that we can satisfy a government's quest for one man, for his retrial so to speak in a court that would have no opportunity to look at the facts, to look at what brought about the occurrence where the English captain was killed.

This was a firefight. It was a firefight. There were two combatant sides. The captain, as the court said, and as I say, was tragically killed. The court reviewed this. Now, to allow this situation to deteriorate where there can be no review, rather we pass in this treaty a provision that says we will hand this man back, that the courts will have no ability to look at the facts I believe really does a great disservice to what we are attempting to do; that is, to legitimately come together in a battle against international terrorism.

Again, I hope that my distinguished chairman might be able to reconsider because of the benefits that are contained in other areas of the treaty. Why should this one glaring deficiency that really cries out for modification be included in a treaty that otherwise might be accomplishing some very important goals?

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I rise in support of this amendment offered by the distinguished Senator from New York, and myself, among others.

The Senator from New York I think has very adequately addressed what is the rationale for this amendment.

I would just explain to my colleagues here that this treaty is one that has consumed a significant amount of time of the Foreign Relations Committee over the last year or so, most specifically in the last 4 to 5 months. We spent countless hours in informal sessions trying to resolve what for many of us were deep concerns about a precedent-setting treaty when it came to the question of extradition.

As a result of those many meetings we were able to forge a document that was certainly a vast improvement over what was originally submitted.

I say to my good friend and colleague from New York that while he is disturbed about some of the provisions of this particular treaty, I would say to him that the product that we see before us today is significantly improved over what we were asked to support about a year ago.

I, for one, supported sending this treaty to the floor. My hope is to be able to, of course, hear as well as to support it.

I commend the chairman, I say specifically, for his patience in all of this, Senator EAGLETON who is not with us here today who deserves great credit for a Herculean effort along with Senator KERRY, Senator BIDEN, Senator SARBANES, and Senator PELL who really hosted and has shown great patience over and over again so we could try to produce a product here that would be at least marginally acceptable to a significant majority of the committee.

My hope is to support this treaty. However, I do think this amendment is a good amendment because it does not do what I think could be harmful; that is, to oppose retroactivity entirely.

This country has ratified a number of treaties over the past decade or more that include a retroactivity provision. I do not have in front of me at this moment all of the treaties where such a provision is included but, suffice it to say to my colleagues, that there are a dozen or more treaties that include such a provision, and possibly more.

So this amendment, if it were one being offered by the Senator from New York that would entirely wipe out retroactivity, I would not be cosponsor of despite the fact that in committee I would say when such an amendment was offered I would have supported it. It would have wiped out retroactivity entirely.

I think if we are going to be at least consistent on that, retroactivity would make some sense.

I would add as a practical matter that there was, as many will recall, a terrible bombing that jeopardized the life of the Prime Minister of England that caused the loss of life of a number of people in her government not too many months ago. No one yet, as far as I know, has been apprehended that was involved in that terrorist act. And I would call that a terrorist act.

There is, of course, a possibility at some point that one of those involved may emerge or show up in this country. I would certainly not want to be a party to an effort that would deprive this country from extraditing those individuals involved in that incident and

were we to eliminate retroactivity entirely that would be the fact.

This amendment, however, does not do that. It merely singles out those particular cases, and in fact I believe there is only one that would be affected by this amendment, a case that has already been adjudicated in the courts. In that particular case the individual was not extradited after a lengthy judicial proceeding.

In the absence of this amendment, the effect of this amendment would allow that case to be reopened and that individual to be extradited. One of the most basic fundamental principles of law again, as the distinguished Senator from New York has pointed out already here this afternoon, is the issue of double jeopardy.

□ 1720

Frankly, in the absence of this amendment, we would be subjecting that individual to double jeopardy. I do not think anyone here, regardless of their views on the question of extradition, of this particular treaty, would want to be a party to that.

I would point out as well that on the retroactivity clause in every other single treaty that has been ratified by this Senate, there is not a single instance that we have been able to find, nor has the Department of State been able to find, where an individual would have been subjected to a new trial, under that particular provision.

So this is a unique situation where we have an individual who could be tried again, the only such situation that I know of.

This amendment, of course, only provides for protection against that kind of situation and not the situation that I mentioned earlier, that would involve those people who have yet to have been identified, involved in an earlier incident, an incident that predates the ratification of this treaty.

So I think this is a very well-crafted amendment, a thoughtful amendment, and that it narrowly defines and identifies those situations that could cause a double jeopardy to prevail.

I would hope that our colleagues would support this amendment. Again, I emphasize it retains retroactivity. It would allow for the prosecution, allow for the extradition and potential prosecution, of those individuals involved in terrorist activities that have to be apprehended, involved in an incident that occurs prior to the ratification of this treaty. It merely protects those individuals who have had their cases adjudicated.

I believe again on the basis of the principle of jurisprudence against double jeopardy that simple fairness dictates that this amendment be adopted, lest we engage or find ourselves engaged as a participant in a practice that I think would offend the sense of fairness of every Member of this body regardless of one's views on the question of the substance of this particular treaty.

My hope is, again, Mr. President, that the Senate would agree to this amendment and that we would move on to the consideration of the full treaty.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LUGAR. 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. LUGAR. Mr. President, I attempted to cite during my argument the Supreme Court case that clearly indicated the retroactivity situation is not to be considered double jeopardy. A rehearing might occur. I think we have had a good discussion of the law.

At this point, I have visited with the distinguished Democratic leader and my ranking colleague, and unless there is further debate——

Mr. DODD. Can I ask the distinguished chairman a question? I mentioned earlier, and I hope I did not misspeak, that I know of no other incidents where an individual had been subjected to extradition once the matter had been adjudicated and where a retroactivity clause was included in a new extradition treaty. I may be wrong whether or not there is such a case. I may have misspoken.

Mr. LUGAR. I will respond by saying I do not know the circumstances that brought forward the 1923 case that I cited. It clearly dealt, however, with the possibility of a second review on an extradition treaty situation. I am not certain of the circumstances of the individual or individuals involved.

Mr. DODD. I appreciate the chairman responding to that question. I will just mention at this time and ask unanimous consent that a letter dated June 23, 1986, to one of our colleagues be included in the RECORD. It is signed by Mary V. Mochary, Deputy Legal Advisor of the State Department. I would reference and ask that the first paragraph on page 3 of this letter be particularly noted.

Fifth, you asked if there were any precedents for extraditing an individual under the new, retroactive treaty when that person's extradition has been refused under the earlier treaty. The Justice Department has advised me that they have been unable to discover such a case.

I just make that point. I thank the distinguished Senator.

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

UNITED STATES
DEPARTMENT OF STATE,
THE LEGAL ADVISER,
Washington, D.C., June 23, 1986.

DEAR MR. STOCKTON: Boris Feldman told me you called with a number of questions concerning the retroactivity provision in the U.S.-U.K. Supplementary Extradition Treaty. I hope that the following answers will be responsive.

First, you asked for a list of supplementary extradition treaties which are retroactive. Our supplementary extradition treaties with the following countries are retroactive: Austria, Iceland, Belgium, Latvia, Bulgaria, Lithuania, Congo (Brazzaville), Luxembourg, Cuba, Poland, Czechoslovakia, Rumania, Ecuador, San Marino, Estonia, France, Sweden, Switzerland, Guatemala, United Kingdom, and Honduras. Of these treaties, the French and Swedish have a retroactivity provision closest to that in the U.S.-U.K. Treaty. Specifically, article 5 of the U.S.-U.K Treaty states:

"This Supplementary Treaty shall apply to any offense committed before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission."

Article 8 of the 1970 Supplementary Extradition Treaty with France reads:

"This Supplementary Convention shall apply to offenses specified in Article II of the 1909 Convention as herein amended committed before as well as after the date this supplementary Convention enters into force, provided that no extradition shall be granted for an offense committed before the date this supplementary Convention enters into force which was not an offense under the laws of both countries at the time of its commission."

Similarly, article 13 of the 1983 Supplementary Extradition Treaty with Sweden states:

"This supplementary Convention shall apply to offenses encompassed by Article II committed before as well as after its entry into force."

I have attached copies of the French and Swedish Treaties.

Your second question concerned for which period supplementary extradition treaties are made retroactive, back to the date of the original treaty or forever. Supplementary extradition treaties, as can be seen from the three examples quoted above, typically are made competely retroactive. That is, they go back forever, not merely to the date of the original treaty. It should be noted that even when a supplementary treaty is retroactive only to the original treaty, that original treaty itself will usually be retroactive, as are most U.S. extradition treaties. This complete retroactivity must be considered along with the requirement that the charged offense be a crime in both countries when committed. The second clause of Article 5 of the U.S.-U.K. Supplementary Treaty makes this point explicitly. Thus, there is no difficulty, constitutional or otherwise, with complete retroactivity.

Third, you noted that our extradition treaties with Colombia, Mexico, and the Netherlands have been circulated as precedents for the U.S.-U.K. Treaty. These three treaties all have retroactivity clauses. *See* Colombia Treaty, art. 20; Mexico Treaty, art. 22; Netherlands Treaty, art. 20. Moreover, all three are of the "all offense before

as well as after" type, and are thus good examples of retroactivity provisions similar to the U.S.-U.K. Treaty. One difference, however, is that the Colombia, Mexico, and Netherlands treaties are not supplementary extradition treaties, but complete extradition treaties. In this sense, our supplementary treaties with France and Sweden, which I have attached, are prehaps better precedents.

Fourth, you correctly noted that there is no retroactivity clause in the European Convention for the Suppression of Terrorism, which is, in many respects, a model for the U.S.-U.K. Supplementary Treaty. Since the U.S. was not a party to the preparation of this Convention, we cannot be sure why no retroactivity clause was included. Perhaps it is because the European Convention was a multilateral agreement, and this complicated matters. In any case, U. S. practice is clear and consistent. Retroactivity clauses are regularly included in U.S. bilateral extradition treaties.

Fifth, you asked if there were any precedents for extraditing an individual under a new, retroactive treaty, when that person's extradition had been refused under the earlier Treaty. The Justice Department has advised me that they have been unable to discover such a case. They did find several instances where extradition was granted under a new, retroactive treaty when it could not have been obtained under the previous treaty. See, *e.g.*, In re Burt, 737 F.2d 1477 (7th Cir. 1984). In such cases, however, since the U.S. knew that extradition was not possible, we did not seek it. The Justice Department also advised me that we have had several instances where our extradition request was refused and we have then proceeded to negotiate changes that would permit the request to be granted. None of these cases, however, has yet reached the stage where the new, retroactive treaty is fully in force, so no renewed request has yet been made. Nonetheless, this serves to illustrate that U.S. practice is to seek extradition under a new treaty when it was denied under an earlier treaty.

Finally, you asked if the double jeopardy provisions of the U.S. Constitution would be implicated by the extradition under the Supplementary Treaty of an individual whose extradition was refused under the earlier Treaty. Double jeorpardy would simply not be an issue in such a case. As you may know, the Fifth Amendment right to be free from double, jeopardy does not attach until the individual's trial has begun. An extradition proceeding is not a trial, but more akin to such pretrial proceedings as an indictment or a grand jury. These pretrial proceedings do not implicate the right to be free from double jeopardy, and neither does an extradition proceeding. An extradition request may be refiled at any time and, in practice, often is.

I hope I have properly addressed all of your concerns. If you have any additional questions, please let me know. In closing, I would like to emphasize that the retroactivity provision in the U.S.-U.K. Supplementary Extradition Treaty is consistent with established practice in U.S. extradition treaties, is fully consistent with the U.S. constitution, and serves important U.S. law enforcement interests. Virtually all of the supplementary extradition treaties, and many of the complete extradition treaties, which the U.S. has concluded contain a retroactivity provision. Such provisions have been consistently upheld by U.S. courts. In the Burt case, for example, the U.S. Court of Appeals for the Seventh Circuit examined the retroactivity question and concluded there was no constitutional problem with Burt's extradition to West Germany even though the applicable treaty had not become effective until 15 years after the crime. Moreover, since the purpose of this Supplementary Extradition Treaty is to close loopholes in the extradition process, which have permitted accused terrorists to escape accountability for their crimes, it would be counterproductive to adopt a treaty that would continue the loophole for any of those accused terrorists. Retroactivity clauses serve the important purpose of making improvements in our bilateral extradition relations, such as the closing of the "political offense" loophole for terrorists, available for use in a timely, simplified, and coherent manner.

Sincerely,

MARY V. MOCHARY
Deputy Legal Adviser

Mr. HATCH. Mr. President, I would like to say a few words about article 5 and I would like to say a few words with regard to the whole treaty. As I understand, the distinguished Senator from New York presently has an amendment pending.

Article 5 of the treaty has been called the retroactive provision and for good reason. Although there is no question about double jeopardy, since extradition is not a trial on the merits, there is a serious Fourth Amendment issue regarding the violation of due process and complete disregard of fundamental fairness relating to the reinstitution of extradition proceedings against individuals who have already been subjected to an extradition proceeding.

There is an article 1, section 9, issue dealing with the creation of a possible ex post facto law. Some prominent constitutional commentators and scholars have been concerned about this particular provision. Are not treaty provisions subjected to constitutional prohibitions?

It is for this reason, Mr. President, and these concerns, that I am supporting Senator D'AMATO's amendment seeking to remove the potential constitutional difficulties raised by article 5 of the Supplemental Treaty.

Mr. President, I do not mean to take the time of the distinguished Senator from Connecticut or the distinguished Senator from Rhode Island today, but I think it is important that I speak on this treaty. I would like to take a few moments to do so.

Mr. President, there is no one in this body who has more admiration for the Prime Minister of Great Britain than I have. There is no one in this body who has supported her programs and policies with more enthusiasm than I have. And there is no one in this body who has denounced terrorism and terrorists with greater feeling and anger than I have. In fact, on the last point, many of my colleagues have distinguished themselves in pointing out the evils of terror-violence and in seeking remedies for the terrible consequences of that loathesome practice.

But terrorism, Mr. President, is not the real issue here. In fact, despite the letter of transmittal by the Secretary of State to the President of the United States, and despite the letter of transmittal by the President of the United States to the Senate of the United States, nowhere in the treaty is the word "terrorism" ever mentioned or the term "terrorism" ever defined. What we have instead is a treaty proscribing violence, which may be criminal violence and which may be insurrectional violence. The difference between the two, and the issue of who is a victim of terrorism, are at the heart of the debate over this treaty which continues down to the present moment.

The terms of this treaty would change over 175 years of American extradition practice by eliminating the so-called political offense exception to extradition. American courts historically and traditionally have defined a political offense as "an offense committed in the course of and incidental to a violent political disturbance, such as war, revolution and rebellion." I cite *Garcia-Guillern v. United States*, 450 F. 2d 1192; *Jiminez v. Aristeguieta*, 311 F. 2d 560; and *Escobedo v. United States*, 623 F. 2d 1098. Any rebel engaged in an act of insurrection, rebellion, or revolution—all of which are recognized by international law—against an oppressive and repressive regime of a militaristic, authoritarian, or totalitarian nature can—under the terms of the supplementary extradition treaty—be extradited to stand trial for what has been historically, traditionally, and legally been considered to be an act or acts of political defiance and defense. When I asked Judge Abraham D. Sofaer, legal adviser to the U.S. Department of State, whether in the Crown Colony of Hong Kong—listed as one of the territories to which the treaty applies—a group of freedom fighters organized to rebel against English control before Hong Kong reverted to the People's Republic of China (PRC), would be subject to the treaty. He answered: "They might." Antigua has recently gone through an insurrection of a rather complicated nature, but it did involve an armed uprising and it did involve the issue of sending British troops.

We are told by the Department of State that other treaties of this nature will be negotiated with friendly, stable democracies. Negotiations are in fact underway with West Germany, Belgium, France, Italy, and Spain. There is no doubt that all of these countries are friendly. There is no doubt that all of these countries are democracies. But stability may in fact be another matter. Spain has already suffered through several attempted Coup

D'etats. What would happen to Spanish democracy if King Juan Carlos, or Premier Felipe Gonzalez, fell victim to terrorist assassins? As reluctant as I am to raise this issue, given the State Department's future intentions, it must of necessity be discussed.

The real issue of the treaty is who can be considered to be a victim of terrorism. Margaret Thatcher and her government consider all military and security personnel to be terrorist victims and seek to apply this treaty against those who have planned or committed violence against military and security targets. But no less than Secretary of State, George Shultz, said during an interview in August 1985 that terrorist "targets are civilians noncombatants, bystanders or symbolic persons or places." Note his emphasis upon civilians and noncombatants.

Attorney General Edwin Meese, speaking on the subject of terrorism at Tel-Aviv University in May 1986, drew a clear distinction between terrorism and "ordinary warfare, or legitimate military activity." He went on to say in a significant and, for our purposes, vital statement that "the targets of terrorism are innocent civilians rather than combatant forces." This is the absolute antithesis of the position espoused by the Government of Great Britain. Last, but certainly not least, President Ronald Reagan declared that terrorist victims are "innocent people." If this is a treaty directed against terrorism, then we should deal with that noxious subject and protect its innocent victims. If this is a treaty directed at those who challenge military and civil authority, then American extradition law as it has worked, and worked well, for the past 175 years will not only suffice, but it will protect those who need protection and punish those who require punishment.

As long as I am on this subject, Mr. President, I would like to clarify one major misconception that has abounded in the debate over the treaty. The British Government and the administration proponents of the treaty would have us believe that the United States is inundated with Irish PIRA terrorists who have escaped the heavy hand of justice in Great Britain. In truth, there have been only four alleged terrorists during the past 30 years who were not found extraditable during their extradition hearing. All of them were indeed alleged members of the PIRA. One returned to England voluntarily. One has been ordered deported by the Ninth Circuit Court of Appeals, having his grant of political asylum revoked. One has had his extradition denial reversed, in a very technical decision, by the Ninth circuit and has been found to be extraditable. The last one is setting records for sitting in a New York jail, even though a Federal magistrate's court denied Great Britain's extradition request. None of them is at liberty. None of them is roaming this country free. None presents any threat to either the United States or to the United Kingdom.

As for the treaty itself, there are several sections which bother me a great deal, and which I deem to be a departure from American law and American legal practice. I am profoundly disturbed by article 3, section (b), which would allow an appeal of an extradition finding from a Federal magistrate's court by either the accused offender or the Government. Current law and practice allows only an appeal to a district court and, under certain limited situations, to a circuit of appeals by way of habeas corpus. The U.S. Government ordinarily, and just about always, does not have the right of appeal either by statute or by case law. This rule, still followed, was laid down by justice Brandeis nearly seven decades ago: "The proceeding before a committing magistrate in international extradition is not subject to correction by appeal." The appeal procedure established by the treaty, although voted by the Senate in the Comprehensive Crime Control Act of 1983, was eliminated by conference and is not part of U.S. law.

Article 3, section (a), would change the general rule of noninquiry, which is current law in all but a minority of jurisdictions. The general rule is that the U.S. extradition court will not look into the nature of the legal process found in the requesting state. As much as I abhor the diplock courts and their violation of due process of law, to change our domestic statutes by way of treaty rather than by legislative process, or even court decision, is to violate the spirit of the legislative and judicial process.

Article 3 represents an attempt to change American law. It is a fundamental change in extradition practice and therefore a fundamental change in American legal procedure by means of the treaty process. I have consistently opposed this approach, as has been attempted in more than 40 ILO conventions and I oppose this approach as manifested by this treaty. It is a twisting of constitutional intent and it is misapplication of the treaty process.

Article 5 of the treaty has been called the retroactive provision, and for good reason. Although there is no question about double jeopardy, since extradition is not a trial on the merits, there is a serious fourth amendment issue regarding the violation of due process and complete disregard of fundamental fairness relating to the reinstitution of extradition proceedings against individuals who have already been subjected to an extradition proceeding. There is also an article 1, section 9, issue dealing with the creation of a possible ex post facto law. Some prominent constitutional commentators and scholars have been concerned about this provision. Are not treaty provisions subjected to constitutional prohibitions? It is for this reason, Mr. President, and for these concerns, that I am supporting Senator D'AMATO's amendment seeking to remove the potential constitutional difficulties raised by article 5 of the supplementary treaty.

Treaties per se are not automatically constitutional in all of their aspects merely through the wording of article 6 of the U.S. Constitution. Treaties are not only instruments relating to foreign affairs. The contents of many treaties, conventions, and executive agreements have domestic effects as well as foreign aspects. Many of these effects are beneficial. Some are not. I have long been concerned and I shall continue to be concerned over treaties and conventions which would change the nature and substance of American domestic law by their provisions. I am concerned about the dubious constitutional validity and suspect legality of many provisions of this supplementary treaty.

I am also concerned, Mr. President, about the operation of the so-called diplock courts in Northern Ireland. I am bothered by their sweeping powers of arrest, by the lack and prohibition of jury trials, by the denial of any right to bail to diplock court defendants, by the placing of the burden of proof upon the accused offender, by the creation of new offenses unknown to the common law, and by the use of coerced confessions in the investigatory process. The distortion and abuse of accomplice testimony is another serious concern. Surely, the best way to combat terrorism and terrorists is through a legal process which emphasizes and protects fundamental legal rights—not which creates a litany of legal wrongs. I do not feel that article 3, section (a), provides sufficient protections from these abuses to an accused offender subject to the U.S. extradition process.

The way the article is worded at present, the protections granted are already part of our extradition and legal practice. There has to be double criminality. And this would negate, ab initio, any charge relating to political beliefs, religious beliefs, race, nationality, or whatever. And speaking of double criminality, article 1, section (b), introduces a new crime into American law, or at least an act which, to my knowledge does not exist in U.S. criminal jurisprudence—assault causing grievous bodily harm. The double criminality principle mandates that there be specificity in proscribed criminal acts.

I decry the diplock courts. I decry the way they are run. I decry the abuses that are occurring. I think we ought to do something about it, and I

do not like this treaty, in part because of them.

As much as I want to stamp out terrorism, I also want to make sure that we do not stamp out some basic legal rights as well. I am concerned that this treaty does not do the job for which it was intended. I do not understand why we need a treaty of this nature. The fight against terrorism is not an easy one. I understand that. And there are not always easy choices to be made. But in the last analysis, Mr. President, the choice must always come down on the side of the rule of law. I am sure that none of us would wish it to be otherwise.

I thank my colleagues for being patient with me and allowing me to make this statement because of the press of time. I really hope we examine this treaty at every step of our approval process, because I find much wrong with it, although I believe the intent of those who are sponsors is meritorious. I know the Prime Minister of Great Britain feels very deeply about it, and I feel sorry I have to oppose it.

I thank the chairman and yield back the floor.

Mr. LUGAR. Mr. President, I thank the Senator from Utah for offering his scholarship and assistance throughout the debate on this issue. His contribution today is an important one.

● Mr. LEVIN. Mr. President, I will vote against tabling the D'Amato amendment, but this is a very close call.

I believe that we should extradite individuals who have committed terrorist acts. This is essential if the United States, as part of the community of nations, is to win the battle against terrorism.

In the effort to win this battle, we must preserve our own most cherished principles of law. The retroactive application of a new law or treaty always raises the concern that fundamental fairness is being transgressed. In the specific case to which this amendment particularly speaks, the legal process has proceeded so far along that retroactive application of the treaty would go beyond the bounds of our traditional sense of justice. It is for this reason I vote against tabling the D'Amato amendment.

□ 1740

Mr. LUGAR. Mr. President, I move to table the D'Amato amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Vermont [Mr. STAFFORD] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

The PRESIDING OFFICER (Mr. HECHT). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 65, nays 33, as follows:

[Rollcall Vote No. 156 Ex.]

YEAS—65

Abdnor	Glenn	Metzenbaum
Andrews	Goldwater	Murkowski
Armstrong	Gore	Nickles
Baucus	Gorton	Nunn
Bentsen	Gramm	Packwood
Bingaman	Grassley	Pell
Boren	Hatfield	Pressler
Boschwitz	Hawkins	Proxmire
Broyhill	Hecht	Pryor
Burdick	Heflin	Quayle
Chafee	Hollings	Roth
Cochran	Humphrey	Rudman
Danforth	Johnston	Simon
Denton	Kassebaum	Simpson
Dixon	Kasten	Stennis
Dole	Kennedy	Stevens
Domenici	Laxalt	Thurmond
Eagleton	Lugar	Trible
Evans	Mathias	Wallop
Exon	Mattingly	Warner
Ford	McConnell	Wilson
Garn	Melcher	

NAYS—33

Biden	Harkin	Matsunaga
Bradley	Hart	McClure
Bumpers	Hatch	Mitchell
Byrd	Heinz	Moynihan
Chiles	Helms	Riegle
Cohen	Inouye	Rockefeller
Cranston	Kerry	Sarbanes
D'Amato	Lautenberg	Sasser
DeConcini	Leahy	Specter
Dodd	Levin	Weicker
Durenberger	Long	Zorinsky

NOT VOTING—2

Stafford	Symms

So the motion to lay on the table amendment No. 2206 was agreed to.

□ 1800

Mr. LUGAR. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I yield to the distinguished majority leader.

Mr. DOLE. Mr. President, if we could have order, I will make an important announcement.

Mr. BYRD. Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order.

Senators will please take their seats.

Mr. DOLE. Mr. President, I am advised by the distinguished Senator from North Carolina that he will take just about 10 minutes and then there will be a short debate with both managers. Then I think there will be a motion to table and a rollcall vote on that.

We think we can arrange to finish it without any additional rollcall votes.

I understand the minority would like to not have any votes after 6:30 p.m. We believe we can accommodate.

Also, if we can get an agreement on the budget matter that we are now circulating to either complete that tomorrow night or, say, between 9 and 11 o'clock on Friday morning, we could indicate that there would be no afternoon session on Friday, or if we could do it all tomorrow, there would not be a Friday session. But I will discuss that with the minority leader.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

AMENDMENT NO. 2207

(Purpose: To provide for a defense to extradition)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 2207.

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

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

The amendment is as follows:

At the appropriate place in the Treaty, insert the following new article:

"Article——

"(a) Paragraph (b) of this Article shall be known as the Reagan-Shultz-Meese Defense.

"(b) Notwithstanding any other provision of this Supplementary Treaty, in the United States, the competent judicial authority shall consider as a defense to extradition a showing that the person for whom extradition is sought has committed the specified acts in furtherance of an armed uprising, insurrection, or rebellion against the military authorities of the state in which the accused person is a national, if such acts did not include wanton crimes of violence against civilian personnel.".

THE ABROGATION OF THE POLITICAL OFFENSE DOCTRINE

Mr. HELMS. Mr. President, the ratification of the Supplementary Extradition Treaty between the United Kingdom and the United States would create a precedent profoundly altering the United States treatment of persons who escape from tyranny while fighting for freedom.

This treaty makes no legal distinction between terrorists who kill and maim innocent men, women, and children on the one hand, and freedom fighters who are engaged in military or paramilitary actions in just wars for the reestablishment of traditional moral, cultural, and religious values.

For the first time in history, a person fighting against extradition would not be able to present the political offense defense in a U.S. court. For over 200 years, our tradition has been

that a court may rule against extradition based on the consideration that the accused was engaged in military operations in an effort to win freedom for his or her country. Indeed, this tradition has become a basic legal principle.

Moreover, the treaty would seriously impair the battle against terrorism by lumping criminal terrorists in with genuine freedom fighters. Although it is easy to stir emotions with accounts of PIRA terrorists who attack the civilian population at large, the ratification of the treaty, as it stands, would abolish the distinction between terrorists and genuine freedom fighters.

Once the legal distinction has been abolished between terrorists and freedom fighters, it will be very difficult to sustain support for the Afghan Mujahideen, Savimbi's UNITA fighters, the Nicaraguan resistance, the Cambodian resistance, or any other group fighting against an established tyranny.

It is not enough to say that treaties abolishing the political offense defense will only be concluded with established democracies. It is not enough to say that there is no right of rebellion against a country with democratic institutions. It is not enough to say that the United Kingdom itself is a democracy.

These things are not in themselves sufficient reason to abrogate an objective legal principle and substitute a subjective and changing judgment based upon political expediency. There is no commonly accepted definition of a "democracy." The word itself is claimed both by free countries and abysmal dictatorships. The history even of Western democracies sadly demonstrates that freedom is not forever, and that democracies, like republics and other forms of free government, can fall prey to totalitarian forces.

Moreover, a nation that is free in the main part of its territories, may not be free in all of the territories that it governs. From the time of the Barons at Runnymede, the history of Great Britain is a history of different groups and classes struggling to be free. The United States itself is a product of that history. It is very difficult for an outsider to be certain that the process has been completed.

THE SUPPLEMENTARY EXTRADITION TREATY AND THE AMERICAN REVOLUTION

The impact of abolishing the political offense doctrine may best be seen in our own history. Article 1 of the Supplementary Treaty, as reported, includes the following:

For the purposes of the Extradition Treaty, none of the following shall be regarded as an offense of a political character:

* * * * *

(b) murder, voluntary manslaughter, and assault causing grievous bodily harm;

* * * * *

(d) an offense involving the use of a bomb, grenade, rocket, firearm . . . or any incendiary device if this use endangers any person.

If this treaty had been in effect in 1776, or even after the Treaty of Paris in 1783, this language would have labeled the boys who fought at Lexington and Concord as terrorists. There is no question that the British authorities in 1776 would have considered the guerrilla operations of the Americans to be murder and assault. Their offenses included the use of bombs, grenades, rockets, firearms, and incendiary devices, endangering persons, as may be demonstrated by reference to our National Anthem. Yes, there is no doubt whatsoever that such a treaty would have required us to extradite the patriots who fired "the shot heard 'round the world" to swing on a British gallows.

For this reason, the infant United States was properly wary of extradition treaties. It was many, many decades before the first one was signed. And remembering our revolutionary origin, American courts developed the doctrine of the political offense exception: No extradition if the accused was sought for violent actions relating to a battle for his country's freedom.

THE DISTINCTION BETWEEN PATRIOTS AND TERRORISTS

The distinction between patriots and terrorists is not difficult to understand. Both President Reagan and Secretary of State Shultz have succinctly made this distinction in recent statements. The Supplementary Treaty flies in the face of both these statements.

At the Tokyo Summit, President Reagan said:

The cliché line is going around that, well, one man's terrorist is another man's freedom fighter. No such thing.

The people that are customarily called freedom fighters are fighting against organized military forces in what—even if it is a civil war, it is a war. Terrorists, as I said before, are people who deliberately choose as a target to murder and maim innocent people who have no influence upon the things that they think of as their political goals.

The President said that on May 7, 1986.

Then, in an interview a few months ago, Secretary of State Shultz made exactly the same distinction. Let me quote from an interview:

Q. Is there an accepted definition of terrorism—and how would you distinguish between the terrorist and the insurgent?

A. There is no legal or universally accepted definition of terrorism. We describe it as the use of threat or violence for political purposes to create a state of fear which will cause individuals, groups, or governments to alter their behavior or policies. Its targets are civilians, noncombatants, bystanders, or symbolic persons or places.

An insurgent is in revolt against an established government. His objective is political power. His methods are military or paramilitary. He actively seeks support, usually within one country.

That interview was in August 1985.

□ 1810

Finally, it should be noted that U.S. Attorney General Edwin Meese also adopted this same distinction in a major address on terrorism which he delivered at the Jonathan Institute in Tel Aviv:

I think Benjamin Netanyahu summed it up very well when he said: "Terrorism is the deliberate and systematic murder, maiming and menacing of the innocent to inspire fear for political ends." Now I suggest that that definition is vitally important, because it describes the nature of the battle we are talking about. And it also describes the character of the participants. It provides a clear distinction which separates terrorism from ordinary warfare, or legitimate military activity, because it demonstrates that the targets of terrorism are innocent civilians, rarther than combattant forces.

That was on May 15, 1985.

Any reasonable treaty on extradition, even with a democracy, must preserve this distinction. A terrorist aims his attack at the people. His aim is to disorient, disrupt, and destabilize. His hope is to break down all organized force through fear and paralysis. Thus he strikes at innocent civilians, especially women and children. He makes bombings in crowded places unpredictable. He attacks symbolic persons such as Prime Minister Thatcher and Lord Mountbatten or soldiers off duty relaxing in nightclubs. He frequently attacks these targets in other countries to draw attention to his political cause, or to raise money through blackmail. No patriot resorts to such criminal tactics, even in defense of freedom.

A patriot, on the other hand, attacks the military or defense forces of the occupying power. As Secretay Shultz says, his methods are military or paramilitary, in the tradition of the American Revolution. He does not engage in attacks which harm civilians or which might be expected to harm civilians. He does not attack soldiers when they are sleeping peacefully in their homes, or relaxing in nightclubs. He may attack soldiers on duty or in the barracks, but it is the duty of soldiers and their commanding officers to be prepared against such attacks. Moreover, as Secretary Schultz points out, such attacks are only considered to be part of an insurgency when they are conducted within the country which the troops are occupying.

THE POLITICAL OFFENSE DOCTRINE AS A DEFENSE

It is important to understand that the political offense doctrine has always been construed narrowly by the courts. No one can escape extradition for crimes just because that person asserts that the crimes were committed in pursuit of political goals. It is a defense that the accused can raise in the courts against extradition; it is not an automatic right. The court

must weigh the evidence adduced in support of the fact that the actions of the accused were part of a true insurgency. Courts can, and have, rejected the political offense doctrine as a defense when the courts determined that the accused was, in fact, a terrorist, or a common criminal, and not a rebel.

The political offense doctrine was established nearly 200 years ago to provide a haven under international law for unsuccessful rebels who fought for their freedom against established authority in their country and lost.

This doctrine has been carried forward in all the Western democracies until the present day.

Terrorism is a term which has no legal definition. However, in common use, it is applied to wanton crimes of violence, even when politically motivated, against innocent civilians. International law has created exceptions to the political offense exception for certain specific crimes, namely: Attacks upon airplanes in international travel; seizure of hostages in international transport; the use of bombs and booby traps directed against civilian targets; attacks upon diplomats, embassies, and heads of state.

In U.S. law, the political offense exception has received a narrow definition in circuit courts of appeals. The definition is as follows: a violent act or acts committed in furtherance of an armed uprising, insurrection or rebellion by a national of the country in which the disturbance was taking place. Clearly it excludes acts against civilians, and acts of wanton and reckless violence—such as described in the previous paragraph—even when a political motivation is asserted by the offenders. Just as clearly, it excludes attacks across national borders, and conspiracies relating to those attacks.

It is natural that an incumbent administration in a situation of insurrection and rebellion will attempt to obtain custody of leaders of the rebellion by any and all means. One of the traditional methods is the extradition of such individuals by accusing them of having perpetrated common crimes. Those alleged criminal acts are in fact the acts of rebellion or insurrection which the political offense exception seeks to protect.

It is very tempting to abrogate the political offense exception in order to help a long-time ally that is faced with violent insurrection. But we should not give up the principles which have been ingrained in our legal system since the founding of our constitutional republic.

Mr. President, I have sent to the desk an amendment which is pending to restore the political offense doctrine. It is based on the distinctions made by President Reagan, Secretary Shultz, and Attorney General Meese, which I have just quoted. Therefore, with the Senate's permission, I shall call it the Reagan-Shultz-Meese defense. I think we should have a rollcall vote on whether that defense should be preserved, so I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair and I yield the floor.

Mr. LUGAR. Mr. President, let me indicate, before I begin my thoughts about this amendment, that it has been suggested, due to the constitutional necessity of a two-thirds majority on a treaty vote, that we have a division of the House after the rollcall vote on the Helms amendment, or more particularly my motion to table that amendment. That would apparently be satisfactory as far as the parliamentary situation is concerned. I mention that to Members because they are concerned, I know, about the time of departure.

The intent would be to have a rollcall vote on the Helms amendment and then a division of the House establishing the two-thirds on the treaty as a whole.

Mr. President, in a democracy such as the United Kingdom, violence should never be deemed an acceptable part of the political process. To permit courts in the United States to consider political motives as justifying murder or other violent crimes shows a lack of respect for the democratic process. In Great Britain, we are not talking about a society in revolution or a society experiencing substantial political violence. We are talking about a remarkable democracy, a peaceful democracy, a democracy operating under law.

Let me just make the point—because the distinguished Senator from North Carolina has called this amendment and used the names of the distinguished Attorney General, Mr. Meese, and the President of the United States was very clear on this specific idea.

Mr. MOYNIHAN. Mr. President, I hesitate to interrupt. The distinguished chairman is making an important statement and deserves the full attention of this body.

The PRESIDING OFFICER. The Senator is correct. The Senate is not in order.

Will Senators please take a seat and staff take a seat in the back of the room?

The Senator from Indiana.

Mr. LUGAR. Mr. President, if Members would follow just this one paragraph of the President of the United States, I believe the intent that he has is clear. He addressed the Nation in a radio broadcast on May 31 of this year. He said:

> Some Members of the Senate Foreign Relations Committee have gone so far as to prepare a substitute treaty permitting those who have murdered British policemen and soldiers, for so-called political reasons, to avoid extradition.

Now, listen carefully to what the President had to say about those members of the Foreign Relations Committee who had such an idea. He said:

> Well, this substitute is not a compromise—it's retreat. Its passage would be a victory for terrorism and a defeat for all we've been trying to do to stop this evil.

Now, the President spoke very directly to precisely the amendment offered by the Senator from North Carolina. He characterized it as retreat; something that, in fact, would assist terrorism. And he was talking about this treaty. This was after he had given a report about his conversations with the distinguished Prime Minister of Great Britain.

Well, let me just add one further thought. The Prime Minister of Great Britain was asked in a radio interview on the April 27, 1986:

> Prime Minister, what do you say to the suggestion that one man's terrorist is another man's freedom fighter? What is a terrorist?

Prime Minister Thatcher said:

> Look, is anyone suggesting that there is any possible justification, if there is any justification, for terrorism, to attack free societies, democratic societies? Of course there is not. There is no justification for the IRA. Everyone in Northern Ireland has the same right to vote for a Member of Parliament as we have in the rest of the United Kingdom. Everyone in Northern Ireland has the same civil rights. What they are trying to do is trying to get something by virtue of fear when the result of the ballot has denied it to them. And to suggest that there is any form of terrorism ever justified in democracy is totally and utterly wrong.

Mr. President, I suggest that the eloquence of our President and the distinguished Prime Minister, and those two governments that have worked together to fashion at least a treaty and have worked with the Senate Foreign Relations Committee on the amendments that we have had that we believe have perfected this treaty, have spoken eloquently to the point.

Therefore, Mr. President, I, of course, yield to my distinguished colleague if he has a comment, and then I will move to table the amendment.

Mr. PELL. Mr. President, I thank the chairman.

I do not agree with the President's characterization of the amendment that was originally offered in the committee. But I do think that I agree with our chairman that the amendment by the Senator from North Carolina would undo the treaty that has been very carefully crafted with a great deal of work and a good deal of compromise and effort on both sides of the aisle to reconcile various viewpoints. Accordingly, I intend to vote to table.

Mr. HELMS. Mr. President, notwithstanding the eloquent statement by

the distinguished chairman, I still say that the President, I have just discovered, has said the same thing twice, which unquestionably supports this amendment. He stated it in Tokyo and then I was just handed a copy of a radio address of May 31. And the President said:

Terrorists intentionally kill or maim unarmed citizens, often women and children, often third parties who are not in any way part of a dictatorial regime.

Terrorists are always the enemy of democracy. Luckily, the world is shaken free of its lethargy from moving forward to stop the bloodshed.

□ 1820

Mr. President, nothing could be clearer. The Secretary of State, the Attorney General, and the President of the United States have stated precisely the thrust of this amendment.

One can get different interpretations and take other quotes. But I have two that I have introduced in the RECORD just now.

I see no reason why this amendment should not be accepted.

Mr. LUGAR. Mr. President, I think the idea of our President is quite clear. I simply reiterate that when confronted with it the Senate Foreign Relations Committee rejected the precise amendment that the Senator from North Carolina is suggesting. The President said this substitute is not a compromise. It is a retreat. It would be a victory for terrorism if passed. That I think is pretty clear. I would simply say the letter of transmittal of this treaty says in my judgment the same thing.

Mr. President, I move to table the Helms amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the motion of the Senator from Indiana, Mr. LUGAR, to lay on the table the amendment of the Senator from North Carolina, Mr. HELMS. On this question the yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. GOLDWATER], the Senator from Oregon [Mr. PACKWOOD], the Senator from Vermont [Mr. STAFFORD], the Senator from Idaho [Mr. SYMMS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 87, nays 9, as follows:

[Rollcall Vote No. 157 Ex.]

YEAS—87

Abdnor	Baucus	Biden
Andrews	Bentsen	Bingaman
Boren	Grassley	Metzenbaum
Boschwitz	Harkin	Mitchell
Bradley	Hart	Moynihan
Broyhill	Hatfield	Murkowski
Bumpers	Hawkins	Nickles
Burdick	Hecht	Nunn
Byrd	Heflin	Pell
Chafee	Heinz	Pressler
Chiles	Hollings	Proxmire
Cochran	Inouye	Pryor
Cohen	Johnston	Quayle
Cranston	Kassebaum	Riegle
Danforth	Kasten	Rockefeller
Denton	Kennedy	Roth
Dixon	Kerry	Rudman
Dole	Lautenberg	Sarbanes
Domenici	Laxalt	Sasser
Durenberger	Leahy	Simon
Eagleton	Levin	Simpson
Evans	Long	Stennis
Exon	Lugar	Stevens
Ford	Mathias	Thurmond
Garn	Matsunaga	Trible
Glenn	Mattingly	Wallop
Gore	McClure	Warner
Gorton	McConnell	Weicker
Gramm	Melcher	Wilson

NAYS—9

Armstrong	Dodd	Humphrey
D'Amato	Hatch	Specter
DeConcini	Helms	Zorinsky

NOT VOTING—4

Goldwater	Stafford
Packwood	Symms

So the motion to lay on the table was agreed to.

□ 1840

Mr. LUGAR. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NORTHERN IRELAND AND UNITED STATES TRADITION

Mr. DECONCINI. Mr. President, I wish to take just a moment to discuss the Northern Ireland-United States tradition with respect to this treaty.

Mr. President, the U.S. Senate is widely recognized as the most open and deliberative governmental body throughout the world. Currently, people struggling for freedom, fairness, and liberty, in such locations as Afghanistan, South Africa, Nicaragua, and South Korea, seek these rights through protest and politically related activities. The Senate has historically debated the role of the court system to shield political fugitives exercising these rights from extradition to any country. This administration has demanded emergency action to enhance the extradition of fugitives with this proposed Supplemental Extradition Treaty with the United Kingdom.

I think we need to be perfectly honest in discussing this treaty with Great Britain. This historic exception for political fugitives and the political crimes defense was invented by Thomas Jefferson. This was added to our treaties by Daniel Webster and refined by John Stuart Mill. It is embedded in the United States system of individual justice. And it has been a universal principle of international law for more than a century. Yet, the British Government; under the auspices of international terrorism, wants to fundamentally change this provision.

Although the official topic of this bebate is the Supplementary Extradition Treaty, the broader question of the situation in Northern Ireland cannot and should not be ignored. In fact if anything useful is accomplished by this treaty before us today it is that it provides a means for drawing the Senate's attention to the struggle of the people of Northern Ireland and the unfortunate role that one of our Nation's allies has become locked into during this struggle.

Rather than rubberstamp this executive agreement as eradicating terrorism, as President Reagan and Prime Minister Thatcher might label it, we should carefully discuss the legal historical, and political implications of this treaty. I do not object to assisting both leaders in combating terrorism. I adamantly deplore and consistently condemn the actions of the IRA and do not object to a treaty which would treat ordinary rebels as criminals who should be surrendered. I also do not object to court decisions which have discussed the "wanton crimes exception" to the political crimes defense.

However, both President Reagan and Prime Minister Thatcher are not satisfied with this and apparently want this treaty to symbolize public indignation against terrorism. They would argue that a rebellion against an allegedly democratic country with a judicious legal system cannot be justified. Nothing could be further from the truth. Northern Ireland is patrolled by British Army troops and has claimed sovereignty over its citizens for centuries. The judicial system is riddled with juryless trials, warrantless raids of private homes, and torture-filled prisons. This is the infamous Diplock system.

I strenuously object to a treaty constructed under the guise of fighting international terrorism and subsequently involving the United States on the side of the British in an Anglo-Irish conflict since Ireland was petitioned in 1920. I object to a treaty which undermines the tradition of the United States providing refuge for persons protesting against their government. I object to a treaty reversing the decisions of the courts of the United States based upon the concepts of international law. I object to a treaty which is uneven in administering justice and politically motivated—especially in its retroactivity.

Mr. President, I have been interested in the problems of Northern Ireland for many years and this past summer I had the great pleasure of visiting this bittersweet country. I have spoken with numerous representatives on all sides of the conflict there. I have testified before the Constitution Subcom-

mittee on the legal amenities of this treaty. Although the Foreign Relations Committee has revised and altered much of the language to which I refer, this still does not adequately address my concerns.

The administration claims that this treaty was negotiated in order to improve law enforcement cooperation and counter international terrorism and other crimes of violence. In the cause of preventing and reacting to terrorism, we must carefully scrutinize what kind of response we make. If the British are as concerned as we in the United States are, why have they failed to implement economic sanctions against Libya?

America has a long and proud tradition of providing refuge for political dissidents, some of which were saluted in the recent Liberty Weekend celebration. Some of this heritage dates back to colonial times and was brought to us by the British. Our tradition should not change. Our court system is not broken. Ours is a system and tradition of asylum for political dissidents and individual justice.

The ongoing strife in Northern Ireland cannot be addressed by a treaty based on political payoffs to Great Britain or a revision of U.S. extradition law. We have talked around the issue of Northern Ireland for too long. An end to this bitter struggle will come only through new political solutions from the British—not the United States. Before this august body considers change in our laws and legal system, it is my view that major changes should take place in all facets of life in Nothern Ireland. For example; the British should seriously consider changes in the court system and implementing a timetable to reach these endeavors.

Mr. President, I firmly believe that only when the British begin to dismantle the Diplock courts and implement some of the traditions they so proudly passed on to our Founding Fathers will justice begin to emerge in Northern Ireland. I am certain that the British will then no longer call upon us to change our extradition laws. We must stick with this country's own long tradition grounded in our revolutionary past.

Mr. EAGLETON. Mr. President, I support the resolution of ratification reported by the Senate Foreign Relations Committee.

For the last 12 months, the Senate Foreign Relations Committee has wrestled with the United States-United Kingdom Supplementary Treaty and the sensitive and highly emotional issues embodied therein, to wit, the right to forcibly rebel against what some perceive as an oppressive government and whether, in the context of extradition, limits should be imposed on that presumed right as between democratic allies.

The controversy in committee centered around the supplementary treaty's redefinition of the political offense exception as it would apply between the United States and the United Kingdom by excluding certain violent offenses from its ambit. There is no question that bilateral and multilateral extradition treaties among countries generally, if not universally, except the political offender from extradition. Each of the some 100 bilateral extradition treaties to which the United States is a party contains some provision broadly excepting political offenders.

As the politics of revolution changed, as the present era of terrorism emerged, so has the U.S. policy toward a broad political offense exception evolved. It is now standard for the executive branch to negotiate treaties that bar certain types of offenses from the political offense exception, assaults against heads of states, skyjacking, and hijacking, for example, offenses which are already within the scope of multilateral treaties.

The United States-United Kingdom Supplementary Treaty continues the trend of narrowing the political offense exception by excluding offenses within the scope of any of four multilateral treaties regarding the taking of hostages, crimes aboard aircraft, or crimes against protected persons, and a large number of specified violent crimes against persons.

The administration presented the treaty as an important step toward combating terrorism and improving law enforcement cooperation with our closest ally. Opponents of the treaty painted it as an anti-Irish measure which, if ratified, would represent full United States compliance with the political status quo in Northern Ireland and would sacrifice the historic concept of the United States providing asylum for so-called political fugitives. I emphasize "so-called."

Mr. President, we all decry violence when it is directed toward us. When a suicide bomber drives into the Marine Corps headquarters in Beirut killing 241 U.S. servicemen, we label it "terrorism"—and properly so. When Navy diver Stetham was beaten and shot aboard TWA Flight 842, we labeled it "terrorism"—and properly so. When Sgt. Kenneth Ford was killed in the Berlin disco, we labeled it "terrorism"—and properly so. Indeed, we took severe retaliatory military action against Libya for this event.

It should be noted that all of these actions were against U.S. servicemen. Of course, we are just as incensed when an American civilian is harmed as in the case of Mr. Leon Klinghoffer when he was pushed over the rail of the *Achille Lauro*. We labeled it "terrorism"—and properly so.

We are actively seeking the perpetrators of these heinous offenses against American military personnel and civilians. We would seek prompt extradition of these culprits. We would not tolerate their offenses as being deemed in any way "political." We would take all necessary action to see that they were punished.

Twice this year, on February 19, by a vote of 92 to 0, and on June 25, by a unanimous vote, the Senate has passed legislation expanding U.S. law by making it a crime for anyone in any country to assault any U.S. citizen as part of any act of terrorism. That legislation even goes so far as to specifically authorize the United States to use forceful methods—that is kidnaping—to bring a terrorist to justice in this country.

Yet, when a civilian in England is injured by a bomb; when a plainclothes police constable in London is murdered; when the murder of a plainclothes British soldier in Belfast is attempted; when a British Army officer is murdered, some say, indeed some of our United States courts have said, those violent acts are merely "political" offenses.

Those four incidents above are the reason we are here today. In each case, *Matter of Mackin*, 668 F. 2d 122 (2d. Cir. 1981); *Matter of Doherty*, 599 F. Supp. 277 (S.D.N.Y. 1984); In re *McMullen*, Magistrate No. 3-78-1099 MG (N.D.Cal. May 11, 1979); and *Quinn* v. *Robinson*, No. C-82-668 RDA (N.D.Cal. 1983) a Federal district court denied extradition of members of the Provisional Irish Republic Army accused or convicted of heinous violent acts.

Mr. President, the United States has sought aggressively to gain international accord on a total rejection of political violence as an instrument of political change; however, these decisions, one of which was reversed by the court of appeals, sent a very different message. They proclaim that the American judicial system somehow accepts the notion that violence is an acceptable method of accomplishing political goals, at least in Northern Ireland.

Mr. President, terrorism is terrorism. If the killing of 241 U.S. marines in their barracks, arguably an act of war, is internationally condemned as an act of terrorism, then IRA bombs that explode throughout Great Britain, killing civilians and military alike, are acts of terrorism. Terrorism is not only what is directed at the United States. Terrorism is not only committed by people with a swarthy complexion who speak Arabic. Terrorism is also committed by people with rosy cheeks who speak with a brogue.

Americans condemn all acts of terrorism as being inherently violative of civilized behavior. But too often, as in the matter before us, one particular group of terrorists captures the sym-

pathy of some, whether for historical, racial, ethnic, or ideological reasons. Strangely, some see fit to deem these terrorists as "freedom fighters." There is a small—a very small—section of the Irish community in the United States which has sympathy for the IRA and their misdeeds. They seem trapped in a time warp of the Kilmainham "martyrs" of the Easter Rising.

□ 1900

A brief look at the history of the division of Ireland confirms that the present-day IRA has cloaked itself in a pervasive nationalist myth that a united Ireland is somehow preordained. Nothing could be further from the truth. The 1916 Easter Rising characterized by William Butler Yeats as "a terrible beauty" was anything but beautiful. The Irish Catholic characterized it this way:

> The movement which has culminated in deeds of unparalleled bloodshed and destruction of property in the capital of Ireland was as criminal as it was insane. Only idiots or lunatics can have supposed it could prove successful. Traitorous and treacherous as it undoubtedly was, it was most traitorous and treacherous to our native land.

It was only the stupidity of the British military courts in condemning and making martyrs out of the Easter Rising ringleaders that gave birth to the notion that Ireland was locked into a death struggle with the British. In fact, the question of the division of Ireland was long ago settled with the acquiescence of the Free Irish State. The Irish Civil War was not fought on the issue of partition. The Government of Ireland Act of 1920 legislated for the partition of Ireland along the lines set out by Lloyd George in 1916 and for two home rule governments in Ireland, one in Dublin for 26 counties and one in Belfast for the 6 northeastern counties. Provisions were made for the eventual unification of Ireland, but only when and if a majority in the north wanted it.

The 1921 treaty, ending the civil war maintained the partition established by the 1920 Government of Ireland Act. The Dail in the Republic voted to accept the treaty in 1922 by a vote of 64 to 57. Under that treaty, a new government, the provisional government of Ireland, was formed to take over the administration of Southern Ireland until the Irish Feee State was formally established. Michael Collins, the mainspring of post-1916 Irish nationalism, signed the treaty and was subsequently killed in an ambush by the antitreaty forces who were then, as now, a lunatic fringe which had turned on their fellow Irishmen in defiance of the lawfully constituted state for which they had fought. In 1925, the Free State Government accepted, albeit reluctantly, the Boundary Commission Report which ratified the division of Ireland as a permanent arrangement. Throughout the early days of the Free State, the issue of sovereignty took precedence over the issue of unity.

True, political parties in the south continue to call for the end of the British occupation of the north and for an end to partition, but they articulate no policies to achieve that end. The November 15, 1985, Anglo-Irish Agreement, signed by the Governments of the Republic of Ireland and Great Britain, and approved by the Irish Parliament by a 13-vote margin, continues recognition of the separate existence of Northern Ireland. It states in its first article that the two governments:

> (a) Affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland;
>
> (b) Recognise that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland;
>
> (c) Declare that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish.

Thus, the IRA today, like its antecedent IRB of the Easter Rising, is an aberration, representative of only a small number of fanatic nationalists in the North and the South.

The IRA has killed over a thousand people, most of them their own countrymen, since 1968. While playing on the endemic divisions between the two parts of Ireland and within Northern Ireland, their true agenda is to set up a socialist society, not just in Northern Ireland but in all of Ireland. They are a bunch or PLO-trained and PLO-sponsored terrorist thugs.

And, I hasten to add, the terrorism is not only on one side. We saw only a few days ago the thuggery in Portadown, Northern Ireland, where Catholic families were terrorized by Protestant thugs. These activities were denounced by Secretary of State for Northern Ireland Tom King:

> Last night's incident was a disgraceful, calculated attack by thugs and hooligans on people's homes. It must be condemned by all decent people. No society can tolerate vicious and barbaric assaults of that kind.

Further, on this point, while on vacation over the Fourth of July, I read the following article in the Boston Globe of July 2, 1986, and ask unanimous consent that it be printed in the RECORD at this point. This article describes what the four Ulster soldiers did in murdering a citizen in Northern Ireland and how they were sentenced.

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

[From the Boston Globe, July 2, 1986]

FOUR ULSTER SOLDIERS SENTENCED TO LIFE IN MURDER OF CATHOLIC

BELFAST.—A court yesterday convicted four Ulster Defense Regiment soldiers of murder in the random slaying of an unarmed Roman Catholic man and sentenced each of them to life in prison.

The verdict came just hours after another defense regiment soldier was killed by a bomb the Irish Republican Army claimed it had set.

Lord Justice Basil Kelly, who presided over the two-month nonjury trial at Belfast Crown Court, said members of the predominantly Protestant Ulster Defense Regiment who testified for the defense conspired to "distort true events."

The four soldiers were convicted of killing Adrian Carroll, 24, outside his home in Armagh while they were on patrol in November 1983.

Carroll was a Roman Catholic who, according to testimony, had no political connections.

The four were convicted after testimony that one of the defendants, Pvt. Neil Latimer, changed from his uniform into jeans, a windbreaker and tartan cap before walking up to Carroll and shooting him in the neck, head and shoulders with a .38-caliber handgun.

The three other defendants—Pvt. Noel Bell, 22; Lance Cpl. James Hegan, 36; and Pvt. Alfred Allen, 26—pretended to arrest Latimer and drove him away in their patrol vehicle.

Mr. EAGLETON. Mr. President, terrorism breeds terrorism. We condemn it wherever and however found. We provide no sanctuary for any terrorist of any persuasion, of any stripe.

Some have argued, erroneously in my opinion, that circumscribing the political offense exception somehow violates some constitutional rights of the fugitive. Let me dispose of that bromide right now. The political offense exception is not a recognition of some inalienable U.S. constitutional right of the fugitive. A person has no constitutional right to commit a crime in another country and escape extradition because the crime was "political." The only "right" involved is the discretionary act of the state, if it so wishes of its own free choice, to give political asylum for humanitarian reasons.

□ 1910

I would further point out that the Federal district judge in one of the four cases cited earlier, a case where the judge denied extradition on the grounds that the crime constituted a political offense, looked at the question of fairness of the Diplock courts. District Judge Sprizzo's opinion states:

> The Court also specifically rejects respondent's claim that the Diplock Courts and the procedures there employed are unfair, and that respondent did not get a fair trial and cannot get a fair trial in the courts of Northern Ireland. The court finds the testimony of the Government witnesses as to this issue both credible and persuasive. The Court concludes that both Unionists and Republicans who commit offenses of a political character can and do receive fair and impartial justice and that the courts of Northern Ireland will continue to scrupulously and courageously discharge their responsibilities in that regard.

There are elements in the administration of justice in Northern Ireland which are unfair, no question about it. The widespread use of administrative detention, their search and seizure procedures are antipathetic to our judicial principles. However, it is important to make the distinction that these abhorrent practices do not impact upon extradition cases because they do not apply to fugitives who are apprehended in the United States.

Finally, it should be noted that the United States and the Republic of Ireland currently allow extradition for defendants who will be tried in Diplock courts. Nonpolitical security offenses are now and always have been extraditable to the Diplock courts. Dominick McGlinchey was extradited from the Republic of Ireland to face trial in a Diplock court.

Mr. President, I wish to address in some detail one new article added to the supplementary treaty by the committee, article 3(a). When the supplementary treaty was submitted to the Senate, concern was expressed about the possibility of sham prosecutions, in which a foreign government would trump up charges against a dissident in order to obtain his extradition for trial and punishment.

Senator DODD posed a disturbing hypothetical involving the Philippines. He suggested that, if the supplementary treaty had been in effect with the Philippines while Benigno Aquino was in exile in the United States, the Marcos regime could have submitted fraudulent affidavits charging Aquino with a violent crime in order to secure his extradition. Aquino would not have been allowed to assert the political offense exception or to challenge the Marcos regime's motives in seeking his extradition.

I, and several other members of the committee, felt strongly that such a situation should not be allowed to occur. We therefore began working to add a provision to the treaty to meet that concern, what we referred to in a short-hand way as the "Ninoy Aquino" clause, or the "trumped-up charge" clause. Following these discussions among Democrats on the committee, I worked with Chairman LUGAR to develop language to embody the necessary protection against trumped-up charges.

In selecting what "trumped-up language" to use, we decided to draw upon existing language found in current United Kingdom statutes. That is, instead of concocting new language, we decided to travel the course of trying to use existing British—and later American—legislative "boilerplate."

The chairman and I first met on June 4 to discuss a variety of amendments to the supplementary treaty. At that time, I proposed to add the following reservation—taken from the United Kingdom Fugitive Offenders Act—to the supplementary treaty:

RESERVATION

(a) Nothing in this treaty shall be interpreted as imposing an obligation to extradite if the competent judicial authority of the requested state has substantial grounds for believing that the request for extradition for an offense mentioned in Article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons, or that, having regard to all the circumstances, it would be unjust or oppressive to extradite a person to the requesting State.

(b) Nothing in paragraph (a) shall be deemed to derogate from the discretionary authority of the President of the United States under United States law to withhold extradition.

The chairman, Senator LUGAR, was opposed to this language. After lengthy discussions, he and I tentatively agreed on a second version—taken from the 1870 United Kingdom Extradition Act, as amended by the 1978 Suppression of Terrorism Act:

ARTICLE

Nothing in this Supplementary Treaty shall be interpreted as imposing an obligation on the United States to extradite if the person sought proves to the satisfaction of the competent judicial authority of the United States that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

This second version differed from my initial proposal in three major respects. First, the new version changed the proof requirement: instead of "substantial grounds for believing" that the specified conditions had been met, the person sought was now required to prove the elements "to the satisfaction" of the court; and he was now required to prove that the request for extradition was "in fact" based on the impermissible grounds.

Second, the phrase "the person's position may be prejudiced" was narrowed to specify that the person sought must prove that "he might, if surrendered, be prejudiced at his trial or punished, detained, or restricted in his personal liberty" by virtue of the impermissible factors. Third, and most significant, the final clause of my initial proposal—granting courts broad discretion to deny extradition on the ground that it would be "unjust or oppressive"—was deleted. This narrowed substantially the grounds on which extradition could be denied under the trumped-up charge clause.

The second version of the clause was the subject of much discussion in the week following my June 4 meeting with the chairman. He and I met again on June 11 to work out the final language of this and other amendments to the supplementary treaty. We agreed on the following language for the trumped-up charge clause:

ARTICLE 3

(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try to punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at this trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for offenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a) shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration a every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision. In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process.

Another principal argument raised against the treaty revision has been the reputed unfairness of the so-called Diplock courts in which security offenders are brought to trial in Northern Ireland. Under the Diplock court system, the trials are public, the defendants are given notice of the charges, they have the right to counsel, the right to confrontation, and the privilege against self-incrimination. Over 50 percent of those cases that have actually proceeded to trial in the Diplock courts have resulted in the acquittal of the defendant. There also exists the right to appeal from a conviction in a Diplock court, and a recent appeals court decision in Belfast gives me every reason to believe that guilty verdicts are given strict judicial scrutiny. Last year, an appeals court in Belfast voided the murder conviction of "Mad Dog" Dominick McGlinchey on the basis of insufficient evidence. This reversal is noteworthy because McGlinchey has been described as the most wanted terrorist in all of Ireland. He has been implicated in over 30 killings and 200 terrorist attacks. If the judicial system in Northern Ireland can act fairly in the case of Dominick McGlinchey, it is hard to find the basis for an argument that due process is simply not available.

It is true that Diplock courts do not afford the right to a jury trial, an enshrined feature of our judicial system. However, we have never required our extradition partners to adhere to every feature of our system. We maintain treaties with numerous countries that do not have a jury system, including Israel and France.

□ 1920

This third version, derived in part from section 3194 of the Extradition Act of 1984, H.R. 3347, adopted by the House Judiciary Committee on October 4, 1983, contains the language actually adopted by the committee on June 12. It differs from the second version in two important respects.

First, the final version specifies the burden of proof that must be satisfied by a person invoking article 3(a): "a preponderance of the evidence." This is the usual standard in a civil lawsuit; it means that the person sought must prove that his claim is more likely true than not.

Second, the final version requires the person to prove that he "would" be prejudiced at trial, or punished, detained, or restricted in his personal liberty, on the impermissible grounds—rather than that he "might" be so affected, as the second version had provided. This change was highly significant: it indicates that the court may not speculate as to the likelihood of the prohibited events occurring, but rather must find that they "would" occur. In connection with the "preponderance of the evidence" requirement, this provision imposes a significant evidentiary burden on the requested person.

As one can readily perceive, each version of article 3(a) got narrower and narrower and narrower.

I wish to underscore, Mr. President, this narrow scope of article 3(a). The description as the "Ninoy Aquino clause" or the "trumped-up charge clause," is itself suggestive. As the principal author of this article 3(a), it was my intent to authorize a court, under most unusual factual conditions, to deny extradition based on a factual showing that the extradition request for this particular person was a sham, or that he would not get a fair trial upon his return because of the enumerated factors.

As far as I can ascertain, Judge Sprizzo's in dictum assessment, mentioned earlier, on the fairness of the Diplock court system is the only American case commenting on that system. His assessment, of course, was known to me when I authored article 3(a) and was known to other members of the committee. Frankly, but for the existence of Judge Sprizzo's in dictum analysis of Diplock, I would have drafted article 3(a) in a different form. I consider Judge Sprizzo's opinion, as it relates to the fairness of the Diplock court system, as being conformative to our intent in fashioning article 3(a) and conformative to applicable extradition law both before and after the supplementary treaty is ratified.

It would be a ludicrous reading of the Supplementary Treaty as a whole to conclude that the United States and the United Kingdom went to enormous pains to eliminate the political offense defense for a whole host of heinous crimes as set forth in article 1, then undid it all in article 3(a) by creating a huge new loophole by which terrorists could seek protracted sanctuary in the United States.

What might be called the judicial coddling of the four terrorists cited earlier in this speech gave rise to this treaty. Article 3(a) was not written to engender a new breed of terrorist coddling. As the author of article 3(a), I wish to assure my colleagues that it has the narrow and focused scope as I have stated heretofore.

If any of my colleagues wish to delude themselves that they are opening up once again the whole matter of a political offense exception, then I urge them to disabuse themselves of such delusion. If that is what some wish to believe, I assure them they are wrong. If that is what they wish, this supplementary treaty does not provide them any comfort and, in fact, if that be their belief, they should vote against the treaty.

Finally, Mr. President, I would emphasize that article 3(a) is not intended to give courts authority generally to critique the abstract fairness of foreign judicial systems. It is directed at the treatment to which this particular person will be subjected. And it is directed at the likelihood of prejudice by reason of race, religion, nationality, or political opinions. A court may not deny extradition because it concludes that a foreign tribunal does not provide every procedural safeguard provided by U.S. courts. Rather, the test should be whether the procedures that would be applied to the requested person, on account of his race, religion, nationality, or political opinions, would be so unfair as to violate fundamental notions of due process.

Mr. President, I hope that this account of the drafting and adoption of article 3(a) will be useful to courts in construing its application.

Mr. President, I yield the floor.

(Mr. HUMPHREY assumed the Chair.)

Mr. LUGAR. Mr. President, I thank the distinguished Senator from Missouri, not only for his extraordinary leadership and scholarship, for his patience and diplomacy in working through the last few weeks and, for that matter, the better part of a year of hearings and meetings with interested people, but I thank him also for an extraordinarily thoughtful statement. And, from the standpoint of the distinguished Senator from Missouri, clearly, as he has identified himself as the chief author of section 3(a), a very critical aspect of the treaty, this offers, it seems to me, to both scholars and jurists a very important view of that section.

I believe, in his statement, although it comes late in the day, was an extraordinarily important point of trying to commend everybody who has been involved, but it speaks especially well of the Senator himself, that he devoted this time and this effort to such a labor of love.

I thank the Senator. I appreciate hearing his statement.

Mr. PELL. Mr. President, I wish to join with our chairman in thanking from the bottom of my heart the Senator from Missouri for the role that he took and the leadership he exercised. I do not know what we would have done if he had not taken hold of it the way he did. I am very grateful to him, indeed. I recall vividly the other prolonged meetings in my office as we all tried to work out a possible compromise. A very, very real debt, indeed, is owed to the Senator from Missouri. Without him, I do not think we would be on this floor with a complete victory.

Mr. EAGLETON. Mr. President, I am very grateful, indeed, for the fine praise from both the chairman, Senator LUGAR, and the ranking minority member, Senator PELL. Thank you very much.

Mr. LUGAR. Mr. President, very shortly, I understand the distinguished minority leader will be on the floor. At the time that he arrives, I will propound a unanimous consent that will guide us toward the conclusion of this matter.

For the moment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The clerk proceeded to call the roll.

□ 1930

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

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

DIPLOCK COURT SYSTEM

Mr. LUGAR. Mr. President, for purposes of legislative history, I ask unanimous consent that an analysis of the Diplock courts, prepared for the Committee on Foreign Relations by the Department of State and used during the committee's deliberations, be printed in the RECORD at this point.

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

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

DIPLOCK COURT SYSTEM—NORTHERN IRELAND

I. BACKGROUND

In the early 1970's, the British government found itself unable to control the rapidly escalating violence in Northern Ireland through ordinary criminal justice procedures. The government resorted to interning suspected terrorists without trail at the direction of the Executive for Northern Ireland. Recognizing the dangers inherent in this unfettered executive power, Parliament enacted in 1972 a more regular system of administrative detention for suspected terror-

ists. This system remained extra-judicial, however, and was considered foreign to the common law and in contravention of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention on Human Rights").

In 1972, the British government responded to public criticism of the detention procedures by appointing a commission, headed by the jurist Lord Diplock, to recommend new legal procedures for dealing with terrorist activities in Northern Ireland. The Commission issued a report recommending that the government return to controlling terrorism through courts of law (although it recommended that administrative detention be preserved for extreme cases). The Commission recommended creation of a separate trial court for terrorist crimes, which would provide substantially greater procedural safeguards than the administrative detention system, but fewer safeguards than ordinary criminal courts. The new courts would at minimum comply with the requirements of Article 6 of the European Convention on Human Rights.

Most of these recommendations were adopted by various statutes enacted in 1973 and thereafter. These provisions were consolidated in the Northern Ireland (Emergency Provisions) Act 1978 ("the 1978 EPA"). Although detention did not end with the creation of the "Diplock" courts, it was used less frequently and was finally phased out as the security forces grew capable of arresting and convicting suspected terrorists under the new judicial procedures.[1]

The criminal justice system in Northern Ireland is based upon an Act of Parliament, the 1978 EPA.[2] The 1978 EPA must be renewed by Parliament every six months. Parliament has also enacted a series of anti-terrorism statutes for the entire United Kingdom, now known as the Prevention of Terrorism (Temporary Provisions) Act 1984 ("the 1984 PTA"). The renewal provisions in that Act are similar to those of the 1978 EPA.

II. PROVISIONS AFFECTING INDIVIDUAL RIGHTS

A. Search and seizure

The English law of search and seizure has recently been restated and modified by the Police and Criminal Evidence Act of 1984 ("the 1984 PCEA"). The rules are generally similar to those in the United States. Whereas the U.S. standard is "probable cause," the U.K. standard is "reasonable grounds" for the search. In practice, the two standards are similar. As in the United States, a warrant is required for most searches of private premises; typical exceptions exist for emergencies, hot pursuit, etc. A warrant is not required to search a person or vehicle in a public place, so long as there are reasonable grounds for the search; nor is a warrant required for a search pursuant to an arrest. Written reports must be made of all searches of persons or vehicles not pursuant to an arrest warrant. England does not have a statutory exclusionary rule for illegally seized evidence. However, courts may exclude illegally obtained evidence in exercising their power to exclude unfairly prejudicial evidence in the interests of justice.

The 1978 EPA grants the police and British soldiers broader power to conduct searches and seizures in Northern Ireland. Police and British soldiers stationed in Northern Ireland have the power to enter any premises (except for dwelling houses) or vehicles to search for munitions and radio transmitters. To enter and search a dwelling house for munitions or transmitters, there must first be a suspicion that those articles are present; a soldier must then obtain authorization from an officer, and a policeman must have authorization from someone of the rank of chief inspector or above (§ 15). Soldiers and police may also stop and search any person in public for munitions and transmitters. If the person is not in a public place, he may be searched only if the policeman or soldier suspects he has munitions or ammunition.

Upon authorization by a superior officer, soldiers and policeman may also enter and search any place to ascertain whether someone is being unlawfully detained there or is in physical danger (§ 17). Soldiers or police may also enter any place when necessary to preserve the peace or maintain order (§ 19). Except for the power to stop and search persons for munitions or transmitters (§ 15(3)), no provision in the 1978 EPA allows general stop and frisk powers such as are available to police in the United States. As in England, only searches pursuant to an arrest are generally permitted (PCEA § 32).

B. Arrest

The general rule in England is that a policeman may arrest someone without warrant only if he has reasonable grounds for suspecting that the person has committed, is in the act of committing, or is about to commit an offense (§§ 25, 26). Except under the provisions of the 1978 EPA, no one may be arrested solely for questioning. A policeman may also arrest someone in order to protect the public or because he has reasonable grounds to doubt the person's stated name and address. The law in England and Northern Ireland requires that a policeman inform the arrested person of the ground for the arrest as soon as practical; if the policeman fails to do so, the arrest is unlawful. The 1978 EPA makes an exception to this rule for a soldier, who need only state he is making an arrest as a member of Her Majesty's forces.

Prior to enactment of the 1984 PCEA, an arrested person in England had to be brought before a magistrate within 24 hours of arrest (except, in the case of a "serious offense," only "as soon as practicable"). In practice, these rules resulted in detentions without charge for an uncertain time (often up to three or four days). The 1984 PCEA has changed the common law rule to provide that only in cases of serious offenses, where an investigation is being carried out diligently and expeditiously, may detention without charge extend beyond 24 hours. An officer of the rank of superintendent or above who is in charge of the police station at the time must authorize any additional detention up to 36 hours after arrest. Beyond 36 hours, continued detention without charge may occur only upon a warrant issued by a Magistrate's Court for up to an additional 36 hours. The warrant may be renewed up to 96 hours total before the arrestee must be released or charged.

The 1978 EPA changed the law of arrest in Northern Ireland in three respects. First, it allows the police to arrest anyone "suspect[ed] of being a terrorist" (not suspected of any specific crime) and to hold the person up to 72 hours for questioning. The term "terrorist" is not defined (§ 11). Second, the EPA changes the "reasonable grounds for suspecting" standard of warrantless arrest to one of mere suspicion (§ 12). Third, the EPA permits a British soldier to arrest a person on suspicion of an offense and hold him up to four hours for questioning (§ 13).

The 1984 PTA and its predecessor laws give wider powers of arrest to police throughout the United Kingdom. Under the PTA, the police may arrest anyone reasonably suspected of the "commission, preparation or instigation of acts of terrorism" connected with Northern Ireland (§ 12). This standard requires less than reasonable suspicion that a specific illegal act has been committed, but unlike the EPA provision authorizing arrest on suspicion of being a terrorist, the PTA ties the suspicion to specific acts. The 1984 PTA arrest power allows detention for questioning up to 48 hours (and, in the discretion of the Secretary of State, for up to five additional days). Police in Northern Ireland can release a suspected terrorist after detention under either the EPA or PTA and then rearrest him under the other statute.

C. Admissibility of confessions

In offenses involving terrorism in Northern Ireland, rarely can witnesses be found who will agree to testify. Convictions, are usually based upon confessions or incriminating statements made by a defendant. As a result, police interrogation plays an important role in gathering evidence to convict terrorists. In the last fifteen years, the law in Northern Ireland has accommodated greater police powers to arrest and detain for questioning, but it has also been modified to limit the potential for abuses.

1. Right to Silence

There is no duty in England or Northern Ireland to answer questions put to a person by the police. The only exception is under the 1978 EPA, which imposes a duty to identify oneself properly when asked to do so by a policeman on the street and to answer his questions about "any recent explosion or any other incident endangering life or concerning any person killed or injured in any such explosion or incident" (§ 18). The right to silence in the United Kingdon does not forbid (until after an indictment) continued questioning by the police of anyone asserting that right. In England (and in Northern Ireland), police are no longer allowed to question an arrestee at all after indictment.

2. Admissibility Standard

Before enactment of the EPA in Northern Ireland and the PCEA in England, the common law rule of admissibility of confessions was known as the "voluntariness" standard: after arrest, only a voluntary confession could be used against a defendant. This standard was interpreted to mean that any statement obtained by "fear of prejudice or hope of advantage, exercized or held out by a person in authority, or by oppression" was inadmissible. Northern Ireland

[1] The last detention order was issued in 1975, and all detained persons were released by the end of that year. The statutory provisions for detention, section 12 of the 1978 EPA, were not renewed by Parliament in 1980, but the Secretary of State of Northern Ireland retains the power under section 33(3) of that act to revive them immediately by order. Because the use of detention contravenes the European Convention on Human Rights and the U.N. Covenant on Civil and Political Rights, Britain has filed notices of derogation under the emergency derogation provisions of those instruments.

[2] The 1978 EPA is a consolidation of the 1973 EPA, which enacted most of the Diplock Commission's recommendations, and the 1975 EPA, which had amended the 1973 EPA pursuant to the recommendations of a commission created by Parliament to study the operation of the 1973 EPA (the Gardiner Commission). Parliament recently commissioned a new study of the 1978 EPA by Lord Baker. His recommendations are being considered by Parliament for inclusion in a revised EPA.

courts interpreted the voluntariness standard even more strictly than the English courts: "any set-up [by the police] which makes it more likely that those who did not wish to speak will eventually do so" was ruled to make a statement obtained thereby "involuntary" and thus inadmissible. This rule prohibited almost all modern psychological interrogation techniques.

The Diplock Report found that the prevailing voluntariness standard was so rigid that it had forced the authorities to resort to extra-legal administrative detention proceedings instead of trying confessed terrorists in courts of law. The Diplock Report recommended, and the 1978 EPA adopted (§ 8), the admissibility standard found in Article 3 of the European Convention on Human Rights: all statements of a defendant are admissible, unless he presents prima facie evidence that he was subjected to "torture or to inhuman or degrading treatment in order to induce him to make the statement," whereupon the prosecution must satisfy the court that the statement was not so obtained. Since the Convention standard was adopted, the European Court of Human Rights has interpreted it to permit a certain amount of rough treatment of a suspect, including slapping his face.

The Diplock courts have interpreted the EPA admissibility standard as preserving their common law discretion to exclude confessions "in the interests of justice." They have exercised this discretion in cases in which evidence existed of physical maltreatment of the defendant by police.

3. Right to Counsel

In England and Northern Ireland, the Judges' Rules provide that whenever an arrested person demands to see a lawyer, the police must stop questioning him and give him the opportunity to notify his attorney (or a friend or relative) or to arrange for counsel to be appointed. Police are permitted to delay a meeting between the arrested and his counsel if they believe that it would cause unreasonable delay or hindrance to the process of the investigation or to the administration of justice. In serious cases, arrested persons were often unable to meet with counsel until after indictment. Parliament therefore adopted for Northern Ireland (as part of the Royal Ulster Constabulary ("RUC") code of conduct) the rule that a defendant has an absolute right to see an attorney after 48 hours, and every 48 hours thereafter. Each arrested person must be given a printed notice of his right of access to an attorney.

D. Limitations on speech and assembly

The EPA establishes as a criminal offense actual or professed membership in one of eight terrorist organizations (along with solicitation of support for members of those organizations, or carrying out their orders) (§ 21). The 1984 PTA contains a similar provision for England, applicable to two of the groups listed in the 1978 EPA. Both acts grant the Secretary of State power to add or remove an organization from the list of proscribed groups if it "appears to him to be concerned in terrorism or in promoting or encouraging it." The Republic of Ireland also proscribes organizations, specifically the IRA since 1939. Penalties run to ten years under the EPA, five years under the PTA and 7 years in the Republic of Ireland. Baker considered arguments that membership in certain groups should not be outlawed, but concluded that the prohibition was an important symbol for the people, both as an expression of public outrage at the acts of the groups involved and as a disincentive to youths considering joining up.

The 1978 EPA renders illegal collecting, disseminating or possessing information about individual police, soldiers, judges, or prison employees that might be useful to terrorists planning acts of violence. The burden is on those charged to show a reasonable excuse. The EPA also proscribes training persons in the use of firearms and explosives, dressing or behaving in public like a member of a proscribed organization, wearing a hood in public (§§ 21-23, 25-26). The 1984 PTA also makes it a crime to withhold information that might help prevent terrorist acts or aid in the apprehension or prosecution of a terrorist (§ 11). In order to cut off support for terrorist groups, Section 10 of the PTA makes it a crime to solicit or acept "any money or other property . . . intending that it shall be applied or used for or in connection with the commission, preparation or instigation of acts of terrorism [connected with Northern Irish affairs] (§ 10)."

E. Miscellaneous provisions

1. Burden of Proof for Possession of an Illegal Object

The Diplock Report found that the government's burden of proving that a defendant was in possession of terrorist objects (e.g., arms, ammunition explosives) found in the same place as the defendant or in a place he frequented was too high: perpetrators of terrorist bombings and shootings are rarely caught in the act: testimony of witnesses is difficult to obtain in Northern Ireland because of sympathy and intimidation; and terrorist acts need to be prevented before they claim innocent victims.

Following Lord Diplock's recommendation, the 1978 EPA relieves the prosecution of part of the burden of proving possession. It creates a permissible inference that, if certain illegal articles (firearms, ammunition or explosives) are found on the same premises as the defendant, or in a place he occupied or "habitually used otherwise than as a member of the public," then the court "may accept the fact proved as sufficient evidence of his possessing . . . that article at the time unless it is further proved that he did not at that time know of its presence in the premises in question, or, if he did know, that he had no control over it" (§ 9(1)). In effect, the provision forces a person on the premises where the proscribed articles are found to explain himself. It does not affect the legal standard of proving possession beyond a reasonable doubt. Similar burden of proof provisions exist in the United States and have been held constitutional by the Supreme Court. For example, in *County Court of Ulster County, New York* v. *Allen*, 442 U.S. 140 (1979), the Court upheld a New York statute that made the presence of a firearm in an automobile presumptive evidence of its illegal possession by all persons occupying vehicle.

2. Young Persons

The 1978 EPA also adopted several provisions recommended with respect to youths who shoot soldiers or commit other specified crimes. The Act permits the Secretary of State to direct that any "young person" (age 14 through 16) may be held without bail in such custody as is necessary to ensure his safety or that of others (e.g., by imprisonment) (§ 3). Such direction must be renewed every two months. The Act permits a court to imprison a young person convicted of an offense which is punishable in the case of an adult for five years or more (§ 10). The maximum term for those crimes requiring remand to a juvenile home is six months.

3. Exclusion

In order to deal with the problem of importation of terrorism, the PTA authorizes the Secretary of State to issue exclusion orders. Such orders expire after three years and may be rovoked by subsequent order of the Secretary. The Secretary may exclude any person who "is or has been concerned in the commission, preparation or instigation of acts of terrorism" that are "designed to influence public opinion or Government policy with respect to affairs in Northern Ireland," or who is attempting or may attempt to enter . . . with a view to being concerned in the commission, preparation or instigation of such acts of terrorism. . ." (§§ 3(6), 4(1)). These orders can exclude an individual from Northern Ireland, Great Britain, or the United Kingdom. British citizens who are ordinarily resident" in the area from which exclusion is sought are not subject to an exclusion order.

IV. SPECIAL CRIMINAL COURTS: "DIPLOCK COURTS"

Based upon the recommendation of the Diplock Report, the EPA creates a second type of criminal court in Northern Ireland, known colloquially as "Diplock courts." Their principal distinction from ordinary criminal courts in Northern Ireland is that they have no jury; all offenses are tried before a single judge (§ 7). Appeals are taken as of right to a three-judge panel of the Court of Appeals.

A. Jurisdiction

The jurisdiction of the Diplock Courts extends to all trials in which any charge against the defendant is for one of a specified set of common law offenses characteristic of terrorism and listed in schedule 4 of the EPA. "Terrorism" itself is not a crime under the EPA although suspicion of being a terrorist is grounds for detention for questioning under § 11 of the EPA and § 12 of the PTA). The scheduled offenses include murder, kidnapping, assault, conspiracy, crimes involving firearms or, explosives, arson, belonging to a proscribed organization, aggravated burglary and mayhem (schedule 4). The EPA does not provide for distinguishing non-terrorist offenders of the scheduled crimes and trying them before a jury.

B. Trial by judge alone

Although the right to trial by jury is all but gone in civil trials in England (though not in Scotland or Northern Ireland), it is still available as of right in all criminal trials, except for those under the 1978 EPA. The primary reason that the EPA provides for trying terrorist cases before a judge alone is Lord Diplock's observation that the jury system was in danger of a complete breakdown in Northern Ireland. Terrorists were engaging in actual intimidation of juries, and there was widespread fear of retaliation for "bad" jury verdicts. As Lord Diplock observed, "[a] frightened juror is a bad juror even though his safety and that of his family may not actually be at risk." Seating a jury had become difficult because of nearly endless rounds of challenging potential jurors by both sides. Trial by a panel of one's peers, seldom occurred: juries tended to be almost exclusively made up of protestants in trials of republican terrorists. Loyalist suspects were rarely convicted by protestant juries.

Although trial by jury is a treasured part of the Anglo-Saxon legal heritage, it is not considered essential to just trials in most legal systems of the world (including many inheritors of the British common law tradition). Unlike a jury, the judge in a Diplock court must state reasons for his decision in writing. His decisions of fact as well as of law can be overturned on appeal. Acquittal rates in Diplock courts are very similar to those in the jury courts of Northern Ireland; indeed in 1983 the rate for Diplock courts was higher.

C. Bail

The 1978 EPA removes the power to grant bail from magistrates and justices of the peace and makes it available only upon application to a High Court judge (or to the trial judge when trial is adjourned). Threats, intimidation and actual violence created intolerable pressure on magistrates and justices of the peace.

Requirements for bail have also been modified. At the time of the Diplock report, the likelihood that the accused would continue to commit crimes if released was not a grounds for denial of bail in Northern Ireland (although it was in England). The EPA made that a ground for denying bail. The EPA also added a requirement that all other conditions of bail must be complied with and that the accused may not interfere with any witness.

The EPA shifts onto the accused the burden of satisfying the High Court judge that he has met the requirements for bail; in England, the burden is on the prosecution. Between 1973 and 1982, around 40 percent of bail applications to the High Court were granted.

D. Right to counsel

In England and Northern Ireland, a person has an absolute right to be represented by an attorney at trial and (subject to the provisions for delay discussed above) in the police station before indictment. A defendant must always be informed of his right to counsel. Moreover, in Northern Ireland, an application for legal aid must be granted unless the defendant is found to have sufficient financial means to obtain his own counsel. Usually, an indigent defendant is provided both a barrister and a solicitor. By contrast, in England the right to free counsel is not absolute except when a defendant is tried for murder or when the prosecutor takes an appeal.

E. Right to confrontation

All defendants have a common law right to confront the witnesses against them at trial. Traditionally, that right has extended to proceedings leading to indictment (the "committal proceeding" in England and the "preliminary enquiry" in Northern Ireland). The prosecution and the suspect may present evidence in the form of written statements, but either side may refuse to accept such form of evidence and demand that witnesses give live testimony.

In some cases in Northern Ireland in which indictments were based on the testimony of accomplices (called "supergrasses"), these preindictment proceedings became particularly chaotic, with spectators shouting threats at the witness to make him change his mind about giving evidence for the prosecution. As a result, the prosecution has occasionally invoked a little-used procedure that has long existed in England and Northern Ireland, the "voluntary bill of indictment." This procedure enables the prosecution to apply for an indictment in an ex parte proceeding to a judge of the High Court, Court of Appeal, or Crown Court; the accused has no right to be heard or to confront witnesses against him. In cases in which the testimony of a "supergrass" accomplice is the sum of the prosecution's evidence, use of the voluntary bill deprives the defense of an early opportunity to hear and cross-examine the "supergrass." In the United States, a defendent has no right at all to confront witnesses before indictment.

One potential area for unfairness in preindictment proceedings was dealt with by the judiciary itself. The Northern Ireland preliminary enquiry proceeding does not provide for the committing magistrate to edit out inadmissible, prejudicial material from the statements given before sending them to the trial judge with the indictment. This is sensitive because of the judge's role as sole trier of guilt or innocence in Diplock courts. On his own initiative, the Lord Chief Justice instituted a pretrial review proceeding, whereby another judge reads and edits committal papers before they are sent to the trial court, to ensure the trial judge sees no prejudicial material inadmissible at trial.

F. Supergrasses

"Supergrass" is British slang for an accomplice who becomes a witness for the prosecution against his former colleagues. In the last few years the police in Northern Ireland have made widespread use of the testimony of republican and loyalist insiders, themselves often guilty of serious crimes. Supergrass testimony has resulted in some well-publicized convictions based solely on the basis of the supergrass's uncorroborated testimony.

Accomplice testimony, especially when given in return for leniency, has been viewed with distaste for centuries in England. Yet accomplice and co-conspirator evidence has always been admissible in England, so long as the trial judge first warns the jury that, although they may find the defendant guilty solely on the basis of the accomplice's testimony, it is "dangerous" to do so. Opposition to the use of supergrass testimony focuses on the fact that, because there is no jury in Diplock courts, the judge can warn himself. In at least one major trial of 35 IRA defendants, however, a judge did dismiss the charges after declaring the evidence of the prosecution's supergrass "entirely unworthy of belief." Accomplice and co-conspirator evidence has always been admissible in U.S. courts, subject only to the trier of fact's evaluation of its credibility.

V. GOVERNMENT RESPONSES TO CHARGES OF UNFAIRNESS

The British government has been very responsive to criticisms of its handling of security in Northern Ireland. In 1971 the government of Ireland lodged a complaint with the European Commission on Human Rights, alleging that British authorities had breached Article 3 of the European Convention on Human Rights in authorizing the use of wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink as interrogation techniques in Northern Ireland. Shortly thereafter, the British government suspended existing procedures and set up a committee of inquiry that found the techniques used did not amount to brutality. After criticism of that report, another committee was set up; two of its members found the techniques justifiable in exceptional circumstances, while a third member found the techniques illegal and objectionable. The government then abolished the techniques and subsequently paid substantial compensation to the victims of those interrogation methods. In 1978 the European Court of Human Rights, reversing the Commission's finding of torture, found that the techniques had amounted to inhuman or degrading treatment, but not torture.

When resort was made to administrative detention in 1971, the British government was quick to set up the commission under Lord Diplock to recommend legal procedures to deal with terrorist activities in Northern Ireland. The Commission's report was largely followed in enacting the 1973 EPA. At the same time as juries were suspended, capital punishment was abolished. In 1974 a new committee was formed under Lord Gardiner to consider the whole range of measures used to deal with terrorism in Northern Ireland, with particular regard to the protection of civil liberties and human rights. Its recommendations were incorporated into the 1975 EPA. The 1974 and 1976 PTA were reviewed by Lord Shackleton in 1978 and Lord Jellicoe in 1983. Those recommendations were incorporated in the 1984 PTA.

In 1977 Amnesty International investigated complaints that suspects were being physically maltreated while in the custody of the Royal Ulster Constabulary ("RUC"). The government immediately set up an independent committee headed by Judge Bennett to investigate RUC interrogation procedures and practices. The report found that some violence had been used during interrogation, and it made several recommendations that were implemented as part of the RUC code of conduct and in the 1984 PTA and the 1984 PCEA. After the measures undertaken in 1971, when the Republic of Ireland filed its complaint with the European Commission, and in 1979, after the Bennett report, charges of maltreatment by police and soldiers in Northern Ireland declined dramatically.

A review of the 1978 EPA was commissioned by Judge Baker in 1983. His report is currently under study for incorporation in a new EPA for Northern Ireland. The Standing Advisory Commission on Human Rights also reported to Parliament in 1977 on the state of protections for human rights under law in Northern Ireland and recommended that a bill of rights be enacted for the entire United Kingdom. The combination of the problems brought to light in practice in Northern Ireland and in the various commissioned reports led to a complete review of English criminal procedure by the Royal Commission on Criminal Procedure, whose suggestions were substantially incorporated in the 1984 PCEA. In addition to the various reports commissioned by Parliament, the operation of the EPA is debated every six months when both Houses vote on whether to continue the Act in force.

AMENDMENT NO 2208

Mr. LUGAR. Mr. President, I send the committee reported amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR] proposes an executive amendment numbered 2208.

Mr. LUGAR. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

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

The amendments are as follows:

(1) Amend article 1 to read as follows:

"For the purposes of the Extradition Treaty, none of the following shall be regarded as a offense of a political character:

(a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;

(b) murder, voluntary manslaughter, and assault causing grievous bodily harm;

(c) kidnapping, abduction, or serious unlawful detention, including taking a hostage;

(d) an offense involving the use of a bomb, grenade, rocket, firearm, letter or parcel bomb, or any incendiary device if this use endangers any person; and

(e) an attempt to commit any of the foregoing offenses or participation as an accomplice of a person who commits or attempts to commit such an offense."

(2) Amend article 2 to read as follows:

"Nothing in this Supplementary Treaty shall be interpreted as imposing the obligation to extradite if the judicial authority of the requested party determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty. The evidence of criminality must be such as, according to the law of the requested party, would justify committal for trial if the offense had been committed in the territory of the requested party.

"In determining whether an individual is extraditable from the United States, the judicial authority of the United States shall permit the individual sought to present evidence on the questions of whether:

(1) there is probable cause;

(2) a defense to extradition specified in the Extradition Treaty or this Supplementary Treaty, and within the jurisdiction of the courts, exists; and

(3) the act upon which the request for extradition is based would constitute an offense punishable under the laws of the United States.

"Probable cause means whether there is sufficient evidence to warrant a man of reasonable caution in the belief that;

(1) the person arrested or summoned to appear is the person sought;

(2) in the case of a person accused of having committed a crime, an offense has been committed by the accused; and

(3) in the case of a person alleged to have been convicted of an offense, a certificate of conviction or other evidence of conviction or criminality exists."

(3) Insert after article 2 the following new article:

"ARTICLE 3

"(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.

"(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for offenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a)—shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration at every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision. In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process."

(4) Renumber the remaining articles 4, 5, 6, 7.

Mr. LUGAR. Mr. President, these are the amendments that Senator EAGLETON and I prepared for our compromise resolution of ratification. I know of no objection to them. I ask for their adoption.

The PRESIDING OFFICER. Is there objection to the adoption?

Mr. BYRD. Mr. President, does the distinguished Senator ask for their adoption en bloc?

Mr. LUGAR. I do. I ask unanimous consent for the adoption en bloc.

Mr. BYRD. There is no objection on this side.

Mr. LUGAR. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from Indiana.

The amendment (No. 2208) were agreed to en bloc.

Mr. LUGAR. Mr. President, the majority leader has consulted with the minority leader; and as the distinguished Democratic leader is now present, I raise the following request:

I ask unanimous consent that the treaty now be advanced through its various parliamentary stages up to and including presentation of the resolution of ratification, and that the committee-reported declaration be considered and agreed to.

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

Mr. LUGAR. Mr. President, I further ask unanimous consent that at 2 p.m. tomorrow, the Senate proceed to vote on the resolution of ratification and that no further action or debate be in order.

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

Mr. LUGAR. Mr. President, I ask for the yeas and nays on that final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LUGAR. Mr. President, I thank the Chair. I thank the distinguished Democratic leader. I thank my colleague, Senator PELL.

ROUTINE MORNING BUSINESS

Mr. LUGAR. Mr. President, I move there now be a period for the transaction of routine morning business as in legislative session.

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

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed to speak in morning business.

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

OUR FASCINATING COLLEAGUE IS RECOGNIZED IN THE PRESS

Mr. BYRD. Mr. President, the style section of this morning's Washington Post carries a feature story about one of the finest minds and most interesting people ever to sit in the U.S. Senate, our colleague, the distinguished senior Senator from New York [Mr. MOYNIHAN].

I urge all my colleagues to read this fascinating story about Senator MOYNIHAN. It tells how he prevailed against hardships to become an aide and adviser to Gov. Averell Harriman, and Presidents Kennedy, Johnson, Nixon, and Ford.

Now he sits in the U.S. Senate, and I am pleased and honored to have him with us. According to the article, he seems just as happy to be here. His daughter, Maura, is quoted as saying: "One thing about my father you should know * * * he loves being Senator."

In addition to his lifetime of work as a public servant, Mr. MOYNIHAN has also come to be regarded as one of the Nation's foremost intellectuals, as evidenced by his recent book, *Family and Nation*. This study calls attention to the plight of American families and urges the adoption of a family policy to address those problems rather than simply paying lipservice to traditional family values. Senator MOYNIHAN explains: "You cannot experiment with social policy. You can't do that with citizens. When you cite a problem, and ask questions, you'd better hope the answers are the right ones. People's lives are at stake."

As in so many cases, the senior Senator from New York is right on mark.

Mr. President, I ask that the splendid article from the Washington Post be reprinted in the RECORD at this point.

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

[From the Washington Post, July 16, 1986]

MOYNIHAN: THE MYTHS AND THE APPETITES

(By David Remnick)

Has teevee land ever seen a man so tickled as Daniel Patrick Moynihan?

As he describes the plight of the American family to Phil Donahue, the senator's knees lock and his shoe tips wag. His bushy brows hump up like two millipedes on a twig, then ascend to his thatchy forelock. When the audience applauds him, Moynihan applauds back. And as the clapping flattens into a

roar, his mouth goes pursy, forming a fleshy Irish rose.

His daughter Maura—late of Harvard and the rock group the Same—has seen the look before. "Dad's mouth gets like that when he's happy," she says.

After the show, Moynihan lumbers toward the elevator. He is a towering sight—6 feet 4 inches—and surprisingly trim. He is one of those men whose waggy midlife jowls make them seem far heavier than they are.

"Saddle up, children!" he yells tinnily, and the entourage shuffles over to meet him. There is something antique, something mythological about Moynihan. The theater he has become—the herky-jerky Anglo-speech, the bow tie slightly askew, the tweedy caps and professorial rambles—they all make him seem vaguely not there, a figure not of the present but of an unreal history, an American Edmund Burke taking dominion on the Hill.

The sources of Moynihan's real satisfactions these days run deep. His New York Senate seat appears safe. As an analyst of American family problems, he is being hailed as an embattled prophet redeemed. Even the publicity ball is rolling pleasantly to his feet. Donahue—perhaps the most influential book seller in American history—twice showed Moynihan's book. "Family and Nation," to the cameras. Twice! The senator is even more delighted than the PR woman from Harcourt Brace.

"Well!" he chirps in the elevator. "You can't say that fella didn't try to sell any books!"

The limo ushers Moynihan crosstown to further flattery. The editors of the Encyclopaedia Britanica have arranged to bestow medals on the senator and five others for making scholarly work accessible. In the course of a very few minutes Moynihan refers to political theorist R.H. Tawney, physicist Max Planck and other academic immortals. He lobs bons mots like bonbons. And now Moynihan's mouth is blooming again. He is enjoying that uniquely intoxicating sensation: He is talking, and everyone is listening. In his odd pizzicato, he is discoursing obscurely on the universality of scientific experiments— ". . . and so it will turn blue in Bul . . . gar . . . ee . . . ya and it's turn blue in Pa . . . ta . . . go . . . nee . . . ya!"

"One thing about my father you should know," Maura Moynihan says. "He *loves* being senator."

"I couldn't believe it!" Moynihan says, in his Washington office a few days later. "In the elevators people were saying 'Hey! We were watching you on television! We saw you on Donahue!' "

The moment is optimal for Moynihan, too. When he first spoke out on the state of the black family as an undersecretary of labor in the Johnson administration 21 years ago, he cited the problem of single-parent homes as a "tangle of pathology." He caught swift hell for that. The times did not permit such an analysis—too soon after the civil rights initiatives—and the attacks on Moynihan were sometimes ugly and cruel, Black leader James Farmer wrote that the Moynihan Report was "the fuel for a new racism," and its data would "turn the Grand Dragon of the Ku Klux Klan into a prophet." Moynihan was deeply wounded. He abandoned plans to write a book on the black family:

"I thought, let someone else do that."

Finally, he did write his book. "Family and Nation," which was first delivered as a series of lectures last year at Harvard, shifts somewhat the emphasis of Moynihan's old argument from race to class, and it has been received with almost universal acclaim. Although it is conspicuously lacking for answers and recommendations, Moynihan has once more framed the critical questions on family and poverty. This time there is applause.

"Pat was right all along," says Sen. Bill Bradley (D-N.J.). "He set an agenda and stayed with it." "Pat deserves all the acclaim he's getting on this," says Sen. William Proxmire (D-Wis.). "He was dead right."

"The subject of the family is on the agenda now," says Moynihan, who is hoping that he and his fellow Democrats can pull together a set of coherent proposals for the years ahead. He compares the need for a family policy to the need for basic social welfare programs preceding the years of the New Deal. "And that sort of thing requires preparation, thinking. You know by 1935 if you wanted a Social Security bill, there were people you could turn to who could tell you what it should be. They'd been working on it for 30 years.

"We have behavioral, social and structural problems to deal with and the first step in the legislative process is to protect the few things we do have. Even if the president does raise the subject of the family, he's wrong about what we have to do about it. With the Reagan administration there came to power an official doctrine that you have problems because you tried to do something about them. It's a national tragedy."

The overall Moynihan Myth, the one that he propagates, is one of ideological, liberal consistency. And yet he has shifted his imagery and allegiances radically over his career.

As an aide to former New York governor Averell Harriman in the '50s and to John F. Kennedy and LBJ in the '60s, he was a mainstream Democrat, part regular, part reformer, part broker, part civil rights advocate. As an adviser to Johnson he wrote a crucial speech on poverty in black America. As an adviser on domestic affairs to Richard Nixon and the spokesman for a temporary policy of "benign neglect" toward the tumult in the black urban community, he began forfeiting those liberal credentials. He lost some old friends. Upon his return to Harvard in 1971, he was accorded a dismal attic office and a good many sneers. He even lost one tenure vote before finally gaining a secure post on the faculty.

Moynihan's sympathies—or lack of them—stunned some of his more liberal friends. During the Vietnam era he was often more critical of the protesters than of the war—"I can live with the robber barons, but how do you live with these pathological radicals," he said in 1969.

As President Ford's U.N. ambassador, Moynihan was a swaggering figure, hoisting the nameplate of the United States in pugnacious opposition to much of the Third World. Suddenly he was the Neoconservative of U.N. Plaza, an ally of Commentary editor Norman Podhoretz, Public Interest editor Irving Kristol and other converts to the Temple of Toughness. During Moynihan's U.N. career, William F. Buckley's National Review proclaimed him Man of the Year.

After denying for weeks that he would run, Moynihan won his Senate seat by outflanking his Democratic rivals Bella Abzug, Ramsey Clark and Paul O'Dwyer to the right and his Republican rival, incumbent and Buckley brother James, to the left.

He came to the Senate in 1977 as a kind of New York version of Sen. Henry (Scoop) Jackson—a liberal on social policy, a hawk on defense and foreign affairs. He brought with him some of Jackson's most militantly neoconservative former aides, among them Elliott Abrams, Chester Finn, Abram Shulsky and Gary Schmitt. Soon there were furious denunciations of the Carter foreign policy in the office—the weakness, the weakness! At times the office seemed like the Washington bureau of Commentary.

Almost immediately Podhoretz and others involved in neoconservative organizations such as the Coalition for a Democratic Majority began chatting up Moynihan as a presidential candidate, for in his first five years in office, Moynihan pleased most of his neoconservative allies. His Americans for Democratic Action ratings were 70, 60, 47, 72, 75—the numbers of their kind of moderate Democrat.

"But Pat started moving in a different direction," Podhoretz says ruefully. With Reagan in office, Moynihan sounded his odd, burbling bugle of opposition. After voting in favor of Reagan's intitial round of tax cuts—"not my finest moment," he says now—he began taking a more antagonistic approach to the administration.

Opposition has long been his strongest suit. First it was opposition to the Democratic orthodoxy of the '70s; now it's opposition to the conservative orthodoxy of the '80s.

"I've always liked that role," he says.

With liberals Gaylord Nelson, Birch Bayh, Frank Church, Hubert Humphrey, Walter Mondale and George McGovern all gone from the Senate, and with the political climate itself shifted to the right, Moynihan suddenly finds himself greatly valued, even by his old ideological enemies. "I feel delighted with the intellectual and political growth of Pat Moynihan," says George McGovern—who did not win Moynihan's vote in 1972. "Pat's been moving in the right direction. After flirting with all the neos, he's returned to his natural instincts. There's been a maturing process. He grew away from his natural base—a liberal, Irish Democrat—and that got him in trouble, I thought. Now he's returned."

In contrast, of course, Moynihan's neoconservative allies are disappointed. The relationship with Podhoretz, which had once been so close, has deteriorated. Abrams (who is Podhoretz's son-in-law), Finn, Shulsky and Schmitt all took posts in the Reagan administration. Not only did they want to serve in the executive branch, they had all drifted rightward from their mentor Moynihan. Tim Russert, Moynihan's political guru, was one of the few who did not enter the administration; after a stint with Mario Cuomo, Russert became a vice president at NBC News.

Moynihan holds fast to what might be called the "I never changed, the world did" theory. "The Democratic Party in the early '70s went very considerably to the left," he says. "There were some of us who didn't, that's all."

Of the term neoconservative, he says, "I didn't like it then and I don't like it now. Why take the honorable word 'liberal' away from people who want it?" And of neoliberal, well, Moynihan would rather resort to visual aids.

"Come, come, I'll show you something in my bathroom."

Moynihan points the way with a forefinger as long and knobby as E.T.'s.

Hanging above the toilet are two framed magazines. There is a Nation cover with the logo. "The Conscience of a Neoconservative." The Nation, obviously, thought Moynihan had no conscience—the cover drawing shows the senator wearing a holster with a couple of six-shooters and a bullet strap loaded with tiny missiles. The other cover is from The New Republic with a smiling Moynihan under the logo, "Pat Moynihan, Neo-Liberal."

"Well . . . there you see . . . the value of labels."

Like so much drizzle on a hot street, Moynihan's patience evaporates. As far as he is concerned, the subject can be dismissed.

And so he turns his attention to an ornate relief map of New York State that hangs on another wall in the bathroom. His finger wanders from the plains of west New York to the rivers converging in Pennsylvania.

"Well!" he says. "Would you like to see how the Indians got to Pittsburgh?"

Moynihan's mythology of self is a thing to behold. His daughter Maura grew up on it: "the myth of Dad. When we were growing up we'd recount with reverence how he shined shoes in Times Square and became the ambassador to India. We thought it was extraordinary! The American dream. He'd always say, 'This country has been good to me.' "

Moynihan's version of his public life also has a mythological quality.

When he was in the Nixon White House he pushed a liberal Family Assistance Program and tried to get Nixon to read, and emulate, Britain's progressive Tory, 19th-century Prime Minister Benjamin Disraeli. "I gave him books about progressive conservatives," Moynihan says. "After all, half the legislation [Reagan] is now trying to repeal was enacted under Nixon."

But of Nixon's darker side, Moynihan says he never saw it. "I was half a world away" in India as U.S. ambassador during Watergate. Furthermore, he saw the 1972 election not as a matter of Republican versus Democrat, but of a moderate Nixon versus a far-out McGovern.

But after Scoop Jackson died in 1983, Moynihan never stepped into the breach as the national neoconservative. "When he first got to the Senate I thought he might run for President," says Sen. Sam Nunn (D-Ga.). "But not lately. The ambition to do that isn't there."

Moynihan says the presidential talk never came from him. "It should be recorded that no conversation ever took place with me. If there had been I would have said no. I was not interested in that."

Why not?

"I'm very sorry! I think people should have to explain *why* they think they should be president, not why not. You have to think you'd be a good president. Anyone who thinks that has a lot of explaining to do. If you're of the view that there are people who could do the job better than you, well . . . It's not something I've ever thought of doing. I very much wanted to be senator. Well, once I got to be one I very much wanted to be one . . . I'm not interested in being an astronaut, or in commanding a nuclear submarine, either. You don't have to explain that. A senator—that's a useful job."

Moynihan adores the life of a senator, and many of his critics even contend that his shift to the left was a deliberate attempt to keep the favor of New York voters. To prevent a challenge from the left in the 1982 election, Russert went around to various county organizations hyping Moynihan's more liberal positions and his work for the state. In the meantime Russert discovered that the chief threat from the Republican side, former congressman Bruce Caputo, had lied about his military record. Exit Caputo. "We did a little accounting after the election," Moynihan says with glee, "and we found that we won 50 [of 62] counties in 1982. I'm the only New York Democrat to do that."

New York political analysts say that Moynihan's opposition in 1988 is bound to come once more from conservative opponents such as Lewis Lehrman.

Since the death of Jackson and the electoral defeat of the late Jacob Javits in 1980, Moynihan has had few close friends in the Senate. He spends time occasionally with Bradley, Gary Hart (D-Colo.), Alan Simpson (R-Wyo) and a few others, but he is something of a Senate loner, an intellectual among politicians. Another Senate loner, Hart, says, "You just don't become a buddy with Pat overnight. Patrick is clearly a prophet, and, frankly, he's not always appreciated. He's one of our few people with a sense of history. Intellectuals are not always appreciated here."

Although he seems to write a serious book nearly every year—one year on arms control, another on the welfare state—Moynihan's reputation is the less intellectual senatorial skills—legislative initiative, cajolery, mixing with the constituents, the dull details of Capitol life—is middling at best.

Staffers say Moynihan's working days follow a pattern more reminiscent of a 19th-century don than that of a state-of-the-art senator. Often, he has trouble sleeping and will write in the middle of the night. He is grouchy and impatient at work in the morning. "He's impossible most mornings," says a former aide. For two or three hours after lunch, he retreats to his "hideaway" for a nap on the couch or some writing. He follows that with a couple hours more of work at the office in the afternoon. "Moynihan just doesn't have the patience or the passion for all the detail work," says one former aide. "And he's impossible to schedule. A lot of the time he'll be all set to go to a dinner in Buffalo or something and he'll call and say 'i just don't want to go!' And that's it. Russert was always pushing him to do more politically, but he hates it. He's a certain sort of good senator, but in other ways he just doesn't care that much. He takes an almost totally golbal view of his job, and the hell with the rest of it."

Occasionally an article—in, for example, The New York Times Magazine in 1979—will mention the persistent rumors about Moynihan and alcohol. (Russell Baker remarked on his reputation as "a convivial imbiber of spirit and grape.") Says Moynihan, "I go home and have two or three drinks with my wife and split a bottle of claret." Asked directly if drinking was for him a problem in any way, Moynihan is quiet for a while, then says slowly, "No. I hope not. Here I am, 59 years old . . . without a day's break since 1965 or 1964. A steady life—one wife, three kids, three mortgages."

Says Russert, "I've heard that stuff and generally it's from people who are either jealous or oppose him. As a senator or a campaigner he's always been 100 percent."

If Moynihan has any political problems they are rooted in the contrast in style and substance between him and the junior senator in his state, Alfonse D'Amato, a Long Island Republican who displaced Javits. When he first came to the Senate, Moynihan could not have seemed any less "local" than his colleague Javits. But with the advent of D'Amato, Moynihan seems an almost wholly national and international figure. D'Amato rarely misses a ribbon cutting.

Moynihan is cool to D'Amato. During one late-afternoon interview, a piercing buzzer in his office summons Moynihan to the floor for a vote. On his way out of the chamber after the vote, D'Amato passes by. Moynihan exchanges greetings with a few other senators—"Well, well, hello, hello!"—but he and D'Amato do not even acknowledge each other.

They both walk to the Senate subway, first D'Amato, then Moynihan. They are waiting for the little Senate trains to shuttle them back to the Russell Building, but they wait at separate tracks.

No waves, no hellos.

Moynihan's public insouciance masks a great deal of personal pain and trial in his life.

The myth is that it doesn't hurt.

He is the son of Margaret Phipps, the daughter of a successful trial attorney, and John Moynihan, a peripatetic newspaperman who preferred the bottle and the track to family responsibility. John Moynihan worked as a publicity man at RKO for most of Moynihan's childhood, and the family lived in a middle-class neighborhood in Queens.

But one day, when Pat was 11, John Moynihan bolted the family. Moynihan, his mother, his sister Ellen and his brother Michael had to move to cold-water flats in Yorkville and the Upper West Side. They moved a lot to take advantage of the one month's free rent offered by some New York landlords. Pat shined shoes around Times Square.

Moynihan, who has been married to the former Elizabeth Brennan since they were aides in the Harriman administration three decades ago, seems not to have talked about his difficult childhood even with his three grown children. "He never discussed it all when we were kids—never, never," Maura Moynihan says. "I never saw a picture of [John Moynihan] and I know nothing about him. Just that he was supposed to be witty and talented."

Moynihan's economic fortunes continued to fluctuate throughout his adolescence. After several years of financial struggle, his mother married again and the family moved to the suburbs. After that marriage disintegrated the Moynihans moved in with relatives in Indiana. The family later moved back to New York, where Margaret Moynihan opened a bar in the Hell's Kitchen area when Moynihan was 20. Moynihan's old campaign biography says he was "raised in New York City's Hell's Kitchen District," a phrase that was later dropped.

Moynihan graduated first from Benjamin Franklin High School in East Harlem and was voted the most popular boy in his class. Before entering City College in the fall Moynihan worked on the Hudson River docks, first as a stevedore, then as a checker. An oft-repeated anecdote from that period in his life is full of swagger:

"A friend told me about the qualifying examination for City College and mainly to prove to myself that I was as smart as I thought I was, I went up and took the test. I remember playing it very tough—I swaggered into the test room with my longshoreman's loading hook sticking out of my back pocket. I wasn't going to be mistaken for a sissy college kid."

Moynihan's account is part truth, part mythology. Even Doug Schoen, who has since become a pollster for Moynihan, wrote in his mainly adoring biography, "Pat," that Moynihan was admitted to college on the strength of his grades in high school. "Moynihan may have confused his admission to City College with his entrance into the Navy officer's training program," Schoen wrote.

Moynihan's Navy training took place at Middlebury College in Vermont, and it was there that he began to see the way the upper half lives. He began meeting boys from Andover and Exeter. At Tufts, where he finally earned his B.A. and before shipping off for a stint in the Navy, the education had a similar class tone.

All of Moynihan's hurts, his careening from one place and economic situation to another, were suspended and eased in 1950 when he won a Fulbright scholarship to study at the London School of Economics. With money coming in from both the scholarship and the GI Bill, Moynihan loved the situation:

"I was living abroooad . . . and had plenty of *monnnney* and had no! thing! to! do! There were no classes, there were no exams."

Sander Vanocur, now a correspondent for ABC News in Washington, met Moynihan when they were both young and living in London:

"Pat seemed to me the richest man in the world in those days. And one of the happiest. He was so absorbed in the place. He would talk for hours about the doors in Regency architecture, knew everything about it. One day he got me to jump over a fence with him on High Street, Kensington, and sneak into the Holland House where the Whig aristocracy used to meet. He made the place come alive.

"Pat was loved by the English. He was an American—so out front and full of life."

Moynihan came back to the United States an Anglophile. He is partial to Cockney pub songs such as "The Lambeth Walk," odd British evening slippers, English soaps, colognes, cheeses, mustards and ales. He used to stuff his handkerchief up his jacket sleeve in the British mode, but that mannerism has disappeared.

"When Dad was ambassador to India I was interested in the Hindu era, Mom was interested in the Mogul era and Dad was interested in the Raj," says Maura Moynihan.

A photo of Moynihan reviewing an honor guard of Indian Gurkha soldiers 13 years ago shows the new ambassador wearing a bowler on his pate and a carnation in his lapel. He looks as though he were meeting Mountbatten in Raj heaven.

"But I like Irish things, too," he adds quickly. On his office wall is a landscape by Jack Yeats. "It's a beauty, isn't it?"

Seven years ago in The Nation, Fred Powledge wrote a "journalist's apologia" for a favorable piece he wrote on Moynihan in a 1967 issue of Life magazine.

"I should have caught on when . . . I saw him unlimber an Abercrombie & Fitch fly-fishing outfit, complete with rod, reel, little hat and dry martini, to pursue trout in a mud puddle," Powledge wrote. "He was, I realized then, a cartoon, not the real stuff."

Moynihan, for all this theater, is nothing at all like a cartoon. The Anglophile reviewing Gurkhas, the department-store fisherman, the stammering academic pol, these are cartoons. And funny ones, too. But in an era of technopoliticians, legislators without flair or intellectual adventure, he is unique on Capitol Hill.

Moynihan, who was abandoned by his own father, has spent much intellectual energy and political capital working on the deepening problems of single-parent families. And yet he resists discussing the past and the notion that his present work reflects a private hurt:

"Oh, oh, it's not something I talk about very much. I was not abandoned. It was not something that happened, like an automobile accident; it was stretched out, it took place over time . . . It was not a traumatic event.

"It wasn't a traditional breakup. The husband wasn't functioning very well, and just went off. It was more in the nature of a divorce. The problem now is the institutionalization of a single-parent home."

After a conference on the underclass and family earlier this month in New York, Moynihan had some time to kill before flying back to Washington. He spent it going door to door at a welfare hotel near Union Square. He was struck by the sight of 12-year-old girls holding their own babies, and the human problems represented in those images.

"The truth is, we are in a lot of trouble," says Moynihan. "And if there's one thing basic to all this it's that you cannot experiment with social policy. You can't do that with citizens. When you cite a problem, and ask the questions you'd better hope the answers are the right ones. People's lives are at stake!"

ARMS CONTROL: THE POSSIBILITY FOR PROGRESS

Mr. BYRD. Mr. President, in an opinion piece published in the Charleston Daily Mail last week, my distinguished colleague from West Virginia, Senator ROCKEFELLER, discussed the outlook for meaningful arms control between the United States and the Soviet Union.

Mr. ROCKEFELLER has expressed a deep interest in the arms control process and, as my designee, recently served as a member of the Senate observer group at the United States-Soviet arms control talks in Geneva, Switzerland.

Mr. ROCKEFELLER's observations were clear and to the point. He made the case that arms control is central to America's national security, and that the opportunity for agreement exists largely because the United States has demonstrated its determination to achieve progress. However, Mr. ROCKEFELLER rightly warns that the Geneva negotiations are fragile and the the arms control effort could easily fall apart if the United States and the Soviet Union do not take advantage of the opportunity offered by the Geneva talks.

I ask unanimous consent that the text of Mr. ROCKEFELLER's opinion piece, "Arms Control: Making the Most of the Possibility for Progress," be printed in its entirety at this point in the RECORD.

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

ARMS CONTROL: MAKING THE MOST OF THE POSSIBILITY FOR PROGRESS

(By Sen. Jay Rockefeller)

Victor Karpov, the Soviet Union's chief negotiator at the Geneva arms control talks, is a stern, unyielding man who gestures abruptly when making a point.

During a recent Senate delegation trip to observe the Geneva process first-hand, I sat directly across a table from Karpov for the course of an entire evening. For more than three hours, Karpov and I went back and forth, debating the fundamental issues which separate the two superpowers.

When confronted with Russia's violations of SALT II or with the Soviets' despicable behavior in Afghanistan, Karpov never budged an inch, never deviated from the Kremlin's line. Karpov's intransigence points out the enormous difficulties inherent in achieving a fair, lasting, and—above all—mutually verifiable arms control agreement. Decades of animosity and suspicion cannot be eradicated overnight.

Nevertheless, I came away from Geneva convinced that a breakthrough is possible, that we have reached a critical juncture with the Soviets. In my view, the next six months may well determine whether real progress is achieved at the negotiating table—or whether the whole arms control process will break down.

The opportunity for agreement lies in the fact that American determination in Geneva to date has paid off: The Soviets have accepted the principle of deep reductions in the nuclear warheads of both sides; they have fallen off their insistence that the British and French nuclear forces be counted as part of "our" side of the equation, and they have indicated their willingness to negotiate more stringent verification measures, including "on-site" inspection of military facilities.

But the major obstacle to agreement lies in our differences over how President Reagan's "Star Wars" missile defense system is to be addressed in the negotiations. The Soviets contend that deep cuts in offensive weapons cannot take place without parallel limitations on strategic defenses against those weapons. President Reagan argues that the U.S. should accept no limits on the promise of developing and deploying his Strategic Defense Initiative.

While I was in Geneva, the Soviets outlined a new proposal which may provide the basis for accord on this difficult problem. They called for an extension of the Anti-Ballistic Missile (ABM) Treaty for 15 to 20 years, as well as a strengthening of the terms of that treaty. This is in stark contrast to their earlier—and totally non-negotiable—position that all "space strike" weapons should be banned. We should vigorously pursue this offer in Geneva.

The Reagan Administration is now conducting SDI research within the terms of the ABM Treaty. It is unlikely that we would bump up against the constraints of that treaty until the end of the decade, even if the president receives the full $33 billion in research money he has requested for SDI. Budgetary pressures will almost certainly result in that time-frame being stretched out even further.

The Republican-controlled Senate Armed Services Committee recently voted to cut Reagan's "Star Wars" budget by $1.45 billion. Even greater cuts will be made on the floor of the House and Senate. As Senator Goldwater's committee report noted, "negotiating leverage is sometimes a perishable

commodity—we should be prepared to consider adjustments to the pace and scope of the SDI" as part of an arms control package. "Star Wars" has reached the zenith of its usefulness as a bargaining chip.

The basis for a settlement is there. We should press for a 10-year guaranteed extension on the ABM Treaty and attempt to redefine the terms of the treaty in a way that would allow us to continue to pursue strategic defense research. In this way, the president could keep alive the promise of SDI while recognizing—and taking advantage of—the inevitable; given the technological and budgetary problems posed by the SDI, we are not going to be able to make an informed decision on "Star Wars" deployment for another decade.

In exchange for agreeing to limits on SDI, we should demand deep cuts in the most threatening element of Soviet strategic forces: their heavy, land-based MIRVed ICBMs. Bringing these first-strike weapons down to a level that does not pose a preemptive threat to our own forces would enhance our own security and reduce the "hair trigger" threat of nuclear war. In addition, we must demand that allegations of Soviet cheating—in particular, the development of the SS-25 missile, the coding of their missile test data, and the Krasnoyarsk ABM radar in Siberia—be adequately redressed before we commit to a new treaty.

While the claims of Soviet cheating on SALT II must be resolved, it is important to note that President Reagan has not alleged that the Soviets have violated any of the core provisions of SALT—those dealing with numerical limits on the most threatening components of the nuclear equation: multiple-warhead missiles and cruise missile-carrying bombers. SALT has required the Soviets to dismantle 1,339 missiles, while we have only had to dismantle a small fraction of that. Continued adherence to the key limits in SALT is in our interest. We should respond to Soviet non-compliance by taking proportionate measures ourselves—not by rejecting the most essential and stabilizing elements of the treaty.

Back in 1974, arms control talks with the Soviet Union had reached a stalemate. At a summit meeting that year in Vladivostok, President Nixon and Soviet Premier Brezhnev broke the logjam by agreeing on the broad terms of an accord—leaving the details to be negotiated back in Geneva. The planned summit meeting between President Reagan and Soviet leader Gorbachev could achieve a similar breakthrough if the two sides work diligently and in good faith over the next several months to make it possible.

If, on the other hand, we and the Soviets do not take advantage of the opportunity before us, we could well end up derailing arms control and inviting a spiraling arms race between offensive and defensive weapons on both sides. Without a summit at year's end—and it may not occur if there is not a tangible prospect of progress on arms control—we could begin 1987 with little direction or momentum in Geneva. And if the president proceeds with his decision to disregard SALT II by deploying more than 130 B-52 bombers armed with cruise missiles, we could well end up with no arms control structure—past, present, or future—in sight.

Arms control is not an exercise in goodwill nor an end in itself. It is a vital element of our national security policy. That is why the Joint Chiefs of Staff have traditionally supported nuclear arms control agreements with the Soviets; they know that arms control provides important predictability and reassurance in the superpower nuclear equation. It is in the strategic interests of the U.S. to achieve meaningful, balanced, and verifiable arms agreements with the Soviet Union. The alternative is an unbridled competition in nuclear weapons.

President Johnson initiated talks with the Soviets in November, 1966 on the challenge of controlling the nuclear arms race. Twenty years later, the two superpowers are still struggling to find the right formula to reduce the risk of nuclear holocaust. As my brief exposure to Soviet negotiator Karpov demonstrates, the Geneva process will be long and hard. If the Soviets continue to negotiate in good faith—and President Reagan is willing to make certain concessions on SDI—it is not inconceivable, however, that the summit will produce the framework for a historic arms control agreement.

Mr. BYRD. Mr. President, I yield the floor.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, 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.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3459. A communication from the Comptroller General of the United States transmitting, pursuant to law, his report on the fourth special message of the President deferring certain budget authority; jointly, pursuant to the order of January 30, 1975, to the Committee on Agriculture, Nutrition, and Forestry, the Committee on Appropriations, and the Committee on the Budget.

EC-3460. A communication from the Director of the Office of Management and Budget transmitting, pursuant to law, the cumulative report on rescissions and deferrals as of July 1, 1986; jointly, pursuant to the order of January 30, 1975, to the Committee on Appropriations and the Committee on the Budget.

EC-3461. A communication from the Chairman of the National Advisory Committee on Oceans and Atmosphere transmitting, pursuant to law, the 15th annual report of NACOA; to the Committee on Commerce, Science, and Transportation.

EC-3462. A communication from the Secretary of Energy transmitting, pursuant to law, a report on State authority and nonregulated utility compliance with the Public Utility Regulatory Policies Act; to the Committee on Energy and Natural Resources.

EC-3463. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report on projects funded under the Consolidated Federal Program; to the Committee on Finance.

EC-3464. A communication from the Assistant Secretary of State transmitting, pursuant to law, the texts of ILO Convention No. 161 and Recommendation No. 171; to the Committee on Foreign Relations.

EC-3465. A communication from the Acting Chairman of the Federal Energy Regulatory Commission transmitting, pursuant to law, the Commission's 1985 Government in the Sunshine report; to the Committee on Governmental Affairs.

EC-3466. A communication from the Director of the Office of Personnel Management transmitting a draft of proposed legislation to establish a simplified Government personnel management system; to the Committee on Governmental Affairs.

EC-3467. A communication from the Secretary of Labor transmitting, pursuant to law, a report on community service employment for older Americans; to the Committee on Labor and Human Resources.

EC-3468. A communication from the Executive Secretary of the Office of the Secretary of Defense transmitting, pursuant to law, a report on DOD procurement from Small and Other Business Firms, October 1985-April 1986; to the Committee on Small Business.

EC-3469. A communication from the Administrator of the Veterans' Administration transmitting a draft of proposed legislation to provide authority for disclosure of names and addresses of veterans in relation to receipt of certain benefits; to the Committee on Veterans' Affairs.

EC-3470. A communication from the Under Secretary of Agriculture transmitting, pursuant to law, the fourth quarterly report on commodity and country allocations under Public Law 480; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3471. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, three Soil Conservation Service plans; to the Committee on Agriculture, Nutrition, and Forestry.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 447. An original resolution to amend Senate Resolution 28, as amended, agreed to February 27, 1986.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry:

Kalo A. Hineman, of Kansas, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring June 19, 1991;

Kenneth A. Gilles, of Virginia, to be Assistant Secretary of Agriculture;

Kenneth A. Gilles, of Virginia, to be a Member of the Board of Directors of the Commodity Credit Corporation;

Robert W. Beuley, of Virginia, to be Inspector General, Department of Agriculture;

Kathleen W. Lawrence, of Virginia, to be Under Secretary of Agriculture for Small Community and Rural Development; and

Kathleen W. Lawrence, of Virginia, to be a Member of the Board of Directors of the Commodity Credit Corporation.

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. McCLURE (for himself and Mr. SYMMS):

S. 2645. A bill to provide for the establishment by law of the requirements for strategic and critical materials to be stockpiled in the National Defense Stockpile, and for other purposes; to the Committee on Armed Services.

By Mr. HEINZ (for himself, Mr. GLENN and Mr. GORE):

S. 2646. A bill to provide that no change may be made in the prospective payment rates established under section 1881(b)(7) of the Social Security Act with respect to outpatient maintenance dialysis services until certain requirements are satisfied; to the Committee on Finance.

By Mr. WEICKER (for himself and Mr. BUMPERS):

S. 2647. A bill to amend the Small Business Investment Act of 1958 to create the Corporation for Small Business Investment, to transfer certain functions of the Small Business Administration to the Corporation, and for other purposes; to the Committee on Small Business.

By Mr. KENNEDY (for himself and Mr. GORE):

S. 2648. A bill to improve the public health through the prevention of childhood injuries; to the Committee on Labor and Human Resources.

By Mr. KENNEDY (for himself and Mr. HATCH):

S. 2649. A bill to amend title XIX of the Social Security Act to strengthen and improve Medicaid services to low-income children, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY:

S. 2650. A bill to amend title XIX of the Social Security Act to strengthen and improve Medicaid services to pregnant women and infants, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KENNEDY (for himself and Mr. GORE, Mr. SIMON, Mr. HARKIN, Mr. KERRY, Mr. PELL, Mr. WEICKER and Mr. CRANSTON):

S. Res. 446. A resolution condemning the government of Chile for the death of Rodrigo Rojas de Negri; to the Committee on Foreign Relations.

By Mr. MATHIAS:

S. Res. 447. A resolution to amend Senate Resolution 28, as amended, agreed to February 27, 1986; from the Committee on Rules and Administration; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCLURE (for himself and Mr. SYMMS):

S. 2645. A bill to provide for the establishment by law of the requirements for strategic and critical materials to be stockpiled in the national defense stockpile, and for other purposes; to the Committee on Armed Services.

STRATEGIC AND CRITICAL MATERIALS STOCK PILING AMENDMENTS ACT

● Mr. McCLURE. Mr. President, today I am introducing legislation for myself and Senator SYMMS to address the highly questionable policies of past administrations that have plagued the national defense stockpile for over four decades. Such questionable policies have resulted in using the stockpile for purposes other than national defense—for example, fighting inflation, reducing deficits, stabilizing prices, supporting foreign policy objectives, and so forth.

Mr. President, this administration's proposed stockpile modernization proposal as announced by the President on July 8, 1985 is a clear example of an attempt to use the stockpile for purposes other than national defense. Our view of the administration's proposal is shared by Congressman BENNETT, chairman of the Subcommittee on Seapower and Strategic and Critical Materials of the House Armed Services Committee. As my colleagues know, the Congressman and I asked the General Accounting Office [GAO] to conduct an investigation into the methodology and planning factors used by the National Security Council in its study that was the basis for the President's modernization proposal. While that investigation has not been completed, GAO has provided Congressman BENNETT and me with a letter dated June 6, 1986 that reflects their progress to date and provided us with a preliminary assessment of their findings. Since I published the full text of the GAO letter in the RECORD on that same date (pages S7073 and S7074), I will not bother to do so again. Suffice it to say, the letter from GAO reflects that they have found the National Security Council's study not to be a sufficient basis for setting stockpile goals nor a basis for other U.S. mobilization planning.

In addition to requesting a GAO investigation of the President's July 8 proposal, Congressman BENNETT and I have been working together in an attempt to formulate legislation that would, once and for all, bring stability to the management of our national defense stockpile. The bill we are introducing today represents a merging of the concepts embodied in bills previously introduced by Congressman BENNETT (H.R. 3743) and I (S. 2102) on November 13, 1985, and February 26, 1986, respectively. Congressman BENNETT introduced our merged legislation on May 8, 1986, as H.R. 4781. I am pleased to inform my colleagues that H.R. 4781 has been incorporated in the House version of the fiscal year 1987 defense authorization bill now pending before the full House of Representatives. Senator SYMMS and I are hopeful that the Armed Services Committee of the Senate will expedite consideration of the legislation we are introducing today which is identical to that contained in H.R. 4781.

Mr. President, we would urge the cosponsorship of our bill from all of our colleagues who share the concerns we have expressed today and in the past regarding the management of our national defense stockpile. I ask unanimous consent that the text of my bill be printed in the RECORD in full at this point.

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

S. 2645

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Strategic and Critical Materials Stock Piling Amendments Act of 1986".

SEC. 2. STOCKPILE REQUIREMENTS.

(a) PURPOSE OF STOCKPILE.—Section 2 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98a) is amended by adding at the end the following new subsection:

"(c) It is the intent of Congress—

"(1) that the National Defense Stockpile be used to serve the interest of national defense only and not be used for economic or budgetary purposes; and

"(2) that the quantities of materials stockpiled under this Act should be sufficient to sustain the United States for a period of not less than three years in the event of a national emergency.".

(b) ESTABLISHMENT OF STOCKPILE REQUIREMENTS BY LAW.—Section 3 of such Act (50 U.S.C. 98b) is amended to read as follows:

"ESTABLISHMENT BY LAW OF STOCKPILE REQUIREMENTS

"SEC. 3. (a) The materials that are strategic and critical materials for the purposes of this Act, and the quality and quantity of each such material to be acquired for the purposes of this Act and the form in which each such material shall be acquired and stored, shall be established by law.

"(b) Such materials when acquired, together with the other materials described in section 4, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this Act referred to as the 'stockpile').

"(c) Determinations under subsection (a) shall be known as 'stockpile requirements'.".

(c) INITIAL LEVEL OF STOCKPILE REQUIREMENTS.—The determinations in effect as of October 1, 1984, under section 3(a) of the

Strategic and Critical Materials Stock Piling Act shall be the stockpile requirements for the purposes of such section, as amended by this Act, until otherwise provided by law.

SEC. 3. TRANSFER OF CERTAIN STOCKPILE FUNCTIONS TO THE SECRETARY OF DEFENSE.

(a) IN GENERAL.—Sections 5, 6, 10, and 11 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98d, 98e, 98h-1, 98h-2) are amended by striking out "President" each place it appears and inserting in lieu thereof "Secretary".

(b) DEFINITION OF SECRETARY.—Section 12 of such Act (50 U.S.C. 98h-3) is amended by adding at the end the following new paragraph:

"(3) The term 'Secretary' means the Secretary of Defense.".

(c) TECHNICAL AMENDMENT.—Section 11(b) of such Act (50 U.S.C. 98h-1) is amended by striking out "each year" and all that follows through "the next fiscal year" and inserting in lieu thereof "each year, at the time that the Budget is submitted to Congress pursuant to section 1105 of title 31, United States Code, for the next fiscal year,".

SEC. 4. ANNUAL RECOMMENDATION OF STOCKPILE REQUIREMENTS BY SECRETARY OF DEFENSE.

The Strategic and Critical Materials Stock Piling Act is amended by adding at the end the following new section:

"ANNUAL RECOMMENDATIONS BY SECRETARY OF DEFENSE

"SEC. 14. (a) IN GENERAL.—In order to assist Congress in establishing stockpile requirements under section 3, the Secretary shall submit to Congress an annual report on stockpile requirements. Each such report shall be submitted with the annual report submitted under section 11(b) and shall include—

"(1) the Secretary's recommendations with respect to stockpile requirements; and

"(2) the matters required under subsections (b) through (e).

"(b) NATIONAL EMERGENCY PLANNING ASSUMPTIONS.—Each report under this section shall set forth the national emergency planning assumptions used in determining the stockpile requirements recommended by the Secretary. Assumptions to be set forth include assumptions relating to each of the following:

"(1) Length and intensity of the assumed emergency.

"(2) The military force structure to be mobilized.

"(3) Losses from enemy action.

"(4) Military, industrial, and essential civilian requirements to support the national emergency.

"(5) The availability of supplies of strategic and critical materials from foreign sources, taking into consideration possible shipping losses.

"(6) Domestic production of strategic and critical materials.

"(7) Civilian austerity measures.

"(c) CONSIDERATION OF MATERIALS BASED ON NET IMPORT RELIANCE.—

"(1) IN GENERAL.—In determining the materials to be recommended to Congress under subsection (a)(1) as strategic and critical materials (and the quantity and quality of such materials to be recommended), the Secretary shall consider—

"(A) whether each of the materials determined under paragraph (3) should be recommended as a strategic and critical material; and

"(B) in the case of any such material, whether the quantity determined under paragraph (5) with respect to such material is the appropriate quantity of such material to be established by Congress as the stockpile requirement for that material.

"(2) MATTERS TO BE INCLUDED IN REPORT.—In each report under this section, the Secretary shall identify—

"(A) each material determined under paragraph (3); and

"(B) the quantity determined under paragraph (5) with respect to each such material.

"(3) MATERIALS TO BE IDENTIFIED.—The Secretary shall identify each material that the Secretary determines is necessary for the security of the United States, essential to the economy of the United States, and obtained from foreign sources.

"(4) CLASSIFICATION OF MATERIALS BASED ON NET IMPORT RELIANCE.—Each of the materials identified under paragraph (3) shall be classified by the Secretary for the purposes of this section as follows:

"(A) CLASS A MATERIALS.—A material shall be classified as a class A material if—

"(i) the material is not produced in the United States or is produced in the United States in limited quantities; and

"(ii) the net import reliance of the United States for the material is greater than or equal to 65 percent.

"(B) CLASS B MATERIALS.—A material shall be classified as a class B material if—

"(i) the material is produced in the United States but is not available in sufficient quantities in the United States; and

"(ii) the net import reliance of the United States for the material is greater than or equal to 30 percent but less than 65 percent.

"(C) CLASS C MATERIALS.—A material shall be classified as a class C material if—

"(i) the material is produced in substantial quantities in the United States; and

"(ii) the net import reliance of the United States for the material is less than 30 percent.

"(5) QUANTITY TO BE DETERMINED.—For each material identified under paragraph (3), the Secretary shall determine the following:

"(A) CLASS A MATERIALS.—In the case of a material classified under paragraph (4) as a class A material, the Secretary shall determine the quantity of such material equal to three years' net imports of such material.

"(B) CLASS B MATERIALS.—In the case of a material classified under paragraph (4) as a class B material, the Secretary shall determine the quantity of such material equal to two years' net imports of such material.

"(C) CLASS C MATERIALS.—In the case of a material classified under paragraph (4) as a class C material, the Secretary shall determine the quantity of such material equal to one year's net imports of such material.

"(6) DETERMINATION OF NET IMPORTS.—For purposes of paragraph (5), a year's net imports of a material is the quantity of the material equal to the amount by which—

"(A) the sum of—

"(i) the average annual imports of such material into the United States during the base period; and

"(ii) the average annual shipment of such material from the stockpile as excess material during the base period; exceeds

"(B) the average annual exports of such material from the United States during the base period.

"(7) BASE PERIOD DEFINED.—For purposes of paragraph (6), the term 'base period' means the most recent period of five calendar years for which data is available.

"(d) EFFECT OF ESTABLISHING STOCKPILE REQUIREMENTS IN ACCORDANCE WITH DETERMINATIONS UNDER SUBSECTION (c).—The Secretary shall include in each report under this section an analysis of the effect (including the cost and the impact on world markets) of establishing the stockpile requirements in accordance with the materials, and the quantities of materials, identified under subsection (c).

"(e) DIFFERENCES BETWEEN RECOMMENDATIONS AND NET IMPORT RESULTS.—When the stockpile requirements recommended by the Secretary in a report under this section differ from the materials and quantities that are identified under subsection (c), the Secretary shall also include in the report a detailed explanation for such differences, including—

"(1) a description of the assumptions used to determine the recommended stockpile requirements; and

"(2) a detailed analysis supporting the recommended quantity and quality for each material recommended as a strategic and critical material.

"(f) PERIODIC REVIEW.—The Secretary shall conduct a detailed review of the stockpile requirement for each strategic and critical material at least once every five years. If the Secretary determines at any time that the stockpile requirement for a material should be revised, the Secretary shall submit to Congress a report that—

"(1) notifies Congress of that determination;

"(2) sets forth the Secretary's recommended stockpile requirement for that material; and

"(3) sets forth the assumptions used by the Secretary in determining that recommended requirement.".

SEC. 5. STOCKPILE MANAGEMENT.

The Strategic and Critical Materials Stock Piling Act is amended by adding after section 14 (as added by section 4) the following new sections:

"INTERAGENCY AGREEMENTS

"SEC. 15. (a) AUTHORITY TO ENTER INTO AGREEMENTS.—The Secretary may enter into an interagency agreement with the head of any other department or agency for the performance of functions of the Secretary relating to section 6.

"(b) REIMBURSEMENT.—The Secretary shall reimburse the head of any such agency for expenses incurred by that agency in the administration of functions relating to the stockpile assigned to that agency by the Secretary under such an interagency agreement.

"APPROPRIATIONS TO BE MADE TO DEPARTMENT OF DEFENSE

"SEC. 16. Appropriations for the operation and management of the stockpile and for deposit to the National Defense Stockpile Transaction Fund shall be made as part of appropriations made to the Department of Defense for the military functions of the Department.".

SEC. 6. EXTENSION OF USES OF STOCKPILE TRANSACTION FUND AND CODIFICATION OF REVOLVING FUND PROVISIONS.

(a) IN GENERAL.—Section 9(b) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h(b)) is amended—

(1) by striking out the second sentence of paragraph (1); and

(2) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) Subject to section 5(a)(1), moneys covered into the fund under paragraph (1) are hereby made available (subject to such

limitations as may be provided in appropriation Acts) for—

"(A) the acquisition of strategic and critical materials under section 6(a)(1);

"(B) transportation, storage, and other incidental expenses related to such acquisition;

"(C) development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation related to such upgrading);

"(D) testing and quality studies of stockpile materials; and

"(E) other reasonable requirements for management of the stockpile.

"(3) Moneys in the fund shall remain available until expended.".

(b) CONFORMING AMENDMENT.—Section 110 of Public Law 97-377 (96 Stat. 1911) is amended by striking out "Notwithstanding" and all that follows through "That during" and inserting in lieu thereof "During".

SEC. 7. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) TECHNICAL AMENDMENTS.—Section 4(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c(a)) is amended—

(1) by striking out "on the day before the date of the enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979" in paragraphs (1) and (3) and inserting in lieu thereof "on July 29, 1979", and

(2) by striking out "on or after the date of the enactment of the Strategic and Critical Materials Stock Piling Revision Act of 1979" in paragraph (2) and inserting in lieu thereof "after July 29, 1979".

(b) CLARIFYING AMENDMENT.—Section 6(a)(3) of such Act (50 U.S.C. 98e(a)(3)) is amended by striking out "the form most" and inserting in lieu thereof "a form more".●

By Mr. HEINZ (for himself, Mr. GLENN, and Mr. GORE):

S. 2646. A bill to provide that no change be made in the prospective payment rates established under section 1881(b)(7) of the Social Security Act with respect to outpatient maintenance dialysis services until certain requirements are satisfied; to the Committee on Finance.

MORATORIUM ON PROSPECTIVE PAYMENT RATES

● Mr. HEINZ. Mr. President, for 78,000 Americans, kidney dialysis treatment is a hard, painful reality. For 4 hours a day, 3 days a week, 52 weeks a year for the rest of their lives, end-stage renal disease [ESRD] patients must rely on a dialysis machine to remove toxins, salt, and water from their blood, functions their own kidneys can no longer perform. Sixty percent of these patients are treated with reused dialysis equipment and devices.

Today, I am introducing legislation to protect these vulnerable ESRD patients by placing a moratorium on a proposal by the Health Care Financing Administration that would cut the reimbursement rate for dialysis and jeopardize the safety of these patients.

At a March 6 hearing of the Senate Special Committee on Aging, I and the other members of the committee learned of the serious risks involved in the reuse of dialyzers and other devices used in dialysis treatment. These risks include exposure to formaldehyde, a known carcinogen, as well as infection and liver damage. The Federal Government has refused to conduct a meaningful assessment of the safety and efficacy of reuse. Safe reuse procedures have not been developed, leaving ESRD patients exposed to tremendous risks and haphazard reprocessing procedures.

The Health Care Financing Administration [HCFA] has proposed significant reductions in the pretreatment reimbursement rates for ESRD facilities. HCFA claims to have two major objectives in this proposed rate reduction: to encourage use of home dialysis, and to "encourage economy and efficiency in furnishing dialysis services." The result of this proposed rate reduction will be that tens of thousands of Americans will be made significantly more vulnerable to the dangers of reuse.

It may very well be that facility rates should be adjusted. But the fact of the matter is that many ESRD facilities will attempt to recoup their losses by increasing reuse of dialysis devices and equipment. In 1983, when HCFA reduced payment rates for dialysis in ESRD facilities, its objectives were to encourage use of home dialysis, and to encourage economy and efficiency in dialysis services. The industry responded to these reductions not by increasing home dialysis, but by reusing dialysis devices. These same objectives are being sought through this new round of proposed rate reductions. In all likelihood the new proposed reduction will push the industry even further toward reuse, even while a clinical assessment of the safety of reuse and the development of safe reuse procedures are still desperately needed.

HCFA's definition of "economy and efficiency" seems to mean exposing dialysis patients to even greater risks of formaldehyde poisoning from reprocessed dialyzers. On June 26, I along with Senators GLENN, D'AMATO, and JOHNSTON, and Representatives RANGEL and MOLINARI, sent a letter to Dr. Otis Bowen, Secretary of the Department of Health and Human Services. We asked that HCFA's proposed reductions be postponed until studies could be completed on the effects of rate reductions on quality of care and on reuse, the actual risks involved in reuse could be determined, and the effects of reductions on rural and urban dialysis facilities had been examined.

We have not received the answers to any of these questions, but the rate reductions are due to be imposed on August 1, 1986. For that reason, I am calling for a legislative moratorium on the proposed rate reductions. HCFA's proposal notice contains no mention whatsoever of any quality of care issues. Yet such issues, including the effect of rate reductions on reuse, staffing patterns, and the possible closures of dialysis facilities in rural areas, are precisely those with which we should be most concerned.

This legislation complements S. 2547, the 1986 ESRD Patient Rights Act which I introduced last month along with my distinguished colleagues Senators GLENN, BINGAMAN, HAWKINS, and WILSON. S. 2547 requires ESRD facilities to clearly inform patients of the potential risks and benefits associated with reuse, and to allow patients to refuse reuse at any point during their treatment without fear of reprisal or intimidation. Together these bills will help protect the rights and safety of dialysis patients, and will ensure the continued high quality of care that has come to be associated with the Medicare ESRD Program.

For more than a decade the Medicare End-Stage Renal Disease Program has been tremendously successful at helping to provide life-sustaining treatment to tens of thousands of Americans. It is crucial that we enable this vital program to continue its history of high quality care. I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be reprinted at this point.

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

S. 2646

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MORATORIUM ON CHANGES IN PROSPECTIVE PAYMENT RATES FOR OUTPATIENT MAINTENANCE DIALYSIS SERVICES.

(a) Moratorium Imposed.—

(1) No change may be made pursuant to title XVIII of the Social Security Act in the prospective payment rates established under section 1881(b)(7) of such Act (42 U.S.C. 1395rr(b)(7)) that are in effect on the date of the enactment of this Act until 60 days after—

(A) the Secretary of Health and Human Services (in this section referred to as the "Secretary") certifies to the Congress that—

(i) audited information is available with respect to the costs of providing outpatient maintenance dialysis services for cost reporting periods or fiscal years ending after June 30, 1984, and before July 1, 1985, and

(ii) the Secretary will utilize such information in the determination of any change in such rates;

(B) the Secretary has studied and submitted final reports to the Congress on—

(i) the anticipated effects of any reduction in such rates on the quality of care provided to individuals receiving such services (including, but not limited to, the effects on the dialysis equipment purchasing patterns and the staffing of renal dialysis facilities and providers of such services),

(ii) the anticipated effects of any reduction in such rates on the use of reprocessed dialysis devices and supplies by such facilities and providers,

(iii) the safety, efficacy, and patient outcomes (both morbidity and mortality) of the use of reprocessed dialysis devices and supplies, and

(iv) the differing effects of any reduction in such rates on facilities and providers located in urban and rural areas; and

(C) the Commissioner of Food and Drugs has developed and implemented safety standards for the use of reprocessed dialysis devices and supplies.

(2) The study required by paragraph (1)(B)(iii) shall be conducted by the National Center for Health Services Research and Health Care Technology Assessment.

(b) Interim and Final Reports.—

(1) The Secretary shall—

(A) initiate the studies required by subsection (a)(2) not later than 60 days after the date of the enactment of this Act, and

(B) submit an interim report on the progress of the studies to the Congress 180 days after the date of the enactment of this Act and every six months thereafter until a final report has been submitted with respect to each such study.

(2) The Secretary shall submit a final report with respect to each of the studies required by subsection (a)(2) upon the completion of the report.●

● Mr. GLENN. Mr. President, today I join Senator HEINZ in introducing the ESRD [End-Stage Renal Disease] Patient Protection Act of 1986. This legislation is simple and straightforward, and I hope it will prove to be unnecessary.

Three times a week, 52 weeks a year, 78,000 ESRD patients—4,500 in Ohio alone—spend 3 hours hooked up to kidney dialysis machines which cleanse the toxins and the water from their blood that have accumulated due to their improperly functioning kidneys. Sixty percent of the 1,200 U.S. clinics reuse the medical devices which filter the dialysis patient's blood. There is little question that there already is an incentive to reuse these devices since it is cheaper to reuse them than to use new devices and because the clinics are reimbursed by Medicare at the same rate regardless. Without question, there is no consensus about the safety of reuse. However, in my mind, there is little question that there should be Federal standards which provide guidelines for safe and effective reuse. I have called for, and will continue to call for, such standards.

Simply stated, the bill we are introducing would prohibit the Reagan administration from implementing a recent regulatory proposal to reduce Medicare reimbursement rates to dialysis clinics before the Department of Health and Human Services (DHHS) has completed studies on how this proposal would affect the ESRD program. Specifically, it would require the Secretary of DHHS to use the most up-to-date data available and adequately evaluate how reimbursement reductions would affect the quality of care ESRD patients receive. One would hope that before making a proposal that may threaten the quality of care kidney dialysis patients receive, the administration would conduct such studies. Unfortunately and, after years of similar experiences, perhaps not too surprisingly, this is not the case.

This year, the Senate Special Committee on Aging has repeatedly voiced its concerns about the federally unregulated practice of reusing dialysis devices for ESRD patients. On March 6, we held a hearing which was the culmination of a committee investigation into the reuse of kidney dialysis devices. Testimony was presented from patients and physicians who have major concerns with the practice of reusing dialysis devices. In the interim between the hearing and today, we have written to the Food and Drug Administration (FDA) and DHHS requesting their assistance in assuring quality care for all dialysis patients. In addition, we have introduced legislation, the ESRD Patient Rights Act of 1986, which would: First, assure that ESRD patients are aware of the potential risks and benefits of reusing dialysis devices; second, give patients the right to choose whether or not they want to reuse; and third, prohibit dialysis clinics from refusing treatment to a Medicare patient who chooses to not reuse.

I believe that there very likely is some fat we can squeeze from the Medicare ESRD program. It is my hope that the Congress and the administration can work together to better target and retrieve this fat. But let's not do it at the expense of the ESRD patients. At a time when there is so much uncertainty surrounding the practice of reuse, it makes no sense to provide additional incentives to reuse before we have Federal standards for reuse. I urge all my colleagues to join me in supporting this important legislation.●

By Mr. WEICKER (for himself and Mr. BUMPERS):

S. 2647. A bill to amend the Small Business Investment Act of 1958 to create the Corporation for Small Business Investment, to transfer certain functions of the Small Business Administration to the Corporation, and for other purposes; to the Committee on Small Business.

CORPORATION FOR SMALL BUSINESS INVESTMENT CHARTER ACT

● Mr. WEICKER. Mr. President, I am today introducing, along with Senator BUMPERS, legislation to create a federally chartered, privately owned corporation which will relieve the Federal Government of the need to provide funds annually for small business investment companies [SBIC's] and minority enterprise small business investment companies [MESBIC's]. SBIC's and MESBIC's are venture capital companies which provide vital risk capital to small businesses, the locomotives of our economy. Very often, they provide capital to companies which cannot raise money from banks or other lending institutions and which may be too small for traditional venture capital firms. Among the success stories of the SBIC's are Apple Computer, Cray Research and Federal Express.

The SBA through its SBIC and MESBIC venture capital programs, has provided $6 billion in equity capital to approximately 70,000 firms, creating 920,000 jobs. The assisted companies have produced jobs, economic gains, and tax revenues far exceeding the Government's outlays.

The Small Business Investment Act of 1985 which first authorized the Small Business Investment Company Program, recognized "that small business concerns are faced with a real difficulty in obtaining long-term and equity capital required for adequate growth and development. Commercial banks are not able to furnish such financing; their function lies primarily in short- and intermediate-term lending; they do not supply venture capital or long-term credit." This funding void still exists today, and the SBA's venture capital programs are filling this critical credit gap.

This legislation would create a new entity known as Cosbi—the Corporation for Small Business Investment—to fill that gap. Cosbi would issue securities to the private capital market, benefiting from its federally chartered status to raise money at only a slight premium over the cost of money to the Treasury. In that respect Cosbi would be like Sallie Mae, Fannie Mae and Freddie Mac, and other Government-sponsored enterprises which raise money in the private capital markets. Cosbi in turn would loan its capital to the SBIC's and MESBIC's which would be the shareholders of Cosbi.

While S. 2647 is similar to an earlier version of Cosbi which I introduced on May 17, 1984, as S. 2686, it makes significant improvements. It clarifies that Cosbi will pay in cash for the entire outstanding portfolio of SBIC debentures currently owned by the Federal Financing Bank which I understand amounts to about $1 billion. Those debentures will carry a Government guarantee to facilitate Cosbi in its ability to raise capital and use the portfolio as an asset base. The bill also clarifies that in the event that Cosbi falls on hard financial times, the Secretary of the Treasury may provide up to $500 million to bail out the Corporation only upon an express act of appropriation by Congress. An earlier version of Cosbi would have given the Treasury Secretary unbridled discretion to purchase up to $1 billion in Cosbi securities. Finally, S. 2647 provides for a continuing role for the SBA in terms of supervising Cosbi.

While this is an exciting concept, there are a number of areas which remain uncertain and which will be examined when the Small Business Committee holds hearings on this proposal. In particular, we will examine the larger question of the proper role for the SBA and the Federal Government in regulating Cosbi. The Federal involvement continues to be substantial under this proposal and despite our hopes and expectations that Cosbi will prove a financial success, there is always the risk that things won't go as anticipated. In that event, we want to be sure to establish the proper safeguards to protect the public interest in the context of assuring that the purposes of the Small Business Investment Act are being fulfilled. Additionally, we will examine in the hearings the likely market reception to Cosbi securities if they do not maintain a Federal guarantee. Can Cosbi hope to sell its paper without a Federal commitment, and what type of exposure is the Government undertaking if there is some sort of backstop or guarantee? Finally, what is the budget impact of selling the portfolio to Cosbi for cash and will we realize any net savings if the portfolio continues to carry a Federal imprimatur?

Mr. President, privatization is in the vogue now, and everyone will agree that at a minimum Cosbi represents a step in the right direction. An identical bill has been introduced in the House of Representatives by PARREN MITCHELL, chairman of the House Small Business Committee and hearings have been held.

I ask unanimous consent that a section-by-section analysis of the bill along with the bill itself be printed in the RECORD.

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

S. 2647

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 "Corporation for Small Business Investment Charter Act".

SEC. 2. Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended—

(a) by inserting before the semicolon in paragraph (3) the following: ", or a company qualified to conduct business with the Corporation under section 357 of this Act";

(b) by inserting before the semicolon at the end of paragraph (5) the following: ", except that for purposes of title III the term means one which, together with its affiliates, is independently owned and operated, is not dominant in its field of operations and—

"(A) does not have net worth in excess of $7,000,000 and does not have an average net income, after Federal income taxes, for the preceding two years in excess of $2,500,000 (average net income to be computed without benefit of any carryover loss), except that such net worth and net income limitations shall be adjusted effective January 1 of each year following the effective date of this Act. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the implicit price deflator for gross national product published by the United States Department of Commerce, with 1986 being the initial year for adjustment; or

"(B) otherwise qualifies under size standards for financial assistance established by the Administration under the Small Business Act, as amended (Public Law 163, Eighty-third Congress).".

(c) by striking "and" at the end of paragraph (7);

(d) by striking the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(e) by inserting after paragraph (8) the following new paragraphs:

"(9) the term 'Corporation' means the Corporation for Small Business Investment, as constituted under this Act; the Corporation shall be classified as and considered to be a corporate instrumentality of the United States;

"(10) the term 'Board of Directors' means the Board of Directors of the Corporation;

"(11) the term 'disadvantaged small-business concern' means a small-business concern owned by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

"(12) the term 'law' includes any law of the United States or any State (including any rule of law or of equity);

"(13) the term 'organization' means any corporation, partnership, association, business trust, or other business entity;

"(14) the term 'security' has the meaning ascribed to it by section 2(1) of the Securities Act of 1933 (15 U.S.C. 77(b)(1));

"(15) the term 'small business investment security' shall include—

"(A) debentures, bonds, promissory notes, obligations or securities issued by small business investment companies, and

"(B) such other small business investment company securities as determined by the Corporation;

"(16) the term 'private capital' means the combined private paid-in capital and paid-in surplus of a corporate small business investment company, or in the case of an unincorporated small business investment company, the permanent partnership capital; and

"(17) the term 'licensee in good standing' means a small business investment company which was approved by the Administration to operate under the provisions of this Act and was issued a license as provided in section 301 of this Act, unless such licensee (A) is in default under the provisions of preferred securities or debentures and such preferred securities or debentures have been declared due and payable by the Administration, or (B) is in liquidation by the Administration for regulatory reasons.".

SEC. 3. Title III of the Small Business Investment Act of 1958 is amended by adding the following new section at the end thereof:

"TRANSFER AND PHASEOUT

"SEC. 322. (a) A licensee in good standing shall have a period of three months from the date the Administration receives notice under section 352(h) of this Act in which to qualify under section 357(a) or section 359(a) of this Act.

"(b) Within six months after the Administration receives notice under section 352(h) of this Act, the Administration shall promulgate final rules and regulations to effect the orderly termination of operations of any licensee in good standing that is not qualified under section 357(a) or section 359(b) of this Act, and the Administration shall enter into an agreement with the Corporation which provides for the administration of such rules and regulations by the Corporation.

"(c) The final rules and regulations adopted by the Administration for termination of the operations of any licensee under subsection (b) of this section shall, among other things, suspend such licensee's authority under this Act to obtain financial assistance from the Administration and shall require revocation of the license of any such licensee effective within two years after the publication of such rules and regulations, except that the license revocation for any such licensee which has outstanding debentures or preferred securities as provided in this Act shall be within two years after such debentures or securities are due or paid, whether voluntarily or otherwise.

"(d) The Administration shall furnish to the Corporation all books and records of the Administration necessary to carry out the provisions of this Act within thirty days after written request by the Corporation unless the Administrator certifies to the Corporation that such books and records are not available within such time, provided that the Administration shall not furnish information on any individual licensee unless the licensee has entered an agreement for the release of such information. Any such information received by the Corporation shall be kept confidential by the Corporation, its officers, agents and employees, under the same provisions which would have been applicable if it had been retained by the Administration.".

"SEC. 4. Title III of the Small Business Investment Act of 1958 is amended—

(a) by amending the table of contents to read as follows:

"TITLE III—SMALL BUSINESS INVESTMENT COMPANIES

"PART A

"Sec. 301. Organization of small business investment companies.
"Sec. 302. Capital requirements.
"Sec. 303. Borrowing power.
"Sec. 304. Provision of equity capital for small-business concerns.
"Sec. 305. Long-term loans to small-business concerns.
"Sec. 306. Aggregate limitations.
"Sec. 307. Exemptions.
"Sec. 308. Miscellaneous.
"Sec. 309. Revocation and suspension of licenses; cease and desist orders.
"Sec. 310. Examinations and investigations.
"Sec. 311. Injunctions and other orders.
"Sec. 312. Conflicts of interest.
"Sec. 313. Removal or suspension of directors and officers of licensees.
"Sec. 314. Unlawful acts and omissions by officers, directors, employees, or agents; breach of fiduciary duty.
"Sec. 315. Penalties and forfeitures.
"Sec. 316. Jurisdiction and service of process.
"Sec. 317. Interest subsidy.
"Sec. 318. Joint ownership of companies, benefits.
"Sec. 319. Preferred stock asset coverage requirement, exemption.
"Sec. 320. Guaranteed obligations not eligible for purchase by Federal Fi-

Id. at 520.

"Sec. 321. Issuance and guarantee of trust certificates.
"Sec. 322. Transfer and phase-out.

"PART B

"Sec. 351. Purposes.
"Sec. 352. The Corporation for Small Business Investment.
"Sec. 353. Common and preferred stock.
"Sec. 354. Obligations and securities.
"Sec. 355. Legal investments and exempt securities.
"Sec. 356. Loan and investment operations.
"Sec. 357. Qualification of small business investment companies.
"Sec. 358. Operations of small business investment companies.
"Sec. 359. Special small business investment companies.
"Sec. 360. Audits and reports.
"Sec. 361. Transfer of SBA guaranteed securities to the Corporation."

and

(b) by inserting the following heading prior to section 301:

"PART A".

SEC. 5. Title III of the Small Business Investment Act of 1958 is amended by inserting the following new sections at the end thereof:

"PART B

"PURPOSES

"SEC. 351. The Congress hereby declares that the purposes of part B of this Act are—

"(1) to establish a Government-sponsored private corporation which will be financed by private capital and which will serve as a secondary market and warehousing facility for loans and investments in small business investment companies, including loans guaranteed by the Small Business Administration, and will provide liquidity for small business loans and investments;

"(2) to encourage the formation of new small business investment companies and to stimulate and supplement the orderly and necessary flow of private equity capital and long-term loan funds to and improve the distribution of investment capital available for small-business concerns as defined under this Act; and

"(3) to amend the Small Business Investment Act of 1958 to provide for an orderly transfer of certain functions of, and securities guaranteed or owned by, the Small Business Administration to the Corporation for Small Business Investment as constituted under this Act.

"THE CORPORATION FOR SMALL BUSINESS INVESTMENT

"SEC. 352. (a) There is hereby created a body corporate to be known as the Corporation for Small Business Investment (hereinafter referred to as the 'Corporation'). The Corporation shall have succession until dissolved. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof. Offices may be established by the Corporation in such other place or places it may deem necessary or appropriate for the conduct of its business.

"(b) The Corporation, including its franchise, capital, reserves, surplus, mortgages, or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, or by any county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

"(c) Within sixty days of the date of enactment of this Act, an interim Board of Directors of the Corporation shall be appointed by the President, one of whom the President shall designate as interim Chairman. The interim Board shall consist of five members, two of whom shall be representative of small business, two of whom shall be representative of small business investment companies, and one of whom shall be the Administrator. The interim Board shall arrange for an initial offering of common stock and take whatever other actions are necessary to proceed with the operations of the Corporation.

"(d) The Corporation shall have a permanent Board of Directors which consist of fifteen persons. When small business investment companies have purchased and fully paid for $15,000,000 of common stock of the Corporation, the holders of such common stock shall elect ten members to the Board of Directors. The President shall appoint the remaining five directors.

"(e) At the time the events described in subsection (d) of this section have occurred, the interim Board shall turn over the affairs of the Corporation to the permanent Board of Directors. The directors appointed by the President shall serve at the pleasure of the President and until their successors have been appointed and have qualified. The Board shall at all times have as members appointed by the President at least one person from a small business investment company operating under section 359 of this Act, and two persons who shall be representative of small business. The directors elected by the common shareholders shall each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Corporation, and shall serve until their successors have been elected and have qualified. Any appointive seat on the Board which becomes vacant shall be filled by appointment of the President. Any elective seat on the Board which becomes vacant after the annual election of the directors shall be filled by the Board, but only for the unexpired portion of the term.

"(f) The Board shall determine the general policies which shall govern the operations of the Corporation. The Board shall select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Corporation and shall discharge all such executive functions, powers, and duties.

"(g) The Corporation shall have power—

"(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

"(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

"(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(4) to conduct its business, carry out its operations, and have officers and exercise the powers granted by this section in any State without regard to any qualification, licensing, or similar statute in any State;

"(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Corporation;

"(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(8) to appoint such attorneys, officers, employees, and agents as may be required, determine their qualifications, define their duties, fix their compensation, require bonds from them and fix the penalty thereof; and

"(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and proper conduct of its business.

"(h) When the permanent Board of Directors is duly constituted and the Corporation is ready to conduct business, it shall so notify the Administration.

"COMMON AND PREFERRED STOCK

"SEC. 353. (a)(1) The Corporation shall have voting common stock, having such par value as may be fixed by its Board of Directors from time to time, which may be issued only to small business investment companies. Each share of voting common stock shall be vested with all voting rights, each share being entitled to one vote with rights of cumulative voting at all elections of directors. The free transferability of the voting common stock at all times to any person, firm, corporation, or other entity shall not be restricted except for the restriction in subparagraph (5)(B) of this subsection and except that, as to the Corporation, it shall be transferable only on the books of the Corporation. The initial maximum number of shares of voting common stock that the Corporation may issue and have outstanding shall be one hundred million shares. The maximum number of shares of voting common stock may be increased or decreased by the affirmative vote of the holders of at least a majority of the total outstanding shares.

"(2) The Corporation is authorized to issue nonvoting common stock having such par value as may be fixed by its Board of Directors from time to time. The initial maximum number of shares of nonvoting common stock that the Corporation may issue and have outstanding shall be one hundred million shares. The maximum number of shares of nonvoting common stock may be increased or decreased by the affirmative vote of the holders of at least a majority of the total outstanding shares. Any nonvoting common share issued shall be fully transferable, except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

"(3) The holders of the voting or nonvoting common stock shall not have preemptive rights.

"(4) In order to accumulate funds for its capital surplus account from private sources—

"(A) the Corporation shall require each small business investment company to make payments of nonrefundable capital contributions not to exceed 2 per centum of the private capital of each such company;

"(B) the Corporation also may require each small business investment company to make payments of nonrefundable capital contributions not to exceed 2 per centum of any increases in the private capital of each such company; and

"(C) the Corporation also may require each small business investment company

which sells a small business investment security to the Corporation to make, or commit to make, a nonrefundable capital contribution not to exceed 1 per centum of the unpaid principal balance of such security;

"(5)(A) The Corporation, from time to time, shall issue to each small business investment company its voting common stock evidencing any capital contributions made pursuant to paragraph (4) of this subsection.

"(B) Such voting common stock shall be retained by such companies for a period of not less than three years, subject to such conditions as may be established by the Corporation.

"(C) In addition, the Corporation may issue shares of nonvoting common stock in return for appropriate payments into capital or capital and surplus.

"(D) Such dividends as may be declared by the Board of Directors in its discretion shall be paid by the Corporation to the holders of its voting and nonvoting common stock.

"(6) Notwithstanding any other provision of law, any depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve (12 U.S.C. 461(b)(1)(A)), shall be authorized to make payments to the Corporation of the capital contributions referred to in this subsection, to receive stock of the Corporation evidencing such capital contributions, to purchase additional shares of such stock, and to hold or dispose of such stock, subject to the provisions of this Act.

"(b)(1) The Corporation is authorized to issue nonvoting preferred stock, having such par value as may be fixed by its Board of Directors from time to time. Any preferred share issued shall be freely transferable, except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

"(2) The holders of the preferred shares shall be entitled to such rate of cumulative dividends and such shares shall be subject to such redemption or other conversion provisions as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid. The Corporation may prescribe that any class of preferred stock of the Corporation may be converted into voting or nonvoting common stock of the Corporation.

"(3) In the event of any liquidation, dissolution, or winding up of the Corporation's business, the holders of the preferred shares shall be paid in full at par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

"OBLIGATIONS AND SECURITIES

"SEC. 354. (a) The Corporation is authorized to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Corporation. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Corporation shall determine, with the approval of the Secretary of the Treasury. Such obligations may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein. The Corporation shall insert appropriate language in each of its obligations issued under this section and under section 356 clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the Corporation. The Corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price. Any obligation or security of the Corporation may be issued and sold in definitive form, in book entry form or in such other form, with or without delivery of physical evidence of ownership, as shall be prescribed by the Corporation.

"(b) For the purposes of this section, the Corporation is authorized to issue obligations which are subordinated to any or all other obligations of the Corporation, including subsequent obligations. The obligations issued under this section shall have such maturities and bear such rate or rates of interest as may be determined by the Corporation and may be made redeemable at the option of the Corporation before maturity in such manner as may be stipulated in such obligations. Any of such obligations may be made convertible into shares of common stock in such manner, at such price or prices, and such time or times as may be stipulated therein.

"(c) The Secretary of the Treasury, in his discretion, may purchase any obligations issued by the Corporation pursuant to subsection (a) of this section as now or hereafter in force and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act (40 Stat. 288), as amended as now or hereafter in force, and the purposes for which securities may be issued under such Act, as now or hereafter in force, are extended to include such purchases. The authorities provided to the Secretary of the Treasury by the preceding sentence shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $500,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be on terms and conditions as shall be determined by the Secretary of the Treasury, taking into consideration the objectives that the Corporation retain the ability to make credit available to eligible borrowers on reasonable terms as reflected in the current average rate on outstanding marketable obligations to the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, on such terms and conditions and at such price or prices as the Secretary may determine, any of the obligations acquired by the Secretary under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public debt transactions of the United States.

"LEGAL INVESTMENTS AND EXEMPT SECURITIES

"SEC. 355. All obligations issued by the Corporation pursuant to sections 354 and 356, all preferred stock issued by the Corporation pursuant to section 353(b) and all obligations guaranteed by the Corporation pursuant to section 356 shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Corporation shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Corporation shall, for the purposes of section 14(b)(2) of the Federal Reserve Act (12 U.S.C. 355(2)), be deemed to be an agency of the United States. The obligations of the Corporation shall be deemed to be obligations of the United States for purposes of section 3124 of title 31, United States Code. For the purpose of section 101(39) of title 11, United States Code, the Corporation shall be deemed to be an agency of the United States; however, for the purpose of section 101(33) of title 11, United States Code, the Corporation shall not be deemed to be a governmental unit, but instead shall be deemed to be a corporation.

"LOAN AND INVESTMENT OPERATIONS

"SEC. 356. (a) After the permanent Board of Directors has been duly constituted and the debentures purchased as provided in section 361 of this Act, the Corporation is authorized, subject to the provisions of this section, pursuant to commitments or otherwise, to make advances on the security of, purchase, or repurchase, service, sell or resell, offer participations or pooled interests or otherwise deal in, at prices and on terms and conditions determined by the Corporation, small business investment securities.

"(b) Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security or ownership interest in small business investment securities created by the Corporation or by any eligible small business investment company may be perfected either through the taking of possession of such securities or by the filing of notice of such interest in such securities in the manner provided by such State law for perfection of security or ownership interests in accounts.

"(c) The Corporation is authorized to guarantee securities based on or secured by pools or trusts of the small business investment securities eligible for purchase by the Corporation under this section and to act either as issuer or as guarantor of such securities issued by an eligible small business investment company. Such securities shall bear interest at a rate equal to the rate on the underlying small business investment securities less an allowance for servicing and other expenses as determined by the Corporation.

"(d) Securities issued pursuant to subsection (c) of this section may be in the form of debt obligations secured by pools of loans, or trust certificates of beneficial ownership in such pools of loans or both. Small business investment securities set aside pursuant to the offering of participations or pooled interests shall at all times provide for payments that, in the reasonable judgment of the Corporation, are adequate to ensure the timely principal and interest payments on such securities.

"(e) Nothing contained in this section shall be construed to impede small business investment companies operating under section 359 of this Act from receiving a proportionate and fair share of available funds.

"QUALIFICATION OF SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 357. (a) The Corporation shall establish appropriate criteria for the qualification of small business investment companies to conduct business with the Corporation. Such criteria may include, among other things, the general business reputation and character of the owners and management of the small business investment company, and the probability of successful operations of such small business investment company, including adequate profitability and financial soundness. Licensees in good standing which make capital contributions and acquire and maintain common stock of the Corporation pursuant to section 353(a) of this Act, contract with the Corporation pursuant to the provisions of section 358(a) of this Act, and authorize the release of records to the Corporation pursuant to section 322(d) of this Act shall be deemed to be qualified under this section.

"(b) Each small business investment company authorized to operate under the authority of Part B this Act shall have private capital of not less than $1,000,000. In all cases, such private capital shall be in an amount adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently.

"(c) Notwithstanding the provisions of section 23A of the Federal Reserve Act (12 U.S.C. 371c), ownership interests in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire ownership interests in any small business invesment company if, upon the making of that acquisition the aggregate amount of ownership interest in small business investment companies then held by the bank would exceed five percentum of its capital and surplus.

"(d) Each small business investment company shall have authority to purchase stock issued by the Corporation and to borrow money and to issue its debenture bonds, promissory notes, or other obligations under such general conditions and subject to such rules as the Corporation may prescribe.

"(e) Thirty days after the Administration receives notice from the Corporation pursuant to section 352(h) of this Act, the provisions of sections 301-306 inclusive, sections 308-318 inclusive, and sections 320 and 321, of this Act shall be inapplicable to small business investment companies which qualify under section 357(a) or section 359(a) of this Act and which remain qualified to conduct business with the Corporation.

"(f) All specific references to small business investment companies operating under the Small Business Investment Act of 1958 in any law of the United States, or regulations promulgated thereunder by any agency of the United States Government, or any law of any State in effect on the effective date of this Act, shall be deemed to refer to and include small business investment companies operating under the provisions of part B of this Act.

"OPERATIONS OF SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 358. (a) The Corporation shall enter into agreements with small business investment companies qualified under section 357 or section 359 of this Act governing the operations of such companies, in accordance with the provisions and purposes of this Act.

"(b) Each small business investment company is authorized to provide equity capital and loans to small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the rules of the Corporation. Equity investments and loans made under this section may be made directly or in cooperation with other investors or lenders on a participation or guaranteed basis. Each small business investment company may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services.

"(c) Small business investment companies shall engage only in the activities contemplated by this Act and in no other activities.

"(d) For the purpose of eliminating conflicts of interest which may be detrimental to small-business concerns, to small business investment companies, to the shareholders or partners of either, to the Corporation, or to the purposes of this Act, the Corporation shall adopt rules to govern transactions with any officer, director, shareholder, or partner of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, or partner of (A) any small business investment company, or (B) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company.

"(e) The Corporation shall adopt rules which shall provide that small business investment companies, either singularly or jointly, shall not be permitted to assume control over small-business concerns except on a temporary basis if reasonably necessary for the protection of its investment and then only under restrictions as determined by the Corporation.

"(f) Except as otherwise provided by the rules of the Corporation, financings of small-buisness concerns by small business investment companies shall be for a minimum period of five years. In the case of small business investment companies operating under section 359 of this Act, financings shall be for the minimum period of four years, except as otherwise provided by the rules of the Corporation.

"(g) Without the approval of the Corporation, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this Act for any single enterprise shall not exceed 20 per centum of the private capital of such company. In the case of small business investment companies operating under section 359 of this Act, the limitation shall be 30 per centum.

"(h) Small business investment companies shall not provide financing to a small-business concern for relending, foreign investments, passive investments or the acquisition of farm land. For purposes of this subsection, farm land shall mean land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

"(i) Each small business investment company shall be subject to an annual audit and shall make such reports to the Corporation at such times and in such form as the Corporation may require.

"(j) The Corporation shall adopt appropriate measures to assure compliance by small business investment companies with the provisions of this section. Failure by a small business investment company to comply with the provisions of this section shall entitle the Corporation to terminate or suspend the agreements between the Corporation and a small business investment company or to take corrective action warranted under the circumstances which shall include, but is not limited to: suspensison or termination of agreements between the Corporation and such company; assessment of penalties against such company or its officers or directors: or removal or suspension of officers or directors of such company. In appropriate cases, the Corporation is authorized, in its discretion, to refer violations of the provisions of this section to the Administration for investigation or to refer such violations to the United States attorney in the jurisdiction in which such violations may have occurred or in which the small business investment company, or its officers or directors, are located.

"(k) In order to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small-business concerns, the provisions of the Constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges or other charges which may be charged, taken, received, or reserved by lenders shall not apply to any business loan made by a small business investment company pursuant to provisions of this Act. This subsection shall apply to business loans made by a small business investment company in any State on or after the effective date of this Act, unless such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of the subsection to apply to business loans made in such State. In any case in which a State takes an action described in this subsection, such State or constitutional or other provision shall not apply after the date such action was taken with respect to any business loan made by a small business investment company pursuant to a commitment to make such loan which was entered into on or after the effective date of this Act and prior to the date on which such action was taken.

"SPECIAL SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 359. (a) The Corporation shall adopt reasonable criteria regarding the qualification of a special type of small business investment company (hereinafter referred to as 'special small business investment companies'), the investment policy of which is that its investments will be made solely in disadvantaged small-business concerns. Licensees in good standing operating under the provisions of section 301(d) of this Act which make capital contributions and acquire and maintain common stock of the Corporation pursuant to section 353(a) of this Act, contract with the Corporation pursuant to the provisions of section 358(a) of this Act, and authorize the release of records to the Corporation pursuant to section 322(d) of this Act shall be deemed to be qualified under this section.

"(b) In order to benefit special small business investment companies, there is hereby authorized and created a special-purpose trust (hereinafter referred to as the 'Trust') which shall operate in conjunction with the Corporation as follows:

"(1) The Trust shall operate in accordance with a trust agreement between the Trust

and the Corporation to carry out the purposes of this Act.

"(2) The Trust shall be administered by five trustees, three of whom shall be nominated by the special small business investment companies and appointed by the Board of Directors of the Corporation. At least three of the trustees shall, at all times, be persons from special small business investment companies. One of the trustees shall be appointed by the President, to serve at the pleasure of the President, and one of the trustees shall be ex-officio, the Chairman of the Board of Directors of the Corporation, or his designee.

"(3) The nomination of trustees by special small business investment companies shall be by vote of such companies, which shall be cumulative, by number of shares of voting common stock of the Corporation held by each such company. Each of the trustees nominated by the special small business investment companies shall be appointed as trustees by the Board of Directors of the Corporation unless such Board, for good cause shown, refuses to approve any such nominee, in which event a new nominee shall be nominated by the special small business investment companies. Nominees, upon appointment by the Board, shall serve for terms of three years, and no such trustee shall serve more than two consecutive terms.

"(4) The trustees appointed by the Corporation shall have custody and control of the trust estate to administer, sell, invest and reinvest the trust estate with the care, skill, purdence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

"(5) The Trust shall establish separate accounting for all preferred securities, debentures, loss reserves and other funds acquired and the application of funds for the purposes specified in this section. The trustees shall make an annual accounting of the Trust's operations to the Secretary of the Treasury.

"(c) Within thirty days after the Administration receives notice from the Corporation pursuant to section 352(h) of this Act, the Administration shall convey to the Corporation in trust all of the right, title, and interest to all preferred securities and debentures issued by small business investment companies operating under authority of section 301(d) of this Act, and held by the Administration. The Corporation shall grant and convey to the Trust such securities and debentures and other funds designated for the Trust in trust, to be administered in accordance with the provisions of this Act.

"(d) The Trust shall apply all of the funds held in trust and income thereon, dividends on any preferred securities held in trust, and interest on any debentures held in trust, together with the proceeds from any retired preferred securities held in trust, and proceeds from any maturing debentures held in trust—

"(1) to cover any losses realized on preferred securities or debentures held in trust, preferred securities purchased by the Trust in accordance with the provisions of this section or debentures purchased or guaranteed by the Corporation in accordance with the provisions of this section;

"(2) to reduce the interest rate on debentures purchased or guaranteed by the Corporation in accordance with the provisions of subsection (e) of this section;

"(3) to purchase preferred securities in accordance with the provisions of subsection (e) of this section; and

"(4) to cover the operating costs of administering the Trust.

"(e) The trustees of the Trust are authorized to purchase preferred securities, and the Corporation is authorized to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by special small business investment companies. Such purchases or guarantees may be on such terms and conditions as the Trust or the Corporation deems appropriate, subject to the following:

"(1) The Trust may purchase shares of nonvoting stock (or other securities having similar characteristics) issued by special small business investment companies, provided—

"(A) dividends are preferred and such securities are subject to such rate of cumulative dividends, redemption or other conversion provisions, terms and conditions as may be determined by the Trust;

"(B) on liquidation or redemption, the Trust is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Trust) the Trust shall be paid any amounts as may be due pursuant to subparagraph (A) of this paragraph;

"(C) the purchase price shall be at a price determined by the Trust and, in any one sale, $50,000 or more; and

"(D) the amount of such securities purchased and outstanding at any one time shall not exceed 200 per centum of the private capital of such company. The amount of such securities purchased by the Trust in excess of 100 per centum of such private capital from any company may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in venture capital as determined by the Trust. For the purpose of the subsection, the term 'venture capital' means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other ventures for profit or debt instruments which are subordinate by their terms to other borrowings of the issuer.

"(2) The Corporation may purchase or guarantee debentures issued by special small business investment companies which shall be subordinate to any other debentures, bonds, promissory notes or other debts and obligations of such companies unless the Corporation in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise, provided—

"(A) the effective rate of interest during the first five years of the term of any debenture purchased by the Corporation under authority of this section shall be at a rate determined by the Corporation to be the rate of return on comparable small business investment securities purchased by the Corporation reduced to such lower rate as determined and provided by the Trust, such reduction in rate not to exceed 3 per centum per annum; and

"(B) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this subsection or transferred to the Trust under subsection (c) of this section shall not exceed 400 per centum of a company's private capital less the amount of preferred securities outstanding.

"(3) Debentures purchased and outstanding pursuant to paragraph (2) of this subsection (e) may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(B) of this subsection (e).

"(f) The Trust and the Corporation are authorized to extend the benefits of this section to any special small business investment company which is owned, in whole or in part, by one or more small business investment companies, in accordance with rules promulgated by the Trust and the Corporation.

"(g) All dividends on preferred securities, interest on debentures, gains from sales of any securities and all other income of the Trust shall be exempted from all taxation now or hereafter imposed by the Congress or by any State or by any country, municipality, or local taxing authority.

"(h) Fifty years after the effective date of this Act, all preferred securities purchased by the Trust from special small business investment companies shall be redeemed and, together with the remaining corpus and interest of the Trust, less any funds owed to the Corporation, shall be transferred by the Trust to the United States Treasury for covering into miscellaneous receipts. Thereafter, the Trust shall be terminated and special small business investment companies operating under the authority of this section shall operate under the authority of section 357 of this Act.

"AUDITS AND REPORTS

"SEC. 360. (a) The Administration shall have review authority over the Corporation to ensure that the public purposes of this Act are carried out. The Administration's reviews shall cover the Corporation's criteria for the qualification of small business investment companies to conduct business with the Corporation and the Corporation's agreements, rules or regulations governing the operations of small business investment companies, but shall not extend to the Corporation's internal operations such as personnel, salary, and other usual corporate matters.

"(b) The Administration may examine the books and records of the Corporation and may require the Corporation to make such reports as the Administration deems desirable. The Administration, not later than January 31 of each year, shall report to the Congress on reviews made under this section.

"(c) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States. A report of each such audit shall be furnished to the Secretary of the Treasury. The audit shall be conducted at the place or places where the accounts are normally kept. The representatives of the Secretary shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

"(d) A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Small Business Committees of the Congress not later than six months following the close of such fiscal year. The report shall

set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Corporation, together with such recommendations with respect thereto as the Secretary may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit. A copy of each report shall be furnished to the Administration and to the Corporation. In addition to such annual audits, the Corporation shall be subject to audit by the General Accounting Office, at the request of either of the Small Business Committees of the Congress, as long as the Corporation holds small business investment company securities guaranteed by the Administration and acquired by the Corporation pursuant to section 361 of this Act.

"(e) The Corporation shall, as soon as practicable after the end of each fiscal year, transmit to the President, the Small Business Committees of the Congress and the Administration a report of its operations and activities during last year.

"TRANSFER OF SMALL BUSINESS ADMINISTRATION GUARANTEED SECURITIES TO THE CORPORATION

"SEC. 361. (a) To carry out the purposes set forth in section 351 of this Act, and notwithstanding any law, rule, or regulation, the Secretary of the Treasury is authorized and directed to sell to the Corporation during fiscal year 1987, all of the right, title and interest to all small business investment company securities guaranteed by the Administration and held by the Federal Financing Bank (the 'Bank'), providing such securities are due in fiscal year 1988 or any subsequent year. The Corporation shall fully pay in cash for such securities during fiscal year 1987 at a price equal to the outstanding principal balance of such securities, except that $100,000,000 of the purchase price shall be paid by the Corporation to the trustees for the Trust to carry out the trust functions specified in section 359 of this Act. Such securities may be freely transferred, hypothecated or sold by the Corporation. Interest on such securities shall accrue to the benefit of the Bank up to the date of transfer of title of the securities from the Bank to the Corporation.

"(b) To the extent the Corporation is prepared to conduct business during fiscal year 1987, the Secretary of the Treasury is authorized to sell to the Corporation during fiscal year 1987, all of the right, title and interest to any small business investment company securities guaranteed by the Administration and held by the Bank which are due in fiscal year 1987. The Corporation shall fully pay in cash for such securities during fiscal year 1987 at a price equal to the outstanding principal balance of such securities. Such securities may be freely transferred, hypothecated or sold by the Corporation. Interest on such securities shall accrue to the benefit of the Bank up to the date of transfer of title of the securities from the Bank to the Corporation.".

SEC. 6. Except as otherwise provided in this Act, or as otherwise provided by the Corporation or by laws hereafter enacted by the Congress expressly in limitation of provisions of this Act, the powers and functions of the Corporation and of the Board of Directors shall be exercisable, and the provisions of this Act shall be applicable and effective, without regard to any other law.

SEC. 7. Notwithstanding any other law this Act shall be applicable to the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SECTION-BY-SECTION SUMMARY OF THE BILL TO BE KNOWN AS THE CORPORATION FOR SMALL BUSINESS INVESTMENT CHARTER ACT

Section 1. This section provides that the Act may be cited as the "Corporation for Small Business Investment Charter Act."

Section 2. This section amends section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) by redefining one of the terms defined therein, and adds the definitions of certain terms used in the Act.

Subsection (a) adds the phrase "or a company qualified to conduct business with the Corporation under section 357 of this Act" to the definition of "small business investment company," "company" and "licensee."

Subsection (b) modifies the definition of "small business concern" to provide that for purposes of Title III of the Act, a "small business concern" is one that is independently owned and operated, is not dominant in its field of operations, does not have net worth in excess of $7,000,000 and does not have average net income for the preceding two years in excess of $2,500,000. This latter size standard is subject to an annual inflation adjustment. In the alternative, the size qualification also may be met under standards established by the Small Business Administration (the "Administration").

Subsections (c), (d) and (e) add nine new definitions to the end of section 103. New paragraphs (9) and (10) define the terms "Corporation" and "Board of Directors" to mean the Corporation for Small Business Investment and its Board of Directors. New Paragraph (11) defines "disadvantaged small business concern" as a small business concern owned by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. New paragraph (12) defines the term "law" to include any law or rule of law or equity of the United States or any State. New paragraph (13) defines the term "organization" to mean any corporation, partnership, association, business trust or other business entity. New paragraph (14) provides that the term "security" has the meaning ascribed to it by Section (2)(1) of the Securities Act of 1933. New paragraph (15) defines the term "small business investment security" to include debentures, bonds, promissory notes, obligations or securities currently issuable by small business investment companies plus such other small business investment company securities as the Corporation may permit to be issued. New paragraph (16) defines "private capital" of a small business investment company to be the combined private paid-in capital and paid-in surplus or, in the case of an unincorporated small business investment company, the permanent partnership capital. New paragraph (17) defines "licensee in good standing" to mean licensee as defined in the Act unless such licensee is in default under the provisions of preferred securities or debentures or such securities have been declared due and payable by the Administration or the licensee is in liquidation for regulatory reasons.

Section 3. Title III of the Small Business Investment Act of 1958 is amended by adding a new section 322. Subsection (a) provides that a licensee in good standing shall have three months after the date the Corporation gives notice to the Administration that it is ready to conduct business to qualify under sections 357 or 359. Section 357 establishes the criteria for qualification of small business investment companies to conduct business with the Corporation and section 359 establishes the criteria for qualification of special small business investment companies to do business with the Trust.

Subsection (b) provides that within six months after the Administration receives notice (under section 352(h) of the Act) that the Corporation is prepared to do business, the Administration shall promulgate rules and regulations to effect the orderly termination of any licensee in good standing which has not qualified under sections 357 or 359 of the Act, and the Administration shall contract with the Corporation to administer these regulations.

Subsection (c) provides that such rules and regulations shall suspend the licensee's authority to obtain financing or financial assistance from the Administration. The revocation of license must be effective within two years of the publication of the rules and regulations except such revocation may be delayed within two years of the maturity of preferred securities or debentures of a licensee.

Subsection (d) provides that the Administration shall furnish to the Corporation all of its books and records necessary to carry out the provisions of the Act within thrity days of a written request by the Corporation unless the Administrator certifies that such books and records are not available within such time. Information on individual licenses shall not be furnished unless the licensee has agreed to such release. Information furnished by the Administration to the Corporation shall be kept confidential.

Section 4. Title III of the Small Business Investment Act of 1958 is amended by revising the table of contents and by inserting the heading "Part A" prior to section 301.

Section 5. The Small Business Investment Act of 1958 is amended by inserting the heading "Part B" at the end thereof.

A new Section 351 entitled "Purposes" is added.

This section sets forth the purposes of Part B of the Act. It is declared that the purposes of this Part of the Act are (1) to establish a Government-sponsored private corporation, financed by private capital, which will serve as a secondary market and warehousing facility for loans to and investments in small business investment companies, and will provide liquidity for small business loans and investments; (2) to encourage the formation of new small business investment companies to stimulate and supplement the orderly and necessary flow of private capital and long-term loan funds to and improve the distribution of investment capital available for small business concerns; and (3) to provide for an orderly transfer of certain functions of and securities guaranteed or owned by the Small Business Administration to the Corporation for Small Business Investment as constituted under the Act. These purposes reflect the belief that a government-sponsored private corporation financed by private capital can more appropriately, efficiently and profitably stimulate investment in small business investment companies.

New section 352 is entitled "The Corporation for Small Business Investment."

Subsection (a) establishes a corporation to be known as the Corporation for Small Business Investment (the "Corporation") which would have succession until dissolved. The Corporation would maintain its principal office in the District of Columbia and would be deemed to be a resident and citizen of the District for purposes of venue and jurisdiction in civil actions. Finally, the Corporation would be authorized to establish offices wherever necessary or appropriate for the conduct of its business.

Subsection (b) provides that the Corporation, as an instrumentality of the United States, would be exempt from State taxation, except that any real property of the Corporation would be subject to taxation to the same extent that other property is taxed. The Corporation would not be exempt from federal income taxes.

Subsection (c) provides that until the permanent Board of Directors is designated, the President would appoint an interim Board of Directors consisting of five members, one of whom would be designated by the President as interim Chairman. The interim Board would be appointed by the President within sixty days of the enactment of the Act. Of the five members, two would be representative of small business, two would be representative of small business investment companies, and one would be the Small Business Administration Administrator. The main function of the interim Board is to arrange for an initial offering of common stock of the Corporation and to take whatever other actions are necessary to proceed with the operations of the Corporation.

Subsection (d) provides for a permanent Board of Directors consisting of fifteen persons. When $15,000,000 of common stock of the Corporation has been purchased by small business investment companies, the holders of common stock would then elect ten members of the Board of Directors. The remaining five would be appointed by the President.

Subsection (e) provides that once the events described in paragraph (d) have occurred, the interim Board would turn over control of the affairs of the Corporation to the permanent Board. The directors appointed by the President would serve at the pleasure of the President and until their succesors have been appointed and have qualified. At least one of the directors appointed by the President must be from a special small business investment company, operating under section 359 of the Act. Two directors shall be representative of small business. The directors elected by the common stockholders would each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Corporation, and would serve until their successors have been elected and have qualified. Any appointive seat on the Board which becomes vacant would be filled by appointment of the President and any elective seat on the Board which becomes vacant after the annual election of the directors would be filled by the Board, but only for the unexpired portion of the term.

Subsection (f) sets forth the responsibility of the Board for determining the general policies which would govern the operations of the Corporation and for selecting, appointing, compensating and prescribing the functions, powers and duties of the executive officers of the Corporation.

Subsection (g) provides that the Corporation would have the normal powers exercised by a corporation including the power to sue and be sued, to use a corporate seal, to adopt bylaws, to conduct business in any state, to deal in various ways with property, to appoint and dismiss officers and employees, to enter into contracts, and to exercise other specified or necessarily incidental powers.

Subsection (h) provides that when the permanent Board of Directors is duly constituted and the Corporation is ready to conduct business, it shall so notify the Administration.

A new section 353 is entitled "Common and Preferred Stock."

Paragraph (a)(1) of this section provides that the Corporation shall have voting common stock which may be issued only to small business investment companies. Each share of common stock shall have such par value as the Board of Directors may fix from time to time. Each share is entitled to one vote with cumulative voting rights at the elections of directors. The maximum number of authorized shares of voting common stock of the Corporation shall be 100,000,000 shares. This maximum number of authorized shares may be increased or decreased by an affirmative vote of a majority of the total outstanding shares. Such stock is freely transferable except as to the restriction on retention by small business investment companies for three years in section (5)(B) below and that, as to the Corporation, it is transferable only on its books.

Paragraph (a)(2) provides for nonvoting common stock and that the number of authorized shares of nonvoting common stock of the Corporation shall be 100,000,000 nonvoting common stock. This maximum number of authorized shares may be increased or decreased by an affirmative vote of a majority of the total outstanding shares.

Paragraph (a)(3) provides that holders of voting and nonvoting common stock shall not have preemptive rights.

Paragraph (a)(4) provides that the Corporation will raise funds for its capital surplus account by requiring nonrefundable capital contributions from each small business investment company, not to exceed, in total, two percent of the private capital of each such company. In addition, the Corporation may require small business investment companies which sell securities to the Corporation to make, or to commit to make, capital contributions not to exceed one percent of the unpaid principal balance of such securities.

Paragraph (a)(5) provides that the Corporation will issue shares of its common stock to each small business investment company to evidence any capital contributions made pursuant to paragraph (a)(4) of this section. It is further provided that the Corporation may issue additional shares of nonvoting common stock in return for appropriate payments into capital or capital and surplus. Thus, the Corporation is authorized to issue nonvoting common stock to the general public. Any dividends declared by the Board of Directors are to be paid by the Corporation to the holders of its common stock. Common stock issued to small business investment companies under paragraph (a)(5) must be retained for three years, subject to such conditions as may be established by the Corporation.

Paragraph (a)(6) of this section provides that, notwithstanding any other provision of law, any depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act, is authorized to make capital contributions to the Corporation as provided in this subsection, and to receive nonvoting common stock evidencing it contributions. This authorization is intended to encourage the purchase of Corporation stock by depository institutions which generally are prohibited from owning stock in other entities.

Subsection (b)(1) authorizes the Corporation to issue a class of nonvoting preferred stock. Under the Act, if the Corporation so prescribes, such stock could be converted into voting or nonvoting common stock of the Corporation.

New section 354 is entitled "Obligations and Securities."

Subsection (a) of this section authorizes the Corporation (after approval by the Secretary of the Treasury) to issue obligations with maturities, rates of interest and terms and conditions as set by the Corporation. At the option of the Corporation, such obligations could be redeemed before maturity. This subsection makes clear that these obligations are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Corporation. The Corporation is authorized to purchase in the open market any of these obligations at any time and at any price. Finally, the Corporation can prescribe that any obligation or security can be sold in definitive form or in book entry form with or without delivery of physical evidence of ownership.

Subsection (b) provides that the Corporation may issue subordinated obligations with such maturities and rates of interest as set by the Corporation. At the option of the Corporation, these obligations could be redeemed before maturity, and may be convertible into shares of common stock.

Subsection (c) provides discretionary authority for the Secretary of the Treasury to purchase any obligations issued by the Corporation and authorizes the Secretary to utilize the proceeds of the sale of any securities under the Second Liberty Bond Act for the acquisition of any obligations of the Corporation.

The prospective Treasury acquisitions are limited in several important respects. First, the amount of such holdings must be approved in advance through appropriation Acts of the Congress. Second, the holdings authorized under this subsection cannot exceed $500,000,000 at any time. Moreover, the yield must be at a rate determined by the Secretary in relation to the current average rate on outstanding Treasury obligations of comparable maturities. This will assure yields comparable to other Treasury holdings. The Secretary is authorized to sell the obligations of the Corporation at any time, price and upon any conditions and to treat such sales or redemptions as public debt transactions.

Under current law such public debt transactions are not included in the calculation of federal deficit figures. If such acquisitions are made, they will be reflected in the aggregate public debt totals at the time of acquisition. It is anticipated that this discretionary authority will, in fact, not be used but will be held in reserve by the Secretary. It would only be used in the event the private market floundered and it became necessary for the Congress to provide support for the small business investment company market through appropriate Treasury support. The Congress and the Secretary will be responsible for determining that such Treasury support is used only when necessary.

As a public debt transaction, this authority will not be reflected as budget authority or outlays in the federal budget when obligations are purchased. When they are sold, no change in the deficit will occur. Since the transactions are public debt financing mechanisms, they only show up in those accounts.

New section 355 is entitled "Legal Investments and Exempt Securities."

This section makes all obligations issued by the Corporation lawful investments acceptable as security for all fiduciary, trust and public funds under the authority or control of the United States. The stock and obligations issued by the Corporation would be classified as exempt securities under the laws administered by the Securities and Exchange Commission. The Corporation is deemed to be an agency of the United States for the purposes of section 355(2) of title 12 which gives the obligations of the Corporation the same investment status as other federally guaranteed obligations of the United States. With this status, the obligations of the Corporation would be considered liquid investments and, thus, could be used to satisfy reserve requirements of banks and savings and loan associations. Finally, for purposes of the Bankruptcy Code, and, specifically section 101(33) of title 11, the Corporation would be deemed to be a corporation and not a governmental unit; consequently, the U.S. Government does not by law have first priority over other creditors in the event of dissolution, liquidation or winding up of the business of the Corporation. For purposes of section 101(39) of title 11, however, the Corporation would be deemed to be an agency of the United States for the purpose of inclusion of its obligations within the provisions of the Bankruptcy Code relating to repurchase agreements.

New section 356 is entitled "Loan and Investment Operations."

Subsection (a) of this section authorizes the Corporation to issue commitments or otherwise deal in securities issued by small business investment companies after the permanent Board of Directors has been duly constituted and Administration-guaranteed debentures purchased under section 361 of the Act.

Subsection (b), which essentially restates section 1087-2(a)(2) of title 20, simplifies the procedure for perfecting a security or ownership interest in small business investment securities created by the Corporation or by an eligible small business investment company. Notwithstanding the provisions of any state law to the contrary, including the Uniform Commercial Code as in effect in any State, a security or ownership interest in small business investment securities created by the Corporation or by any small business investment company may be perfected either through taking possession of such securities or by filing notice of an interest in such securities in the manner provided by State law for perfection of security or ownership interests in accounts.

Subsection (c) authorizes the Corporation to guarantee securities based on or secured by pools or trusts of the small business investment securities eligible for purchase by the Corporation under this section. The Corporation is further authorized to act either as an issuer or guarantor of such securities. Thus, for example, the Corporation could guarantee collateralized securities issued by small business investment companies, and such securities so issued or guaranteed would bear interest at a rate equal to the rate on the underlying small business investment securities less an allowance for servicing other expenses as determined by the Corporation.

Subsection (d) provides that these securities may be in the form of debt obligations secured by pools of loans, or trust certificates of beneficial ownership in such pools of loans, or both. Thus, the Corporation is provided with the authority to operate a collateralized security program. The remainder of this section authorizes the Corporation to determine the adequacy of payments on such securities to assure their timely repayment.

Subsection (e) provides that nothing in this section shall be construed to impede small business investment companies operating under section 359 of the Act from receiving a proportionate and fair share of available funds.

New section 357 is entitled "Qualification of Small Business Investment Companies."

Subsection (a) restates the criteria of 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) for determining the qualification of small business investment companies to conduct business with the Corporation. It specifies some of the factors (business reputation and character of the owners, and the and probability of success of the proposed company) which must be taken into consideration in determining qualification. This section also provides that any small business investment company that is currently licensed and approved by the Small Business Administration to operate under the provisions of the Small Business Investment Act of 1958 is automatically qualified to operate under the provisions of the Act if such company subscribes to stock of the Corporation, as provided in section 353(a) of the Act, contracts with the Corporation, as provided in section 358(a) of the Act, and authorizes the release of records, as provided in section 322(d) of the Act.

Subsection (b) essentially restates section 302(a) of the Small Business Investment Act of 1958 (15 U.S.C. 682(a)) with the exception that the specific minimum private capital requirements of that section have been increased form $500,000 to $1,000,000, the current minimum requirement of the Small Business Administration. Under the Act, it is required that each small business investment company have sufficient private capital to assure sound and profitable operations and active and prudent management.

Subsection (c) restates the provisions of section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)) which permits the purchase of ownership interests in small business investment companies by national banks, and by other Federal Reserve member banks and FDIC-insured banks when not prohibited by State law, up to an aggregate of 5 percent of the bank's capital and surplus. This authorization retains the current small business investment company exemption from the Glass-Steagell Act, and, specifically, section 371(c) of title 12, which generally prohibits banks from engaging in non-banking related activities.

Subsection (d) essentially restates section 303(a) of the Small Business Investment Act of 1958 (15 U.S.C. 683(a)) by authorizing small business investment companies to borrow money and to issue obligations therefor, under conditions and rules prescribed by the Corporation. This paragraph goes further, however, and authorizes small business investment companies to purchase stock issued by the Corporation since purchase of such stock will be a prerequisite for qualification as a small business investment company.

Subsection (e) provides that thirty days after the Administration receives notice from the Corporation under section 352(h) of the Act that the Corporation is ready to conduct business, the provisions of sections 301-306, inclusive, sections 308-318, inclusive, and sections 320 and 321 of the Act shall be inapplicable to small business investment companies qualified under section 357 or 359 of the Act.

Subsection (f) provides that all specific references to small business investment companies operating under the Small Business Investment Act of 1958 in any federal or state law or regulation shall now be deemed to refer to and include small business investment companies operating under the provisions of the Act. The foregoing provision is intended to insure that small business investment companies are accorded the same treatment under the Act as they currently enjoy under other statutes that make reference to small business investment companies operating under the provisions of the Small Business Investment Act of 1958. References to small business investment companies can be found in several statutes and regulations including, but not limited to, the following: in the Internal Revenue Code, 26 U.S.C. sections 243(a)(2), 542(c)(8), 586, 1242 and 1243; in the Investment Company Act of 1940, 15 U.S.C. sections 80a-18(k); and in regulations promulgated pursuant to the Internal Revenue Code, 26 C.F.R. section 1.533-1(d), and pursuant to the Investment Company Act of 1940, 17 C.F.R. sections 270.17(a)-6 and 270.18c-2(a).

New section 358 is entitled "Operations of Small Business Investment Companies."

Subsection (a) of this section authorizes the Corporation to enter into agreements with small business investment companies governing the operations of such companies to carry out the provisions of the Act. This gives the Corporation the general authority to establish criteria for the operations of small business investment companies.

Subsection (b) essentially combines the provisions of sections 304(a) and 305(a) and (b) of the Small Business Investment Act of 1958 (15 U.S.C. 684(a) and 685(a)(b)) by authorizing small business investment companies to make equity investments and loans directly or in cooperation with other investors or lenders on a participation of guaranteed basis.

Subsection (c) adopts SBA's current regulations which provide that small business investment companies shall engage only in the activities contemplated by the Act and in no other activities.

Subsection (d) restates the provisions of section 312 of the Small Business Investment Act of 1958 (15 U.S.C. 687d). For the purpose of controlling conflicts of interest, the Corporation is empowered to adopt rules governing transaction between or among small business investment companies and persons interested in them as officers, directors, shareholders or partners.

Subsection (e) provides that the Corporation shall adopt rules that will prevent small business investment companies from assuming control over small business concerns, except under limited conditions, such as situations where it was necessary to do so to protect an investment. This provision is a restatement of the Administration's current control regulations.

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Subsection (f) provides that financings of small business concerns by small business investment companies shall be for a minimum period of five years. In the case of small business investment companies operating under section 359 of the Act, the minimum period is four years. This provision is consonant with one of the purposes of the Act which is to provide long-term loan funds to small business concerns and conforms with current Small Business Administration regulations.

Subsection (g) restates the provisions of section 306(a) of the Small Business Investment Act of 1958 (15 U.S.C. 686(a)) to provide that a small business investment company may not acquire obligations or securities for any single enterprise in excess of 20 percent of its private capital without the approval of the Corporation. In the case of small business companies operating under section 359 of the Act, this limitation is 30 percent.

Subsection (h) prohibits small business investment company investments in small business concerns for relending, foreign investments, passive investments or the acquisition of farm land. The prohibitions also are contained in current Small Business Administration regulations.

Subsection (i) provides that each small business investment company shall be subject to an annual audit and shall make such reports as the Corporation may require. These audits could be made by independent auditors acceptable to the Corporation or the Corporation itself, in its discretion.

Subsection (j) provides that the Corporation shall adopt appropriate measures to assure compliance by small business investment companies with the provisions of section 358 of the Act. It follows those provisions of sections 309 through 315, inclusive of the Small Business Investment Act of 1958 (15 U.S.C. 687) that specify grounds for administrative action against small business investment companies. Under this general authority, the Corporation would establish criteria for good business practices of small business investment companies which would be contained in agreements between the Corporation and small business investment companies. Failure to adhere to these criteria would subject the small business investment company to revocation of its qualification to conduct business with the Corporation and other appropriate administrative or legal action. Such revocatory authority currently exists for the Administration under 308(d) of the Small Business Investment Act of 1958 (15 U.S.C. 687(d)). The Corporation will have broad authority to take whatever actions are necessary under the circumstances to carry out the provisions of this section. Examples of measures which may be taken include: (1) suspension or termination of agreements between the corporation and a company; (2) assessment of penalties against a company or its officers or directors; or (3) removal or suspension of officers or directors of a company. In appropriate cases, such as suspected criminal activity, the Corporation is authorized to refer a violation of this section to the Small Business Administration for investigation or to the United States attorney for the jurisdiction in which the violations occurred or in which the company or its officers and directors are located. While the Corporation is not subject to the Administrative Procedure Act, it is intended that the Corporation will adopt rules or have provisions in its agreements with small business investment companies which will assure such companies or their officers and directors of reasonable opportunity to be advised of the nature of alleged violations of this section and an opportunity to be heard by responsible officers of the Corporation before dispositive actions is taken by the Corporation.

Subsection (k) restates section 308(h)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 687(i)(1)). It declares that the purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns. Any business loan made by a small business investment company pursuant to the provisions of the Act is exempt from the provisions of the Constitution or the laws of any State that expressly limit the rate or amount of interest, discount points, finance charges or other charges that may be imposed by lenders. However, such exemption can be overriden if a State adopts a law or certifies that the voters of such State have voted in favor of a provision which states explicitly that such exemption does not apply to business loans made in such State. Even if a State overrides the exemption by passing a law or certifying voter action, such law or certification will not apply to any loans made by a small business investment company pursuant to a commitment to make such loan after the effective date of the Act and prior to the date such law was passed or such certification occurred.

New section 359 is entitled "Special Small Business Investment Companies."

The provisions of this section essentially continue the existing special small business investment program (i.e., the Minority Enterprise Small Business Investment Company Program) of preferred security purchases and subsidized interest rates for five year terms. In place of the Administration, these benefits would be provided by the Trust created in the section.

Subsection (a) of this section is essentially a restatement of section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)). It requires that the Corporation adopt reasonable criteria for the qualification of a "special type of small business investment company" the investment policy of which is to facilitate ownership in small business concerns by persons whose participation in the free enterprise system has been hampered because of social or economic disadvantages.

Subsection (b) creates a special-purpose trust (the "Trust"). The Trust would be administered under a trust agreement between the Corporation and five trustees, three of whom would be nominated by the MESBICs and appointed by the Board of Directors of the Corporation. At least three of the trustees must be persons from special small business investment companies. One trustee would be appointed by the President and one trustee would be the Chairman of the Board of Directors of the Corporation, or his designee. The trustees nominated by special small business investment companies and appointed by the Board of Directors of the Corporation would have three year terms and could not be reappointed for more than two consecutive terms. The trustees of the Trust would have full authority to administer, sell, invest and reinvest the trust estate, subject to the "prudent man" rule for fiduciaries. The Trust would establish separate accounting for all such preferred securities, debentures and other funds held in trust and would provide an annual accounting of its operations under this subsection to the Secretary of the Treasury.

Subsection (c) provides that within 30 days after the Administration receives notice from the Corporation (under section 352(h)) that it is prepared to conduct business, the Administration shall convey all preferred securities and debentures issued by small business investment companies under section 301(d) of the Act to the Corporation in trust.

Subsection (d) provides that the trust corpus and income shall be administered in the following manner: (1) to cover any losses on the preferred securities or debentures held in trust, preferred securities purchased by the Trust or debentures purchased or guaranteed by the Corporation; (2) to reduce the interest rate on debentures purchased or guaranteed by the Corporation under subsection (e) of this section; (3) to purchase preferred securities under subsection (e) of this section and (4) to cover operating costs of the Trust.

Subsection (e) authorizes the trustees to purchase preferred securities and the Corporation to purchase or guarantee debentures of special small business investment companies. The Trust's purchase of such non-voting securities is subject to such terms and conditions as determined by the Trust, including: (1) dividends are preferred; (2) on liquidation or redemption, the Trust is entitled to the preferred payment of the par value of such securities; (3) the purchase price shall be $50,000 or more and (4) the amount of such securities purchased by the Trust shall not exceed 200 per centum of the private capital of such company. Also, the amount of such securities purchased by the Trust in excess of 100 per centum of such private capital may not exceed an amount equal of funds invested in venture capital by such company as determined by the Trust.

The Corporation is authorized to purchase or guarantee debentures issued by special small business investment companies. The rate of interest on such debentures shall be determined by the Corporation based upon comparable small business investment securities purchased by the Corporation reduced to a lower rate provided by the Trust, not to exceed three per centum per annum. The amount of debentures purchased or guaranteed or transferred to the Corporation under subsection (c) of this section shall not exceed 400 per centum of a company's private capital less the amount of preferred securities outstanding.

Subsection (f) provides that the benefits of this section may be extended to special small business investment companies owned, in whole or in part, by other small business investment companies.

Dividends on the preferred securities, interest on the debentures, gains on sales of securities and other income of the Trust would be exempt from federal, state and local taxes under paragraph (g).

Subsection (h) provides that the Trust will terminate fifty years after the effective date of the Act. All of the preferred securities outstanding will be redeemed and the corpus and interest of the Trust, less any funds owed to the Corporation, will be transferred to the U.S. Treasury.

New section 360 is entitled "Audits and Reports."

Subsection (a) of this section provides that the Administration shall have review authority over the Corporation to insure that the public purposes of the Act are carried out. This review applies specifically to

the Corporation's criteria for qualification of small business investment companies to conduct business with the Corporation and the Corporation's agreements, rules and regulations governing the operations of small business investment companies. It does not extend to the Corporation's internal operations, such as personnel, salary and other corporate matters, or to the operations of individual small business investment companies.

Subsection (b) provides that the Administration may examine the books and records of the Corporation and may require the Corporation to make reports to the Administration. The Administration shall report to the Congress on its reviews under this section no later than January 31 of each year.

Subsection (c) requires an annual audit of the accounts of the Corporation to be performed by an independent certified public accountant and such report must be furnished to the Secretary of the Treasury.

Subsection (d) requires the Secretary of the Treasury to deliver a report of each fiscal year audit of the Corporation to the President, and to the Small Business Committees of the Congress within six months of the end of such fiscal year. In addition to a normal report of the fiscal structure of the Corporation, the report is to include recommendations as the Secretary deems advisable and any indication of impairment of capital or insufficient capital. The Corporation also is subject to audit by the General Accounting Office at the request of either of the Small Business Committees of the Congress, as long as the Corporation holds small business investment securities guaranteed by the SBA and acquired pursuant to section 361 of the Act.

Subsection (e) requires the Corporation, as soon as practicable after the end of each fiscal year, to transmit to the President, the Small Business Committees of the Congress and the Administrator of the Small Business Administration, a report of its operations and activities during each year.

New section 361 is entitled "Transfer of Small Business Administration Guaranteed Securities to the Corporation."

This section provides for the sale during fiscal year 1987 to the Corporation of the Federal Financing Bank's portfolio of Administration-guaranteed debentures issued by small business investment companies due in fiscal year 1988 or later. If the Corporation is operational in fiscal year 1987, it could acquire debentures maturing in fiscal year 1987. The Corporation would pay cash for such securities in fiscal year 1987 at a price equal to the outstanding principal balance of the securities. $100,000,000 of the purchase price would be paid to the Trust created under section 359 of the Act to carry out the trust functions of the Trust. The sale contemplates the substitution of private financing for the obligations acquired by the Corporation.

Section 6. This section provides that the powers and functions to the Corporation and its Board of Directors shall be exercisable, and the provisions of the Act shall be applicable and effective, without regard to any other law.

Section 7. Territorial Applicability.

This section provides that, notwithstanding any other law, the Act is applicable to the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territories, possessions and dependencies of the United States.●

● Mr. BUMPERS. Mr. President, I am delighted to join with Senator WEICKER in moving forward the concept of COSBI, the Corporation for Small Business Investment, by introducing in the Senate the COSBI authorization legislation which was recently marked-up in the House Small Business Committee.

This is an innovative proposal to privatize the financing of the SBA's Small Business Investment Company Program, which is well known to Senators as one of the most successful small business programs ever enacted. The SBIC Program, Mr. President, owes its existence primarily to Senator Lyndon Johnson, who was majority leader in 1958 when the SBIC Act was passed by Congress, and Senator Sparkman, who was the distinguished chairman of the Senate Small Business Committee, and others on both sides of the aisle who worked hard to answer a profound, unmet need in small business financing.

The SBIC Program in recent years has made possible some of America's great entrepreneurial successes—Apple Computer, Cray Research, Federal Express, Digital Switch, NBI, Nike, Winnebago, Lifeline Systems, Pandick Press, to name but a few of the familiar corporate names which would never have gotten off the ground without help from the SBIC Program.

The Federal cost of this program is modest, in the neighborhood of $225 million annually, compared to many Government programs, and the jobs and tax revenues produced by successful businesses mentioned above. The SBIC's, however, have been plagued by the vicissitudes of the congressional authorization, appropriations, and budget processes and, worse, repeated attacks from the White House which has sought to abolish the program entirely.

The SBIC's have a right to feel aggravated with this process. For the last 2 years, Mr. President, they have awakened almost every day to another depressing news story indicating that they were not long for this world. And this, Mr. President, is an industry which has an exemplary record and does not deserve such treatment. So the SBIC industry has fashioned legislation which will give up entirely the SBA guaranty of SBIC debentures and allow them to take control of their own destinies.

This bill, Mr. President, is consistent with the reforms which Senator WEICKER authored, with the support of the SBIC industry, I should add, which removed SBIC financing from the Federal Financing Bank and provided for the sale of SBIC debentures in the private capital markets, with an SBA guaranty. That major change in financing, incidentally, produced $551 million in budget savings over 3 years, and was a key provision of the SBA reauthorization which President Reagan signed into law on April 7 of this year as part of the Combined Omnibus Budget Reconciliation Act.

The bill which Senator WEICKER and I are introducing today will carry this process a giant step further through COSBI. What we propose is a financing entity to meet the needs of small business for venture capital through a privately financed but federally chartered corporation for small business investment. COSBI would, initially, purchase the SBIC debentures now held by the Treasury in the Federal Financing Bank. This should produce a large savings for the Treasury and go a long way toward reducing the deficit. Additionally, it will allow COSBI to issue securities, which will furnish the proceeds for continued financing of the SBIC leverage program by the purchase of SBIC debentures by COSBI.

COSBI securities will not be guaranteed by the Government, so the Federal role will be substantially diminished.

This is a complex proposal, Mr. President, and I will not attempt to explain all its details at this point, but members of the Senate Small Business Committee are eager to work toward understanding and improving it. There are many questions which must be answered, the most important of which is, obviously, "will it work?" Additionally, there are concerns about the role which SBA will have in relation to COSBI. Under the House bill, which we are using as our starting point, SBA's existing regulations would be made statutory and SBA would conduct an annual audit of COSBI. Individual SBIC's however, would no longer be subject to annual audits by the SBA's inspector general. This is a question which must be carefully examined by the Small Business Committee in hearings, and it would be premature to express any view on this question which, I understand, is of considerable importance to the SBIC industry.

Finally, we must be sure that COSBI, which is intended to be a profitmaking venture, will adequately take care of the needs of the minority enterprise SBIC's. These companies, so essential to the continued and improved growth of new businesses owned and operated by economically disadvantaged minorities, are willing to take the risk of foregoing direct Federal funding. We must be sure, however, that this industry is ready to leave the nest, so to speak.

Mr. President, I look forward to working with Senator WEICKER and other members of the Small Business Committee, as well as our friends in the SBIC industry, on this important legislation. There is much work to be

done, and not much time left this year.●

By Mr. KENNEDY (for himself and Mr. GORE):

S. 2648. A bill to improve the public health through the prevention of childhood injuries; to the Committee on Labor and Human Resources.

CHILD INJURY PREVENTION ACT

● Mr. KENNEDY. Mr. President, today I am introducing the Children's Injury Prevention Act of 1986. The problem of injuries to children has been highlighted this year by the celebration for the first time of Children's Accident Prevention Week. As indicated by this new commemorative week, there is a growing awareness throughout the country that the toll from injuries to children is too high to be ignored.

Injuries are responsible for 50 percent of all the deaths of children over the age of one; they are responsible for two-thirds of all deaths of children over the age of 15. Injuries account for more deaths among children than all diseases combined. They are also the leading cause of death for all individuals up to the age of 34. There is good reason that injuries have been called the last major plague of the young.

We must resist the notion that injuries are simply accidents—random events, beyond the realm of human control. It is because injuries have been regarded as unavoidable accidents or behavioral problems there has often been little faith that human effort or design could control them.

In fact, most injuries are predictable. Our researchers can tell us where, how, and even when they will happen. For example, we know that this month and through the summer, there will be 7 deaths every 10 days because of all-terrain vehicles. These vehicles, which have been often viewed as toys, have caused 415 deaths and 185,000 serious injuries since 1982. Half of the deaths have been children under 16; a quarter have been under 12.

We can also predict that there will be about a quarter of a million accidents from people falling down stairs next year. There will be approximately a half million serious bicycle accidents. About 250,000 children will be seriously injured in automobile accidents next year and thousands will die. Almost 5 million children will suffer injuries that are related to products and approximately 126,000 of them will be injured by hazardous toys.

This is the bad news. The good news is that if injuries can be predicted, they can also be prevented. Researchers can identify common design flaws, typical human errors, and successful approaches for reducing the risk of injury. They can also devise better modes of diagnosis, treatment, and rehabilitation from injuries. Government involvement can increase public awareness, enforce design standards, and promote injury reduction efforts. Our best investment is clearly in prevention.

The legislation I am introducing today will utilize the high office of the Secretary of the Department of Health and Human Services to gather more information and promote public awareness on the problem of injuries to children. It directs the Secretary to report and make recommendations about this senseless and unnecessary cause of childhood mortality.

The bill will also authorize a center for injury control within the Center for Disease Control. This center will promote research into the causes, prevention, treatment, and rehabilitation from injuries. It will also promote cooperation between the Federal Government and the State and between the States to reduce the toll of injuries.

Mr. President, a recent report on injury issued by the National Academy of Sciences recommended that such a center be created. This report pointed out that no central agency has had responsibility for reducing the incidence of injuries and that injury control has not been given a high priority.

Last year, the Appropriations Committee took note of that report and put aside $10 million to support an effort like the one we would authorize with this bill. Those funds have already begun to be spent. Those of us who realize the wisdom of the Appropriations Committee must now join them in creating this link in the chain of national health policy.

I hope my distinguished colleagues will join me in support of this new direction for the national public health effort. I believe that once my colleagues are made aware of this national menace of injuries, especially injuries to children, they will join me in support of this reasonable approach. I urge them to do so—for their own children, for their children's children, and the children of the Nation.●

By Mr. KENNEDY (for himself and Mr. HATCH):

S. 2649. A bill to amend title XIX of the Social Security Act to strengthen and improve Medicaid services to low-income children, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY:

S. 2650. A bill to amend title XIX of the Social Security Act to strengthen and improve Medicaid services to pregnant women and infants, and for other purposes; to the Committee on Finance.

CHILDREN'S HEALTH LEGISLATION

● Mr. KENNEDY. Mr. President, today I am introducing two bills that will have a significant impact on the health of pregnant women and children throughout the country. These bills will make health care available to those who currently have little access to it but have the most to gain from it.

Mr. President, the plight of children in our society has become increasingly alarming. Over the last decade, the percentage of children without health insurance has doubled from 9 percent of all children to 18 percent of all children. When children who have no insurance for part of the year are counted, that number rises to 25 percent of all children.

This rise in the number of uninsured children has occurred at the same time that the number of children living below the poverty line has increased. Approximately 25 percent of all children below the age of 6 in our country are living in households that have incomes below the poverty line.

Though Medicaid was established to provide health services for the poor, especially for mothers and children, today this coverage is available to only 48 percent of children who live in poverty households. Fifty-two percent of poor children do not have Medicaid coverage—or any other health coverage. In addition, less than half of the women of child-bearing age whose incomes are below the poverty level are eligible for Medicaid.

In these years of obsession with Government spending, it seems reasonable to ask whether this policy even saves money. The truth is, Mr. President, that even by this miserly yardstick, this policy fails. Children comprise 50 percent of all Medicaid recipients. Yet they account for only 14 percent of Medicaid expenditures. Women are 25 percent of the recipients in the program. Yet they account for only 12 percent of the costs. The average cost of providing Medicaid service to a child was $400 per capita last year. By contrast, the average per capita cost of providing medical services to individuals last year was four times as large. These numbers show clearly that health care for children is a bargain.

Of course, cost is not the principal issue here. But the facts remain that children are not expensive to provide for. A small investment can go a very long way.

Mr. President, the disadvantages of inadequate health care begin early in life. They begin even before birth. Lack of health care during pregnancy increases the risk that a baby will be below the normal birthweight by 300 percent. Low-birthweight babies are at the greatest risk of becoming infant mortality statistics.

Earlier this year, I introduced, along with a larger bipartisan group of Senators, a bill (S. 2333) that will make health care more available to pregnant women and their infants. The bills I

am introducing today will extend the initiative of that earlier bill.

The first of the two bills, the Children's Health Care Act of 1986, which I am introducing with my distinguished colleague, Senator HATCH, will allow States to extend Medicaid benefits to as many as 3 million children who live in poverty households around the country. The bill will permit States to separate AFDC eligibility from Medicaid eligibility so that it will no longer be necessary to enroll in AFDC in order to be eligible for Medicaid. Under the terms of the bill, States will have the option of offering Medicaid to children to any age up to age 18 as long as they live in poverty households with incomes up to 100 percent of the Federal poverty line. Because a healthy family is the best environment for a healthy child, States will also be able to enroll the parents of those children if they chose to do so.

The Southern Governors' Association has recommended this change in the law. The National Governors' Association unanimously endorsed it. It is time for those of us in Congress to do our part.

Earlier this year, we introduced a bill to extend a similar option to States to provide Medicaid coverage for pregnant women and their infants. That bill was introduced with solid bipartisan support. It was clearly understood by all the cosponsors that nothing is gained and, in fact a great deal is lost, when health care is denied to pregnant women and their newborn infants. The toll we pay in the use of prolonged and expensive hospital intensive care services, and in children with lifetime disabilities, is unacceptably high. I cannot think of a better example where an ounce of prevention really does equal a pound of cure or a pound of care.

As important as that bill is, it will not eliminate the barriers to health care for poor pregnant women. Other barriers, including delays in eligibility determinations and arbitrary limitations on numbers of medical visits and services, endanger the tremendous gains we can make by expanding Medicaid eligibility. The bill we are introducing today would provide for accelerated enrollment of pregnant women into the Medicaid Program and remove limitations of amount, scope, and duration on medical services for pregnant women. It would also provide expanded services for those pregnant women who are at highest risk of a poor birth outcome.

These amendments will increase the odds that prenatal care will begin in the first trimester of pregnancy rather than months later—after eligibility has been determined. They will also ensure that pregnant women receive all the services ordered by their doctors. These changes should greatly increase the odds that expanding Medicaid services to poor pregnant women and their infants will succeed in reducing the great cost and human toll caused by low birthweight and infant mortality.

This bill will also ensure that Title V, Maternal and Child Health Clinics, get reimbursed fully by Medicaid when they provide services to pregnant women enrolled in Medicaid. And it will improve the reporting done by title V clinics about the service they provide.

Mr. President, these bills could benefit 3 million women and 3 million children living in poverty households around the country. Children, those little people who are the hope of our future, deserve better than they are receiving in 1986. The first step is to ensure their mothers access to decent health care during their pregnancies. The next step is to provide for the children themselves. It is difficult to find arguments against proposals such as these. I hope my colleagues from both sides of the aisle will join in supporting these very sound pieces of legislation.●

ADDITIONAL COSPONSORS

S. 329

At the request of Mr. HECHT, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 329, a bill entitled the Highway Speed Modification Act of 1985.

S. 961

At the request of Mr. SARBANES, the names of the Senator from Michigan [Mr. LEVIN], and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of S. 961, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr. in the District of Columbia.

S. 1322

At the request of Mr. HECHT, the names of the Senator from Oregon [Mr. HATFIELD], and the Senator from Utah [Mr. GARN] were added as cosponsors of S. 1322, a bill to amend the Geothermal Steam Act of 1970.

S. 1836

At the request of Mr. MITCHELL, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1836, a bill to provide the protection of ground water through State standards, planning, and protection programs.

S. 2049

At the request of Mr. PROXMIRE, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 2049, a bill to prohibit Export-Import Bank loans to Angola.

S. 2064

At the request of Mr. WARNER, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2064, a bill to require the President to make an annual report on the national strategy of the U.S. Government to certain committees of Congress and to require joint committee meetings to be held on such report.

S. 2103

At the request of Mr. MCCLURE, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 2103, a bill to clarify the application of the Clayton Act with respect to rates, charges, or premiums filed with State insurance departments or agencies.

S. 2129

At the request of Mr. KASTEN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 2129, a bill to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes.

S. 2187

At the request of Mr. DECONCINI, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2187, a bill to amend title 38, United States Code, to exempt from sequestration certain benefits for veterans and dependents and survivors of certain veterans which are paid based on the service-connected disability or death of veterans.

S. 2270

At the request of Mr. SIMON, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2270, a bill to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud.

S. 2331

At the request of Mr. HEINZ, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 2331, a bill to amend title XVIII of the Social Security Act to assure the quality of inpatient hospital services and posthospital services furnished under the Medicare Program, and for other purposes.

S. 2333

At the request of Mr. KENNEDY, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2333, a bill to amend title XIX of the Social Security Act to strengthen and improve Medicaid services to low-income pregnant women and children.

S. 2345

At the request of Mr. KENNEDY, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 2345, a bill to improve counseling, education, and services relating to acquired immune deficiency syndrome.

S. 2453

At the request of Mr. COHEN, the names of the Senator from North Dakota [Mr. ANDREWS], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Kentucky [Mr. FORD], and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of S. 2453, a bill to enhance the capabilities of the United States to combat terrorism and other forms of unconventional warfare.

S. 2455

At the request of Mr. MITCHELL, the name of the Senator from Nebraska [Mr. ZORINSKY] was added as a cosponsor of S. 2455, a bill entitled the National Organ and Tissue Donor Act.

S. 2494

At the request of Mr. BRADLEY, the names of the Senator from Vermont [Mr. STAFFORD], the Senator from New Jersey [Mr. LAUTENBERG], and Senator from New Mexico [Mr. BINGAMAN] were added as a cosponsors of S. 2494, a bill to amend title XVIII of the Social Security Act to modify the limitations on payment for home health services under the Medicare Program to conform regulations; to assure that all legitimate costs are taken into account in calculating such limitations; to provide affected parties an opportunity to comment on revisions in Medicare policies; and to require discharge planning procedures.

S. 2539

At the request of Mr. WARNER, the names of the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. HATCH], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], the Senator from Indiana [Mr. LUGAR], the Senator from South Dakota [Mr. ABDNOR], the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from Arizona [Mr. DECONCINI], the Senator from Illinois [Mr. DIXON], the Senator from Kentucky [Mr. FORD], the Senator from Ohio [Mr. GLENN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Florida [Mrs. HAWKINS], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Maine [Mr. MITCHELL], the Senator from Oklahoma [Mr. NICKLES], the Senator from Rhode Island [Mr. PELL], the Senator from Michigan [Mr. RIEGLE], the Senator from Alaska [Mr. STEVENS], the Senator from Idaho [Mr. SYMMS], the Senator from South Carolina [Mr. THURMOND], the Senator from Nebraska [Mr. ZORINSKY], the Senator from New York [Mr. MOYNIHAN], the Senator from Idaho [Mr. MCCLURE], the Senator from Texas [Mr. GRAMM], the Senator from Indiana [Mr. QUAYLE], the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 2539, a bill to consolidate and improve provisions of law relating to absentee registration and voting in elections for Federal office by members of uniformed services and citizens of the United States who reside overseas.

S. 2547

At the request of Mr. HEINZ, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 2547, a bill to amend title XVIII of the Social Security Act to require renal dialysis facilities and other providers of dialysis-related services, devices, and supplies to obtain informed, written consent from Medicare patients with respect to the use of reprocessed dialysis devices and supplies.

S. 2576

At the request of Mr. DURENBERGER, the names of the Senator from Florida [Mrs. HAWKINS] and the Senator from Montana [Mr. MELCHER] were added as cosponsors of S. 2576, a bill to amend title XVIII of the Social Security Act to require timely payment of properly submitted Medicare claims.

S. 2620

At the request of Mr. DECONCINI, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2620, a bill to improve the Government's debt collection and credit management practices, to implement certain recommendations of the President's Private Sector Survey on Cost Control, and for other purposes.

S. 2621

At the request of Mr. HUMPHREY, the names of the Senator from South Carolina [Mr. THURMOND], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 2621, a bill to increase Government economy and efficency and to reduce the deficit by implementing certain recommendations of the President's Private Sector Survey on Cost Control relating to reduced Government competition with the private sector to provide goods and services.

SENATE JOINT RESOLUTION 322

At the request of Mr. LAUTENBERG, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Hawaii [Mr. INOUYE], and the Senator from North Dakota [Mr. ANDREWS] were added as cosponsors of Senate Joint Resolution 322, a joint resolution to designate December 7, 1986, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

SENATE JOINT RESOLUTION 345

At the request of Mr. DOLE, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of Senate Joint Resolution 345, a joint resolution to designate the week beginning November 9, 1986, as "National Reye's Syndrome Awareness Week".

SENATE JOINT RESOLUTION 360

At the request of Mr. GARN, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of Senate Joint Resolution 360, a joint resolution to designate July 20, 1986, as "Space Exploration Day".

SENATE JOINT RESOLUTION 366

At the request of Mr. HELMS, the name of the Senator from Alabama [Mr. DENTON] was added as a cosponsor of Senate Joint Resolution 366, a joint resolution to disapprove the Act of the District of Columbia Council entitled the "Prohibition of Discrimination in the Provision of Insurance Act of 1986".

SENATE JOINT RESOLUTION 371

At the request of Mr. DECONCINI, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from Indiana [Mr. QUAYLE] were added as cosponsors of Senate Joint Resolution 371, a joint resolution to designate August 1, 1986 as "Helsinki Human Rights Day".

At the request of Mr. GRASSLEY, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of Senate Joint Resolution 371, supra.

SENATE CONCURRENT RESOLUTION 39

At the request of Mr. DODD, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of Senate Concurrent Resolution 39, a concurrent resolution expressing the support of the Congress for Costa Rica's neutrality and urging the President to support such neutrality.

SENATE RESOLUTION 381

At the request of Mr. DECONCINI, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of Senate Resolution 381, a resolution expressing the sense of the Senate with respect to U.S. corporations doing business in Angola.

SENATE RESOLUTION 385

At the request of Mr. SASSER, the names of the Senator from Georgia [Mr. NUNN], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Resolution 385, a resolution to express the sense of the Senate that certain action be taken to end hunger in the United States by 1990.

SENATE RESOLUTION 446—CONDEMNING THE GOVERNMENT OF CHILE FOR THE DEATH OF RODRIGO ROJAS DE NEGRI

Mr. KENNEDY (for himself, Mr. GORE, Mr. SIMON, Mr. HARKIN, Mr. HART, Mr. KERRY, Mr. PELL, Mr. WEICKER, and Mr. CRANSTON) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 446

Whereas Rodrigo Rojas de Negri, a 19 year old student of Woodrow Wilson High School in Washington, D.C. and a legal resident of the United States, returned in May 1986 to his native Chile;

Whereas on July 2, 1986 Rodrigo Rojas and Carmen Quintana Arancibia were among a group of university students visiting a shanty town outside Santiago, Chile;

Whereas on July 2, 1986 Rodrigo Rojas de Negri and Carmen Quintana Arancibia were brutally beaten, set on fire, thrown into a vihicle and driven away by Chilean soldiers;

Whereas the Chilean authorities blocked efforts to have Rodrigo Rojas transferred from the public hospital, Posta Central, to the Hospital de Trabajador, a facility with a better burn treatment facility;

Whereas on July 6, 1986 Rodrigo Rojas died of the injuries he had incurred;

Whereas on July 9, 1986 Chilean authorities disrupted the funeral procession of Rodrigo Rojas, which included the U.S. Ambassador to Chile, by firing tear gas and water cannons.

Resolved,

SECTION 1. The Senate commends Ambassador Harry Barnes for attending the funeral of Rodrigo Rojas on July 9, 1986 and for his efforts to obtain proper medical care for the youth;

SEC. 2. The Senate holds the Government of Chile responsible for the injuries inflicted on Rodrigo Rojas de Negri and for the denial of proper medical care; and

SEC. 3. The Senate condemns the Government of Chile for the death of Rodrigo Rojas de Negri.

SENATE RESOLUTION 447—AMENDING THE PROVISIONS OF SENATE RESOLUTION 28

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. RES. 447

Resolved, That, Section 6 of Senate Resolution 28, as amended, agreed to February 27, 1986, is amended as follows:

Strike out all of Section 6 and insert in lieu thereof:

"SEC. 6. Effective June 1, 1986, the use of tape duplications of broadcast coverage of the proceedings of the Senate for political or commercial purposes is strictly prohibited; and any such tape duplication furnished to any person shall be made on the condition that it not be used for political or commercial purposes."

AMENDMENTS SUBMITTED

CENTRAL VALLEY PROJECT, CALIFORNIA

METZENBAUM AMENDMENT NO. 2204

Mr. METZENBAUM proposed an amendment to the bill (H.R. 3113) providing for the coordinated operation of the Central Valley Project and the State water project in California; as follows:

Page 11, line 14, strike subparagraph 307(b)(A) and insert in lieu thereof the following:

"(A) which is attributable to furnishing irrigation benefits in each particular year to land held in private ownership by a qualified recipient or by a limited recipient, as such terms are defined in section 202 of the Reclamation Reform Act of 1982, in excess of 320 irrigable acres; or"

METZENBAUM (AND McCLURE) AMENDMENT NO. 2205

Mr. METZENBAUM (for himself and Mr. McCLURE) proposed an amendment to the bill H.R. 3113, supra; as follows:

On page 13 after line 3 insert the following new section:

"SEC. 311. The Secretary of the Interior and the Secretary of Agriculture shall review the effect of the Small Reclamation Projects Act of 1956, as amended, on the operation and objectives of the programs of the Department of Agriculture dealing with the production of surplus commodities as determined by the Secretary of Agriculture pursuant to the Agriculture Act of 1949, as amended, and shall jointly submit a report on their findings to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House no later than 120 days from the date of enactment of this Act together with their recommendations, if any, for any changes to either or both programs to better achieve the objectives of such programs."

SUPPLEMENTAL EXTRADITION TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN

D'AMATO (AND OTHERS) EXECUTIVE AMENDMENT NO. 2206

Mr. D'AMATO (for himself, Mr. DODD, Mr. HATCH, Mr. KERRY, Mr. HELMS, and Mr. DECONCINI) proposed an amendment to the resolution of ratification to Treaty Doc. 99-8, Supplementary Extradition Treaty between the United States of America, and the United Kingdom of Great Britain and Northern Ireland; as follows:

Strike out Article 5 of this Treaty and insert in lieu thereof the following:

"ARTICLE 5

"This Supplementary Treaty shall apply to any offense committed before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply, (1) to an individual whose extradition was sought prior to the entry into force of this Supplementary Treaty, or (2) to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission."

HELMS EXECUTIVE AMENDMENT NO. 2207

Mr. Helms proposed an amendment to the resolution of ratification to Treaty Doc. 99-8, supra; as follows:

At the appropriate place in the Treaty, insert the following new article:

"ARTICLE ——

"(a) Paragraph (b) of this Article shall be known as the Reagan-Shultz-Meese Defense.

"(b) Notwithstanding any other provision of this Supplementary Treaty, in the United States, the competent judicial authority shall consider as a defense to extradition a showing that the person for whom extradition is sought has committed the specified acts in furtherance of an armed uprising, insurrection, or rebellion against the military authorities of the state in which the accused person is a national, if such acts did not include wanton crimes of violence against civilian personnel.".

LUGAR EXECUTIVE AMENDMENT NO. 2208

Mr. LUGAR proposed an amendment to the resolution of ratification to Treaty Doc. 99-8, supra; as follows:

Amend the treaty as follows:

(1) Amend article 1 to read as follows:

"For the purposes of the Extradition Treaty, none of the following shall be regarded as a offense of a political character:

(a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;

(b) murder, voluntary manslaughter, and assualt causing grievous bodily harm;

(c) kidnapping, abduction, or serious unlawful detention, including taking a hostage;

(d) an offense involving the use of a bomb, grenade, rocket, firearm, letter or parcel bomb, or any incendiary device if this use endangers any person; and

(e) an attempt to commit any of the foregoing offenses or participation as an accomplice of a person who commits or attempts to commit such an offense."

(2) Amend article 2 to read as follows:

"Nothing in this Supplementary Treaty shall be interpreted as imposing the obligation to extradite if the judicial authority of the requested party determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty. The evidence of criminality must be such as, according to the law of the requested party, would justify committal for trial if the offense had been committed in the territory of the requested party.

"In determining whether an individual is extraditable from the United States, the judicial authority of the United States shall permit the individual sought to present evidence on the questions of whether:

(1) there is probably cause;

(2) a defense to extradition specified in the Extradition Treaty or this Supplementary Treaty, and within the jurisdiction of the courts, exists; and

(3) the act upon which the request for extradition is based would constitute an offense punishable under the laws of the United States.

"Probable cause means whether there is sufficient evidence to warrant a man of reasonable caution in the belief that:

(1) the person arrested or summoned to appear is the person sought;

(2) in the case of a person accused of having committed a crime, an offense has been committed by the accused; and

(3) in the case of a person alleged to have been convicted of an offense, a certificate of conviction or other evidence of conviction or criminality exists."

(3) Insert after article 2 the following new article:

"ARTICLE 3

"(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.

"(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for offenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a) shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration at every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision. In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process."

(4) Renumber the remaining articles 4, 5, 6, 7.

NOTICES OF HEARINGS

SUBCOMMITTEE ON WATER AND POWER

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources has rescheduled the hearing originally scheduled on Tuesday, June 24, 1986. This hearing now will take place Wednesday, July 23, beginning at 2 p.m. in room SD-366, Senate Dirksen Office Building, Washington, DC 20510.

Testimony will be received on the general relationship between the Federal Energy Regulatory Commission and related State public utility regulatory commissions and S. 1149, to amend the Federal Power Act to allow State commissions to determine whether to exclude all or part of a rate set by the Federal Energy Regulatory Commission based on construction cost.

Those wishing to testify should contact the Subcommittee on Water and Power of the Committee on Energy and Natural Resources, room SH-212, Hart Senate Office Building, Washington, DC 20510. For further information, please contact Mr. Russell Brown at 202-224-2366.

SUBCOMMITTEE ON FOREIGN AGRICULTURAL POLICY

Mr. HELMS. Mr. President, I wish to announce that the Subcommittee on Foreign Agricultural Policy, of the Committee on Agriculture, Nutrition, and Forestry, has scheduled its third in a series of hearings entitled: "Preparing for the GATT: A Review of Agricultural Trade Issues."

The subcommittee, chaired by Senator BOSCHWITZ, will focus on agricultural trade barriers around the world. This encompasses both market access issues and the use of export subsidies—including those of the United States.

The hearing will take place on Tuesday, July 22, 1986, at 9:30 a.m., in room 332, Russell Senate Office Building.

For further information, please contact the committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, July 16, in closed session to conduct a business meeting on intelligence matters.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, July 16, in order to review recommendations and reports relating to televised Senate proceedings.

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

ADDITIONAL STATEMENTS

KELSEY ORESTIS: CHAMPION OF RIGHTS FOR THE MENTALLY ILL

● Mr. COHEN. Mr. President, a recent State-by-State evaluation of our Nation's mental health system has concluded that, with a few exceptions, the care provided by States to our Nation's seriously mentally ill is at best, mediocre, and sorely in need of improvement. The evaluation, which was done by the Public Citizen Health Research Group, concluded that the problem is not so much lack of money, as a lack of commitment and a lack of caring.

The State of Maine scored very well in the public citizen survey, ranking fourth in the Nation in terms of the quality of care available for the mentally ill. If it is true that commitment and caring are the keys to such success, Kelsey Orestis of Lewiston, ME, should certainly serve as an inspiration to the rest of the Nation.

An active member of several mental health organizations and founder of the Region IV Mental Health Services Coalition, Kelsey Orestis has proven an extremely effective advocate for the mentally ill. She has fought, and won, battles for increased State funding for community based programs in the Lewiston-Auburn and Tri-County areas. She also continues to work to put an end to discrimination against the mentally ill, and to improve public awareness about mental illness and its effects on patients and their families. In recognition of her efforts, she was recognized earlier this year as one of three recipients of the Commissioner's Award from the Maine Department of Mental Health and Retardation.

Mr. President, I would like to take this opportunity to commend the attention of my colleagues to an article from the Lewiston Daily Sun which further describes the accomplishments of this remarkable woman, and I ask that the article be printed in the RECORD.

The article is as follows:

KELSEY ORESTIS: CHAMPION OF RIGHTS FOR THE MENTALLY ILL

(By Joe O'Connor)

If anyone doubts that mentally ill people are the victims of discrimination, says Kelsey Orestis, they should consider the terms used to describe them.

"These are terms that are used for criminals rather than ill people," she says. For example, we speak of mental "institutions" rather than hospitals, that are occupied by "inmates" rather than patients, who are "committed," rather than hospitalized.

"For centuries, I think since the beginning of mankind, those people who were different were shoved into a closet and had the door closed behind them," Mrs. Orestis says.

Changing that situation has been Mrs. Orestis's goal for the past several years. As a member of several mental-health organizations, and the founder of the Region IV Mental Health Services Coalition, she has fought for increased funding for additional community-based programs in this area, as well as for greater public awareness about mental illness and its effects on patients and their families.

In the short time that she has been involved in advocating for mental health programs in the Lewiston-Auburn and Tri-County areas, Mrs. Orestis has scored some remarkable victories, including winning major funding for community services from the Legislature.

Those efforts were recognized this month, when she was one of three recipients of the Commissioner's Award from the Department of Mental Health and Retardation.

In presenting her with the award, Commissioner Kevin Concannon said Mrs. Orestis "has been a strong advocate for her community and its needs and has shown what we all are taught: that one person, for sure, can make a difference."

The wife of attorney and former Lewiston mayor John C. Orestis and the mother of three children, age 13, 17, and 20, and an accomplished photographer and pilot, Mrs. Orestis was involved in several community

organizations before 1984, when she was appointed to the Governor's Advisory Committee on Mental Health.

It was at a meeting of that committee in late 1984 that a member from Waterville mentioned that the newly-formed crisis intervention program there was doing very well.

"Right away, I said, 'What program is that?' " Mrs. Orestis recalls.

What the Waterville woman was referring to was a three-part community program approved that year for Augusta-Waterville, Portland, and York County. The program included social clubs, long- and short-term housing, and a crisis outreach program that sends mental health workers to visit people who are having a crisis, rather than waiting until the crisis is so severe that hospitalization is required.

When Mrs. Orestis heard about that program, her immediate reaction was: "Why can't we have something like that here?"

In early 1985, she held a meeting at her home, which resulted in the formation of the Region IV Mental Health Services Coalition.

The coalition is composed of representatives of the Governor's Advisory Council for Mental Health, St. Mary's Hospital, Tri-County Mental Health Services, Androscoggin Home Health Services, Relatives and Friends Together for Support, and the Lewiston Housing Authority.

Contending that the need for such services is equally great in Region IV (which basically consists of Franklin, Oxford, and Androscoggin counties) as in those other areas, the coalition approached the Legislature with a request for about $275,000 to establish similar programs.

The bill came within two votes in the Appropriations Committee," Ms. Orestis said, but failed to win a majority. However, Bureau of Mental Health Director Michael DeSisto, who had supported the coalition's request, managed to locate funds elsewhere in his budget to fund the social club and residential program.

In February, the coalition opened the social club at 100 Pine St., Lewiston, where short-term housing for as many as four people can also be provided. With the same BMH grant, the coalition also rented a supervised long-term apartment for one person, also in Lewiston.

This year, the coalition won legislative approval of $200,000 for a crisis intervention team which will provide around-the-clock, on-the-scene services to mentally-ill people who are experiencing increased symptoms that, without treatment, could result in their being hospitalized.

Throughout the struggle to improve community services in Lewiston-Auburn and the surrounding area, Mrs. Orestis has been active in other mental-health organizations. She is a board member of the Advocates for the Developmentally Disabled and represented the Maine State Alliance for the Mentally Ill at a legislative seminar in Washington, D.C., in March, during which she met with the state's four-member congressional delegation.

This summer, Mrs. Orestis is running for a seat on the national board of the Alliance for the Mentally Ill.

Mrs. Orestis has high praise for the professionals in the Bureau of Mental Health and in community organizations such as Tri-County Mental Health Services.

"They are very dedicated people. I'd say that 95 percent of them work beyond what they're supposed to do, and put in extra hours, because they want to do a good job," she said. "What is available is very, very good; there just isn't enough of it."

Following the success in getting improved community services, Mrs. Orestis said the Region IV Coalition is now turning its sights on education.

That type of situation is typical, she says. Quoting a mother whose son is mentally ill, she says, "When someone in a family has a broken leg, flowers come, cards come, casseroles come. When you have mental illness in the family, nothing comes. People are embarrassed by it—they don't know how to talk about it, to the family or to the mentally-ill person."

The worst part about this, she says, is that the thing most needed by the mentally ill and their immediate families is support from other family members and friends—"and when you need it the most, you get it the least."

"You really become isolated, and this has to change," she says.●

THE PASSING OF ADMIRAL RICKOVER

● Mr. DODD. Mr. President, I note with sadness the passing of Adm. Hyman G. Rickover a week ago. Our Nation lost a dedicated patriot, our military a brilliant leader and teacher.

A few days after our Statue of Liberty celebrations had ended it is fit to recall that Admiral Rickover's career has been the epitome of the realization of the American dream. Born to poor Jewish parents in Poland, he arrived in the United States as a 4-year-old child. His achievements, his enormous success was based solely on the formula of talent, hard work, and single-minded dedication.

He earned his best known sobriquet "Father of the Nuclear Navy" by presiding over the most important modernization program of the U.S. Navy, the construction of our fleet of nuclear submarines. Through sheer tenacity and superior technical expertise he overcome the resistance of those who did not share his insight. During the decades of heading the program he was uncompromising in demanding the best quality for the defense of our Nation and the best return quality for the defense of our Nation and the best return on our taxpayers' hard-earned money. Today, our nuclear submarines provide the most reliable leg of our triad of strategic deterrent, thanks to the vision of Admiral Rickover.

Our Nation has had many legendary military leaders who were subject of colorful anecdotes. I can think of only one, however, who became a legend behind a desk instead of the battlefield, Admiral Rickover. His eccentricity, bluntness, occasional abrasiveness were perhaps necessary concomitants of his unquestionable brilliance. Even his adversaries respected him, though, as he worked harder than any of his subordinates and demanded more of himself than of anyone else.

His ultimate satisfaction was the knowledge of a job well done. He cared little who gets the credit. On being called the father of the nuclear Navy he reacted in the following manner: "I don't concern myself with junk of that kind, I did the best I could." He did, indeed.●

CONNECTICUT SMALL BUSINESS SURVEY

● Mr. WEICKER. Mr. President, during November 1985 through January 2, 1986, a unique small business survey was sponsored by the Travelers. Known as the Connecticut small business survey, it mailed a poll to over 70,000 companies in the State with 500 or fewer employees. I am pleased to report that nearly 10 percent of the small business owners responded. It was the first time a statewide small business survey had ever been completed in Connecticut. Its purpose was to provide an indepth profile of Connecticut small business, elicit opinions and concerns of small business owners, and obtain opinions on many important issues facing small business today.

The survey revealed many significant findings including:

Finances—small business, particularly "smaller" small business, is primarily concerned about finances, whether capital formation, cash-flow, sales volume, or profits.

Industrial revenue bonds [IRB's]—one-half of the respondents were unsure whether IRB's should be continued. There is either uncertainty concerning the value of IRB's or, more likely, most are unfamiliar with these bonds.

State government—more than one-half of small businesses in Connecticut are aware of economic development activities offered by the State; awareness is highest among manufacturing firms.

Federal and State Contracts—three-quarters of respondents had a high success rate when competing for Government contracts.

Federal deficit—all types and sizes of businesses indicated that the Federal deficit is a serious problem and favored spending cuts as a means to control the deficit.

Imports—nearly one-half of the small businesses buy imports while only 10-percent export products.

Unemployment/workers compensation—roughly one-half of the respondents prefer national uniformity.

Small Business Administration—64 percent favor continuing the SBA.

Further, the survey demonstrated how active small business is in the political arena both as voters and contributors. Finally, the survey fulfilled the objectives of profiling small business and soliciting the opinions of small business owners on important issues. A summary of the survey will

be used by Connecticut's delegates to the White House Conference on Small Business to recommend Government action on issues of importance to small business.

I commend Murray Gerber, president of Prototype Plastics Mold Co. in Middletown, CT, and Shaw Mudge, president of Shaw Mudge & Co. in Stamford, CT, co-chairmen of the Connecticut Small Business Conference and the Travelers Insurance Co. for their ledadership. The survey will provide Federal and State policymakers with a unique perspective on an important, highly diverse, entrepreneurial sector of our State's economy.●

THE GENERAL FEDERATION OF WOMEN'S CLUBS

● Mr. HATCH. Mr. President, I rise in support of H.R. 2459, a bill amending the charter of the General Federation of Women's Clubs. As you may know this legislation is identical to S. 1827, a bill I introduced earlier this Congress.

The General Federation of Women's Clubs is the largest and oldest nondenominational, nonpartisan, international service organization of volunteer women in the world with membership in the United States numbering 50,000. In 1984 alone, GFWC members donated $50 million and 18 million hours on volunteer projects. The effect of the GFWC's work is seen around the world.

The General Federation of Women's Clubs aims at involving their members in concerns of their local community. To this end, the GFWC has sponsored seminars on child abuse, missing children, latchkey children, women in the Third World, and disposal of hazardous wastes. Such seminars provide a forum for open discussion of the problems and possible solutions. The GFWC also lends its time to CARE and Save the Children. GFWC members are committed to improving the quality of life of the communities they serve.

A special project of the GFWC is the youth city councils. This event is a leadership training program for teenagers ages 13 to 18. Elections are held for positions on a mock city council. Once elected, these youth city councils work on projects to better their locality. Once YCC in my own State of Utah reduced juvenile crime by 50 percent within their city. Many of the YCC's hold a Christmas dinner and dance for the elderly members of their community.

Because they are such an asset to our society, it is urgent we help them in the best way we can. This bill will enable the GFWC to qualify for 501(c)(3) tax status. They presently hold a 501(c)(4) tax status. As a result, they would be able to apply for special third class rates of postage. The money they save on postage can be applied to many of their worthwhile projects.

I congratulate my fellow Senators in supporting the legislation to amend the General Federation of Women's Clubs charter so that this fine organization may continue to serve this Nation and the world as it has for the past 95 years.●

THE NATIONAL DAIRY PROMOTION BOARD

● Mr. BOSCHWITZ. Mr. President, recently the National Dairy Promotion and Research Board, which was created by Congress in 1983, held its second annual board meeting here in Washington.

The report on its marketing promotion efforts, combined with the numerous other dairy promotional groups around the country, is encouraging.

The board has wise and capable leadership under Ivan K. Strickler of Iola, KS, chairman of the board, and Joe Westwater, the chief executive officer. My own State of Minnesota is capably represented on the board by George Rydeen of Stillwater, Leslie Winters of Bingham Lake, and Robert L. Gee of Moorhead.

This, incidentally, is the 50th anniversary of the observance of June as Dairy Month. I congratulate dairy farmers in Minnesota and across the Nation on this anniversary and wish them continued success in the future.

I also request that a column by Sonja Hillgren of UPI, who covers agriculture here in Washington, reporting on the National Dairy Board's activities, be printed in the RECORD.

As Ms. Hillgren notes, consumption of dairy products is increasing, in large part because of promotion efforts. I've often said that the problem in dairy is not overproduction, it's underconsumption. We need to sell milk aggressively to help our dairy farmers, to provide nutritious food for consumers, and to take the pressure off the Federal budget. I applaud the National Dairy Promotion Board for its efforts.

The column follows:

[From the Broward Review Record, May 28, 1986]

AMERICANS RESUMING DORMANT LOVE AFFAIR WITH A GLASS OF MILK

(By Sonja Hillgren, United Press International)

Sipping a tall glass of milk as a refresher may have become fashionable again.

For years, milk suffered from Americans' aversion to fat in their diets, along with a stodgy image. Price increases also pushed customers away.

This week, farmers who serve on a 2-year-old, 36-member dairy board created to promote dairy consumption will celebrate the resumption of America's love affair with the cow and her products.

Other news for dairy farmers is less encouraging.

A controversial government program is paying some of them to get out of business to reduce surplus dairy products the government buys to prop up prices. Beef producers were so angry about how the program was conducted that they forced changes by a federal court suit.

Many dairy farmers, like others in agriculture, have suffered from the farm crisis.

Just around the corner are scientific developments like a bovine growth hormone that could increase production sharply and force more dairy farmers out of business.

Despite many uncertain developments, "the one strong point of the industry is the fact that commercial sales are increasing," said Ron Hamel, a spokesman for the National Dairy Promotion and Research Board.

"I think the image of dairy products has definitely become more positive over the past couple years," Hamel said.

Dairy farmers, by contributing 15 cents for every 100 pounds of milk sold to national promotion, are each involved in marketing their product rather than simply producing it, sometimes with only the government as the market.

Hamel said optimists would hope that reducing production under the current dairy program and increasing consumption with promotion will bring supply in line with demand and eliminate surpluses that have cost taxpayers several billion dollars over the past few years.

Established by Congress in 1983, the National Dairy Promotion and Research Board began operating two years ago. Since the board began an extensive national advertising campaign, consumption of dairy products has risen.

"This is the first time in more than 20 years we have seen a major upturn in dairy products use," said dairyman and board chairman Ivan Strickler, of Iola, Kan., as the board began meeting in Arlington, Va.

The Agriculture Department said the two-year increase is the largest since the early 1940s.

Strickler said commercial use of milk has increased 7 percent since 1983. Cheese use is up 12 percent and butter use has increased 5.7 percent. Only dry milk made no significant gains.

"We believe the board's promotional efforts, combined with those of other dairy promotion groups around the country, have made the difference," Strickler said.

Jim Miller of the Agriculture Department's Economic Research Service gives promotion some, but not all, the credit.

"Declines in inflation-adjusted dairy prices, an improving economy and recently expanded promotion efforts are the roots of the uptrend," he said.

One secret to dairy's new success is image. Dairy products went from being regarded as contributors to fat-related health problems to foods needed for a healthy diet. Diet-conscious Americans are drinking more low-fat milk.

A major part of the board's promotion budget, set at $66.4 million for fiscal 1986, promotes dairy products as a key source of calcium. Agriculture Department data show 75 percent of Americans get calcium from dairy products.

Millions of Americans were exposed to the board's national campaign to raise awareness about osteoporosis, a bone-destroying disease common to older women. Consuming calcium is believed to prevent the disease.

"Young women are low dairy product consumers, and many drink virtually no milk," Miller said.●

NBC CONTINUES ITS WAR AGAINST DRUG ABUSE

● Mrs. HAWKINS. Mr. President, in the war on drugs, we fight with an arsenal of diverse weapons. Together, they attack both the supply and the demand side of this problem.

On the demand side, where the battle is for control of public opinion about drug use, there is no tool more potent than the television airwaves. TV is more pervasive, it reaches more people, and its message is the most influential.

It is with this in mind, Mr. President that I would like to take this time to speak once again about work done by the National Broadcasting Co. in the fight against drug abuse.

"Wasted!" the NBC television stations division's dramatic half-hour special examining drug and alcohol abuse among the Nation's young people, has just won a first place Gold Camera Award in the U.S. Industrial Film Festival Awards competition. This honor is presented to films which effectively present a message to their intended audience.

"Wasted!" was part of NBC television stations' ongoing "Just Say No" campaign to combat drug and alcohol abuse among young people. The program was produced as a companion-piece to a five-part news series. This series was, in turn, integrated into newscasts of the five NBC television stations during the week prior to the broadcast of "Wasted!"

Focusing on youngsters ranging in age from 10 to 12 who already abuse drugs and alcohol, "Wasted!" examined how they got started at such early ages, why their substance abuse behavior continued and what effect their abuse problems has had on family and friends.

Since it began in 1979, NBC's "Just Say No" campaigns have grown steadily in scope and intensity. Throughout the years, the network's commitment to a drug free society has spread to every area of NBC programming. Today, at NBC it is not just the news division that examines and discusses the drug menace. NBC entertainment division regularly features programs which discuss this vital issue and which stress the need to say "No" to drugs. And now NBC sports has joined in the effort. Realizing the importance of sports in defining roles for young people, NBC has asked its sportcasters to take time out during broadcasts to offer antidrug messages aimed at children and teenagers.

NBC also produces quality public services announcements which it runs during prime time where they can have their greatest effect. The network also sends printed materials about drug abuse to schools, thereby lessening the burden on the Federal Government to print and distribute this information.

Next year NBC plans to expand its message even further in an attempt to encourage those who know someone with a drug problem to find that person help. Their slogan next year will be "Help Someone To Say No."

Mr. President, our society is invaded by the drug menace. To beat it, we must continue to fight on all fronts.

I applaud this private sector initiative, taken on voluntarily by NBC. They are demonstrating what I have long believed, Americans, working together in the best spirit of our Nation can once-and-for-all time whip drugs.●

INDIANA ELEMENTARY SCHOOLS SELECTED FOR NATIONAL RECOGNITION

● Mr. QUAYLE. Mr. President, I would like to draw to your attention and to the attention of my colleagues the Department of Education's Elementary School Recognition Program, part of Secretary Bennett's overall effort to focus on excellent educational programs in the early years of a child's education, a period crucial to the formation and development of our young.

This year marks the first recognition program for elementary schools. Public and private schools were examined separately for school effectiveness through detailed applications, school visits and interviews with parents, teachers, and administrators. The awards were based primarily on the efficacy of schools' utilization of resources and the degree to which schools met students' needs. Special emphasis was placed on student achievement in reading and in mathematics and on the school's record of overcoming obstacles to learning and sustaining progress.

As a representative of Indiana, I take pride in the accomplishments of Indiana's elementary schools. Of particular note, two public and four private elementary schools were recently recognized by the Department of Education through the National Elementary School Recognition Program for excellence in education.

Skiles Test Elementary School of Indianapolis and Southport Elementary School in Southport were among the 210 public elementary schools recognized for singular accomplishments in the field of education. St. Paul Lutheran School and Holy Cross Lutheran School in Fort Wayne, St. Mark Catholic School in Indianapolis, and the Stanley Clark School in South Bend were among 60 private schools selected as providers of superior education.

I commend these particular schools—their administrators, instructors, students, and parents—for doing such a fine job. Our Indiana schools have displayed a profound commitment to educational excellence and I send my wishes for continued success at these six schools.●

MARY ROOS

● Mr. QUAYLE. Mr. President, we all pride ourselves that we are known and respected in our States because of our contributions to the formulation of public policy. Sometimes we forget that we are also known, I hesitate to say better known, through the personal contacts that our constituents have with our staffs—and in that regard no staff member plays a more important role than the receptionist.

Mary Roos has served as my receptionist for the last year and I wish I had a count of the friends that she has made in that brief time. Whether on the phone or in person, she treats each visitor not only with courtesy and cheerfulness but also with a genuine friendliness that can only be reciprocated.

Mr. President, I want to take this occasion to publicly wish Mary well, to tell her she will be missed not only by me and the staff but also by all the Hoosier friends that she has made and, finally, to tell her that we are saving a spot for her when she returns from Japan.●

ADVANCE NOTIFICATION

● Mr. LUGAR. Mr. President, by agreement, section 36(b) of the Arms Export Control Act provides that Congress receive advance notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, the Congress has 20 calendar days to review and consult with the administration on the proposed sale. Section 36(b) requires that Congress then receive a statutory notification of the proposed arms sales and upon such notification, has 30 calendar days to review the sale. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD at this point the notification which has been received. A portion of the notification, which is classified information, has been deleted for publication, but is available to Senators in the office of the Foreign Relations Committee, room SD-423.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, July 14, 1986.

Dr. M. GRAEME BANNERMAN,
Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR DR. BANNERMAN: By letter 18 February 1976, the Director, Defense Security As-

sistance Agency, indicated that you would be advised of possible transmittals to Congress of Information as required by Section 36(b)(1) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to an East Asian recipient tentatively estimated to cost $50 million or more.

Sincerely,

GLENN A. RUDD,
Acting Director.●

NATIONAL PROGRAM TO CONQUER ALZHEIMER'S DISEASE

● Mr. METZENBAUM. Mr. President, during the past several years, I have worked with a remarkable organization, effective in its commitment to heighten public awareness of a cruel and devastating disease. The Alzheimer's Disease and Related Disorders Association has successfully established over 160 chapters across the country. It has enlisted the support and dedicated efforts of families, health care professionals, researchers. It has encouraged research into causes and treatment of a disease which a Gallup poll listed as the fifth most feared disease in America.

The figures on Alzheimer's disease are depressingly familiar: Presently, in 1986, 2.5 million Americans suffer from this deadly neurological disorder.

By the year 2030, the elderly population will have almost doubled to 21 percent of the total population. Nearly half of that 21 percent will be over 75, the most vulnerable age for Alzheimer's disease. The magnitude of the problem at that time will be overwhelming.

The social and economic consequences will unquestionably burden families, health professionals, and institutions far beyond their limits. Even now, the desperation of families has spawned personal tragedies. Some families have seen entire life savings wiped out in a matter of months. There are reports of murder and suicide as the strain imposed by Alzheimer's becomes unbearable.

From a public health perspective, Alzheimer's disease can already be labeled an epidemic.

Federal involvement and funding for research have increased, but much too slowly. It is true that more scientists have entered into the research effort, resulting in some promising findings, but the effort in no way equals the severity and magnitude of the need. Diseases impacting on far fewer Americans have received research funds 10 times greater than Alzheimer's disease—over $200 per victim, whereas, Alzheimer's research receives less than $20 per victim. It takes time and energy and commitment to develop the scientific potential required for an all-out effort to conquer this disease.

We must build on the momentum that exists. We must move ahead before our families, our health care professionals, and our health care institutions are totally overwhelmed. And we must find ways, through home and community-based efforts, to assist the families now desperately trying to provide home care for their loved ones.

There is much we can do. The Alzheimer's Disease and Related Disorders Association provides thoughtful and comprehensive proposals:

Expand support for medical research;

Strengthen and expand the Alzheimer's disease centers;

Provide family support services;

Develop policies for meeting the costs of long-term care;

Ensure equitable treatment under Federal disability programs;

Establish a consistent policy for veterans with Alzheimer's disease;

Develop training curricula and special training programs aimed at all involved personnel;

Promote coordination and public awareness through a national advisory council;

I have introduced two bills, S. 1835 and S. 2183, which are cosponsored by several of my colleagues. Bills have also been introduced by other Members of this Congress. We welcome, we urge your support for these bills, and for all efforts to eliminate this dreaded disease.

Mr. President, I ask to have printed in the RECORD, the Alzheimer's Disease and Related Disorders Association policy agenda, entitled "A National Program To Conquer Alzheimer's Disease." I urge that it be carefully read by every Member of this Congress as we seek to develop national policy which will eliminate Alzheimer's disease within this century, within the lifetime of our children and grandchildren.

The document follows:

NATIONAL PROGRAM TO CONQUER ALZHEIMER'S DISEASE

"For more than two million Americans with Alzheimer's disease, each day is fraught with fear and frustration. Fear of getting lost in one's own neighborhood; of not recognizing members of one's immediate family; of not being able to perform simple, familiar chores.

". . . But until a way to prevent Alzheimer's disease is found, these families need our support and understanding."—President Ronald Reagan on proclaiming November as National Alzheimer's Disease Awareness Month; November 8, 1985.

INTRODUCTION

Based on his study of the world's great civilizations, the historian Toynbee concluded that a society's quality and durability can best be measured "by the respect and care given its elderly citizens." That being the case, never before has the measure of this country's commitment to the elderly been so critically important.

The challenges ahead

The rapid increase in the elderly population has given rise to a host of medical, economic, and social challenges which, if left unanswered, threaten a hemorrhaging in our society. And nowhere are those challenges more evident or more threatening than for the families and loved ones of the more than 2.5 million persons now suffering from a deadly neurological disorder known as Alzheimer's disease.

A national association responds

From the time the Alzheimer's Disease and Related Disorders Association (ADRDA) was first created in late 1979, the families, care givers, health professionals, and scientists who make up the organization have strived to mount a national effort to combat this dread disease. That effort includes:

Research aimed at finding the cause and cure for Alzheimer's disease;

Education of the general public, health professionals, and care givers;

Chapter formation of a nationwide family support network;

Advocacy of essentially-needed government assistance and patient and family services.

In furtherance of these goals, the ADRDA submits the following National Program intended to serve as a guide in helping to meet some of the challenges brought on by Alzheimer's disease.

The growing threat of Alzheimer's disease

Medical researchers have established that Alzheimer's disease, the most widespread form of dementia disorders, is not simply a part of the aging process—as evidenced by the fact that many of its victims are in their forties and fifties. Yet for some reason the vast majority of Alzheimer's sufferers are elderly persons.

According to the U.S. Public Health Service, Alzheimer's disease affects at least one person in twenty between the ages of 65 and 75, and every fifth person over 80 years of age. It follows, therefore, that as the number of elderly persons grows society can expect to encounter a substantial increase in the incidence of Alzheimer's disease and related disorders.[1] Apart from causing widespread human suffering, the disease will then carry particularly severe social and economic implications, as families, health professionals, and institutions are strained far beyond their limits.

Of course, from a public health perspective there can be no doubt that Alzheimer's disease has already reached epidemic proportions.

EXPANDING SUPPORT FOR MEDICAL RESEARCH

"The tacit assumption in our society that everyone will eventually become "senile" must be put aside. The expected norm should be that of a vigorous, intellectually active aging process."—Dr. Robert Katzman, Professor and Chair, Department of Neurosciences, University of California at San Diego.

Eighty years have elapsed since a German neurologist named Alois Alzheimer first described the effects of a progressive fatal dementia on a 51-year old patient. But it is only in the past decade that the disease which bears his name has received major research attention. Since 1976, research funding provided through the National Institutes of Health has increased from $4 mil-

[1] Today, the elderly constitute about 11 percent of the total U.S. population. By the year 2030, the Bureau of the Census projects that 21 percent of the population, 64.5 million persons, will be age 65 or older. Nearly half of the total will be over age 75.

lion to nearly $50 million annually. Over the same period, the number of scientists studying the disease in the U.S. jumped at least tenfold.

With greater federal involvement and increased scientific interest have come promising new research findings. One of the major advances over the past decade was the discovery that Alzheimer's patients often suffer from certain biochemical abnormalities in the brain. Most strikingly, they lack an enzyme that helps produce an important chemical messenger, or neurotransmitter, involved in learning and memory. In other studies, scientists have discovered similarities in protein fragments found in the damaged areas of the brain and in the brain's blood vessels, suggesting that perhaps science is moving closer to finding the underlying cause of Alzheimer's disease.

More recently, scientists have begun to suspect that the symptoms of Alzheimer's disease can be associated with loss of specific populations of brain cells. This finding could suggest that relatively normal brain function might be restored if the function of the damaged brain areas could be compensated for or replaced.

But in spite of this remarkable progress, as one government publication describes it, a diagnosis of Alzheimer's disease "carries with it a sentence of eventual mental emptiness."

In other words, there is still much to be done. For while new knowledge is helping to reduce the degree of impairment of Alzheimer's victims, science is still unable to prevent the disease, cure it, or stop its progression. And although research funding has increased in recent years, the total spent on finding a cause or cure still amounts to less than one-tenth of one percent of the $32 billion spent annually to care for victims of Alzheimer's disease.

Recommendations

That federal support for research on Alzheimer's disease be assigned a high priority at the National Institute on Aging, the National Institute of Neurological and Communicative Disorders and Stroke, and the National Institute of Allergy and Infectious Diseases.

That funding for research on Alzheimer's disease be increased to at least $75 million in fiscal year 1987.

STRENGTHENING ALZHEIMER'S DISEASE CENTERS

"Full support of the Alzheimer's disease centers program is a crucial element in this war. In good conscience, we cannot recruit a cadre of scientific soldiers and send them into battle without the ammunition they need to keep fighting."—Dr. David Drachman, Professor and Chair of Neurology at the University of Massachusetts Medical School.

From a scientific standpoint, there are a number of issues surrounding Alzheimer's disease that must be addressed, not the least of which is finding a clinical diagnostic procedure for identifying Alzheimer's patients. Recognizing that a mechanism was needed that would address several of these problems simultaneously, two years ago Congress and the President launched a new and innovative effort designed to complement the work being conducted by independent researchers.

Since 1984, ten Alzheimer's research centers have been established—each having clinical demonstration units together with a staff of investigators drawn from various scientific disciplines. As required by Congress, the ten centers are administered by the National Institute on Aging, working in cooperation with the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute of Mental Health, and the National Institute of Allergy and Infectious Diseases.

The ten existing centers have already begun to have a dramatic impact on the status of research into Alzheimer's disease. As a result of the centers program, for example, a network of over 100 scientists throughout the country have begun to work together, sharing ideas, knowledge, and resources. Among other things, the participating scientists have already begun to standardize the diagnostic instruments used in identifying Alzheimer's disease.

Unfortunately, budget cutbacks threaten to weaken the centers program and slow the pace of scientific advances—at a time when promising research leads point to the need for a stronger commitment to this effort. Additional funding in the amount of $2 million is rquired simply to maintain the basic centers program. Beyond that, an additional $5 million would permit the ten centers to expand clinical data gathering activities and support work on new and emerging research leads.

Recommendations

That an additional $2 million be provided in fiscal year 1987 to more adequately support the activities of the ten existing research centers.

That an additional $5 million be provided to expand both basic research projects and clinical activities.

That an additional $2.2 million be appropriated to support the establishment of two new research centers.

PROVIDING FAMILY SUPPORT SERVICES

According to the National Center for Health Statistics, over eighty percent of all home care is provided to the chronically ill elderly by family members. For the families of Alzheimer's victims, this usually entails mobility assistance, personal care, and household assistance.

Apart from placing an enormous financial burden on families, meeting the extensive needs of an Alzheimer's victim often results in severe stress and family dysfunction, manifested as physical illness, anxiety, depression, and family conflict. This is due, in large part, to the fact that Alzheimer's disease usually runs an agonizingly slow course, lasting anywhere from five to twenty years. Recognition of this fact has led to the development of programs designed to help ease the burden on caregivers; foremost among these has been the development of an extensive family support network by the Alzheimer's Disease and Related Disorders Association.

But peer support is clearly not enough. Family caregivers are in desperate need of a wide range of services, including respite care, adult day care, transportation, administrative and legal assistance, and in-home personal and medical services.

Recommendations

That the federal government forge a partnership with state and local agencies to launch a nationwide effort to help meet the needs of families caring for Alzheimer's victims. In so doing, government agencies at all levels should draw upon the knowledge and expertise of the Alzheimer's Disease and Related Disorders Association.

That the Administration on Aging be directed to support exemplary projects to serve as models for rendering family support services. To the extent feasible, this effort should be carried out through a partnership arrangement with national voluntary organizations, such as the Alzheimer's Disease and Related Disorders Association.

That the federal government offer subsidized loans to public and private nonprofit institutions to finance the development of respite care programs and adult day care centers for Alzheimer's victims and their families.

That the National Institute of Mental Health continue its research on the family stress problems related to the care of Alzheimer's victims.

MEETING THE COSTS OF LONG-TERM CARE

Long-term care is, of course, a growing national concern. In his most recent State of the Union Address to Congress, President Reagan focused attention on the fact that "devastating illness can destroy the financial security of a family."

Nowhere is that more evident than the families struggling to cope with Alzheimer's disease, for the nature of this illness is such that the long-term care needs of its victims most often arise at a time when the family's economic and social resources—including savings, pensions, and other assets—are dwindling. Furthermore, the care of treatment of Alzheimer's patients is deemed "custodial" and specifically excluded from coverage under Medicare and practically all private health insurance plans. Consequently, the catastrophic costs of caring for an Alzheimer's victim are borne almost entirely by their families. And while Medicaid offers some help, this program most often favors institutionalization—and is available only after a famly has exhausted nearly all of its resources. (Of course, all of these problems are more pronounced when victims have no family or loved ones to turn to for help and support.)

To further compound the problems, families of Alzheimer's victims frequently encounter difficulties in obtaining access to nursing home care, since many facilities prefer short-stay, Medicare or privately-insured patients.

Recommendations

Federal policies should be developed which stimulate a broader range of alternative programs and services. To this end, Medicare coverage should be extended to victims of Alzheimer's disease; the Secretary of HHS should be directed to authoriize Medicare waivers and home health care for these individuals.

Far more emphasis (and resources) should be devoted to health services research on alternative delivery systems. A major portion of this research ought to be financed on developing an integrated continuum of care, including cost-effective strategies for expanding community-based care and in-home services.

Federal statutes should expressly prohibit nursing homes from discriminating in the acceptance or refusal of individuals as patients on the grounds that those individuals are on Medicaid or are victims of Alzheimer's disease.

Families and care givers should be allowed a tax deduction or refundable tax credit to help defray the added costs associated with caring for an Alzheimer's victim at home.

Any federal and/or private initiative to address the need for catastrophic or chronic illness insurance should include coverage for victims of Alzheimer's disease.

ENSURING EQUITABLE TREATMENT UNDER FEDERAL DISABILITY PROGRAMS

The Social Security Administration has national responsibility for the administration of both the Social Security Disability program and the Supplemental Security Income (SSI) program. The former provides cash benefits to those disabled workers and their dependents who have contributed to the social security trust fund; the latter provides for a minimum income level for the needy aged, blind, and disabled who qualify because of financial need. Under both programs, the definition of disability is the same: "an inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months." (The decision as to whether an applicant is disabled, as defined by law, is made by a special disability determination unit in each state.)

Although federal statutes do not preclude benefit payments to Alzheimer's victims, the guidelines used to determine eligibility are rather vague when it comes to this disease. This, in turn, has led to wide variations from region to region, resulting in an uneven policy toward individuals who hold a rightful claim to benefits.

Recommendations

Federal regulations and guidelines used in evaluating disability claims should be amended to include specific reference to Alzheimer's disease and related disorders.

A mechanism should be established whereby the most current scientific knowledge available to the National Institutes of Health is communicated to those responsible for overseeing and administering disability programs.

Government agencies, working together with the medical and scientific community and ADRDA, should devise specific assessment tools for use by examining physicians.

ESTABLISHING A CONSISTENT POLICY FOR VETERANS WITH ALZHEIMER'S DISEASE

The Veterans' Administration currently has no uniform nationwide policy regarding the care of veterans with Alzheimer's disease. As a consequence, some victims of the disease are admitted for treatment at VA medical facilities, while others are denied admission or referred elsewhere. In other instances, patients are being forced to leave VA facilities, thereby disrupting their care and placing even greater strain on families.

Recommendations

The VA should develop a fair and consistent policy with respect to the care and treatment of Alzheimer's victims. That policy, in the form of written guidelines, should be distributed to VA installations throughout the country.

Local VA facilities should be instructed to develop and implement screening, counseling, and treatment programs for veterans and their families.

The eligibility requirements for veterans diagnosed as having Alzheimer's disease should be lowered to age 50.

A portion of VA intermediate-care hospital beds, perhaps ten percent, should be set aside for the care of veterans suffering from Alzheimer's disease and related organic brain disorders.

The VA should institute a system of enrollment and tracking to permit greater coordination of inpatient care and community-based services.

Pilot studies and/or model projects undertaken by the VA should take into account the special needs of veterans suffering from Alzheimer's disease.

MEETING TRAINING AND EDUCATION NEEDS

"To the extent that individuals can be trained to help themselves and contribute to society, they preserve their autonomy and morale and they free formal and informal providers for other productive activities."—Dr. Robert N. Butler, Professor of Geriatrics, Mount Sinai School of Medicine.

Despite a growing awareness of the extent and burden of dementias such as Alzheimer's disease, there still exists a serious shortage of trained personnel, including research investigators, hospital and nursing home staff, safety and transportation personnel, home health aides, and family members.

Recommendations

Greater emphasis should be placed on career development of faculty and research investigators. As part of this effort, NIH should (1) expand the number of National Research Service Awards in the field of neuroscience, with particular emphasis on Alzheimer's disease and (2) strengthen the training component of the specialized Alzheimer's research centers.

Clinical training needs must be re-evaluated in light of new research findings. Specifically:

New training curriculum must be developed which targets on treating persons with Alzheimer's disease; special attention should be paid to basic training (and continuing education) for clinical care providers;

The Secretary of HHS should institute special training programs aimed at nursing home personnel, home health aides, pathologists, medical examiners, safety and transportation personnel, and families.

Special emphasis should also be placed on the needs of special populations, such as minorities and the frail elderly.

PROMOTING COORDINATION AND PUBLIC AWARENESS

The fundamental need exists for greater cooperation and coordination among the several research institutions, health care providers, and families now engaged in one facet or another of this national problem. Furthermore, greater public awareness is essential if society hopes to overcome the growing challenge of Alzheimer's disease.

Recommendations

A national advisory council should be established to help develop, encourage, and guide research on Alzheimer's disease, as well as to serve as a mechanism for conveying new information and ideas to physicians, nurses, care givers, and family members. The council, with the full support of federal agencies, should promote collaborative efforts among those agencies, university research centers, pharmaceutical houses, and others throughout the medical and scientific community.

The council, as well as key federal, state, and local agencies should utilize the knowledge and expertise of the Alzheimer's Disease and Related Disorders Association.●

CAMPBELL SOUP COMPETES THROUGH MODERNIZATION, INNOVATION

● Mr. LAUTENBERG. Mr. President, I would like to share with my colleagues an article on one of New Jersey's leading companies which recently appeared in the Washington Post business section.

The article is about Campbell Soup Co., which is based in Camden, NJ. To meet increasing competition from Japanese producers, Campbell has set out to modernize its operations and marketing, adopting some Japanese techniques to produce fresher products at substantial savings to the company.

Mr. President, I want to recognize R. Gordon McGovern, president and chief executive officer of Campbell, for his continuing dedication not only to the quality of Campbell products, but to the quality of life in his community. Campbell Soup is one of the prime movers behind efforts to redevelop the Camden area. This article provides a good example of the type of leadership and innovation which has made Campbell Soup a national leader in the food industry.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

[From the Washington Post, June 22, 1986]

A JAPANESE FLAVOR FOR CAMPBELL SOUP

(By Martha M. Hamilton)

All-American Campbell Soup Co. is taking on the Japanese—as a competitor and as a role model.

Since 1980, the Japanese share of the market for soups in the United States has grown from virtually nothing to 9 percent, with products produced by Japanese companies taking a growing share of supermarket shelf space. Nissin foods, makers of Oodles of Noodles, is the largest Japanese producer of soups for the U.S. market.

Despite that increase, Campbell still dominates the market in a fashion many companies would envy: 62 percent of the U.S. market for all types of soup and 82 percent of the market for canned soups. but officials at Campbell say they would rather be vigilant than vulnerable.

"I think that people didn't worry enough when the Japanese companies started competing with the auto manufacturers and the steel mills," said R. Gordon McGovern, president and chief executive officer of the food company, which ranks number 100 in the Fortune 500.

Campbell officials say that they believe that Japanese food manufacturers may be able to establish themselves in the United States with low-cost, high-quality products and then expand. "So, I'm worried," said McGovern. "Officially."

There are four Japanese-owned soup plants in the United States already and another is being built in California, according to Campbell officials. "They say they're making essences [cubes of concentrated flavorings] for the Japanese market," McGovern said. "We've been trying to track [the progress of the company] by satellite."

Campbell has committed itself to spend $1.2 billion between now and 1990 to upgrade and to restructure its 22 plants in an effort to keep ahead of competition. Campbell's plan? To adopt many of the approaches that have contributed to the efficiency and quality of manufacturing in Japan.

"We called this thing the 'total systems approach,' which I guess is gobbledygook to some people," McGovern said. "It's a way to

collect all our efforts to make sure our food distribution is the best it can be."

That translates into a program with several facets. A major one is revamping manufacturing to produce products in smaller batches as they are ordered to eliminate costly inventories, both of raw materials and of the finished product. McGovern said they expect to have reduced the company's inventory costs by $50 million this year and to use capital that has been tied up in inventory more productively.

The program also includes closer computer links with retailers, an attempt to develop closer relationships with suppliers to ensure the quality of the supplies Campbell receives and revamping the sales force into 22 regional forces that sell all Campbell's products instead of just soups or frozen foods. Other major features are "quality circles," in which the workers who are closest to processing and other activities can devise ways to improve them, and statistical monitoring at every step of the way.

Several of these features—"just-in-time" manufacturing and quality circles—have achieved a certain corporate chic throughout the United States. But Campbell officials say that it goes below the surface, that they are committed to fundamental change at their company.

The company has trained about 300 workers in statistics at the University of Tennessee to monitor processing better, and it has handed out copy after copy of a book called "Japanese Manufacturing Techniques" to Campbell employes.

"You've got to take about 10 years, because you're changing a culture," said Lewis W. Springer, senior vice president. Making those changes involves convincing people that they won't suffer from change. "We've done a massive training program. The major thing is getting those hourly people in a plant like Camden, N.J., to say, 'I get it. I agree with it.' "

"You've got to have faith in this because it takes time to get results," Springer said.

"The Japanese have found a way to produce quality products in a very cost-effective manner. It's clearly an effort to copy a very successful manufacturing program," said George Novello, an industry analyst with E. F. Hutton. "You rarely see companies in the U.S. get as involved as Campbell."

"When you hear the speeches that McGovern gives, there's no question that he feels that there are different and better ways to run a manufacturing business than some of the traditional ways," said Leonard Teitlebaum of Merrill Lynch.

McGovern, who had run the company's Pepperidge Farm subsidiary and who took over as president in 1980, is credited by industry observers with taking Campbell in a more consumer-driven, marketing direction that has resulted in a proliferation of new products and an emphasis on freshness.

"We're pushing hard on refrigerated and fresh products, which is where we think the market is going," McGovern said.

In addition to manufacturing soup, Campbell produces Pepperidge Farm products, Vlasic pickles, Mrs. Paul's frozen seafood, V-8, Prego spaghetti sauces, Swanson products, Le Menu frozen dinners and Godiva chocolates. It also sells fresh mushrooms and hydroponically grown tomatoes and avocados with the Campbell label on them.

Among the company's new products designed to keep up with rapidly evolving tastes are Le Orient, a new line of frozen dinners; Fresh Chef sauces and salads sold from the refrigerated shelves of groceries, and a constantly growing line of newly packaged or newly configures soups.

"We introduced dry soups last fall and have about 20 percent of the dry soup market," McGovern said. "We've leased a ramen noodle factory in Ohio. We have microwaveable soups, frozen soups, soups in glass jars, low-sodium soups. We're going to catch you every way we can."

I think what they're saying is that soup in any form is their bailiwick, and they don't want it taken away from them," said Novello of E.F. Hutton. Soup accounts for more than one-third of the company's total earnings, he noted. "It's the key business," Novello said. "They want to use that as a lever" for further expansion.

"If we're the best there is in soup, and doing it here, then we can broaden our soup base," said McGovern. That will allow Campbell to keep up with the super-powers in food processing that mergers, such as the Nabisco-R.J. Reynolds combination, have produced, he said. The nature of the ownership of Campbell's stock protects it from being the target of an acquisition, McGovern said. About 60 percent of the stock is in the hands of the Dorrance family, heirs to John T. Dorrance, who originated the canned, condensed soups that made the company famous, but takeover speculation appears to account for higher prices for the stock in recent months.

Moving into the dry-soup business may allow Campbell to expand in worldwide markets, where it accounts for about 30 percent of the sales. "We tried to take wet soup [canned soup] to the rest of the world and discovered that it was really the specialty end of the business," McGovern said.

Other products are aimed at capturing consumers who seldom sit down for family meals but who "graze" or eat "hand-held" foods.

In the meantime, Campbell is at work on the Le Orient version of itself.

The biggest evangelist for change within the company has been Springer, a former manager of the company's oldest facility, its 97-year-old plant in Camden, which the company is spending $37 million to upgrade. Springer preaches the gospel according to W. Edwards Deming. Deming was invited to Japan in 1949 by the national society of engineers, who wanted advice about how to restore their war-ravaged economy.

Deming emphasized statistical control of quality throughout production, in contrast to the American method of checking quality at the end of the manufacturing process.

Some of the changes are under way at the Camden plant, where one of two warehouses is being eliminated. "What we would like to do is, if you get an order for one case, you produce one case," said plant manager David Winkler. "What we have done in the past is to produce for the sake of production, to keep everyone busy." That kept the two warehouses full.

The plant is being upgraded, despite its age, because of its location. "From a construction point of view, it's expensive," Springer said. "But from a just-in-time-manufacturing point of view, probably 29 percent of the people in the U.S. live within 200 miles of that plant."

Workers in the Camden plant and others participate in quality circles and task forces to devise ways of improving production. One task force is trying to determine what percentage of cans arrives on supermarket shelves damaged and how it happens.

"We've inspected the process here and gotten a number of damaged cans that were going through our system and were not caught," said Dennis Wrigley, a forklift operator at the plant who is a member of the task forces. "Then we went out to the stores to see the level of damage, which is more. We're backtracking now" to determine where the additional damage occurs, he said.

"It's a little bit more interesting than just stacking soup all day," he said.

If Campbell succeeds in reorienting itself, the transformation should result in both fresher products and substantial savings, according to company officials. "What we're trying to do is reduce the cycle time" between the arrival of raw ingredients and when the soup or other food product reaches the store, Springer said. About two years ago, the cycle time for soup was about six weeks, according to Springer. That time has been reduced to about two weeks now. By Aug. 1, 1987, that time may be reduced to a single week, he said.

"The faster you can move it, the less money is tied up," he said. In the past the company emphasized large orders, delivered by truckload to warehouses, and kept substantial amounts of capital tied up in ingredients, trucking and storage. "I think what happened is, over time, as we got more volume and had low interest rates, people forgot how much money was tied up," Springer said.

The approach that the company is trying to adopt from the Japanese is designed to remedy that, he said. "I think some people think it's just something to talk about, but it's not," he said. "It's really asset management."●

TRADE PROGRESS: ROCKY MOUNTAIN ENERGY—REPUBLIC OF CHINA JOINT VENTURE

● Mr. GOLDWATER. Mr. President, it is not often that any of us can report good news. Even less frequently can we report news that is good for both our beleaguered energy minerals industry and our international trade balance. However, I am very pleased to say that I can report both today.

This morning here in Washington an agreement was signed between Rocky Mountain Energy, the mining subsidiary of Union Pacific, and the Republic of China which will result in an equity contribution by the Republic of China in a United States mining venture.

The agreement cements a unique joint venture between Rocky Mountain Energy and Taiwan Power Co., the leading utility on Taiwan, to explore for, and develop, uranium resources here in the United States. Over the next 5 years, the companies will focus their exploratory activities on smaller but higher grade, lower cost uranium deposits in several States, including Arizona. About $3.6 million will be spent each year to find these new reserves. If economically mineable deposits are discovered, the partners will negotiate new agreements to develop these energy resources. The agreement also provides technical training in field geology for employees of Taipower and gives the company the option to purchase cer-

tain already proven U.S. uranium reserves.

This agreement is good for both sides. First, it is an additional, concrete step in the Republic of China's program to address the growing trade imbalance between our nations.

Let me take a moment to update you on these efforts, a subject I discussed in some detail last November.

The Republic of China has undertaken a coordinated, planned program to reduce their trade surplus with the United States. Elements of this program include:

Elimination of, or a substantial reduction in, tariffs on U.S. products;

Drafting a liberalized Trade Act adopting a simplified import-export permit system and eliminating the current prohibited commodities classification;

Initiation of a unique "Buy American" policy that has resulted in 11 "Buy American" trade missions to the United States and the purchase of more than $8 billion in American goods;

A significant loosening of restrictions on the import of United States products to Taiwan;

An opening of the service industry on Taiwan to United States investment;

The establishment of United States products exhibits in Taiwan and trade seminars in the United States on how to tap the Taiwan market; and

A tough crackdown on commercial counterfeiting in the Republic of China.

Even with the best of efforts, we may never reach a perfect trade balance with Taiwan. The Republic of China is a society of 19 million people, whose economic survival is dependent upon exports. It is too much to expect that a country of 19 million citizens can purchase as much total goods, commodities, and services, as a country of over 230 million citizens. But we can expect a responsive attitude toward our interests and an honest effort to redress the trade imbalance insofar as practical, and that is exactly what is reflected in the agreement with Rocky Mountain Energy.

Second, by the agreement, the Republic of China has recognized that the United States uranium industry can guarantee security of supply to a degree greater than any other energy exporting country.

For a nation almost totally dependent upon imports for its energy supply, such security is of great importance. It is an advantage other countries and U.S. utilities also should consider carefully.

Third, by the type of deposit sought in the program, both Taipower and the American company are making a clear statement that the U.S. uranium industry can again become competitive on world markets. The target of the exploration program, a target U.S. geologists feel is achievable, is a new high-grade, low-cost deposit found in several States of the Western United States. If these deposits can be developed on a commercial scale, it will be good news for this depressed industry.

Finally, the agreement may open important new markets for United States uranium in the Republic of China and beyond. This could further reduce trade deficits, create new jobs in depressed areas of the West and contribute to bringing back the U.S. energy minerals industry.

As I said, it is nice to report good news for a change. This agreement is good news, and I hope there will be similar favorable reports to make in the future.●

S. 2539—UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

● Mr. WARNER. Mr. President, on June 10, Senators LAXALT, INOUYE, WILSON and TRIBLE joined me in introducing S. 2539, the "Uniformed and Overseas Citizens Absentee Voting Act". We were subsequently joined by Senators, HOLLINGS, KENNEDY, KERRY, and DENTON, who lent their names to the "Dear Colleague" letter which was sent out to inform the Senate of what this legislation was and why we had introduced it. In the 30 days since we sent that letter out, there has been substantial support for this bill: It gives me great pleasure today to report that 33 Senators, one-third of the Senate, are now cosponsors of S. 2539.

It is always gratifying to receive this kind of support for a legislative initiative, but I want to stress that it comes from both sides of the aisle and from both liberals and conservatives. That is as it should be, because voting is not a Republican or Democratic issue, especially when it concerns the ability of our service men and women to cast their ballots while they are bearing the burden of defending our freedom overseas. When it comes to insuring their right to cast those ballots, the only issue is an American issue, and the duty of the Senate is clear. It is to enact the commonsense solution that this bill provides to the problem of involuntary disenfranchisement that all too often victimizes our soldiers, sailors, diplomats and businessmen who represent us in foreign lands.

The 33 Senators who have joined in cosponsoring this legislation have sent a strong message that we need to take quick action on S. 2539 in the next few weeks to insure that it becomes law. Our House colleagues will complete the subcommittee markup of their version of this bill today, with the expectation of reporting it for final floor action following the Labor Day recess. I would hope that we can move swiftly to consider this bill in the Rules Committee, to work our will on its provisions. and to take final action on it promptly, possibly even prior to the Labor Day recess.

I thank my colleagues who have joined in cosponsoring this legislation for their support. I hope that we will be joined by other Senators who, as they examine S. 2539, will recognize that it is a significant step forward to insure that those who defend our freedom are also able to share in its privileges.●

UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

● Mr. D'AMATO. Mr. President, I rise today in support of S. 2539, the Uniformed and Overseas Citizens Absentee Voting Act, introduced by my distinguished colleague from Virginia. It is one of the most comprehensive absentee voting reforms I have seen, and I am proud to join as a cosponsor of this bipartisan legislation. In the past, U.S. citizens abroad for whatever reason have had difficulty participating in Federal elections, primarily because of foreign mail services less reliable than our own U.S. Postal Service.

This revision of an 11-year-old law is most welcome. The bill eases voting procedures for Americans abroad by improving the absentee ballot mailing process and reforming current laws. At present, an American abroad must mail in a request for an absentee ballot. If the ballot is not received in time, the voter has no recourse. The passage of S. 2539 provides for forms to be made readily available to voters abroad that will serve as substitute ballots if the absentee ballots do not arrive in time. Broadening the American electoral base is a goal we all have sought.

An individual's right to vote is too important to be at the mercy of the mails. S. 2539 is a significant step toward ensuring that right for all, and I am proud to cosponsor it.●

CHINA: A MIX OF OLD AND NEW LIFESTYLES

● Mr. D'AMATO. Mr. President, Alan Emory, a distinguished journalist from the Washington Bureau of the Watertown (NY) Times, recently returned from a visit to China. Mr. Emory traveled as part of a group of journalists organized by the Georgetown University Center for Strategic and International Studies.

In 1981, Mr. Emory wrote a 10-part series on a trip he took to China as a tourist. Now, 5 years later, he returned to this fast-changing nation and details his impressions in a new 14-part series that I think would be informative and insightful reading for all.

Change is found everywhere in the China of 1986. Mr. Emory reports that the young Chinese speak with great enthusiasm about what is happening in their country under the reforms instituted by Deng Xiaoping. Westernization and modernization are sweeping across this nation, affecting almost every part of daily life. Cars jam the streets that once were used mostly by cyclists. Market stalls sell blue jeans and jogging suits, and American films are extremely popular and play on Chinese TV. This nation is clearly one undergoing radical change.

Economically, one can now see a touch of local capitalism in the new China. Officials still vehemently deny that China's economic system is becoming more like that of the United States, yet shoppers crowd the market place every afternoon. It appears that the profit motive is now encouraged, rather than discouraged, and that for the time being, the military has had to take a back seat to the economy.

Emory describes the changes taking place on the farm, the emphasis on milk production, the general increase in living standards, the assimilation of Western technology and modernization into this traditional society, and the basic change in attitude that he has witnessed.

Yet, Emory points out that such changes cannot occur without some obstacles. China must implement these changes while trying to deal with a huge population, the problem of centralized control, a shifting role of the Communist Party in the factory and on the farm and the issues of education and transportation.

China, has entered a period of change that is both fascinating and significant. These changes have already begun to affect China's relationship with the Soviet Union and the United States. Therefore, I encourage all my colleagues in the Senate to take the time to read Mr. Emory's informative articles.

The material follows:

'MODERN' CHINA GOING ON A BUYING SPREE

(By Alan Emory)

BEIJING—There are a lot of good, smart people in China, a veteran diplomat observes, but "the system" makes it difficult for them.

He adds, "Almost everything China is doing is going in the right direction, except for costs."

One can see the results of changes in China "almost every day," says a western ambassador. The historical picture of beggars in the streets and dogs eating chidren's bodies has vanished.

"I think they are happy," the ambassador observed in an interview in his office. "They are smiling. Their clothes are getting more colorful. They are warmly dressed in winter."

The Chinese, in fact, are on a buying spree. Says the diplomat, "They've got money to burn."

Despite the progress to a more modern mode of life and more than a touch of local capitalism, handlabor still accounts for 90 to 95 percent of the work performed. A westerner of Chinese heritage notes wryly that if one inch were added to every man's shirt sleeves the textile business would undergo an explosion.

It is very difficult for a youngster to get into college in this country. Maybe one in a 1,000 hopefuls is lucky.

However, graduates of designated high schools, similar to United States preparatory schools, are admitted.

Large numbers of Chinese are waiting for jobs. In the interim they are allowed to open up shops. However, if they do not belong to a work unit they cannot obtain adequate housing.

Many of the big hotels have discos, but they are usually closed to domestic Chinese. In the Beijing (Peking) Hotel there is a sign outside the disco advising that only westerners and overseas Chinese and people from Hong Kong and Macao may be admitted.

Says a Chinese journalist, in explanation, that is because officials fear the locals would overcrowd the place. In his work unit, he adds, there is disco dancing for members and their families, and outsiders are free to participate.

The disco story—Chinese youngsters love disco, but dislike rock—is just one form of apartheid for the country's citizens. There are two forms of currency, the regular money, called Rmb, and the scrip provided to visitors, called foreign exchange certificates (FECs).

The Chinese merchants and others who may come into possession of FECs are supposed to exchange it for local money. Chinese citizens are not expected to have FECs although that is the only money that is accepted for most items in the hard-currency Friendship stores.

The Friendship stores now allow the Chinese public to buy, but only a limited number of items.

Inevitably, there is some cheating because every regulation has holes in it.

For example, a taxi driver may keep FECs he receives for his fares and turn in local currency to his bosses, using the scrip privately.

As one westerner put it, there is no point trying to take Rmb to a bank in New York because no one can use it outside of China itself. Regulations specify no money is to be taken out of the country.

The Chinese public is not only excluded from using FECs and entering hotel discos, but from obtaining rooms in the modern hotels. Those are reserved for overseas diplomats, business types and tourists.

There are many signs that cracks are appearing in the government's long-standing attempt to suppress individual enterprise. Says one expert, "The work ethic is bursting forth."

Take the story of the western ambassador who wanted to put a roof over his embassy's patio to protect guests from the elements.

All foreign embassies must channel such requests through the Diplomatic Service Bureau, but the Chinese put the price so high—they like to set labor costs at U.S. domestic levels—and the ambassador was resigned to postponing the project as too far over budget.

To his surprise, Chinese members of the embassy staff offered to build the roof themselves, doing the work on their days off. Their offer was reasonable, and the ambassador took it.

The telephone operator, drivers and others pitched in, and, when the project had been completed, they presented the ambassador with a pile of receipts for materials purchased, told him they had kept something for themselves and gave him the leftover money.

When he got over his shock he explained the job had come in under budget, and the Chinese were entitled to the agreed-on figure.

One Chinese at this embassy uses his pay to help buy a piano, another a refrigerator, a third stamps for his collection.

Embassies cannot fire people easily. Says one diplomat, "They just send somebody worse, a phone operator right off the farm. I'd love to put an ad in the paper, but I can't."

When a British rock group appeared here recently authorities wanted the audience to remain seated throughout, but the attempt was futile.

There is concern about what the Chinese see as unhealthy influences, such as pornography, much of which comes in from Taiwan.

"This is not what we fought the revolution for," say local officials.

WESTERN REVOLUTION SWEEPING THE FORBIDDEN CITY

(By Alan Emory)

BEIJING—Five years ago hordes of cyclists pedaled down Beijing's broad Chang An Avenue, sharing the road with a few cars and buses.

Today China's capital city has become one monster traffic jam. New Yorkers would feel right at home.

In many other respects the China of 1986 has absorbed western dress, hotels—now, even, golf.

Signs in English, as well as Chinese, are everywhere, even on the temples in the Forbidden City. Commercial billboards dominate the major boulevards here. American films are popular and play on Chinese television, which has at least four channels.

And all over, in every major city, there is building, for apartments, for offices, for banks. Many of the new structures are skyscrapers, and there are splashy new hotels, but unless a traveler is with a group it is almost impossible to obtain a room.

For the Chinese professional life is not easy in Beijing, even when an apartment with new appliances rents for only $1 a month. Try and get one. The waiting is endless.

In 1981 there were a few splashes of color in Chinese dress. Now, mainly among young people, bright red and pink jackets and blouses break out from the revolutionary tradition of blue, gray and olive green.

Women go for quilted jackets, sweaters with multi-colored stripes and designs and spiky high-heeled shoes. Young people of both sexes favor blue jeans. Men in shirts, ties and dark suites are no longer rarities.

The Mao suits still dominate, but, especially among the young, they are fading. In fact, dress style and color are becoming a demarcation of age groups.

A year ago it was impossible to get a taxi at the Beijing airport. Now there are fleets of Toyotas and Volkswagens. Says one westerner, "I don't know where the drivers come from."

And the green grass was a rarity in 1981, and trees were few and far between. Now the plane swooping down to Beijing airport flies over green fields and leafy trees, and the cities have parks with grass and lots of trees of their own.

Today's Chinese, observes a western diplomat, are "well fed, well clothed, smiling"—and making money. Chinese officials stoutly deny they are on the road to capitalism, but tell that to the shopkeepers whose stores are mobbed every afternoon.

Boxes of Chinese-made washing machines are stacked dozens of feet high.

Young couples stroll the sidewalks and parks hand-in-hand. The women wear lipstick, though not the older ones.

The government specifically approves the lipstick and western suits, a strange development in itself, but only a few years ago the same government condemned such practices.

The evidence is strong that the new Chinese effort is working—imperfectly, perhaps, but working.

Signs in English pair up with those in Chinese on many storefronts and billboards—advertising is thriving—and western tourists have become so numerous as they are no longer curiosities in the major cities. Chinese do not flock around them to practice their English as they once did, although the young people now have their "English-speaking corners," where they do their thing on specified days.

Hotel staffs speak enough English to accommodate the tourists, from room numbers to handling telephone calls, which are quick and cheap to the United States, to dining room courtesies. However, a request for orange juice still produces orange soda pop, although that and local beer are now served chilled, rather than warm.

To take a taxi, a visitor, to be safe, must have the destination address written out in Chinese ideographs, along with the instruction to the driver to wait, if necessary. In Beijing cabs are relatively cheap. A half-hour ride to destination, an hour's wait and a return trip cost $10.

Chinese TV gives a picture of life in the city—three generations of a family in one room, parents, children married with one child, a sheet across the bed for privacy.

In Shanghai, the country's most populous city, a family lives in a space of about 10 square feet, but in the countryside it is five times that.

Here in Beijing, which is located on the same latitude as Philadelphia, the building boom tries to keep pace with demand, as in most cities, but cannot. There are two-bedroom apartments covering 500 square feet, but to have access to such living space a Chinese must be a fairly high-level party official.

The Chinese people are as friendly as ever. Only in the hardcurrency ironically-named "Friendship" stores does one experience a sense of resentment on the part of clerks.

CHINA'S 'ROUGH' FOR FOREIGNERS

(By Alan Emory)

BEIJING—Life for a westerner in China is not easy.

Virtually everybody has to stay at a hotel, although the American president of a joint United States-Chinese manufacturing venture has managed a house outside Shanghai. But even that is rented from a nearby hotel.

There are just no apartments available.

A three-bedroom apartment here goes for about $6,000 a month, plus a $300 management fee.

At the Beijing Hotel a room costs $100 a day, and suites are double that.

Diplomats from five English-speaking countries here may send their children to an international school, which covers the first eight grades. Nothing is left over for children of business families, and there is no high school.

Children have to be sent to another country for secondary schooling.

The Japanese have schools for their children.

American officials here say the cost of doing business is the same for everybody. The major needs are for access to domestic markets, the ability to return profits to the home country and to manage the labor force, including hiring and firing, and incentive systems.

As one official put it, it is difficult to sell in China and if the sale is made, "What do you do with the money when you get it?"

On the other hand, he adds, "If you think it is bad now you should have been here in the seventies."

The Chinese, according to westerners, do not understand competition. Many companies have shifted their focus of attention to Hong Kong, where requirements are fewer.

Unlike in China, in Hong Kong there is no mandate for equipment to be shipped in from the United States, just design specifications, and businessmen say a product can be placed on the market there in only three months.

The forecast is that a tight foreign exchange situation—the Chinese make it almost impossible for take hard currency out of the country—will persist for at least another year.

There has been no drop in the curiosity the Chinese possess about the U.S.

Students, who now cluster about visitors at "English-speaking corners" in major cities, ask about jobs in America, are amazed at the size of U.S. tax rates and, when a journalist tries to explain the national budget and talks about welfare, he is immediately asked, "What about defense?"

When another said he wrote about defense matters in Washington, one student observed, "Oh, Star Wars."

The students are also curious about the Soviet Union and express some envy of Soviet youngsters who get to dance disco.

When they ask about Libya, strangely enough, the questions are not ideological.

The youngsters say they listen more to English-language broadcasts on the Voice of America than to those in Chinese.

One teacher in Shanghai, whose pupils are 11-year-olds, said she liked the writings of Jack London and Ernest Hemingway because of their use of short sentences. She said she taught English phonetically, but that bored her classes, which preferred mathematics.

To one visitor who said he was from Virginia, a young Chinese exclaimed, "Country Roads." That was pretty close. The song is about West Virginia.

The Chinese say they watch the television news program "20-20" on videotape.

Among their favorite American movies are "Gone With the Wind" and "Kramer vs. Kramer."

The Chinese are not reluctant to talk about themselves and their lifestyles.

At the Great Wall two teen-age young women from Bao Ding, in Hebei Province, where Chiang Kai-shek attended military academy, talked about living with their parents and working in a state-run woolen factory making $23 a month, plus a bonus of about $15 to $20.

They give all the money to their parents and receive pocket money in return. They are too young to think of marriage, they say, giggling.

They work an eight-hour day six days a week, with some summer vacation and national holidays off—the Spring Festival, Labor Day (May 1), New Year's Day and National Day. They visit Beijing on holidays, and the Great Wall meant a two-hour express train trip for them.

One of the young women was wearing designer sunglasses, a T-shirt and jeans.

There is no mistaking the enthusiasm with which the young Chinese talk about what is happening in their country under the reforms instituted by Deng Xiaoping.

And one high school student, reluctant to see his conversation with a group of visiting Americans end, asked, "Why are Americans always in such a hurry? Do you make more money that way?"

POPULATION A MAJOR WORRY FOR 'NEW' CHINA

(By Alan Emory)

SHANGHAI.—Population control and cigaret smoking are confronting the Chinese people with difficult decisions.

Even acid rain is intruding on parts of the country.

The five-year-old edict that no Chinese family is to have more than one child has become a sensitive issue, but local officials insist there has been a 96-percent success rate.

They readily concede that the average couple here wants more than one child. Larger families are a Chinese tradition.

On the other hand, they say, the now-scorned Cultural Revolution under Mao Zedong, which is referred to as a "10-year disaster," led to a population explosion the government is determined to bring under control.

Despite many horror stories about forced abortions, Chinese officials maintain they are relying on persuasion and education to achieve their goal.

And there are loopholes in the rules.

In the remote mountainous areas, where more people are required to cultivate more land and there is a lack of manpower, parents are permitted to have at least two children per family.

Parents are allowed to have another child whenever they give birth to one who is handicapped or mentally retarded.

Some people are not happy about the one-child restriction, officials agree, so the government's job is to make them believe family planning is good for the state. Those officials insist most parents finally accept the persuasion, although some still harbor grudges about the limitations.

In a few cases, one official conceded reluctantly, "forcible measures," which he refused to spell out, are taken, but he adds that the results have not been good.

Some women who have had extra children have been deprived of work bonuses or other incentives.

Families who had their children before the one-child edict took effect are, of course, not bound by it.

Parts of China are deep in anti-smoking campaigns.

Success will not come easily. Mao was a chain smoker, and, legend has it, when friends pleaded with him to stop he replied, "Don't bother. I'm making a contribution to the country."

Deng Xiaoping is also a chain smoker.

About half Chinese men smoke and about one in every three in the population as a whole.

There has been some peer pressure to stop, but young people, who have to shell out $1 a pack, are smoking more, while their elders smoke less. There is more smoking in rural areas than in cities.

Shanghai Vice Mayor Liu Zhen Yuan, whose city has placed 6,000 anti-smoking placards on streets and in public parks and has staged mass meetings with notices at movie and other theaters and public places, says the main activity is public relations, telling people smoking is dangerous to their health.

There is no warning on the cigaret packages, but anti-smoking slogans are printed on postal envelopes and wrapping paper and signs are up in foodstuff factories.

Says Liu, it is hard to say if the campaign will succeed.

Young people in colleges and schools are being mobilized for anti-smoking efforts, and the World Health Organization's Eric Goon says the world is watching Shanghai for results.

Some Chinese cities are considering a "Quit Smoking Day."

Liu told a group of American journalists organized by the Georgetown University Center for Strategic and International Studies recently, "Personally, I am not in favor of smoking in public places, but that may be because I'm a nonsmoker."

As for acid rain, it has become a threat in some parts of China.

Says Chengdu Deputy Mayor Pan Zhao Qing, "We do have problems with air pollution."

He says there is environment monitoring on the east side of his city, and he attaches "great importance" to improving the situation.

"We need to strengthen our monitoring measures," he says, "limiting the time factorys can operate. They have been asked to improve their equipment, and we are encouraging a factory to make environmental protection equipment. We believe we can solve the situation, and we have tangible results already."

Experts from the Chinese Academy of Sciences in Beijing have warned that new industries may increase pollution to the point where health and the environment will be damaged unless there is widespread installation of anti-pollution devices.

China says it has been monitoring acid rain in Beijing, Shanghai and Chongqing (formerly Chungking) since the late 1970s and that it made a nation-wide survey less than five years ago.

Scientists name industrial air pollution as the major culprit.

FARMERS HARVESTING PROFITS FROM CHINESE REFORM

(By Alan Emory)

CHENGDU.—There is a revolution down on the farm in China.

But it's not so much what they plant and how they plant it as how the farmers live and how much money they make. Some, by Chinese standards, are making it big.

Where a poor peasant in the Chengdu area of western Sichuan Province—the most populous in the country—may earn $67 a year, and Deng Xiaoping is aiming at an average income of $800 a year by the turn of the century, Xia Song, who runs a nursery and has a two-story house overlooking a large courtyard, rakes in $8,700 after expenses.

He has two tape recorders, a motorbike, washing machine, a "woofer" and a black-and-white television set. He has ordered a color TV.

In China peasants often earn more than soldiers or professionals. A 28-year-old single onion farmer, who cycles 12.5 miles to Chengdu to sell his wares in the "free market," makes $100 a month before expenses, including the 33 cents he pays the market authority daily for his stall space. Say Chinese journalist wryly, "That's more than I make."

The farmer says he is saving to buy a TV set.

Are the soldiers jealous? A 35-year-old infantry platoon leader with nearly 20 years of army service told a group of American journalists organized by the Georgetown University Center for Strategic and International Studies, "Not in the least. I come from a peasant family myself. I am very satisfied with rural reforms. Things are getting better in my home village."

Under the reforms a farmer contracts with the government to produce a certain amount and receives a set price. Anything over that he is free to sell himself at whatever he can get.

China's population is too big and its usable land too limited. By the end of the century, the government hopes, farm manpower will be cut in half and machines will take over.

For the moment, however, machines are not much in evidence, and the work, such as planting and seeding, is virtually all hand labor. Small tractors become vehicles to transport farm produce into town, and the machines are normally brought out for plowing and irrigation and are very seasonal.

Farm output has doubled in the last five years. Fewer people are entering the armed forces and shifting to cities because of job opportunities on the farm, where they can receive $15 to $25 a month more than in factories and pay lower taxes, to boot.

In Shanghai's suburbs two-thirds of the rural population has moved into new housing in the last few years.

The once-dominant farm communes have been abolished in favor of cooperatives and private operations. Land is distributed under contract, and towns take over administrative services, while farm groups control the economics. Centralized management has disappeared.

A local People's Congress decides how much to collect, how money should be spent, such as on law and order, education, welfare and medical care.

Where the government does come into play is on the use of arable land. It may not be shifted to other purposes unless the government gives its blessing.

There is concern that land for crops is too scattered and ownership is on too small a scale for full exploitation.

Some officials talk of diversifying local economies, increasing town employment by as much as two-thirds and increasing machinery horsepower.

There is discussion of centralizing grain sales. Many farmers have dropped production of grain in favor of higher-income-producing crops like celery, some are leaving the farm for commerce or industry and the country has been plagued by weather problems and other natural disasters.

One policy under consideration is to have farm surpluses purchased at higher prices than those authorized by the state to retain rural enthusiasm for agriculture.

CHINA GIVING PRIORITY TO PRODUCTION OF MILK

(By Alan Emory)

CHENGDU.—Many of China's cities are short of dairy products.

The milk producers have enough output for their farms and local communities, according to Du Reng Sheng, director of the national government's State Council Rural Development Research Center.

The average Chinese consumes less meat and dairy products than the average American, Du says, and China is concerned because a milk cow consumes "enough grain for several persons."

The Chinese consumption of about 3.3 pounds of milk per capita a year contrasts sharply with the 582 pounds for an American civilian in 1984.

"We are ready to produce more dairy products," Du told a group of American journalists organized by the Georgetown University Center for Strategic and International Studies in Beijing.

"The first step is to supply the major cities. That is still in the developmental stage. We have too little milk."

China has about 1 million milk cows, producing about 1.1 billion pounds a year.

By contrast, the United States last year, with one-fifth China's population, has more than 11 million milk cows with a total output of 143.7 billion pounds.

The country imports cattle mainly from Denmark, Sweden and the Netherlands, but some from the United States.

Du says the quality of feed must be improved.

He also says that farm prices must be held down because the alternative is higher wages, then higher industrial prices and the familiar inflation spiral.

In "golden" Wenjiang County, just outside of Chengdu, lives Xia Song, 45, who runs a nursery so profitable that he has no car or truck because his customers come to him.

He started out with a 15-year contract in 1979, and his early profits enabled him to increase his workable land from about a quarter of an acre to two acres.

He raised pigs and borrowed from friends to expand his operation.

Now he pays $530 a year to the village committee, $130 to a peasant cooperative and $400 to help the elderly and poor.

Over the past two years he has reaped a profit of about $8,700 on a gross income of about $10,000.

"I'm a flower lover," he said. Increasing urban construction and factories prompted him to go into the nursery business to "make life more colorful."

After he became prosperous, he added, he was not afraid to show it. He built a house on land that had been distributed to his family and hired five relatives to work the place.

He says he teaches them how to plant flowers and to market their products.

He pays them between 67 and 80 cents a day.

He estimates his annual tax bill at about $500.

Xia says the situation has changed substantially since landlords exploited farmhands.

"I employ people and pay them reasonably according to their work." he says. "There are very few cases of jealousy."

In the Wenjiang "free market," a kilogram (2.2 pounds) of pork sells for $1. The farmers running the stall says it is the same

price the state charges, but the quality is better.

Ling Zhong, 46, sells vegetables and eggs, and has five members of his family helping on the farm.

"We need money from sales to make both ends meet," he says, "Most of our profits help maintain the business."

High-ranking government officials say that the old "rigid" economic system must be abandoned and "market forces" be allowed to take over.

It could have been Ronald Reagan speaking.

PROVINCE CAPITAL TEEMS WITH HEAVENLY ABUNDANCE

(By Alan Emory)

CHENGDU.—The early mists shroud the capital city of Sichuan Province, famed for its fiery dishes and, with 104 million residents, the largest in China.

When the sun burns the mists off the dusty roads in the surrounding lush agricultural area become clogged with farmers on their way to market.

A clashing of honking horns, squealing pigs, shouting individuals, quacking ducks, snorting mules and screeching motorbike tires assault the ears.

Whole pigs are strapped onto carts and handlebars, geese are loaded into baskets, chickens stroll across roads and up and down stairs and into living rooms of rural homes.

Men haul huge blocks of concrete for miles, becoming human beasts of burden in what is called "The Land of Heavenly Abundance."

A sign in the Qing Shi Qiao farmers' market reads, "No rotten vegetables should be sold. Efforts should be made to sell vegetables fresh."

The market at midday is jammed with people. Stalls with vegetables, pork, eggs and spices crowd up against each other.

One area is ablaze with the color of local flowers, another alive with the chirping of small parakeets and a sparrow-like bird colored orange, red and yellow.

In nearby Wenjiang County farmers grow oilseeds, oat, and wheat. They have also put up a sausage factory to supply the local market.

At one farm a woman said she did the farming while her husband, a construction worker, was on the road. He sent back part of his income of $1,300 a year. Compare that with the average income in Chengdu of $137 last year—up 86 percent from 1980—the $800-a-year income that is Deng's goal for the turn of the century and the $333,000 annual income some officials concede is being made by a few rich farmers.

There are a half-million "peasants"—a term used in China to describe just about every rural resident—with annual incomes of less than $67 a year.

The poorer peasants are concentrated in mountain areas.

Local officials say the state has created a development fund to provide long-term loans at low rates.

Communities of brick homes with thatched roofs are surrounded by groves of bamboo, one variety of which is the sole food of the giant panda.

Sichuan is the panda's home, as well the birthplace of Deng Xiaoping and the place where Zhao Ziyang, the prime minister, operated as Communist Party boss from 1975 to 1980.

Bordering the fields are "marble" trees, which are grown to raise silkworms.

Many of the homes are lighted by natural gas, which, the owners say, provide more illumination than electric bulbs.

A Tibetan poet of the 8th Century wrote of the perilous 1,400-mile road linking his home with this province, "It is more difficult to go to Sichuan than to get into Heaven."

There are 15 ethnic groups in Sichuan, which covers 220,000 square miles, 87 percent of it rural.

Chengdu, its capital, has a center-city population of 1.3 million living on a latitude comparable to that of Houston, Texas, but with the surrounding countryside the figure jumps to 8.3 million.

Despite all the farm activity, the average peasant works less than one-sixth of an acre, while in the United States the average farmer works more than 1.7 acres.

The residents of Chengdu were unhappy when the local government decided to raze the walls of the old city.

The huge statue of Mao Zedong in the center of town is being cleaned and is hidden by scaffolding.

Signs in the city read, "Leave Home for Work Happily. Return Home from Work Safely," and, "Carry Through the Revolution to the End."

Smokers indulge in Double Happiness cigarets.

A sign over a bookshop advises, "A foreign language is a weapon in the struggle for life."

In the old part of the city narrow streets wind through miles of shops and eating stalls, many of them privately operated. They open out into broad boulevards of the new city, with modern statues, foliage and gardens.

Pedal cabs share some of the space with buses and trucks. There is a huge underground store that was formerly a bomb shelter.

Pan Zhaoqing, deputy mayor of Chengdu and secretary of the local Communist Party committee, says there are 100,000 independent enterprises now, of which individuals own about 3,000 and households another 5,000.

Some farmers in the outskirts live about 100 yards from the fields they cultivate.

Localities have their own health clinics, which charge for medicine, but not for the care itself.

IMPRESSIONS, FROM BLUE JEANS TO CANDY

(By Alan Emory)

BEIJING.—A kaleidoscope of impressions of the China of 1986 . . . Market stalls in several of the major cities sell blue jeans, as well as jogging suits, which have become every-day wear for adults and youngsters alike.

The Chinese government's airline, which now uses American and British aircraft, serves fruit juice in paper cartons. Orange, pear and kiwi are available on request.

The airline also gives each passenger a memento of the flight. Once it was a small costume jewelry pin, once a datebook in red leatherette, twice a digital clock on a clear lucite stand. Travelers also receive varieties of Chinese candy.

There is a drive on in China's scientific community to have the country go on daylight saving time five months a year. Backers say it could mean an annual saving of up to 2 billion kilowatt-hours of electricity.

Traffic authorities in Beijing, known as China's "kingdom of bicycles," want a crackdown on careless cyclists, claiming that accidents they cause are creating a nightmare for other road users. There are more than 5.6 million bicycles in the capital city, two for every three people.

Many Chinese hotels now provide rubber moisture containers to make envelopes easier to seal, pencil sharpeners in the shape of horses and pens with red and black inks.

Hotels that are not at the top of the list have poor plumbing. One in Beijing had dripping water from the shower pipe—a free-standing curved piece of metal in one corner of the bathroom—and from the sink faucets, despite widespread reports in the newspapers of a water shortage in the area.

Chinese proverb: The peasants leave the land, but not the country.

Groups of visitors at offices, factories and farms regularly are provided with large cups of blue-and-white china filled—and refilled—with green tea, poured from a huge pot or long thermos. It is a ritual that accompanies every meeting, no matter how formal or informal.

No hotel tap water is drinkable, but the Chinese still provide two pots or thermos bottles in each room, one with hot water for tea, the other cold water for drinking and brushing teeth.

Maj. Joseph Gallagher, the assistant Army attache at the United States Embassy here, has been assigned to the 10th Mountain Division at Fort Drum, but is not sure when he will move to Northern New York.

A delegation from Michigan showed up in Sichuan Province to provide expertise to the Chinese on building roads and, in return, to receive black-neck pheasant eggs. Michigan is home to the ringneck pheasant, which lives on the ground, but has become so vulnerable to being run over that it is nearing extinction. The black-neck roosts in trees, and the Michigan group hopes to cross-breed the pheasant with the new eggs. Question: How does the new bird decide whether to fly up to a tree or stay on the ground?

In Sichuan's capital city of Chengdu the Jin Jiang Hotel rooms have light switches that do not work by themselves. After an initial reaction of dismay the visitor discovers a rectangular hole in the wall near the door into which he must insert the rectangular plastic block to which his room key is attached. That turns on the lights. Of course, when the traveler takes his key out when he leaves the room he also extinguishes the lights and also wipes out the time on the electric clock in the bedside table, which must be reset every time the tenant returns.

A traveler to China does well to bring along lots of business cards. The Chinese, from journalists to public officials, carry stacks of them to exchange.

Two "must" restaurants in Beijing are Quan Ju De, where everything served is duck, except for one shrimp dish and fruit for dessert, and the Fang Shan, at the back of the Forbidden City, bordering on a large lake. Word of warning: the Peking duck in Peking (Beijing) is slightly greasier than the best versions served in the United States.

Breakfasts in China are an event. There are always several small dishes of cold meat or fish, and eggs are provided as a matter of course. Tea may be green or "black," and there is coffee, which one group of visiting Americans found very palatable. In Chengdu, capital of Sichuan, however, no salt or pepper is on the table. There is the option of using a searing hot pepper oil, which really spices up the eggs.

Other meals take some getting used to. Desserts, such as they are, are often served about two-thirds of the way through. The final course is soup. One lunch for a group of visiting Americans recently involved nine appetizers, called "Nine Dishes in a Box," and was followed by no less than 15 other courses. One unusual dessert was black bean rice, which could be topped with fruit or sugar. Another, described as "eight-jewel," was a kind of apple brown betty studded wtih nuts. Delicious . . .

CULTURAL REVOLUTION "SURVIVORS" RECALL HARDSHIPS

(By Alan Emory)

SHANGHAI. Xia Qi-yan had a problem. He knew Mao Zedong's wife back when.

She was, the 72-year-old retired journalist says, "a third-rate actress who gained leading roles by seducing directors."

So, when the Cultural Revolution came, he was placed in solitary confinement in prison and slapped so hard on the head he became partially deaf.

His wife didn't know where he was and was not supposed to ask.

He managed, however, to send her letters through a newspaper he had worked for.

Two years later he got out, but was called a "traitor," "Japanese collaborator," "secret agent" and "Trotskyite."

The press was tightly controlled then, Xia observes. Ironically, two of the "Gang of Four" imprisoned now for their part in the Cultural Revolution, which today's China blames for most of its ills, worked for his paper.

Xia says his critics on the paper "were not responsible for my being put in prison. They learned their lesson from the Cultural Revolution. They knew I was not anti-revolutionary."

He had been a bank apprentice and joined the Communist Party in 1937. He liked to write, and friends, knowing that, invited him to a dinner, where he met the editor-in-chief, Tang Na, who was the first husband of Mao's wife, Jiang Qing.

Tang said he wanted a first-hand report on damage the Japanese had caused to the Nanking-Shanghai railway in 1945, and if Xia would report on that he would get a free trip out there.

"That's how I became a journalist," he says.

Lin Zhen Yuan, vice mayor of Shanghai, had been working in a scientific institute and had received his Ph.D. in Russia. When the Cultural Revolution was launched, he was dubbed a "secret agent . . . revisionist."

He could not continue his research work, but luckily was assigned to a plant making integrated circuits, and, after a short stint as an ordinary factory worker, became chief engineer.

He was heavily criticized, however, for his technical proposals and "put under house arrest" because of his earlier stay in the Soviet Union.

Another who studied in the Soviet Union, but who has managed to preserve his political career, is Li Peng, one of the five Chinese vice premiers and a man China watchers have tabbed a possible successor to Deng Xiaoping.

Xia Song, who runs a successful nursery outside Chengdu, in Sichuan Province, says it took him a year to be "cleared" after the Cultural Revolution. He had been charged with "going capitalist."

He had been an accountant with an income of $25 a year and was "on my own" after his parents died in the late 1950s.

"Don't blame the critics," he told a group of American journalists recently. "It wasn't their fault. It was the fault of the Cultural Revolution for taking the wrong political line.

"I tried to make friends with them. The party secretary apologized to me for the criticism."

A farmer in Chengdu's free market says that, as a 16-year-old student, he was sent to the countryside to work during the Cultural Revolution and then was shipped to the border of Yunan Province, 500 miles from his home and family.

Says Du Ren Sheng, director of the State Council Rural Development Research Center in Beijing, many survived the Cultural Revolution in fairly good shape, both Deng Xiaoping and what he called "small potatoes."

In what amounts to a minority point of view, Du says the Cultural Revolution "enable me to have a better understanding of the countryside and enriched my thinking and ideas. It was both a gain and a loss."

Those days are not in the past, and the attitude in China today is upbeat and optimistic.

The press, however, is still tightly controlled and continues to promote the Community Party policy.

Chinese journalists, of whom there are about 400,000, take this as a matter of course and offer no objections, even in private, although they insist they "adhere to the facts."

U.S.-CHINESE DRUG CO. EXPECTS PROFIT BY YEAR'S END

(By Alan Emory)

SHANGHAI.—Picture an American capitalist and a Chinese Communist standing in the front of a small bus, explaining to a group of American reporters how they linked up in a $10-million 50-50 venture to sell vitamins and other pharmaceutical products.

Not so crazy.

At a time when joint American-Chinese ventures are running into problems, Squibb Corp. and the Shanghai Pharmaceutical Industrial Corp. have formed a company called SASS to produce vitamins, cardiovascular products and antibiotics, three-quarters of which will be sold to the Chinese.

The products are already being advertised—"rather primitively," the firm's upstate New York president confesses—both on television and in the newspapers.

The 25 percent of the output that will be exported will provide the foreign exchange SASS needs to meet Chinese requirements, says 61-year-old John McCoy, a native of Coffeyville, Kan., but a resident of Ithaca for the past 18 years.

His partner, Jin Bai Chang, 60, insists he is "not a capitalist. I am a technician."

Unlike American Motors, which is threatening to pull out of its $51-million joint deal in China because of the difficulty in getting profits back home, SASS is sailing along.

Mr. McCoy sees profits by the end of 1986—one year of operation—and when Squibb makes its three-year review of the setup in 1988 he expects a "go" for the full 15 years of the contract.

Some western businessmen arrive in China with stars in their eyes, according to veteran observers in this country.

One says wryly, "They check their brains at the door."

Mr. McCoy recognizes they may think about quick profits: "You can't resist the pull of 1.1 billion potential customers out there."

But, he says, he has no problem about profits because "we don't have any," although by the end of the year "we may see something like a profit."

Then he can worry about getting money back to the United States. Until that time he is not "too edgy."

Mr. McCoy and his wife live in a house at the Shanghai airport owned by a hotel and pay $120 a day rent, which he calls a "tremendous drain" on the venture's dollar reserves. He considered building a house, but that would have taken two years.

The plant receives its sugar from Manchuria, its tetracycline from Xian, home of the excavated army of terra cotta soldiers.

Much of the material, and all of the equipment, however, come from abroad.

The operation sprang from a cocktail party conversation at the United Nations about 15 years ago, and the contract was signed in 1982. It has largest sales in China than most such joint enterprises because, as Mr. McCoy says, "The Chinese need everything we make."

The 170 workers put in a nine-and-a-half-hour day five days a week.

Mr. McCoy says he has encountered no more bureaucratic problems than anywhere else in the world. Products must be tested in government laboratories, much as the Food and Drug Administration requires test in the United States.

SASS products carry high prices by Chinese standards, so the advertising is important. However, Mr. McCoy confesses, local ad agencies "were started yesterday" and are "run more on chutzpah than anything else."

The joint venture will avoid "adverial advertising" for the time being, though "that may come later."

Mr. McCoy says the government's attitude toward joint ventures is influenced by the lack of foreign exchange and fees that is something it cannot afford "to be generous with."

He adds that many items he had assumed would be available were not or were of poor quality. However, he did have the advantage of a Chinese partner who had been in the business a long time.

He says there was a "large vacuum" in China into which he moved, and "when the Chinese situation changes, even briefly, it affects our situation."

A western diplomat charged, "We are all being ripped off," but, while businessmen are asked whether they want to quit and go home, Mr. McCoy said, "nobody's left yet. For everybody complaining there is someone waiting to get in."

Adds a high-ranking American official, "Business is making money. It wouldn't be here otherwise."

SHANGHAI GRAPPLES WITH OVERPOPULATION PROBLEM

(By Alan Emory)

Shanghai.—Take an automated steel plant that has 25,000 workers, but no one to control traffic clogging a narrow causeway that leads out to the plant's ship-loading area in the Yangtze River.

Add huge crowds of people jamming the Bund, a long street paralleling a waterfront that looks like Hong Kong, with its junks and rust buckets.

Add a mass of humanity thronging Nanking Road, the fabled main shopping street, in the afternoons and ornate buildings, with intricate stone work and colored brick.

Now you get a picture of Shanghai, China's largest city, like a part of Europe transplanted to the Orient, overflowing with people, 12 million of them.

Here a visitor sees much more western-style dress and better styling than in other cities. Streetcars are packed so solidly with people there is no room for anyone to fall down.

For the past two years Shanghai has been choked with Chinese trying their sideline enterprises and trade. More than a million commute to the city to do business, and it is a huge problem to move them around.

There are circular civilian overpasses for pedestrians high above the crowded shopping streets, but the city is plagued by too many intersections in its original plan.

Narrow streets force cars to creep along at 10 miles an hour.

To relieve the congestion, the city is planning for a two-phase subway system, one of about eight miles, the second about 12 miles, plus two major highways running north and south and a belt of elevated highways.

Most of the subway equipment will be purchased from France and Japan, officials say, with the underground rail system scheduled for completion in five years and the full network of subways and roads in the next decade.

As a bus moves out of the center city where 6 million Chinese live, the apartment buildings become shabbier and more crowded. They are relatively old structures.

Along the waterfront stand huge cranes to unload ships. Office structures and apartments are shooting up in the industrial areas.

Shanghai is a steel city, and about 15 miles from the center stands the gigantic Bao Shan steel plant. The country is desparately short of steel, and substantial imports have dug into China's demand for foreign currency.

Says one official, "China was 50 years behind times, but has managed to close the gap." Nary a soul is visable as molten ingots roll down a blooming hill, but some workers dip their ladles into furnaces of liquefying metal without the benefit of protective goggles or face shields, and plant visitors are not provided with goggles.

Shanghai officials say proudly that every factory has smoke controls, and some are switching from coal to gas for fuel.

The factories, however, pour waste into one of the city's two main rivers, creating a major pollution problem.

The officials argue that Shanghai has one of the best records in the country in limiting population, enjoying an advanced economic and cultural level that makes it easy to accept the family planning goal of one child per family.

By 1992, they maintain, the growth rate will level off, and they say the area is already feeling a lack of manpower.

Says Vice Mayor Liu Zhen Yuan, there are not more young people waiting for jobs. He is trying to control the population flooding in from the countryside and to increase labor efficiency.

Shanghai, he admits, is lagging in economic reforms, but he attributes that to financial problems. citing the city's size and influence, he observes, "Whatever Shanghai does will have nationwide repercussions. We must be extremely prudent."

Liu would like Shanghai, which is on the same latitude as Sarasota, Fla., to become a port of call for the U.S. Navy. Discussions for such a move are under way, and French and Italian sailors already make port here.

Shanghai is the source of the Chinese Communist movement and was home to many of the Gang of Four, whose leadership of the Cultural Revolution has now led to their imprisonment and disgrace.

Vice Mayor Liu says that opposition from those sympathetic to the Gang of Four will continue, but he adds that people have made their own comparisons and choices on which regime benefited them the most.

The question, he says, is, "Are you better off now?' I'm sure the answer is certain."

China Not in Danger of "Going Capitalist"

(By Alan Emory)

Beijing.—Vice Premier Li Peng may not be a Gilbert and Sullivan fan, but he would love the line, "Things are seldom what they seem."

China, he says, allows "a certain type of people to get well off," but insists also, "in China there will not be millionaires."

"When we work out a blueprint," he maintains, "we do not work out a blueprint for capitalism in China. If such a thing really occurs, it means the failure of our plan."

Li makes his remarks in a low-key conversational tone. His right arm moves up and down for slight emphasis, and he keeps a pen in hand to make notes as he goes along.

A youthful-looking 56, Li is one of five vice premiers in the Chinese government, but is considered "more equal" than some of his colleagues, a powerful influence and a strong potential successor to Deng Xiaoping, even though he was Soviet-educated and speaks Russian fluently.

A black haired man with a ruddy complexion, wearing glasses, Li met recently in the Great Hall of the People with a group of American journalists organized by the Georgetown Center for Strategic and International Studies.

Green velvet drapes stretched from floor to ceiling, at least 25 feet above a huge green figured oriental rug. The walls were covered with large Chinese scenic paintings and calligraphy.

The room is known as Chung Fu Hall and is the considered the Chinese equivalent of Capitol Hill.

All the questions were asked first, one per reporter, with the interpreter taking notes and Li, appearing to understand much of what was being asked, nodding occasionally and referring to a list of questioners already in hand.

When the last query had been posed he asked, "Can I answer the questions now?"

While his interpreter translated his answers Li looked up in the air as if for inspiration. Sometimes he pointed with his index finger for emphasis.

The wealthy in China, he said, had "an obligation and a duty to help people in poorer regions." In addition, the government "has an obligation to protect those incomes that are earned by legitimate means."

While he thinks the country's economy should have developed faster than it did, he says the "use" of advanced western technology should not "change . . . the socialist nature of our economy." The 16 million private enterprises account for "a very, very minimal part" of the national economy.

Surrounded by aides in various styles of address, one in a light-colored western suit and cardigan sweater, others in Mao suits of gray and black—one identified by Li as a former journalist—the Chinese leader gave this explanation of economic reform in his country.

Price structure would be improved, but not by stepping "backwards," with the goal a "socialist commodity economy."

Better wages are to be offered to "those who have made greater contributions to society," but if prices are unreasonable that becomes impossible. The pricing system will not be capitalist.

The price of vegetables, for example, will be kept on "a stable level," with a steady flow to market, but the supply cannot be "totally free (or) open," and some state concerns must sell vegetables at low prices to keep the market in line.

"I'm afraid," Li said, "some of our friends from the west have a misunderstanding that the market economy in China is identical (with theirs). It is not the same thing."

He singled out coal as a problem, with the international market price three to four times what it was in China. If China raised its coal prices accordingly, he cautioned, electricity prices would soar.

Li maintained that price reforms would resume next year, but at a slow pace. When an aide whispered it might be "five years or longer," Li agreed with "the latter part of this statement . . . longer than five years."

Li met the Americans wearing a gray western suit and dark sweater, striped tie and brown loafers dressed up with buckles. He occasionally referred to the individual questioners by the location of their newspapers, such as "San Diego Calif.," or "New York."

The United States, he observed, was a "military big power," but China's independent foreign policy involved a national security plan that stressed "self-defense". While praising Congress and the Reagan Administration's "spirit of cooperation," he emphasized that China had "mainly relied on our own efforts" to modernize its military forces.

Slicing a million men off the armed forces rolls, he said, "reflects the sincerity of the Chinese government for peace."

He was slightly defensive about his pet project, the still-on-paper multi-billion-dollar harnessing of the waters of the Yellow River in a giant Three Gorges project, noting that he had visited large hydro plants at Hoover Dan and on the Columbia River in the western U.S.

Li said the Chinese economic policy contained "no empty slogans," and, at one point, conceded, "Maybe we will even make some mistakes."

He shrugged off relations with the Soviet Union by observing that the need is for "concrete deeds, not rhetoric," and, "just because they are socialist doesn't mean they will get along (with us)."

U.S. Regarded by China as an Ally, Not a Friend

Beijing.—The United States has almost assumed the role of Mr. Nice Guy in China.

The U.S. position here has greatly improved, and both Chinese and western experts agree that the only catch is American arms sales to Taiwan, which are being phased out and are no longer regarded as a serious problem.

Former President Richard M. Nixon is treated like an old friend here. He was responsible for launching the process of reopening diplomatic relations, and Jimmy Carter made it official.

When President Reagan visited China in 1984 the government here pulled out all the stops.

A top American official here says both the rhetoric and the strategy have changed in

China, which has a limited defense budget and is counting on the U.S. to offset Soviet military strength while the Chinese build up their economy.

Nevertheless, the best description of the U.S. here is that of an ally, rather than a friend.

Vice Foreign Minister Zhu Qi Zhen recently told a group of American journalists organized by the Georgetown Center for Strategic and International Studies that if the U.S. were not "prudent" on Taiwan the "mutual trust" between the U.S. and China could be damaged.

Americans credit the Chinese with a "hard-headed" approach in their dealings. Trade has mushroomed from almost nothing a decade ago to more than $8 billion.

Licenses to do business, which formerly required three to six months to obtain, can now be obtained in 60 days.

There are about 17,000 Chinese students pursuing their education in the U.S., compared with 1,500 American students in China. Chinese officials are worried that significant numbers of their young people will want to stay in the U.S.

The Chinese have serious concerns about the Soviet Union, but they say they are serious about improving relations with Moscow. Economic ties are strictly on a pragmatic plane. Where they are of mutual benefit to both countries they move forward.

Experts say it has nothing to do with "international politics."

Despite favorable prospects for boosting trade, Chinese officials emphasize "three obstacles" that hamper Sino-Soviet negotiations. The largest, by far, is the massing of Soviet troops on the Chinese border, the second, the Soviet occupation of Afghanistan, and the third, Russian support of Vietnam's incursions into Cambodia.

Chinese journalists point out that three years ago the Soviets promised to invite a group of local reporters and editors to visit their country, but three days later declared such a trip would be impossible, and the offer was never renewed.

The Chinese are using a lot of Soviet training and equipment, but are trying to get away from the Soviet political system. Western observers maintain it does not work in the Soviet Union and it does not work for the Chinese.

One sore point mentioned in this capital city is Soviet businessmen's demand for 50 apartments at a time when housing is in very short supply.

Despite the Soviet military presence on its border, China is determined to reduce its military force from 4 million to 3 million. American experts do not see that reduction as inviting a Soviet land invasion, maintaining the Chinese are not losing any real fighting manpower, but are taking on "a leaner look."

Vice Minister Zhu says the danger of war with the Soviets "still exists," although the forces for peace are making "great progress." He expresses concern about the threat of a U.S.-Soviet arms race and explains China is unhappy about the U.S. military buildup.

Zhu used an old proverb to describe the situation: "The boat rises with the rising water. When the water rises the boat will also rise."

In contrast with the way it regards the U.S. and U.S.S.R., China looks at Canada with a good deal of affection. Says one diplomat, "The maple leaf is very bright and shiny."

One reason is Norman Bethune, a Canadian chest surgeon, who aided Mao Zedong during the Communist revolution, but later died of blood poisoning.

Mao wrote an essay about him and, during the Cultural Revolution, it was one of three or four such essays that had to be memorized.

Says one Canadian official, "it was the best public relations job we ever did, and it didn't cost us a cent."

In addition, Canada established diplomatic relations early with Beijing, backed its admission to the United Nations, never set up "colonies" here, has supplied the country with wheat since 1960, when the Chinese were starving, has provided high-technology goods and, as one official put it, "they have nothing to fear from us."

Canada has nine officials in China to promote trade and to advise the Chinese on how to sell in Canada.

CHINA A MIX OF OLD, NEW LIFESTYLES

(By Alan Emory)

BEIJING.—China is a huge paradox.

In the major cities skyscrapers and hotels are rising from the ground like trees in a forest.

Consumer markets have become important.

Yet there was a burst of publicity about the first modification of yoke for oxen in 3,000 years.

This is a country in which Xue Yongxing, deputy editor of the Xinhu News Agency's international news department and a former student at the London School of Economics, lives with his wife and 7-year-old daughter in one room and shares a kitchen and bathroom with two other families.

Despite the massive challenges facing today's China, the country has made significant progress, and the reforms instituted by Deng Xiaoping are enjoying widespread popular support.

China is trying to deal with a huge population, the problem of centralized control, a shifting role of the Communist Party in the factory and on the farm, with foreign technology and culture and the issues of education and transportation.

Comments one western ambassador, "Deng recognizes he is not immortal. He has put in a team to carry out his plans."

Bureaucrats are becoming cautious. The military finds its resources taking a back seat to the economy.

Some experts say it is matter of "pace, rather than direction," and that China will continue to tilt toward the United States and Europe for economic and strategic reasons.

The Chinese insist that their reforms will be carried through to the end as the only way to stimulate the economy and that reports of a slowdown create an inaccurate impression.

This year, they say, the policy is to consolidate and digest the reforms and accumulate the benefits, eliminate the "negative aspects" and give independent enterprises more automony.

The Chinese reject the observation that the reforms have weakened the role of the Communist Party and assert the party may emerge stronger. They say the party has leaders present in all enterprises, and, while it is wrong for them to interfere in the day-to-day running of a plant, it is proper for them to tell managers to do a good job of operation.

There should be more consultation between party officials and plant managers, they add, but they agree that "having two bosses" is not practical.

Party neighborhood committees have been "kicked out" of the farms, but that was apparently because they had no grasp for agriculture.

Du Ren Sheng, director of the State Council's Rural Development Research Center, said "rigid" systems must be eliminated and replaced by "market forces."

He said a progressive income tax might soon be introduced, although that did not mean the country was returning to "egalitarian practices."

While the Chinese obviously have a much warmer feeling for the West, both as a source of help to bring the country into the 1980s and as a buffer to the threat of the Soviet Union, there are still reservations.

One diplomat says, "They feel in their hearts the West owes them something, that the West forced opium on them, that European colonies pressed China into degradation, that the West did not help much in fighting the Japanese in World War II and that many major Western nations did not accept the Communist revolution for a long time."

In addition, he notes, there is the historic Chinese sense of superiority, the Middle Kingdom with a long history of civilization.

To show how foreign visitors "lap that up," he acidly told the story of a western businessman whose speech gushed over the Chinese "love of life" and "love of family."

The diplomat wondered how that squared with years of dead bodies in the streets and forced abortions.

Nevertheless, most China watchers agree, the modernization will continue, despite "zigs and zags, fits and starts" and a certain amount of corruption as the country takes a rigid authoritarian economic system apart and tries to discover the ingredients to make it more responsive to market forces.

One likened the problem to "unscrewing an appliance, and a spring you didn't notice goes whizz and flies out of sight." It takes a replacement part to make the appliance work.

Members of Chinese think tanks concede, "We are going to make mistakes," but say, "We hope to catch them and back off and start again."

With added economic freedom here come better pay, more responsibility, a better lifestyle and increasing social and political pressures. The operator of the village bicycle shop is doing well, but wants to move to the city to make more money.

China would like to halt the move to the already overcrowded cities and prevent the proliferation of slums.

Some Chinese have voiced unhappiness with the system and the lack of labor mobility.

Corruption is spurred by party officials who see others doing well and want to get a piece of the action, though one expert insisted there was no "blatant squeeze money under the table."

The greening of China is not just economic or political. Grass and trees have brought color to the landscape, as western-style dress has brought color to the population.●

NAUM AND INNA MEIMAN: ONE WISH

● Mr. SIMON. Mr. President, Naum and Inna Meiman continue to languish in their Moscow apartment. The Meimans are a warm and caring couple who have been denied exit visas

from the Soviet Union for no justifiable reason.

The Meimans are elderly and ailing. Their one wish is to live out what is left of their lives together free in the West. Naum is 74 and desperately wants to see his daughter, Olga, who lives in the United States. Inna urgently needs cancer treatment only available in the West.

We cannot allow the Soviets to treat the Meimans like captives. This infringement of their rights cannot be tolerated any longer.

The Meimans deserve the best that life can offer, and I strongly encourage the Soviet authorities to grant them permission to emigrate.●

POSTPONEMENT OF EULOGY PERIOD FOR THE LATE SENATOR JOHN P. EAST

Mr. LUGAR. I ask unanimous consent that the time set aside for Senators to eulogize the late Senator John P. East for tomorrow be postponed to occur from 10 a.m. to 12 noon on Tuesday, July 22.

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

ORDER FOR THURSDAY

RECESS UNTIL 10 A.M. TOMORROW

Mr. LUGAR. Mr. President, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 10 a.m. on Thursday, July 17, 1986.

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

RECOGNITION OF CERTAIN SENATORS

Mr. LUGAR. Mr. President, further, I ask unanimous consent that following the recognition of the two leaders under the standing order, there be a period for special orders in favor of the following Senators for not to exceed 5 minutes each: Senator HAWKINS, Senator PROXMIRE, Senator MELCHER, Senator SASSER, and Senator HARKIN.

Mr. BYRD. Mr. President, reserving the right to object, I will not object.

Mr. LUGAR. Mr. President, I ask that my unanimous-consent request be amended that in the case of Senator PROXMIRE, 15 minutes be allotted.

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

Mr. BYRD. Mr. President, I thank the distinguished acting Republican leader.

Mr. LUGAR. I recall the request by the distinguished Senator from Wisconsin. I am certain my colleague will be pleased to accommodate him.

ROUTINE MORNING BUSINESS

Mr. LUGAR. Following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 11 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

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

PROGRAM

Mr. LUGAR. Mr. President, following morning business, it will be the intention of the majority leader to turn to Calendar No. 645, Senate bill 2129, the risk retention bill. Amendments are expected to be offered to the bill. Therefore, votes will occur during the session of the Senate on Thursday.

By unanimous consent, at 2 p.m. tomorrow, a rollcall vote will occur on the United States-United Kingdom extradition treaty.

□ 1940

Also, the Senate could turn to the joint resolution and the concurrent resolution coming from the House dealing with the March sequester order.

The Senate could also turn to any other Legislative or Executive Calendar items cleared for action.

Mr. President, does the Democratic leader have anything further?

Mr. BYRD. Mr. President, I thank the distinguished acting Republican leader [Mr. LUGAR] for his courtesy. I have nothing I would suggest for further action today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

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

Mr. LUGAR. Mr. President, I suggest the abence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. LUGAR. Mr. President, I move, in accordance with the previous order, that the Senate now stand in recess until the hour of 10 a.m., Thursday, July 17, 1986.

The motion was agreed to and the Senate, at 7:44 p.m., recessed until Thursday, July 17, 1986, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate July 16, 1986:

DEPARTMENT OF JUSTICE

Stephen S. Trott, of California, to be Associate Attorney General, vice Arnold I. Burns.

William F. Weld, of Massachusetts, to be an Assistant Attorney General, vice Stephen S. Trott.

IN THE AIR FORCE

The following officers for appointment in the Regular Air Force under the provisions of section 531, title 10, United States Code, with a view to designation under the provisions of sections 8067, title 10 United States Code, to perform duties indicated with grade and date or rank to be determined by the Secretary of the Air Force provided that in no case shall any of the following officers be appointed in a grade higher than lieutenant colonel.

DENTAL CORPS

Benjamin P. Graham, [redacted]

MEDICAL CORPS

Bruce A. Oksol, [redacted]
Patricia H. Sanner, [redacted]

The following-named officers for permanent promotion in the U.S. Air Force, under the provisions of section 628, title 10, United States Code, as amended, with dates of rank to be determined by the Secretary of the Air Force.

MEDICAL CORPS

To be colonel

Kenneth Klint, [redacted]
Michael G. Wise, [redacted]

To be major

John R. Billingsley, [redacted]
Garrison V. Morin, [redacted]

DENTAL CORPS

To be lieutenant colonel

Roy A. Rosenquest, Jr., [redacted]

To be major

Benjamin P. Graham, [redacted]

IN THE AIR FORCE

The following-named officers for permanent promotion in the U.S. Air Force, under the appropriate provisions of section 624, title 10, United States Code, as amended, with dates of rank to be determined by the Secretary of the Air Force.

DENTAL CORPS

To be colonel

Abrahams, Lewis J., [redacted]
Blosser, Fred M., [redacted]
Buchanan, William E., Jr., [redacted]
Burgess, John O., [redacted]
Daniel, Benge R., Jr., [redacted]
Dyer, Charles L., [redacted]
Eshelman, Enos G., Jr., [redacted]
Faner, Richard M., [redacted]
Hand, Ronald E., [redacted]
Hansen, Steven C., [redacted]
Hanson, Robert W., [redacted]
Howard, Clinton W., III, [redacted]
Howard, James H., [redacted]
Hurd, Joseph J., [redacted]
Klish, John W., [redacted]
Kubinski, Eddie A., [redacted]
Mansfield, Michael J., [redacted]
Matiasevich, Laurie N., Jr., [redacted]

Mikitka, Michael A., [redacted]
Miller, Ronald I., Jr., [redacted]
Mills, Michael P., [redacted]
Murata, Steven M., [redacted]
Ogletree, Robert C., Jr., [redacted]
Ortiz, Ramon F., [redacted]
Preisch, James W., [redacted]
Rapley, John W., [redacted]
Raybeck, Gerald E., [redacted]
Regent, Howard S., [redacted]
Rogerson, John N., [redacted]
Rome, William J., [redacted]
Ruemping, Dale R., [redacted]
Savage, Michael G., [redacted]
Schrader, James A., [redacted]
Schutte, Dale A., [redacted]
Seek, Brian J., [redacted]
Shaner, John W., [redacted]
Snell, Gerald M., [redacted]
Walker, Robert C., Jr., [redacted]
Walker, William A., III, [redacted]
Wilcox, Charles W., [redacted]

MEDICAL CORPS

To be colonel

Abdou, Fathy A., [redacted]
Abernathy, George T., [redacted]
Ankov, Donald H., [redacted]
Ansell, Lee V., [redacted]
Arrants, Charles D., [redacted]
Aycock, Thomas M., [redacted]
Banas, William R., [redacted]
Baugh, Eric R., [redacted]
Bell, Christopher P., [redacted]
Bergman, Ronald J., [redacted]
Bissell, David D., [redacted]
Brown, William H., [redacted]
Button, Jesse H., [redacted]
Campbell, James C., [redacted]
Carrizales, Arthur, [redacted]
Clardy, William F., [redacted]
Clarke, William R., [redacted]
Conage, Thomas J., Sr., [redacted]
Darling, David H., [redacted]
David, Lydia D., [redacted]
Davidson, Thomas W., [redacted]
Dennis, Larry G., [redacted]
Dodd, Lloyd E., Jr., [redacted]
Dozier, Kenneth C., [redacted]
Duffy, Gloria B., [redacted]
Edwards, Charles H., [redacted]
Eibling, David E., [redacted]
Erickson, Donn R., [redacted]
Ficke, Albert J., [redacted]
Fornal, Robert E., [redacted]
Franks, Dennis W., [redacted]
Fronefield, Helen P., [redacted]
Gorman, Richard J., [redacted]
Hall, Dudley W., [redacted]
Hanlon, Thomas M., Jr., [redacted]
Hardy, Marion J., [redacted]
Hassan, Robert M., [redacted]
Hui, Noel T., [redacted]
Ingle, Robert M., Sr., [redacted]
Jacobson, James M., [redacted]
Jansen, George A., [redacted]
Joyner, Ira T., Jr., [redacted]
Kayson, Matthew A., [redacted]
Kunkel, Alan R., [redacted]
Lambert, Harry M., [redacted]
Locker, Dan L., [redacted]
Marsh, John R., [redacted]
Martin, Thomas A., III, [redacted]
Matamoros, Aurelio, Jr., [redacted]
Mays, Steven C., [redacted]
McCarthy, John P., [redacted]
McDonald, Stephen D., [redacted]
McLaughlin, Chester S., Jr., [redacted]
Miller, Edward A., [redacted]
Mills, Harry Brooker, II, [redacted]
Mumm, Alan H., [redacted]
Murphy, Thomas F., [redacted]
Obenza, Nelia J., [redacted]
Ohagan, Richard B., [redacted]
Percy, James R., [redacted]
Perkins, Edward W., [redacted]
Perlstein, Robert S., [redacted]
Poel, Richard A., [redacted]
Pueblatarilonte, Jose L., [redacted]
Rake, Geoffrey W., Jr., [redacted]
Reeves, Glen I., [redacted]
Rostermundt, Gene E., [redacted]
Sanda, Venugopala R., [redacted]
Seaman, John M., [redacted]
Shelat, Sudhir P., [redacted]
Sinha, Nanda K., [redacted]
Spiegel, Robert S., [redacted]
Sterner, Paul E., [redacted]
Stottlemyer, Keith D., [redacted]
Swiney, Merrill F., [redacted]
Tolley, Douglas G., Jr., [redacted]
Wainner, Kenneth F., Jr., [redacted]
Walker, Wayne T., [redacted]
Welling, David R., [redacted]
Whittle, Edward, [redacted]
Winters, Adam D., III, [redacted]
Woods, Wayne G., [redacted]
Zimmerman, Alfred M., [redacted]

IN THE AIR FORCE

The following-named officers for permanent promotion in the U.S. Air Force, under the appropriate provisions of section 624, title 10, United States Code, as amended, with dates of rank to be determined by the Secretary of the Air Force.

DENTAL CORPS

To be lieutenant colonel

Anderson, Gary A., [redacted]
Baiorunos, Barry J., [redacted]
Bell, Leroy, [redacted]
Bierman, Thomas A., [redacted]
Bloxom, Robert M. Jr., [redacted]
Brosnan, Paul J., [redacted]
Bursinger, James C., [redacted]
Caldon, William P., [redacted]
Casey, Larry J., [redacted]
Chema, Michael H., [redacted]
Collins, Terry E., [redacted]
Copenhaver, Donald J., [redacted]
Corley, John M., [redacted]
Cornelius, James D., [redacted]
Crooks, Williams E., [redacted]
Duckett, Mark A., [redacted]
East, John R. III, [redacted]
Edwards, Donald B., [redacted]
Ellison, Larry J., [redacted]
Elwell, Charles W. Jr., [redacted]
Endter, Paul D., [redacted]
Falsey, David W., [redacted]
Finlayson, Richard S., [redacted]
Finnessy, John J., [redacted]
Florence, Michael J., [redacted]
Floyd, Claborne L., [redacted]
Fuhs, Quentin M., [redacted]
Golden, Gary J., [redacted]
Graham, Benjamin P., [redacted]
Graham, Garbeth S., [redacted]
Griffith, Carl M., [redacted]
Hagge, Mark S., [redacted]
Hall, Bruce K., [redacted]
Hatfield, John H., [redacted]
Hermesch, Charles B., [redacted]
Himan, Jeffrey L., [redacted]
Houston, Glen D., [redacted]
Knudson, Rodney C., [redacted]
Koerner, Harry W., Jr., [redacted]
Kyrios, Dean M., [redacted]
Lamb, Robert M., [redacted]
Levering, Nicholas J., [redacted]
Loeb, Andrew H., [redacted]
Mansueto, Michael A., [redacted]
McCartney, James G., [redacted]
McDonald, Daniel K., [redacted]
McDuffie, Michael W., [redacted]
Meng, Thomas R., Jr., [redacted]
Mohs, David T., [redacted]
Morgan, Richard A., [redacted]
Nation, Ivan E., [redacted]
Panzek, John T., [redacted]
Peterzen, Robert M., [redacted]
Pinkerton, Kenneth C., [redacted]
Robbins, James W., [redacted]
Robinson, Charles J., III, [redacted]
Sallen, Bruce T., [redacted]
Saunderson, John R., [redacted]
Schindler, William G., [redacted]
Schmeltzer, Lawrence D., [redacted]
Schmitt, Stephen M., [redacted]
Smartt, William H., IV, [redacted]
Snyder, James L., [redacted]
Soulen, Garrett C., [redacted]
Sprague, Donald M., [redacted]
Staley, Edward C., [redacted]
Steele, Richard H., [redacted]
Stenquist, Glenn R., [redacted]
Sutton, Thomas L., [redacted]
Tanaka, Wayne K., [redacted]
Tarsitano, Ben F., [redacted]
Tollefson, Robert C., [redacted]
Tuttle, Richard D., [redacted]
Warschaw, Alexander J., [redacted]
Wiley, Michael G., [redacted]
Wilson, William W., Jr., [redacted]
Wright, Edward F., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Abernathie, Gordon C., Jr., [redacted]
Acorda, Feliciano R., [redacted]
Aldana, Buenaventura Q., [redacted]
Amisial, Pierre A., [redacted]
Anthousis, John E., [redacted]
Arnold, Rudolph P., [redacted]
Artim, Richard A., [redacted]
Atwell, Dwayne H., [redacted]
Atwood, Hoarce D., [redacted]
Baldwin, Stephen W., [redacted]
Belarmino Jesus, B., [redacted]
Biesenbradley, Rita A., [redacted]
Blake, Winston H., [redacted]
Bonikowski, Frank P., [redacted]
Bost, James W., [redacted]
Brichta, Robert F., [redacted]
Briggs, Richard R., [redacted]
Burke, Robert Thomas, [redacted]
Calzado, Julieta M., [redacted]
Carson, Horace R., [redacted]
Christenson, Paul J., [redacted]
Church, Tommie G., [redacted]
Coffman, Avon C., II, [redacted]
Collins, Robert L., [redacted]
Contiguglia, Jospeh J., [redacted]
Daly, Mary B., [redacted]
Dassah, Harry, [redacted]
Davis, Haywood H., Jr., [redacted]
Delagarza, Vincent W., [redacted]
Desai, Kaushik R., [redacted]
Dickey, Robert P., [redacted]
Doyle, John E., III, [redacted]
Elrod, James P., [redacted]
Emhoff, Timothy A., [redacted]
Evans, Martin E., [redacted]
Evans, Richard A., [redacted]
Galbraith, Mark, [redacted]
Garcia, Quevedo Ana J., [redacted]
Gardner, Charles C., Jr., [redacted]
Gilo, Norma B., [redacted]
Goetz, David W., [redacted]
Greeley, James M., [redacted]
Green, Stanley W., [redacted]
Greenberg, Michael K., [redacted]
Hahn, Hweishien L., [redacted]
Halim, Liliana Q., [redacted]
Hamilton, Donald E., [redacted]
Hart, Kathryn A. L., [redacted]
Heron, Bernard F., [redacted]
Hollingsworth, Charles E., II, [redacted]
Holm, Peter F., [redacted]
Ingraham, Daniel M., [redacted]
Jaffers, Gregory J., [redacted]
Joseph, Malcolm N., III, [redacted]
King, Eugene L., [redacted]

King, Randall B., [redacted]
Kitchen, Robert H., Jr., [redacted]
Knutson, Clark J., [redacted]
Kooker, Robert A., [redacted]
Kwik, Christina I., [redacted]
Lattin, Daniel E., [redacted]
Lee, Chung H., [redacted]
Malmstrom, John A., Jr., [redacted]
McGrath, Kimberly N., [redacted]
McLaughlin, Mark A., [redacted]
Meehan, John J., [redacted]
Mikkelson, Thomas A., [redacted]
Montalvogonzalez, Miguel A., [redacted]
Neuland, Michael E., [redacted]
North, Phillip T., [redacted]
Oksol, Bruce A., [redacted]
Pandula, Anna, [redacted]
Parke, Robert C., [redacted]
Parmet, Allen Jeffrey, [redacted]
Quinton, Ronald R., [redacted]
Reese, Warren, [redacted]
Reveronquestell, Edmundo, [redacted]
Reyburn, John A., Jr., [redacted]
Rieder, Charles F., [redacted]
Robison, Jacob G., [redacted]
Rosenberg, Michael L., [redacted]
Sanner, Patricia H., [redacted]
Schafer, Klaus O., [redacted]
Schrader, Timothy J., [redacted]
Selvaraj, Ananda, [redacted]
Shekitka, Kris M., [redacted]
Slade, John B., Jr., [redacted]
Sorrells, Jimmy R., [redacted]
Sparks, Danny R., [redacted]
Steel, Maxwell W., III, [redacted]
Stepp, Robert J., [redacted]
Teneyck, Raymond P., [redacted]
Tuason, Florentino M., [redacted]
Walsh, William F., [redacted]
Weber, Thomas O., [redacted]
Westfall, Christopher T., [redacted]
White, Larry E., [redacted]
Whitton, Randall C., [redacted]
Willis, Henry S.K., III, [redacted]
Wojciechowski, Frank A., [redacted]
Wright, James K., [redacted]
Yap, Nelson T., [redacted]
Young, David G., III, [redacted]
Young, Gladys E., [redacted]
Zarate, Enrique S., [redacted]
Zen, Bujung, [redacted]

IN THE AIR FORCE

The following-named officers of permanent promotion in the U.S. Air Force, under the appropriate provisions of section 624, title 10, United States Code, as amended, with dates of rank to be determined by the Secretary of the Air Force.

DENTAL CORPS

To be major

Abbott, Steven W., [redacted]
Antinopoulos, Peter C., [redacted]
Bedell, Charles E., [redacted]
Bergh, Scott G., [redacted]
Bettineschi, John R., Jr., [redacted]
Blair, Kevin F., [redacted]
Bobermoken, Irene G., [redacted]
Borland, Morton H., III, [redacted]
Carter, Thomas B., [redacted]
Carlton, David G., [redacted]
Cimis, Gerald Michael, [redacted]
Cocklin, James Lee, [redacted]
Collins, Doris E., [redacted]
Connor, Kevin A., [redacted]
Cramer, Lynn A., [redacted]
Culliton, Christopher R., [redacted]
Cunningham, Cary J., [redacted]
Davison, Donald W., [redacted]
Dickson, Scott S., [redacted]
English, William R., [redacted]
Foley, William L., [redacted]
Frazer, Robert Q., [redacted]
Furey, Dennis C., [redacted]
Garito, Martha L., [redacted]
Garratt, James A., [redacted]
Gillman, Thomas A., [redacted]
Gray, Scott E., [redacted]
Greiff, Richard M., [redacted]
Harper, Michael S., [redacted]
Hludzik, George C., [redacted]
Hopkins, Spencer N., Jr., [redacted]
Huffman, Neil C., [redacted]
Hughes, William G., [redacted]
Humphreys, Lewis G., Jr., [redacted]
Hutchings, Michael L., [redacted]
Johnson, Bruce A., [redacted]
Jolkovsky, David L., [redacted]
Kasler, Scott H., [redacted]
Kelley, Harvey E., [redacted]
Kennedy, Roselyn, [redacted]
Kinyon, Terence J., [redacted]
Kiss, Edward P., [redacted]
Kussmaul, John, Jr., [redacted]
Kwan, John Y., [redacted]
Larson, Brent E., [redacted]
Linton, Donald S., [redacted]
Mason, Gregg B., [redacted]
Mason, Stephanie J., [redacted]
Matuza, Albert R., [redacted]
McDonnell, Howard T., [redacted]
Mesaros, Andrew Joseph, Jr., [redacted]
Monticello, John F., [redacted]
Musella, Anthony E., Jr., [redacted]
Paquette, David E., [redacted]
Paxton, Diane S., [redacted]
Peters, Charles B., III, [redacted]
Piche, Jon E., [redacted]
Ramp, Lance C., [redacted]
Rampton, Jason M., [redacted]
Ross, Ridley O., [redacted]
Rye, Walter D., [redacted]
Sabatini, Robert, [redacted]
Saffer, Edward K., [redacted]
Santin, John N., [redacted]
Schwartz, Scott A., [redacted]
Scott, Lawrence J., [redacted]
Sethman, Ross E., [redacted]
Smith, Jay C., [redacted]
Smith, Karl A., [redacted]
Thompson, Suzanne, [redacted]
Thomson, Steven J., [redacted]
Tjelmeland, Erik M., [redacted]
Trautman, Phillips B., [redacted]
Wanat, Thomas N., Jr., [redacted]
Williams, Gregory P., [redacted]

MEDICAL CORPS

To be major

Adair, Carol F., [redacted]
Adams, Christopher D., [redacted]
Alday, Michael A., [redacted]
Allan, Joseph H., [redacted]
Anagnostou, Jonathan M., [redacted]
Apaliski, Stephen J., [redacted]
Atkins, James S., Jr., [redacted]
Babcock, James L., [redacted]
Barger David O., [redacted]
Barker, Frederick W., [redacted]
Barnes, John V., III, [redacted]
Barnett, Mark R., [redacted]
Barnettsparhawk, Laura E., [redacted]
Bartholomew, Dennis W., [redacted]
Barton, Bruce R., [redacted]
Bartos, Craig L., [redacted]
Batki, Dara, [redacted]
Beck, Barbara R., [redacted]
Bellor, James R., Jr., [redacted]
Belmont, Patricia C., [redacted]
Bennett, Thomas B., [redacted]
Beverly, Carolyn L., [redacted]
Billman, Calvin J., [redacted]
Billock, Joseph G., III, [redacted]
Bischoff, Joann K., [redacted]
Blanchard, Michael D., [redacted]
Bodary, A. Kirk, [redacted]
Bogdanovich, Michael B., [redacted]
Bottner, Randy K., [redacted]
Bowers, David M., [redacted]
Braco, Robert J., [redacted]
Branch, Homer M., Jr., [redacted]
Brandon, Gilbert T., Jr., [redacted]
Bregier, Charles A., [redacted]
Brey, Robin L., [redacted]
Brietzke, Stephen A., [redacted]
Bromberg, Jordan M., [redacted]
Brown, Lurlene S., [redacted]
Brown, Philip S., [redacted]
Brownlee, Richard C., [redacted]
Burgess, David A., [redacted]
Burks, William R., [redacted]
Burress, Robert S., [redacted]
Butz, Mark A., [redacted]
Byrne, Michael E., [redacted]
Cain, James E., Jr., [redacted]
Calkins, Mark S., [redacted]
Callender, William R., [redacted]
Campbell, John J., [redacted]
Carney, Brian T., [redacted]
Carpenter, Walter A., [redacted]
Carr, Robert W., [redacted]
Carter, Ralph E., III, [redacted]
Catallozzi, Kenneth R., [redacted]
Chappell, Phylliss M., [redacted]
Chavoustie, Steven E., [redacted]
Clapp, Clinton E., [redacted]
Clark, Charles A., [redacted]
Clark, James A. II, [redacted]
Collier, James D., [redacted]
Collins, Gary J., [redacted]
Cooper, Timothy W., [redacted]
Cornwell, Margie W., [redacted]
Correll, Donald C., [redacted]
Cotton, Clarence E., Jr., [redacted]
Cox, Steven C., [redacted]
Crozier, James E., Jr., [redacted]
Cruz, Bradley K., [redacted]
Dailey, Mary L., [redacted]
Dalsey, William C., [redacted]
David, Kathleen M., [redacted]
Davidson, James M., [redacted]
Dennis, Daniel P., [redacted]
Dennis, Michael W., [redacted]
Devita, Anne M., [redacted]
Deweerd, John, Jr., [redacted]
Dickey, Glenn E., [redacted]
Dittmar, Susan J., [redacted]
Dockins, Richard O., [redacted]
Dodds, Matthew T., [redacted]
Dondiego, Richard M., [redacted]
Dresner, Steven M., [redacted]
Dreyer, Gary L., [redacted]
Dunaway, Byron E., [redacted]
Eason, Donald E., [redacted]
Ebelke, David K., [redacted]
Eckenbrecht, Paul D., [redacted]
Ediger, William M., [redacted]
Edmondson, Guy M., [redacted]
Eisenbaum, Marc A., [redacted]
Elam, Morris G., [redacted]
Ellis, Mark G., [redacted]
Ericksen, Corey L., [redacted]
Ernster, Dale J., [redacted]
Ervin, Kim S., [redacted]
Farley, Timothy E., [redacted]
Farmer, Margaret E., [redacted]
Faulkenberry, Bradford K., [redacted]
Faust, Dean C., [redacted]
Fellmeth, Wayne G., [redacted]
Fernandez, Douglas K., [redacted]
Fine, Arthur P., [redacted]
Finley, Roy W., [redacted]
Fiore, Fabio F., [redacted]
Fleming, Carlos L., [redacted]
Florentino, Paul F., [redacted]
Floyd, James G., [redacted]
Foss, Frederick A., Jr., [redacted]
Frymus, Michael M., [redacted]
Fuhrman, Thomas M., Jr., [redacted]
Gabriel, Mary E., [redacted]
Gainer, Conley B., [redacted]
Gately, Sheila J., [redacted]
Genez, Beverly M., [redacted]

Gibeily, George J., [redacted]
Gilchrist, William J., [redacted]
Gilligan, Michael S., [redacted]
Gilliland, J., David, [redacted]
Glaze, Arthur L., [redacted]
Glowienka, Paul R., [redacted]
Goodhartz, Lori A., [redacted]
Gourley, David S., [redacted]
Grassell, Jay D., [redacted]
Greenberg, Daniel J., [redacted]
Greenberg, Rosemary T., [redacted]
Greendyke, Spencer D., [redacted]
Greggs, Sharon E., [redacted]
Grieb, Roland A., [redacted]
Griffith, Linda J., [redacted]
Griffith, Michael L., [redacted]
Grkovich, Ljiljana K., [redacted]
Gronseth, Gary S., [redacted]
Hall, Terry E., [redacted]
Halsey, Alan B., [redacted]
Hamel, Lowell G., [redacted]
Hamilton, John F., [redacted]
Hamric, Randal L., [redacted]
Hanington, Kenneth R., [redacted]
Harkness, Richard M., [redacted]
Harner, Jeffery D., [redacted]
Harness, Harry T., [redacted]
Hasegawa, Alan A., [redacted]
Hayden, Anthony J., [redacted]
Hays, Barrett K., [redacted]
Hedlund, Gary L., [redacted]
Heine, David W., [redacted]
Herold, Daniel W., [redacted]
Herring, Duane A., [redacted]
Hill, Michael B., [redacted]
Hockley, Alfred J., III, [redacted]
Holmes, Douglas K., [redacted]
Hopkins, Mark D., [redacted]
Horowitz, Gary M., [redacted]
Houchin, Aubra A., [redacted]
Houser, Michael K., [redacted]
Howerton, Richard A., [redacted]
Hulett, Rebecca L., [redacted]
Illions, Edward H., [redacted]
Jackson, Cary V., [redacted]
James, Warren K., [redacted]
Jarrett, Paul J., [redacted]
Jendzejec, Stephen M., [redacted]
Jeznach, Gary F., [redacted]
Johnson, Charles S., Jr., [redacted]
Johnson, Robert A., [redacted]
Jones, Everett R., Jr., [redacted]
Jones, Lloyd V., [redacted]
Jordan, Joyce Y., [redacted]
Kairalla, Andrew B., [redacted]
Kaump, Randall B., [redacted]
Kearns, Dennis P., [redacted]
Kenagy, David N., [redacted]
Kennedy, Merle L., Jr., [redacted]
Kennedy, Scott M., [redacted]
King, Patricia P., [redacted]
Kipe, Larry W., [redacted]
Kissinger, David P., [redacted]
Klapthor, Lauren B., [redacted]
Klionsky, David L., [redacted]
Knippers, John C., [redacted]
Knowles, Kenneth A., [redacted]
Komadina, Kevin H., [redacted]
Kuebker, Craig W., [redacted]
Kuss, Kit D., [redacted]
Langenfeld, Michael S., [redacted]
Lau, Alan T., [redacted]
Laughlin, Joel P., [redacted]
Lawless, James F., [redacted]
Leetz, Kenneth L., [redacted]
Lehman, Matthew H., [redacted]
Leibrand, Howard L., [redacted]
Levin, Julian C., [redacted]
Lewis, Roger W., [redacted]
Lillie, Michele C., [redacted]
Lindell, Ernest B., [redacted]
Lowman, Anthony D., [redacted]
Lukeman, Robert W., [redacted]
Lundberg, Joel H., [redacted]
Lyons, Paula M., [redacted]
Mappin, Francis G., [redacted]
Marosan, George, [redacted]
Martin, John P., [redacted]
Martinez, Angel H., [redacted]
Maslov, Marc D., [redacted]
Mathis, Robert D., [redacted]
Maynard, Bobby L., [redacted]
McCauliffe, Daniel P., [redacted]
McCormick, Ellen L., [redacted]
McDavid, Stephen T., [redacted]
McIntosh, John C., [redacted]
McKenas, David K., [redacted]
McKinney, James D., [redacted]
Meffert, Jeffrey J., [redacted]
Meissner, Frank W., [redacted]
Merwick, Robert R., [redacted]
Meyers, Franklin B., [redacted]
Mezoff, Adam G., [redacted]
Miller, Blaine R., [redacted]
Miller, Jeffery A., [redacted]
Miller, William P., [redacted]
Mills, Joseph L., [redacted]
Moeller, Gerhard, [redacted]
Morgenstern, Barry R., [redacted]
Moser, Scott E., [redacted]
Moses, Henry P., [redacted]
Mueller, Sandra B., [redacted]
Munson, Robert A., [redacted]
Murphy, Dennis W., [redacted]
Murphy, Kim D., [redacted]
Murray, Patricia L., [redacted]
Nash, Michael J., [redacted]
Neal, William D., [redacted]
Nedved, Lonn J., [redacted]
Nelson, Danny A., [redacted]
Nelson, James R., [redacted]
Nigro, Peter J., [redacted]
Noll, David S., [redacted]
Novotny, William E., [redacted]
Oleniacz, Joseph P., [redacted]
Oliver, Dennis C., [redacted]
Osborne, John R., [redacted]
Owen, John D., [redacted]
Palmer, Robert L., [redacted]
Pandya, Gaurang S., [redacted]
Paolantonio, Frank, III, [redacted]
Parker, William A, Jr, [redacted]
Parrish, Ramon, O. Jr. [redacted]
Paschall, David, L. [redacted]
Penn, Charles H., [redacted]
Pennecasanova, Roberto A., [redacted]
Perry, Van E., [redacted]
Pettit, Orlo W., [redacted]
Pillsbury, Julia M., [redacted]
Pirelacruz, Miguela [redacted]
Platenberg, Robert C., [redacted]
Podany, Joseph E. Jr., [redacted]
Popper, Stephen E., [redacted]
Potchynok, Alan M., [redacted]
Potts, Donald M., [redacted]
Pryor, William W. Jr., [redacted]
Raczek, James A., [redacted]
Rahall, Lawrence F., [redacted]
Ramirezcolon Miguel A., [redacted]
Rauch, Harry B., [redacted]
Rawlinson, William K., [redacted]
Reed, Brian H., [redacted]
Reed, Kurt D., [redacted]
Register, Samuel D., [redacted]
Rehe, Gregory T., [redacted]
Resnik, Michael D., [redacted]
Restey, Michael W., [redacted]
Ricci, Raymond L., [redacted]
Richmond, John A., [redacted]
Robertson, Roger J., [redacted]
Robey, Edwin L., [redacted]
Robine, Virginia A., [redacted]
Rodriguez, Dirk I., [redacted]
Romeo, David P., [redacted]
Ross, Michael A., [redacted]
Rosser, Stephen P., [redacted]
Rossio, Robert J., [redacted]
Rowan, Frank J., III, [redacted]
Rusnak, Janice M., [redacted]
Ryan, Mark S., [redacted]
Rybarczyk, Richard M., [redacted]
Sanchez, Jose M., [redacted]
Sanders, Michael C., [redacted]
Santacruz, Frank R., [redacted]
Santoro, Samuel J., [redacted]
Sarsfield, Jeffrey P., [redacted]
Savage, Douglas F., [redacted]
Schaefer, Randall K., [redacted]
Schlesinger, Alan E.P., [redacted]
Schmidt, David R., [redacted]
Schoeffel, Kim M., [redacted]
Schranck, Charles R., [redacted]
Schreier, Jorgina S., [redacted]
Schwietz, Leigh A., [redacted]
Segarra, Jay T., [redacted]
Seites, Paul G., [redacted]
Sewell, Alvin D., [redacted]
Sfakianos, Peter N., [redacted]
Shaughness, George P., [redacted]
Sheets, Randall E., [redacted]
Shelley, Kirk H., [redacted]
Sherowsky, Ronald C., [redacted]
Sherry, Paul D., [redacted]
Shreeve, Daniel F., [redacted]
Sieh, Susan E., [redacted]
Silvaguerrero, Antonia, [redacted]
Silvis, Timothy R., [redacted]
Simmons, John F., [redacted]
Skogerson, Kent E., [redacted]
Sloan, David M., [redacted]
Smith, Britt D., [redacted]
Smith, Ferril C., [redacted]
Smith, Mary G., [redacted]
Smith, Scott M., [redacted]
Smoot, Roy T., Jr., [redacted]
Smulka, Roman P., [redacted]
Snyder, Marsha R., [redacted]
Snyder, Quay C., Jr., [redacted]
Soisson, Thomas J., [redacted]
Sokoll, William C., [redacted]
Sonek, Jiri D., [redacted]
Song, Woo K., [redacted]
Sorgi, Paul J., [redacted]
Sparhawk, Dana B., [redacted]
Speelman, Patricia N., [redacted]
Spence, Frank J., [redacted]
Spies, James B., [redacted]
Spurlock, William M., [redacted]
Stancil, Stanley H., [redacted]
Stastny, David C., [redacted]
Steffe, John W., Jr., [redacted]
Stephens, Ronald E., Jr., [redacted]
Steppe, Marilyn K., [redacted]
Sterling, Robert T., [redacted]
Stern, Gary L., [redacted]
Stevens, Michael B., [redacted]
Stevenson, Helen E., [redacted]
Stoddard, Larry D., [redacted]
Stone, Elwood E., Jr., [redacted]
Strickland, Elton C., Jr., [redacted]
Sullivan, Thomas J., Jr., [redacted]
Sumida, Colin W., [redacted]
Swartz, John F., III, [redacted]
Tack, Ralph W., [redacted]
Tallent, Eric A., [redacted]
Tanchez, Mario A., II, [redacted]
Terpolilli, Ralph N., [redacted]
Thomas, David M., [redacted]
Thomas, Leslie D., [redacted]
Thomasdaley, Adrienne L., [redacted]
Thompson, Craig F., [redacted]
Thompson, Edward M., [redacted]
Thompson, Maureen E., [redacted]
Thomsen, Kenneth S. [redacted]
Tisdale, Bradford W., [redacted]
Todaro, Robert F., [redacted]
Tomlinson, Daniel A., [redacted]
Towle, Daniel J., [redacted]
Trumbo, John R., [redacted]
Trumbull, Denslow A., III, [redacted]
Urbanc, Bruce C., [redacted]
Vallee, John T., Jr., [redacted]

Varner, Donald R., Jr., [redacted]
Ventre, Clare F., [redacted]
Verges, Leonard P., [redacted]
Vialet, Lynette C., [redacted]
Viser, Tomothy A., [redacted]
Walden, James M., Jr., [redacted]
Watson, James M., [redacted]
Watson, Stephen D., [redacted]
Watts, Raymond G., [redacted]
Werner, Matthew J., [redacted]
Whitaker, Neil S., [redacted]
White Marylin H., [redacted]
White, Michael C., [redacted]
Wichelhaus, Harlan P., [redacted]
Wieczorek, Martin F., [redacted]
Wies, Karen K., [redacted]
Williams, Charles D., [redacted]
Wilson, James A., [redacted]
Wilson, Lawrence W., [redacted]
Wilz, William P., [redacted]
Wood, William G., [redacted]
Worden, William L., [redacted]
Wright, Dalton H., [redacted]
Wyatt, Richard A., [redacted]
Wyttenbach, William H., [redacted]
Yordan, Jovet Raul, [redacted]
Young, Thomas W., [redacted]
Youshock, Evalynn, [redacted]
Yumetmartinez, Louis, [redacted]
Zablotney, David C., [redacted]
Zajac, Robert A., [redacted]
Zefo, Nancy, [redacted]
Zirilli, Victor L., [redacted]
Zollo, Kenneth A., [redacted]

IN THE AIR FORCE

The following cadets, U.S. Air Force Reserve Officers Training Corps, for appointment in the Regular Air Force in the grade of second lieutenant under the provisions of section 531, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force.

Adames, Michael F., [redacted]
Adams, James M., [redacted]
Addicott, Ronald L., [redacted]
Alexander, Robert M., [redacted]
Allen, Bradley K., [redacted]
Andersen, John E., [redacted]
Anderson, Reid R., [redacted]
Atkinson, Leslie C., [redacted]
Aubuchon, James F., [redacted]
Bagley, Daniel T., [redacted]
Baker, Robert P., [redacted]
Baratta, Jeffrey A., [redacted]
Barber, Brent L., [redacted]
Barker, Patrick K., [redacted]
Bassette, Roy D., III, [redacted]
Bate, Kevin D., [redacted]
Batemen, Vance C., [redacted]
Beard, Mary A., [redacted]
Beckwith, Nicky L., [redacted]
Berry, Christopher A., [redacted]
Bishop, Jeb S., [redacted]
Bishop, William W., [redacted]
Bitanga, Dulce D.M., [redacted]
Blair, James N., [redacted]
Boller, Brent B., [redacted]
Boone, Steven E., [redacted]
Botkin, Bruce A., [redacted]
Bottomstone, Maria R., [redacted]
Bowes, John A., Jr., [redacted]
Bradley, Mark M., [redacted]
Bray, Albert E., Jr., [redacted]
Breckenridge, Douglas, [redacted]
Burgess, Thornton W., [redacted]
Bushman, Thomas M., [redacted]
Callan, Joseph A., [redacted]
Campbell, Craig A., [redacted]
Carpenter, Randall A., [redacted]
Cashdollar, Timothy S., [redacted]
Castaldi, Michael R., [redacted]
Chandler, Clara M., [redacted]
Chandler, James W., III, [redacted]
Charles, Gwendolyn E., [redacted]
Cheney, Steven P., [redacted]
Clark, Edward W., III, [redacted]
Clark, Paul, [redacted]
Clements, Ted B., Jr., [redacted]
Colombi, John M., [redacted]
Contrades, Stanley K., [redacted]
Cook, Virgil H., Jr., [redacted]
Copple, Dawn Y., [redacted]
Coy, Gary R., [redacted]
Crow, David J., [redacted]
Curren, Timothy F., [redacted]
Czyzewski, Richard E., [redacted]
Daidoff, Donald M., [redacted]
Davenport, Charles A., [redacted]
Davies, Robert E., [redacted]
Davila, Richardo C., [redacted]
Davis, Jeffrey A., [redacted]
Davis, Stephen S., [redacted]
Dawson, Mark A., [redacted]
Deaver, Timothy L., [redacted]
Demartino, David F., [redacted]
Denker, Stephen T., [redacted]
Dennis, Mark A., [redacted]
Devilbiss, Stewart L., [redacted]
Diamond, Alvin Y., [redacted]
Dickey, Michael P., [redacted]
Donohue, Timothy S., [redacted]
Dowell, Gregory C., [redacted]
Drake, Reed C., [redacted]
Dryfka, Rocco J., [redacted]
Dugas, Patrick D., [redacted]
Dupourque, Muriel B., [redacted]
Eaton, Jason L., [redacted]
Effrece, Frank, Jr., [redacted]
Eldering, Gerard E., [redacted]
England, Ellen C., [redacted]
Espenship, Jeffrey D., [redacted]
Esses, Gregory A., [redacted]
Evans, David J., [redacted]
Evans, Robert D., [redacted]
Fangmeyer, Harlan B., [redacted]
Fanning, Franklin J., [redacted]
Fantini, Michael A., [redacted]
Fienga, Edward A., [redacted]
Flores, Leah E., [redacted]
Fogle, Debra A., [redacted]
Fontaine, Paul V., [redacted]
Forrer, Donald B., [redacted]
Fowler, Jerome M., [redacted]
Froehle, Gregory P., [redacted]
Gathright, James M., [redacted]
Gatti, Lawrence M., [redacted]
Gecowets, Gregory A., [redacted]
Geisler, Deborah L., [redacted]
Gilbert, Sampson, [redacted]
Gillem, Jennings, [redacted]
Givens, Keith M., [redacted]
Glaze, John A., [redacted]
Glenn, Kerrie R., [redacted]
Goeres, Daniel V., [redacted]
Goodall, Jeffrey L., [redacted]
Grady, John R., [redacted]
Grimes, Darryle J., [redacted]
Grosso, Gina M., [redacted]
Guss, Daniel P., [redacted]
Guthary, Sheryle D., [redacted]
Hamilton, George P., [redacted]
Hanaway, David T., [redacted]
Hannah, John J., [redacted]
Harris, Debra A., [redacted]
Harris, Willie L., [redacted]
Harvey, Joseph M., [redacted]
Haven, Douglas L., [redacted]
Hawkins, David W., [redacted]
Healey, John F., [redacted]
Helm, Alfred G., [redacted]
Henson, Christopher J., [redacted]
Herrera, Edward G., [redacted]
Hess, Robert W., Jr., [redacted]
Hinson, Anthony K., [redacted]
Hiss, Steven T., [redacted]
Hodges, Raymond S., [redacted]
Holcomb, William P., [redacted]
Hollandsworth, Edgar M., [redacted]
Horton, Mary E., [redacted]
Hosinger, Tracy J., [redacted]
Howell, Gregory B., [redacted]
Hruska, Joseph G., [redacted]
Hughes, Scott R., [redacted]
Irvin, Mary A., [redacted]
Jamerson, Allen J., [redacted]
Janzen, Michael F., [redacted]
Jenkins, Marilyn H., [redacted]
Jerrell, Gregory A., [redacted]
Jobe, Michael R., [redacted]
Johnson, Darrly E., [redacted]
Johnson, David S., [redacted]
Jovene, Vincent T., Jr., [redacted]
Kane, Patrick J., [redacted]
Kantack, Ronda R., [redacted]
Kapitzke, Michael S., [redacted]
Karibian, Alexander P., [redacted]
Kautzmann, Duane J., [redacted]
Kearns, Ronald G., [redacted]
Kelley, George E., [redacted]
Kelly, Patrick J., [redacted]
Kelsey, Dudley J., [redacted]
Kleb, Christine M., [redacted]
Koch, Mark P., [redacted]
Koopman, Mark S., [redacted]
Kovach, David L., [redacted]
Kozlowski, Jodiye L., [redacted]
Kramer, Jeffrey D., [redacted]
Krawczyk, Peter A., [redacted]
Krist, James G., [redacted]
Kvasnak, Michael A., [redacted]
Lacasse, James M., [redacted]
Lakos, Michael L., [redacted]
Lambert, Stephen T., [redacted]
Langford, Stephen A., [redacted]
Lanier, Troy V., [redacted]
Lankford, Mark M., [redacted]
Larsen, David W., [redacted]
Lausman, Scott A., [redacted]
Leachman, Albert S., [redacted]
Leary, Karyn M., [redacted]
Leavitt, Wilder J., [redacted]
Lefebvre, Susanne V., [redacted]
Leister, Barry P., [redacted]
Leonardi, Linda A., [redacted]
Lesinski, Michael J., [redacted]
Lluberes, Edmundo A., Jr., [redacted]
Lonigro, Anthony S., [redacted]
Lowry, Patrick D., [redacted]
Luke, James P., [redacted]
Lusby, Michael A., [redacted]
Maestas, James A., [redacted]
Marek, James R., [redacted]
Markland, Kimberly J., [redacted]
Marksteiner, Peter R., [redacted]
Mason, Brett S., [redacted]
Mataban, Bridget A., [redacted]
Mathew, Stuart K., [redacted]
McCain, Thomas A., [redacted]
McCammant, Christopher, [redacted]
McCarthy, Damian J., [redacted]
McCollum, Gray L., [redacted]
McCombe, James P., [redacted]
McCool, Gregory B., [redacted]
McFadden, Susan B., [redacted]
McGuire, Bryant P., [redacted]
McHugh, Michael J., [redacted]
McKee, Scott E., [redacted]
McKinney, Floyd A., [redacted]
McLaurin, John S., Jr., [redacted]
McNeely, Mary E., [redacted]
Merrick, Susan E., [redacted]
Meunier, Gregory W., [redacted]
Meyer, Erika M., [redacted]
Miarecki, Sandra C., [redacted]
Michell, Kimberly A., [redacted]
Miller, Alison E., [redacted]
Miller, Courtney A., [redacted]
Miller, Keith E., [redacted]
Milligan, Michael E., [redacted]
Mills, Catricia L., [redacted]
Millsap, Dennis W., [redacted]
Misley, Thomas R., [redacted]

Mispagel, Alan J., [redacted]
Mitcheletti, David A., [redacted]
Miyares, Peter H., [redacted]
Moheit, Jay D., [redacted]
Moore, Jason A., [redacted]
Moore, Jeffory P., [redacted]
Moorhead, Sean T., [redacted]
Morris, Eugene B., Jr., [redacted]
Myers, Lisa C., [redacted]
Nadeau, David M., [redacted]
Nadelman, Cindi A., [redacted]
Nance, Roin Z., [redacted]
Nelson, Brian W., [redacted]
Nicholson, Carl W., [redacted]
Niebauer, Bonnie K., [redacted]
Norman, Patricia M., [redacted]
Obermeyer, Gary W., [redacted]
Oboyle, Thomas F., [redacted]
Oconnor, Michelle M., [redacted]
Oddo, Richard A., [redacted]
Oechsle, John S., [redacted]
Olds, Steven J., [redacted]
Oliver, Jerald G., [redacted]
Orear, Stephen E., [redacted]
Papen, Mark W., [redacted]
Patterson, Elizabeth C., [redacted]
Pedersen, David R., [redacted]
Persons, Cristi L., [redacted]
Peters, Steven F., [redacted]
Phelps, Matthew C., [redacted]
Phillips, Daniel [redacted]
Phillips, Neal C., [redacted]
Pinkerton, Pamela J., [redacted]
Pittman, Lee T., [redacted]
Plandert, Debra C., [redacted]
Poole, James D., [redacted]
Popravak, Terrence G., [redacted]
Porter, Alvin L., [redacted]
Purdy, Danwin J., [redacted]
Randour, Mary A., [redacted]
Rastas, Paul V., [redacted]
Ray, Thomas S., Jr., [redacted]
Reynolds, Douglas P., [redacted]
Rice, Harvey B., [redacted]
Richardo, Maurice J., [redacted]
Richmond, Robert J., [redacted]
Roan, James B., [redacted]
Robbins, Doye P., Jr., [redacted]
Ryan, Jeffrey A., [redacted]
Ryan, Patrick T., [redacted]
Sacre, Jodi A., [redacted]
Salomonson, Amy M., [redacted]
Salomonson, Eric V., [redacted]
Santo, Esther D., [redacted]
Schath, Michael L., [redacted]
Schonfeld, Walter M., [redacted]
Scott, Tracy L., [redacted]
Seaman, Keith A., [redacted]
Seay, Michael J., [redacted]
Sentman, Mark H., [redacted]
Shappell, Andre G., [redacted]
Shipp, M., Bruce A., [redacted]
Sicher, Edward F., [redacted]
Simpson, Mark H., [redacted]
Skelton, Michael R., [redacted]
Skinner, John A., [redacted]
Smith, Bradley J., [redacted]
Smith, Michael V., [redacted]
Snelling, Sandra L., [redacted]
Sosebee, Chris A., [redacted]
Spotts, David S., [redacted]
Steele, John., [redacted]
Stephenson, Robert L., [redacted]
Stewart, Dawn L., [redacted]
Stewart, James D., [redacted]
Stone, Linda K., [redacted]
Strausberger, Donald J., [redacted]
Talda, Timothy A., [redacted]
Tavares, Ernest S., [redacted]
Teel, David L., [redacted]
Thomas, William R., [redacted]
Thrash, Julian E., [redacted]
Tigges, Jon B., [redacted]
Towson, James W., Jr., [redacted]
Trueba, Anthony F., [redacted]
Tyer, Cathleen M., [redacted]
Ude, Dana L., [redacted]
Unitas, Keith W., [redacted]
Vaughan, Edgar M., [redacted]
Verdura, Julie, [redacted]
Vickers, Timothy D., [redacted]
Villaviray, Lina G., [redacted]
Ward, Melissa F., [redacted]
Wasserstrom, Eric C., [redacted]
Welch, Douglas H., [redacted]
Welling, Gregg W., [redacted]
Wells, Michael A., [redacted]
Wesslund, James J., [redacted]
Whitfield, Bradley S., [redacted]
Whitney, Steven D., [redacted]
Wiggins, Kenneth B., [redacted]
Wilbur, John D., Jr., [redacted]
Williams, Lisa E., [redacted]
Williams, Sharon L., [redacted]
Woodrow, Gregory S., [redacted]
Wright, Catharine S., [redacted]
Wyatt, Ricky L., [redacted]
Yamaguchi, Hiroshi T., [redacted]
Youngblood, William R., [redacted]
Zobrist, Scott J., [redacted]
Zolecki, Thomas K., [redacted]

The following officers, U.S. Air Force Officer Training School, for appointment as second lieutenants in the Regular Air Force, under the provisions of section 531, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force.

Abbot, David E., [redacted]
Arnold, Suzanne G., [redacted]
Aubert, Curtis J., [redacted]
Ayers, James B., [redacted]
Balog, Clint R., [redacted]
Beard, Ralph A., [redacted]
Beherec, Remy F., [redacted]
Belote, Howard D., [redacted]
Beyer, Werner, Jr., [redacted]
Bierman, Mervin W., [redacted]
Blackington, Robert E., [redacted]
Blake, Dana F., [redacted]
Blanks, Clifton D., [redacted]
Borg, Jeffrey E., [redacted]
Bostick, Cheryl D., [redacted]
Bouchard, Michael A., [redacted]
Bretscher, Seth P., [redacted]
Buckler, Kimberly A., [redacted]
Byrd, John V., [redacted]
Camit, Peter P., [redacted]
Carey, Bartholomew, J., [redacted]
Carrell, David J., [redacted]
Carter, Rickey L., [redacted]
Cassida, William D., [redacted]
Claxton, David R., [redacted]
Cleveland, William W., [redacted]
Clifford, Linda T., [redacted]
Cline, Michael A., [redacted]
Coffin, Steven A., [redacted]
Coombes, Michael A., [redacted]
Coop, Lindsay A., [redacted]
Corcoran, William P., [redacted]
Cornelio, Ricky J., [redacted]
Cox, Andrew R., [redacted]
Cox, William B., [redacted]
Craven, Robert J., [redacted]
Croft, John D., [redacted]
Crownhart, Raymond E., [redacted]
Cutting, Russell N., [redacted]
Daugherty, Robert L., Jr., [redacted]
Davey, James R., [redacted]
Deneen, Christopher D., [redacted]
Dickens, Martha D., [redacted]
Dunaway, David R., [redacted]
Dwight, Paul P., [redacted]
Eves, Royce E., [redacted]
Flint, Eric R., [redacted]
Galassi, Lello, [redacted]
Gardner, Elizabeth B., [redacted]
Geduld, Alan J., [redacted]
Gese, Glen S., [redacted]
Giesige, Bruce E., [redacted]
Gifford, Ralph E., [redacted]
Gililland, Billy J., [redacted]
Goodison, Carl C., [redacted]
Grajski, Mark P., [redacted]
Grigsby, James H., [redacted]
Haar, Paul G., [redacted]
Halicky, Robert N., [redacted]
Hallisey, John K., [redacted]
Ham, James R., [redacted]
Hamptonwilcox, Chris G., [redacted]
Handley, Gary R., [redacted]
Hartzell, Kenneth M., [redacted]
Hax, Timothy D., [redacted]
Henkel, George M., [redacted]
Herbert, Gary H., [redacted]
Herington, Sonja A., [redacted]
Hiler, Michael S., [redacted]
Hogue, Dennis G., [redacted]
Holbrook, Jeffery A., [redacted]
Hollywood, Bruce E., [redacted]
Holmes, Theresa M., [redacted]
Hoppa, Joseph P., [redacted]
Hunter, Mark W., [redacted]
Irish, Thomas H., [redacted]
Jones, Soren K., [redacted]
Karr, Randy L., [redacted]
Kelley, Scott A., [redacted]
Kelsey, Nathaniel A., [redacted]
Kennedy, William M., [redacted]
Kindred, Curtis S., [redacted]
King, Dale G., [redacted]
Knight, Derek A., [redacted]
Konopka, John T., [redacted]
Laeuchli, Samuel C., [redacted]
Lancelle, Jeffery L., [redacted]
Larabee, Valerie A., [redacted]
Lassila, Gregory D., [redacted]
Lau, Jimmy J.S., [redacted]
Lazarus, Steven J., [redacted]
Leathers, Jonathan G., [redacted]
Levin, Josh, [redacted]
Lovato, Martin E., Jr., [redacted]
Lude, Carl A., [redacted]
Lussier, Matthew J., [redacted]
Lyons, Gerard J., [redacted]
Maldonado, Xavier, [redacted]
Marisa, Kurt M., [redacted]
McEntire, Michael B., [redacted]
Meadows, Dennis F., Jr., [redacted]
Meinhold, Theordore E., [redacted]
Middleton, Darin S., [redacted]
Mitchell, M. Jay, [redacted]
Monroe, Michele S., [redacted]
Moore, Dale P., [redacted]
Moore, Ricky V., [redacted]
Mykrantz, Stuart L., [redacted]
Newby, Wiley R., [redacted]
O'bryan, Michael C., [redacted]
Oelgoetz, James R., [redacted]
Palmer, Bryan B., [redacted]
Penn, William D., [redacted]
Phelan, Terrence J., [redacted]
Pioletti, John R., [redacted]
Popham, Jeffery K., [redacted]
Predeau, William A.C., [redacted]
Privette, John J., [redacted]
Pugh, Mark W., [redacted]
Resimont, William N., [redacted]
Rex, Carl W., [redacted]
Robinett, Gary J., [redacted]
Roe, Kimberley R., [redacted]
Rogers, Susan E., [redacted]
Rose, Donald G., [redacted]
Rothhaupt, Jay H., [redacted]
Ruiz, Jose R., [redacted]
Russell, Clifford T., [redacted]
Schier, Neal A., [redacted]
Schmetzer, Charles R., [redacted]
Schmidt, Marcel T., [redacted]
Seeley, Richard A., [redacted]
Shollenberger, William H., [redacted]
Shrout, Pamela J., [redacted]

Skinner, Jade A., [redacted]
Smallwood, Paul E., III, [redacted]
Smith, Shane R., [redacted]
Sokoly, Steven B., [redacted]
Sparrow, William L., [redacted]
Stanziano, Peter, [redacted]
Strampach, Andrew J., [redacted]
Sully, Michael A., [redacted]
Swonson, John R., [redacted]
Tate, Steven W., [redacted]
Tevis, Jay-Evan J., II, [redacted]
Tibbetts, Patrick S., [redacted]
Tingle, Paul E., [redacted]
Topp, Donald L., [redacted]
Toy, Kevin L., [redacted]
Vaughn, Robert M., [redacted]
Walsh, Joseph B., [redacted]
Warburton, Kirk R., [redacted]
Warner, Jerald R., [redacted]
Watkins, Barbara, [redacted]
Wear, Steven M., [redacted]
Weaver, Robert S., [redacted]
Wery, David P., [redacted]
Wethington, Jacqueline D., [redacted]
Wight, Lee T., [redacted]
Williams, Jonathan D., [redacted]
Ziegler, Cindy L., [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, United States Code, section 3383:

ARMY PROMOTION LIST

To be colonel

Anderson, William R., [redacted]
Fritsch, Nicholas C., [redacted]
Jackson, James A., [redacted]
Mallett, Gerald G., [redacted]
Page, Robert S., [redacted]
Rodman, Glen A., Jr., [redacted]
Taylor, Loren L., [redacted]
Thompson, Luther C., [redacted]

CHAPLAIN

To be colonel

Entwistle, Daniel A., [redacted]

MEDICAL CORPS

To be colonel

Hakim, Simon Z., [redacted]

MEDICAL SERVICE CORPS

To be colonel

Gray, Willard P., [redacted]

ARMY PROMOTION LIST

To be lieutenant colonel

Armour, Raymond L., [redacted]
Beatty, Robert R., [redacted]
Blacksher, William, [redacted]
Bollo, Conrad A., [redacted]
Canepa, Joseph F., [redacted]
Cramer, George H., [redacted]
Dearing, Laurence S., [redacted]
Dewing, John H., [redacted]
Downey, Brian R., [redacted]
Duffy, Michael J., [redacted]
Dustin, Donald F., [redacted]
Easterling, Albert, [redacted]
Gering, Bruce J., [redacted]
Harris, Dave F., [redacted]
Hicks, Jeffrey R., [redacted]
Horlacher, Donald R., [redacted]
Krueger, Wayne V., [redacted]
Lanka, Kenneth E., [redacted]
MacMurray, Orrin B., [redacted]
Mathison, Walter R., [redacted]
McCarty, Edward W., [redacted]
McMahon, Richard A., [redacted]
McNeil, Bernard L., [redacted]
Murphy, John J., [redacted]
Murtland, Theodore, [redacted]
Ordahl, Stephen A., [redacted]
Pemberton, Clem J., [redacted]
Perrine, James L., [redacted]
Powell, Eddie H., [redacted]
Reeves, Donald M., [redacted]
Saboe, James O., [redacted]
Sager, Raymond W., [redacted]
Slade, Randall E., [redacted]
Sullivan, William F., [redacted]
Wightman, Richard O., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Rowan, Edward L., [redacted]
Snyder, Howard M., [redacted]
Winn, Richard H., [redacted]

MEDICAL SERVICE CORPS

To be lieutenant colonel

O'Donnell, Carol A., [redacted]

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, section 3370:

ARMY PROMOTION LIST

To be colonel

Crowley, Robert L., [redacted]
Davenport, William, [redacted]
Greaves, John D., III, [redacted]
Harry, Joe E., [redacted]
Hasenei, Gordon J., [redacted]
Hollenbeck, Robert, [redacted]
Irby, Thomas M. Jr., [redacted]
Johnson, Donald L., [redacted]
Klein, Kenneth C., [redacted]
Kokalas, Joseph J., [redacted]
Lemp, James F., [redacted]
Livingstone, John H., [redacted]
Myers, Roger A., [redacted]
Nance, Daniel R., [redacted]
O'Neal, Harold G., [redacted]
Prante, Howard J., [redacted]
Rogers, Lee E., [redacted]
Schultz, John J., [redacted]
Sowder, Donald D., [redacted]
Stoneman, Kent, [redacted]
Suarez, Jose A., [redacted]
Sullivan, Charles D., [redacted]
Theisen, Robert C., [redacted]
Vachon, Reginald I., [redacted]
Welch, Charlie G., [redacted]
Winters, Ross V., [redacted]
Wroblewski, Ralph H., [redacted]

CHAPLAIN

To be colonel

Curry, Cecil B., [redacted]

DENTAL CORPS

To be colonel

Debs, John F., [redacted]
Desjardins, Ronald, [redacted]
Linhart, Donald S., [redacted]
Pearson, Craig D., [redacted]
Petruzillo, Michael, [redacted]

MEDICAL CORPS

To be colonel

Campbell, Selma R., [redacted]
Modarelli, Robert O., [redacted]
Segli, Floyd R., [redacted]

MEDICAL SERVICE CORPS

To be colonel

Bauscher, William A., [redacted]
Linder, William W., [redacted]
Seng, Barry S., [redacted]
Smith, Robert G., [redacted]

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, section 3366:

ARMY PROMOTION LIST

To be lieutenant colonel

Bryan, Leland W., [redacted]
Carson, James O.,III, [redacted]
Efird, Crayon C., [redacted]
Fiore, Francis A., [redacted]
Funk, Leonard L., [redacted]
Garcia, Jenaro A., [redacted]
Golden, John C., [redacted]
Hurst, Edward J., [redacted]
Kramer, Willard S., [redacted]
Lamborn, George L., [redacted]
Lindenau, Joern N., [redacted]
Lindsey, Edward G., [redacted]
Mackey, Walter L., [redacted]
Majors, David L., [redacted]
McCarthy, Kevin P., [redacted]
Meinerth, Barry R., [redacted]
Parkman, William D., [redacted]
Perry, Dennis R., [redacted]
Robbins, Billy R., [redacted]
Robinson, Raymond C., [redacted]
Ross, Dennis M., [redacted]
Sabus, Jacques L., [redacted]
Slattery, Stephen M., [redacted]
Sweeney, Thomas, [redacted]
Trimble, William L., [redacted]
Vecchiarello, Frank, [redacted]
Washburn, Ronald G., [redacted]
Welchman, Allan R., [redacted]
Wiitala, Donald E., [redacted]
Williams, Robert D., [redacted]
Winkler, Edward H., [redacted]

CHAPLAIN

To be lieutenant colonel

Bender, Gilbert L., [redacted]
Pierce, David W., [redacted]

ARMY NURSE CORPS

To be lieutenant colonel

Blaumeiser, Arlene., [redacted]
Johnson, Donald L., [redacted]
O'Neil, James A., [redacted]
Peck, Teri F., [redacted]
Rubin, Ned E., [redacted]

DENTAL CORPS

To be lieutenant colonel

Keary, George T., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Calverley, Roderick, [redacted]
Gerber, Carl J., [redacted]
Holt, George R., [redacted]
Leslie, James R., [redacted]
Thomason, William B., [redacted]
Tint, Khin M., [redacted]

MEDICAL SERVICE CORPS

To be lieutenant colonel

Alcala, Jose G., [redacted]
Baker, Ralph A., [redacted]
Daniel, William G., II, [redacted]
Hill Richard C., [redacted]
Rayl, Charles R., [redacted]
Ritter, Ronald L., [redacted]
Ward, Thomas E., [redacted]
Williams, Addison K., [redacted]

VETERINARY CORPS

To be lieutenant colonel

Wells, James R., Jr., [redacted]

The following-named officers for appointment in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, section 3359:

MEDICAL CORPS

To be colonel

Leffik, Martin I., [redacted]
Oetgen, William J., [redacted]
Winkel, Craig, [redacted]

To be lieutenant colonel

Nickel, Gary W., [redacted]
Stock, Margaret O., [redacted]