SENATE—*Wednesday, July 25, 1979*

(Legislative day of Thursday, June 21, 1979)

The Senate convened at 8:45 a.m., in executive session, on the expiration of the recess, and was called to order by Hon. J. JAMES EXON, a Senator from the State of Nebraska.

PRAYER

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

They that wait upon the Lord shall renew their strength.—Isaiah 40: 31.

O God, our Father, Restorer of men's bodies and minds, we thank Thee for rest by night and work by day.

We thank Thee for this world which Thou hast made; for summer and winter; for light and dark; for sunset and for dawn. We thank Thee. Thou has made us as we are, for hands to work and feet to walk; for eyes to see and ears to hear; for minds to think and for hearts to love. Help us to use for Thy glory these gifts so richly bestowed.

We thank Thee for all who share with us the responsibilities of Government, for all upon whose wisdom and experience we draw, for friends and colleagues whose love gives glory to our lives.

Above all else, we thank Thee for Him who walked before us to show us that whoever is greatest shall be servant of all. In His name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 25, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J. JAMES EXON, a Senator from the State of Nebraska, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

THE JOURNAL

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

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

EUROPEAN PARLIAMENT

Mr. ROBERT C. BYRD. Mr. President, in the press of business here in Washington, insufficient notice has been made of a historic event that has taken place recently among our allies in Europe, and that is the first election of delegates to the European Parliament.

The European Parliament is made up of representatives of the nine countries belonging to the European Common Market. Prior to June of this year, those delegates were appointed by the legislatures of the member countries.

But in June, the voters of each country directly elected their country's delegates to the Parliament. As a result, 110 million Europeans cast their ballots to choose the Parliament's 410 members.

The Parliament meets in Strasbourg, France. The role of the Parliament is largely advisory, to review and comment on Common Market decisions.

But the real significance of the Parliament is that it will provide an influential forum on major European issues, and it will more closely unite the people of Western Europe.

Consider the odds against which the Parliament has had to mount its case. Europe has twice this century been torn by world war. The peoples of the nine countries represented in the Parliament speak many different languages. And each of the countries has a very separate and distinct culture, with a history that goes back to a time far earlier than our own.

In spite of these obstacles, the Parliament has made its case, and now stands before the European public as proof that a diverse people can subordinate their differences in the name of their common good.

On July 18, the Senate joined the House in approving a concurrent resolution, congratulating the European Parliament for its achievement, and welcoming it to the community of representative bodies around the world chosen by direct universal suffrage. The resolution noted that the United States shares with the West European Community a "common respect for democracy, the promotion of human rights under the rule of law, and the observance of democratic practices."

Mr. President, at various times the countries of the Old World have looked to the United States in the New World for inspiration and innovation in developing a free society. The United States has always tried to respond, and rarely has it responded more warmly than when the Marshall plan was launched in 1948.

Now the very countries to which the Marshall plan was directed are lending inspiration to the United States. The President spoke the other evening of the need in this country to strive toward a goal of cooperation and unity.

It is fitting that the New World now may look to the Old World for a shining example of achieving that goal.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have no further need for my time unless the distinguished acting Republican leader wishes to have it yielded to him.

Mr. STEVENS. It may be that I will need that extra time so I thank my good friend.

Mr. President, may I state to the majority leader that although I am not certain when, I have heard that there might be a motion to recommit the Reiche nomination that will be before the Senate today, so it is possible that we may have a vote on that matter.

May I ask the Chair if the majority leader has yielded me part of his time?

Mr. ROBERT C. BYRD. Mr. President, if I have any time remaining, I yield the remainder of that time to Mr. STEVENS.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

SNAIL DARTER OF THE MONTH AWARD

Mr. STEVENS. Mr. President, for some time now I have been considering following in the tradition of the Senator from Wisconsin (Mr. PROXMIRE) by announcing a new monthly award, and this morning I will begin with the announcement of the Snail Darter of the Month Award.

This award would go to any Government organization which has done more to harm the environment through extremism in its enforcement of environmental laws and regulations than its actions have done to improve the environment in which we live.

We all know that one of the most unfortunate problems we face today is that many of the people who are enforcing environmental laws and regulations in the Federal Government are people who primarily or previously had been advocates for various environmental organizations. They do lack, in many instances, the balance that is required of an official who has the power to enforce Federal laws and create regulations.

Extremism in environmental policies has led the Government to reserve more land than is required for environmental protection. Extremism in environmental policies has led the Government to acquire more and more private land for Government ownership. Extremism in environmental policies has led the Gov-

ernment to stifle free enterprise and to hinder private ownership. Extremism in governmental policies has led the Government to assert Federal supremacy over State laws, such as State water rights laws, which were designed to create private rights to assure individuals that the product of their labors, particularly in placing new lands into cultivation, would be secure for themselves and their families.

The Tellico Dam really is the symbol of the snail darter award. It was a project that was funded in 1967. It has been funded every year since then. Tellico was built for the purpose of providing hydroelectric power for 20,000 homes. It is 99 percent complete, and $111 million of taxpayers' money has been spent on the construction of this hydroelectric project.

The Endangered Species Act, passed in 1973, 6 years after this dam was started, has been used to prevent the completion of Tellico Dam. At issue was a tiny species called the snail darter which inhabits the Little Tennessee River. It was not even discovered until after the dam construction had begun. Yet, as we all know, the snail darter has tied up the completion of this dam.

Since that time the snail darter has been transferred successfully to the Hiwassee River. It is thriving today.

The dam, as I said, will produce power for 20,000 homes, some 200 million kilowatts of potential electricity, and it stands as a symbol of environmental extremism.

As we approached this concept of the snail darter of the month award I thought of some of the things I have run across in the last 6 months.

We could have used the West Virginia railroad siding project as an example. The construction of the siding was necessary for coal cars to take the product of West Virginia mines to market but was delayed because of extremism in the enforcement of environmental regulations. My good friend, the majority leader, asserted himself in that instance, and I think that siding will finally be completed.

We could have used as the first award recipient those people in the Fish and Wildlife Service who denied the State of Alaska an aquaculture project in the Kenai Moose Range south of Anchorage, a project to restore the anadromous fish runs in the streams, the bed of which is owned by the State of Alaska.

They refused to allow us to use the shore of that stream for the purpose of an aqua site to restore the salmon run. After a conference with my staff that project may be reconsidered.

We could have used the example of the Terror Lake project in the Kodiak Bear Wildlife Range which has been underway now for almost 10 years. This project has been recently stopped by the Fish and Wildlife Service because they say that the hydroelectric project, which is primarily a penstock that comes down through the mountains from a lake high above Kodiak was inconsistently and incompatible with the protection of the bears on Kodiak Island. Evidence of a negative impact on the bear population has never been substantiated. That project, also, may be reconsidered.

These are examples of what I am talking about in terms of extremism in the enforcement of environmental laws.

This morning's Post gives probably the worst case of environmental extremism to date, and that is the problem of the city of Skagway's municipal sewage treatment plant. There are literally thousands of cities in the country that have not even tried to comply with the Clean Water Act. Skagway, the gateway of a national historical park, is in and of itself a monument to the freedom of our people who sought a new life and fortune. It was the entrance to the path for those people who wanted to go on to the Yukon gold mines. Now it is but a town of 870 people who have been forced to comply with the Federal Clean Water Act, although their small environmental impact does not really warrant such strict adherence to such arbitrary standards. So, the people of Skagway bonded themselves for $3.5 million and built a new treatment facility.

They have had some difficulty with that plant because of technical problems in the power package required by the treatment standards established by EPA. So they were forced to close it down.

One of the problems that Skagway and many small communites have, with agencies like EPA is in the constant haranguing, the forms and the regulations and just the stifling of the operations of a small city and the people trying to run that small city. So because of the complications, when the citizens of Skagway found out that they would have had to use 46,000 gallons of diesel fuel to keep that plant running because of this malfunction, they closed it down. EPA has now taken the city of Skagway to court and the difficulty is that EPA is drawing its battlelines against people who have tried to comply with EPA's demand. It has not taken to court those cities which have not even tried to comply with the clean air standards.

Skagway, if left alone, will find a way, I am certain, to use its sewage plant. Having built this treatment plant obviously, it is going to find a way to use it. But now the people of EPA have taken Skagway to court and are seeking a fine of $10,000 a day for noncompliance with the Federal laws, in a town where the mayor makes $80 a month. How ridiculous is that?

I just cannot understand a Government agency that refuses to try to seek balance by working with local officials to achieve national objectives.

It is a difficult thing for this Senator, as one who voted for the Clean Water Act, to see how we could possibly have contemplated such extremism in the enforcement of that law through the regulations being demonstrated by the EPA today.

I would invite the Senate as a whole to look at the Skagway problem. What can they do? How can a small town survive when a Federal agency, instead of trying to work with the local government to help achieve national standards, puts the local government and its officials on the complete defensive and forces them to hire lawyers to defend expensive lawsuits in Federal courts when they are already so severely in debt?

The Environmental Protection Agency, by its extremism in the enforcement of the Clean Water Act, has reached the absurd conclusion that Skagway, which really tried to deal with its problems, should be punished while the cities of this country that have not tried at all are given extensions, or are not even taken to court for the purpose of compelling them to at least try.

So my first announcement of the Snail Darter Award of the Month goes to the EPA for its blind extremism in the enforcement of the Clean Water Act.

Mr. President, I ask unanimous consent that an article in the Washington Post, of Wednesday, July 25, 1979, entitled "Town in Alaska Shuts Sewage Plant, Dares U.S. to Do Something About It" be printed in the RECORD.

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

TOWN IN ALASKA SHUTS SEWAGE PLANT, DARES U.S. TO DO SOMETHING ABOUT IT

(By Ward Sinclair)

The City Council of Skagway, Alaska, has carved another niche in history for the little Gold Rush community.

Fed up with the rules and the paperwork, the council this month shut down Skagway's spanking new sewage treatment plant and told Uncle Sam to buzz off.

What is historic about that is that Skagway apparently is the first town in the country simply to shut down its treatment plant and dare the government to do something about it.

What is timely about it is that Skagway is claiming, among other things, that the energy crisis has forced it to thumb its nose at the 1972 Clean Water Act.

Last week, Mayor Robert Messegee fired off an impassioned letter to President Carter, invoking the energy crisis and pleading with him to get the Environmental Protection Agency off Skagway's back.

"Please help me, Mr. President," he wrote. "I am not a criminal. I am an elected official, earning $80 a month. I don't want to go to jail."

EPA, which sees no humor in the Alaskan's action, filed suit in federal court in Anchorage Friday seeking an order to get the plant back into operation.

EPA's complaint also seeks a $10,000-a-day fine against five Skagway council members for each day the plant is out of operation.

And don't think that has not set off snickering in the town of 870 residents in southern Alaska. City Attorney William Ruddy said, "The federal government will end up owning Skagway."

Councilman Oscar Selmer said he would sooner go to jail for contempt. "All they have to do is come up here and get me," said Selmer. "I'll get free room and board, as long as they bring me a little shot of whiskey once in a while."

Not a chance in the world that will happen, said EPA attorney John Hohn at the agency's regional headquarters in Seattle.

"We spent a lot of time and money trying to help them," said Hohn. "The law is pretty plain—they have to have a permit to discharge waste into U.S. waters and it has to meet the EPA standards."

City Manager Gil Acker said the $3.5 million treatment plant, completed in November, has had technical problems which cause it to use more electric power than anticipated.

By Mayor Messegee's calculations, about 46,000 gallons of high-priced diesel fuel are required to generate enough electricity to keep the plant motors running.

City officials say the cost of electricity will just flat out bankrupt Skagway. The mayor told Carter he thought that was a mighty strange way to fight an energy crisis.

Skagway's basic argument, however, is that its sewage—although no more pristine than that of, say, a Washington—is not as bad as one would think.

There is no industry in Skagway and the effluent washes into the 600-foot deep Lynn Canal, a turbulent body of seawater that City Attorney Ruddy said may be enhanced by the run-off.

"We're not looking for a fight," Ruddy said. "But we don't understand why EPA is drawing the battle line in Skagway when Anchorage or Seattle don't have the treatment facilities we have here."

Mr. STEVENS. I yield the floor, Mr. President.

RECOGNITION OF SENATOR TALMADGE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Georgia (Mr. TALMADGE) is recognized as in legislative session for not to exceed 15 minutes.

S. 1569—REGULATORY ACCOUNTABILITY ACT OF 1979

Mr. TALMADGE. Mr. President, I send to the desk a bill in behalf of myself, my colleague from Georgia (Mr. NUNN), and the distinguished senior Senator from Florida (Mr. CHILES) and ask that it be appropriately referred.

Mr. President, I am today introducing the Regulatory Accountability Act of 1979. This is by no means the first such bill that has been introduced during the 96th Congress.

Numerous regulatory reform bills have been introduced in both the Senate and the House of Representatives.

I am a cosponsor of one of the first major regulatory reform bills introduced in the Senate, S. 262, introduced by the distinguished chairman of the Governmental Affairs Committee.

There is much merit, not only in S. 262, but in other bills that have been introduced to provide different approaches to regulatory reform.

I am particularly impressed by the bill introduced by Senator BENTSEN, S. 51, to require that Congress establish a regulatory budget for each Federal agency.

This budget would limit the maximum cost of compliance by the private sector with all rules and regulations promulgated by each agency.

There are some who oppose this kind of legislation because they say that it is impossible to compute the cost of regulations on our economy.

I disagree. I believe that agencies responsible for regulation, working together with the economists in the regulated industries, can come up with a reasonably accurate cost of private sector compliance with Federal regulations.

Moreover, if Federal agencies cannot determine how much of an economic burden they are placing on the regulated industries with volumes of complex regulations then they should not be in the business of regulating private industry.

This is part and parcel of why the regulatory process in America has gotten completely out of control.

Neither the Congress which writes the laws nor the agencies which write and enforce the regulations give much thought to the economic burden they are placing on the regulated industries and, in turn, on the entire U.S. economy.

I submit, Mr. President, we must do something to stem the tide of geometrically increasing Federal regulations. We are in danger of killing the goose that laid the golden egg.

We are in danger of killing free enterprise and growth in this country.

I believe everyone is familiar with the eminent economist Murry Weidenbaum's study for the Joint Economic Committee, which estimated the cost of Federal regulations at $102.7 billion annually.

We all know, although we oftentimes forget, when we write new laws, that it is private business—large and small—which provides the jobs for the Nation's workingmen and workingwomen.

The taxes they pay cover not only our own salaries, but the cost of all the Federal programs that we legislate.

Moreover, we can continue to improve the quality of life for the average citizen of this country only if we promote a climate where economic growth is possible.

It is the private business sector of this Nation which is responsible for all economic growth.

We in the Congress do not create economic growth when we legislate more deficit spending, more regulation and redtape, and authorize the printing of more inflated dollars.

On the contrary, we only stifle individual initiative and create impediments to business growth when we pass unnecessary legislation.

Fortunately, I believe that Members of Congress have finally gotten the message. They have found that the American public is fed up with excessive Government regulation and costly new Federal programs.

That is why I believe that the 96th Congress has thus far been one of the best Congresses in which I have had the opportunity to serve.

It has been a good Congress because we have abstained from enacting a lot of costly new programs that the American taxpayer cannot afford, does not need, and does not want.

Congress has correctly perceived that the past practice of piling one expansive new Federal program on top of all the existing programs has led to nothing but chaos and resentment by the American voter.

I am delighted that the Senate Committee on Governmental Affairs chaired by the able senior Senator from Connecticut, Senator RIBICOFF, has done a good job of evaluating the various regulatory reform proposals that have been introduced and referred to that committee, they contain much merit.

However, I do not feel that any of them go to the heart of the problem.

None of these bills attempt to deal with the root cause of excessive regulation—excessive and poorly drafted legislation.

Every Federal regulation is either specifically mandated by or broadly authorized by some Federal statute. Every Federal regulation must have a statutory base. Statutes originate in Congress.

In some cases, we have specifically legislated regulations which have proven to be unworkable.

However, in most cases we have merely given the bureaucracy a blank check to do almost anything that they wish to do in regulating a particular economic area.

One agency that has drawn a lot of press attention in recent months is the Federal Trade Commission. We have given this regulatory agency almost carte blanche authority to write rules on and meddle in practically every area of private business.

The Washington Post in the lead editorial on April 2, 1979, described the problem very well. Mr. President, I ask unanimous consent that this editorial be printed at this point in my remarks.

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

REGULATION REGULATION REGULATION

A group of lawyers spent a few hours here on Friday talking about what might happen if the truth-in-lending act were rewritten in two simple sentences. One would say lenders had to disclose the true annual interest rate on their loans. The other would say what the penalty would be for not doing so. Period.

The idea has appeal. The truth-in-lending act, although itself short by modern legislative standards, has already generated over 3,000 pages of regulations and administrative interpretations, and more are on the way. Because of either the law or the huge amount of paperwork—people argue about which—consumers are presented with documents

they don't read and probably wouldn't understand if they did; and businessmen are continually wondering whether every "i" needs to be dotted and every "t" crossed—how serious government is about enforcing all these intricate obligations.

The only consensus reached by this meeting of lawyers, as far as we could tell, was that it might be possible to eliminate *some*, but not *much*, of the tangle of administrative interpretations. Consumer groups evidently feel that without such detailed rules and regulations businesses will find ways to conceal useful information from customers. Business groups seem to feel that they will be left unprotected against charges of wrongdoing unless each step they must take is spelled out in advance. Government regulators think they needed to produce all 3,000 pages in the first place to help businessmen know what to do. Nobody, except possibly those who organized the meeting and a few eccentrics who admire plain-spoken English, seemed to take the idea seriously.

We do. And we dwell on this meeting precisely because it says so much about the current onslaught of overregulation that is driving a large part of the nation mad. President Carter had it just right the other day when he described the dealings many Americans have with government as consisting of a "bewildering mass of paperwork, bureaucracy and delay." Unfortunately, the president's remedy—the proposals he has sent to Congress to "reduce, to rationalize and to streamline the regulatory burden"—won't do much good.

The centerpiece of the president's program is an effort to improve the rule-making process. He wants to speed it up (something desperately needed) by setting deadlines for agency action. But he also wants to inject more public participation into the process and he wants to require each agency to publish what might be called a regulatory-impact statement. That statement would examine the costs and benefits of alternative methods of reaching the goal the agency has in mind.

Do you begin to see the built-in problem here? This new procedure could conceivably be a help in making wise choices. But any agency that has been using common sense is probably already weighing these costs and benefits. And there is at least as strong a likelihood, if the past tells us anything, that the new regulatory-impact statements would become just one more part of the bureaucratic rigmarole, one more generator of a useless paper heap.

Like the gestures of his predecessors, most of Mr. Carter's proposals deal with the symptoms of over-regulation, not its cause. Three thousand pages of regulations and interpretations concerning a single piece of legislation do not spring from some malevolent bureaucratic plot. They are a direct result of the way Congress drafted the law. Bewildered by the complexities that lawyers and others can cook up in relation to the most seemingly simple matters, Congress writes laws that reflect that complexity—carving out exemptions for one interest group after another, delegating too much authority to regulatory agencies and passing the buck to them on politically difficult questions—and expressing all this in a prose that is incomprehensible to any but other people who talk that way.

So the true solution to overregulation can only be found when Congress realizes that cat's-cradle complication is not synonymous with wisdom or fairness. Maybe some of the president's proposed administrative reforms will help. But the most he can do is smooth bureaucratic rough edges. The important part is up to Congress. That is where they write all those regulation-prone and rule-generating statutes in the first place, though you wouldn't guess it from the way they complain about them later.

Mr. TALMADGE. The Post hit the nail on the head when it said:

So the true solution to overregulation can only be found when Congress realizes that cat's cradle complication is not synonymous with wisdom or fairness. Maybe some of the President's proposed administrative reforms will help. But the most he can do is to smooth bureaucratic rough edges. The important part is up to the Congress. That is where they write all those regulation-prone and rule-generating statutes in the first place, though you wouldn't guess it from the way they complain about them later.

That is the essence of the problem. Whenever there is some problem that Members of Congress feel requires a legislative solution, we enact broad and sweeping legislation.

We give the bureaucracy almost unlimited power to do whatever they will to regulate some sector of economic activity, or to regulate some particular group in our society.

Even worse, we may specifically mandate a regulation that later proves to be foolish, impractical and unworkable.

Then when the regulations come out, when some agency like the Occupational Safety and Health Administration (OSHA) starts writing all those ridiculous rules that no one can live up to, we throw up our hands in horror and blame those "bureaucrats downtown."

We never mention that it was the Congress who gave agencies like OSHA the authority to write ridiculous and unworkable regulations.

Mr. President, after several years in the Senate, after seeing Congress legislate the authority for excessive regulation and then blame it on the bureaucrats, I attempted to do something about it.

On February 1, 1977, I introduced and secured the enactment of rule 29.5 of the standing rules of the Senate.

The Talmadge rule requires that every committee report accompanying a bill or joint resolution of a public character contain a regulatory impact statement.

My amendment is quite specific in what the regulatory impact statement must include. It requires that the statement must include:

First, an estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses;

Second, a determination of the economic impact of the regulation;

Third, a determination of the impact on the personal privacy of the individuals affected; and

Fourth, a determination of the amount of additional paperwork that will result from the legislation.

The Senate accepted my amendment by rollcall vote of 74 to 20. However, the performance of the Senate in complying with this rule has been far from satisfactory.

On March 1 of this year the senior Senator from Florida (Mr. CHILES) detailed the lack of Senate compliance with the Talmadge rule.

The Senator stated that a review by his staff and the Congressional Research Service revealed that 216 of the 688 committee reports which fell under the rule's scope simply ignored it.

Senator CHILES further stated that a third of the reports, 31.4 percent, did not even refer to the rule and made no statement whatsoever to the requirement that regulatory, economic, privacy and paperwork impacts of legislation be considered.

The Senator rightly criticized this lack of compliance and stated that he planned to bring to the Senate's attention any committee report which ignored rule 29.5.

I compliment the Senator from Florida on his interest in enforcing the Talmadge rule. However, I do not believe that there will ever be proper compliance with the regulatory impact rule unless stronger legislation is written.

The bill I introduced today would put more teeth into the Talmadge rule and apply it to both Houses of Congress.

Also, it would close a glaring loophole in the current Senate rule 29.5. It would apply to floor amendments and conference reports as well as committee reports.

Moreover, there must be some independent agency to assist Congress in complying with the requirement of a regulatory impact statement.

My bill would give the Comptroller General this responsibility. In addition, it authorizes the Comptroller General to render opinions as to whether congressional committees and proponents of amendments were properly complying with the rule.

However, I believe that the most important enforcement mechanism that could be written into the process is a proper follow-up and evaluation. My bill requires that every 2 years the Comptroller General would prepare and transmit a report to the Congress comparing the actual impact of regulations resulting from legislation containing regulatory impact statements.

Thus, if any committee of Congress or the proponent of any amendment which was adopted had written a misleading regulatory impact statement, he would know that the actual impact of the bill or the amendment would be evaluated by an independent authority after the law was implemented.

This would be the single most powerful self-enforcement mechanism in the law. If any Member of Congress wanted to write legislation that authorizes or requires a broad new regulatory program he would know that eventually he himself—not the bureaucracy, not

the President—would be eventually blamed with any excessive and undue regulation that resulted from this bill or amendment.

This same GAO evaluation would apply to executive branch agencies. All agencies would be on notice that their regulatory impact statements would have to be accurate or they would eventually be held accountable.

Mr. President, the committee of which I am chairman, the Senate Committee on Agriculture, Nutrition, and Forestry, has tried diligently to comply with Senate rule 29.5.

However, I have found that the regulatory and paperwork evaluation of legislation tends to be put off until all the decisions on legislation have been made.

Therefore, in an attempt to build consideration of the regulatory and paperwork impact of legislation into the earliest consideration of that legislation, my bill would require that the executive branch include a regulatory impact statement in any legislative recommendations, testimony or comments to the Congress.

The first thing that is done when a bill is referred to a committee of the Congress is that the Congress routinely asks the executive branch for its views.

On all important legislation, executive branch testimony is solicited. Therefore, this new requirement in the law would bring the regulatory impact and paperwork impact of all legislation being considered to the attention of Congress at the earliest stages of committee action on new legislation.

Mr. President, I do not want to put the Congress in a procedural straitjacket. When I introduced rule 29.5 there were some complaints that my amendment would make it very difficult to pass legislation.

In an effort to provide flexibility, my rule provided that a committee could include in lieu of a regulatory impact statement a statement in the committee report as to why compliance with the rule was impractical.

Experience that we have had with the lack of compliance with rule 29.5 in the Senate now shows that we cannot leave this big a loophole if such a rule is to have any meaning.

To close the loophole, my bill would include a procedure whereby the Committee on Rules of the House of Representatives and the Committee on Rules and Administration of the Senate could report a waiver resolution if there was a need or desire to waive the requirement for a regulatory and paperwork impact evaluation.

The waiver procedure is patterned after the procedures used for waivers of requirements of the Budget Act in the House and the Senate.

However, there is one difference. My bill provides that if the Committee on Rules of the House of Representatives and the Committee on Rules and Administration of the Senate report a waiver resolution, a two-thirds vote of the full House or Senate would be required for approval.

In one respect my bill is similar to many other regulatory reform bills. It requires that executive branch agencies prepare regulatory impact statements on new regulations.

My bill would require that the evaluation of regulatory impact and paperwork impact required in the current rule 29.5, must be submitted to the Congress.

I think that it is important that the same regulatory impact statement that Congress is required to prepare when adopting new legislation be required also of executive branch agencies when promulgating new regulations.

A common uniform evaluation statement for both the legislative and the executive branch will make it much easier to properly evaluate the impact of regulations on a continuing basis.

One important difference between my bill and some other bills that have been introduced is in the definition of regulations on which a regulatory impact statement is required.

Other bills require a regulatory impact evaluation only in cases where an agency head determines that the regulation is apt to have an effect on the economy of $100 million or more in any 1 year.

It is possible for an agency to issue a number of different regulation, none of which might have an impact of $100 million, but which in aggregate could stifle an industry and harm the economy.

Moreover, there is the natural tendency for all bureaucrats to underestimate the private sector compliance costs for their regulations.

Therefore, my bill would require regulatory impact statements in the case of all regulations which would have an effect on the economy in any 1 year of $1 million or more or which the agency head determines is likely to have an equally significant effect on the national economy.

Also, my bill provides for a waiver of the regulatory impact requirements by the agency head upon certification that the agency's action is being taken in response to an emergency situation or is governed by short-term statutory or judicial deadlines.

I emphasize that agency heads as well as the Congress will be subject to an ongoing review by the Comptroller General to determine the accuracy of their regulatory impact evaluations. Therefore, any agency which underestimates the cost of its regulations will eventually have to account for the error of its ways.

In summary, Mr. President, I believe that I have offered a bill that goes to the root cause of the problem of excessive and stifling Federal regulations.

I have offered a bill to encourage Members of Congress to squarely face their responsibility for excessive Government interference in the lives of private individuals and in the operation of successful business enterprises.

My bill would improve the current legislative and regulatory process by:

First, building an awareness of regulatory impact into the earliest stages of congressional consideration;

Second, providing a uniform standard of regulatory and paperwork impact;

Third, providing for waiver of the requirement for a regulatory impact statement only in unusual circumstances; and

Fourth, building accountability into actions by both the legislative and executive branch by forcing those who are responsible for excessive regulations to have to live with the consequences of their actions, and to assume the responsibility for these actions.

Mr. President, I hope my bill will receive serious consideration from the appropriate committees of the Senate.

I believe that it is time we in Congress face up to our responsibilities in the regulatory process, as we have repeatedly demanded of the executive branch.

Mr. ROBERT C. BYRD subsequently said:

Mr. President, I ask unanimous consent, as in legislative session, that a bill introduced earlier today by the Senator from Georgia (Mr. TALMADGE), for himself and others, to require that regulatory impact statements are prepared during certain stages of legislative and rulemaking processes, be jointly referred to the Committee on Governmental Affairs and the Committee on Rules and Administration.

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

RECOGNITION OF SENATOR HATFIELD

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oregon (Mr. HATFIELD) is recognized, as in legislative session, for not to exceed 15 minutes.

Mr. HATFIELD. Mr. President, I yield to the distinguished Senator from Minnesota.

SAILOR TRIUMPHS OVER ATLANTIC

Mr. DURENBERGER. Mr. President, yesterday, a remarkable man transcended the boundaries of normal day-to-day life and accomplished an incredible feat that will be heralded around the world. It took Gerry Spiess, an engineer from White Bear Lake, Minn., a lifetime of dreams and 54 days of agony and torture to achieve his longtime personal goal of a solo crossing of the Atlantic Ocean.

Mr. Spiess' accomplishment is unique: His adventure was completed in the smallest boat to ever undertake such a journey. It is most appropriate that this 39-year-old sailor comes from Minnesota, the Land of 10,000 Lakes.

Mr. Spiess' feat will not change the course of society, nor will it alter the human condition. Nevertheless, it will stand out in the dreams of all people as a triumph of human skill, diligence, and dedication to a seemingly impossible goal. For this moment, men and women throughout the world have been reminded that human spirit committed to a goal cannot be conquered, even by the uncertainties of nature.

Mr. President, I am a sailor and a Senator, but I could not achieve the impact of a Gerry Spiess.

Mr. President, I ask unanimous consent that the story of Mr. Spiess' victory

as reported by the July 24 Washington Star be printed in the RECORD.

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

SAILOR TRIUMPHS OVER ATLANTIC—10-FOOT BOAT MAKES CROSSING IN 54 DAYS

FALMOUTH, ENGLAND.—American yachtsman Gerry Spiess today sailed his 10-foot boat into Falmouth Harbor, completing a 54-day solo crossing of the North Atlantic in the smallest boat ever to complete such a journey.

Spiess, a 39-year-old engineer from White Bear Lake, Minn., arrived at the center of a welcoming flotilla of honking, tooting pleasure boats that had sailed out to escort him the last few miles to the Cornish coast. Thousands of cheering spectators lined the shores to greet Spiess and his tiny homemade sailboat, "Yankee Girl."

Spiess, who left Virginia Beach, Va., June 1, said he survived two weeks of "sheer hell" at the start of voyage during which 20-foot waves pounded the boat. He was once swept overboard, and only his lifeline saved him.

The Yankee Girl is shaped like a wedge of pie and painted green. For company in his cramped quarters, Spiess took along the works of Mark Twain and recordings of his favorite American radio shows.

Spiess covered some 3,500 miles in his tiny boat. The previous record for a completed trans-Atlantic crossing in a small boat was set in July 1966, when boat-builder Bill Verity, of Fort Lauderdale, Fla., crossed to Fenit in southwest Ireland in the 12-foot sailing boat "Nonoalca" in 65 days.

Describing the time he was swept overboard early in the voyage, Spiess said: "I was saved by my lifeline. It held fast. I gave a tremendous pull and managed to haul myself back on board.

"It was a terrible half hour. I knew I had to make it back to the boat. I never had any worries after that. What could have been worse?"

Yankee Girl, less than 6 feet wide, has a 14-foot mast, a radio-telephone and a 4-horsepower outboard motor. Most of her 10-foot length is cabin and storage space. There is a narrow bunk, a small chart table and a tiny galley.

"I managed to sleep every night—except last night," Spiess said. "My homemade self-steering gear never let me down.

"Last night, I kept awake. I was in the busy English Channel shipping lanes. I was not going to take a chance on the last leg.

"When I go ashore, I just want a sauna bath and a long sleep. After that a slap-up meal."

His wife Sally said, "He is living on his adrenalin at present. When he comes ashore and starts to calm down, I think he will fall asleep."

Mr. HATFIELD. Mr. President, I thank the Senator from Minnesota for bringing to our attention this very outstanding feat by a man of great determination and vision. I think in the times in which we are living such a feat does lift our spirits, does give us once more the recognition that one person can make a difference in whatever he undertakes with the kind of character and qualities exemplified by this fellow Minnesotan.

SALT II

Mr. HATFIELD. Mr. President, I recently received a letter from President Carter's National Security Adviser, Mr. Brzezinski, which reinforces my fear that the SALT II Treaty is an illusion of arms control.

In the course of the last few months I have, with a number of my colleagues, expressed concern that the SALT II Treaty accomplishes virtually nothing in slowing the arms race. I have contended that each side will continue to build every major weapons systems it considers necessary. I have expressed concern over the fact that these new major weapons systems will move both the United States and the Soviet Union toward a new strategic policy which will be the most dangerous step since the nuclear arms race began.

That new policy is first-strike, counterforce capability. The Soviet Union, it has been argued, will possess the capability by the early 1980's of theoretically destroying the U.S. ICBM force in a surprise first strike. Because of this, the Carter administration has demanded that the Congress appropriate some $40 billion for a new MX mobile missile. What the Carter administration fails consistently to point out, is that the MX missile itself will cause a far greater threat to the Soviet strategic arsenal than that posed by the large Soviet rockets against our own ICBM forces.

In the letter to me, Mr. Brzezinski claimed that "the MX will not give us a first-strike capability." I challenge that statement.

The fact is that once deployed, the MX missile will be able to destroy with near-absolute accuracy every single Soviet ICBM while still allowing overwhelming U.S. strength to bear against any residual Soviet forces. As Mr. Brzezinski knows, fully 77 percent of the Soviet nuclear arsenal is on their land-based missiles. By contrast, some 35 percent of our strategic arsenal is on our land-based ICBM's.

Mr. Brzezinski's comments not only fly in the face of overwhelming technical evidence on the destructive capability of the MX against Soviet land-based forces, they directly contradict recent statements made by Secretary of Defense Brown with respect to MX counterforce capabilities.

Mr. President, I ask unanimous consent that two articles from the Washington Post dealing with the counterforce capability of the MX and other U.S. strategic systems be printed in the RECORD at this point.

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

[From the Washington Post, June 22, 1979]

U.S. MISSILE ACCURACY PREDICTED HIGH BY 1990's

(By George C. Wilson)

American land-based, cruise and submarine-launched missiles all will be accurate enough by the early 1990s to destroy Soviet ICBMs buried in underground silos, Defense Secretary Harold Brown said yesterday.

In the most detailed timetable he has publicly released, Brown said cruise-launched missiles will have this capability by 1983, the MX mobile missile by 1986 and submarine-launched missiles "in 1990 or so."

At a breakfast meeting with reporters, Brown said the decision to deploy the MX mobile missile "will increase the stability" of the arms balance between the two superpowers. Opponents of the MX have argued that the Carter administration is increasing the dangers of nuclear war by going ahead with the mobile-based weapon.

Brown conceded that the Soviets may be tempted to follow the U.S. lead and "go mobile" with their land-based missiles. Under the strategic arms limitation treaty (SALT II) portocol, mobile ICBMs could be developed, but not deployed or flight tested until after 1981.

If the Soviets were to build a counterpart to the MX, it would increase the difficulties of verifying the number of land-based missiles in their arsenal, depending on the system of mobile basing they devised.

Some critics of the Pentagon's modernization system have also suggested that once the Soviets concluded their ICBMs were vulnerable they might be tempted to launch a first-strike attack on the United States.

Brown conceded that both superpowers will have to steer through "a somewhat sticky" course as they modernize their nuclear arsenals toward higher standards of accuracy.

It's the transition from fixed to mobile ICBMs "that is somewhat tricky," said Brown. "It's something we're going to have to handle carefully."

Brown covered these other topics at the breakfast organized by Godfrey Sperling Jr. of The Christian Science Monitor:

He predicted that the Joint Chiefs of Staff, the nation's highest military body, "will take a constructive attitude" on SALT II. Although the Joint Chiefs have refused to state their position on SALT II publicly until formally asked to do so by the Senate, administration officials said they have endorsed the treaty as an acceptable risk in discussing it with Carter and Brown.

He acknowledged that the U.S. desire to fly U2 reconnaissance planes from Turkey along the Soviet border to monitor Soviet compliance with SALT II had been discussed at the recent Vienna summit. "The subject came up at least indirectly. We're not prepared to announce any resolution. I'm neither encouraged or discouraged" about the prospects of the Soviets approving U2 surveillance from Turkish bases.

Discussing U.S.-Soviet military talks, he said Soviet military leaders at Vienna were more willing to talk with their American counterparts "than I had remembered" from any previous meeting. "I'm convinced further discussions of this kind would be useful" because they would "reduce the chances of conflict through miscalculation—mistaking what the other side has in mind . . ."

[From the Washington Post, June 2, 1979]

"COUNTERFORCE" ARMS ATTRACT UNITED STATES, SOVIETS

(By George C. Wilson)

Both the United States and the Soviet Union are developing weapons specifically designed to destroy the other's land-based missiles in a surprise strike, Pentagon officials acknowledged yesterday.

Critics contend that such a "counterforce" capability, pursued by the United States in the 1950s and abandoned in the 1960s when the Soviet Union put its missiles underground, will make the balance of terror between the two superpowers more precarious.

Backers, including Defense Secretary Harold Brown, counter that it would be more dangerous for the United States to leave the field of counterforce weapons to the Soviet Union. The United States must respond in kind, Brown argues.

President Carter is expected to decide soon which of two counterforce missiles—ones with enough explosive power and accuracy to destroy Soviet land missiles despite the tons of concrete protecting them—to put into production.

A high-ranking Pentagon executive acknowledged yesterday that either of the two missile options—the Air Force's MX

blockbuster, under development, or the so-called "common missile," made up of parts from the MX and the Navy Trident missile—could destroy Soviet intercontinental ballistic missiles (ICBMs) buried in underground silos.

Once either MX or the common missiles were deployed, defense officials conceded, the United States would be threatening Soviet ICBMs to a greater degree than at any time since the late 1950s and early 1960s when Soviet land missiles were above ground and thus very vulnerable to destruction.

Arms controllers warn that if the United States and the Soviet Union have lots of counterforce weapons pointed at each other, the temptation will be to launch ICBMs at the first sign of an attack rather than risk losing them. Such a launch-on-warning policy, they contend, could trigger nuclear war in response to a false alarm.

But at the same time the Pentagon is spending billions of dollars to make the U.S. nuclear arsenal accurate and powerful enough to knock out Soviet ICBMs, it is searching for ways to keep Russia from doing the same thing to the United States. If this search is successful, Pentagon leaders contend, the United States could ride out a first strike and fire back only in retaliation.

"We and the Soviet Union are reaching a period in which each can successfully target the other's hardened fixed systems more cheaply than either can further harden its systems to make them survive," Brown said in portraying the current dilemma Wednesday to the graduating class of the U.S. Naval Academy.

Rather than pour more concrete on top of the silos holding land missiles in a futile effort to protect them from new counterforce weapons, Brown explained, both the United States and the Soviet Union are being driven into making their land missiles mobile so they will be harder to hit and destroy.

But Carter, as part of his deep personal involvement in this search for a less vulnerable land missile, has been warning Pentagon leaders against schemes which could come back to haunt the United States if the Soviets were to adopt them. The president believes the Air Force proposal to hide about 200 MX missiles in a field of 4,000 identical holes falls into this category. If the Soviets dug 4,000 holes of their own and said only 200 missiles were being circulated among them, how could the United States be sure this was so? This has proved to be a sticker, Pentagon officials said yesterday.

After sifting through the various missile options in meetings with Carter and answering his long list of questions written in the margins of top-secret Pentagon reports, top defense officials believe only two schemes have passed muster.

The first one, defense officials said yesterday in giving the most detailed rundown yet, would put 200 MX missiles on railroad cars and pull them along stretches of track from 15 to 20 miles long on government land in the Southwest.

The tracks would be laid at the bottom of ditches covered with removable roofs of concrete and dirt. A locomotive would pull the MX railroad car from one concrete "station" to another. The stations would be about 3,000 feet apart.

Only the 8,000 concrete stations hiding the MX would be fenced off from campers, hunters and cattle to avoid putting an unacceptably large amount of land off-limits to the public.

The roofs on both the ditch and the stations would be removed about once a year to enable Soviet satellites to verify how many missiles were hiding along the railroad tracks.

Besides 200 MX missiles on rails, this first option calls for deploying 3,000 cruise missiles on airplanes built expressly for them. Each cruise missile would carry a warhead of 150 kilotons that would be designed to land within 200 feet of its target.

Also, under this option, 20 Trident submarines, each armed with 24 Trident I missiles, would patrol the Atlantic and the Pacific.

The second option would give up on the idea of trying to make land missiles mobile so they would be harder to hit than today's force of 1,054 ICBMs standing still in underground silos. Option two calls for putting new counterforce missiles in 400 of the existing 550 Minuteman III silos and stationing other counterforce missiles at sea in Trident submarines.

The counterforce weapon for the second option would be the smaller common missile made from the MX and Trident I missiles. Although not big enough to carry the MX load of 10 warheads of 335 kilotons each, defense officials said, this common missile would be accurate and powerful enough to destroy Soviet land missiles.

In addition to putting 400 common missiles in Minuteman III silos, 480 more would be deployed on 20 Trident submarines.

To further hedge the bet, 5,000 cruise missiles would be deployed on 175 of the special planes built to withstand the electromagnetic effects of nuclear explosions.

Defense officials said yesterday that the second option would make the air and sea legs of the nuclear triad so strong that attacking the third one, land missiles, "would be an act of insanity."

Option one and option two, they said, each would cost $70 billion to build over 10 years. It would take until 1986, they added, to build and deploy the new counterforce missiles.

Brown said the Soviets have been trying since 1962 or 1963 to develop missiles deadly enough to knock out U.S. land missiles. With their new SS18 and SS19 missiles, he said, they will soon have that capability.

In a separate development, the House yesterday rejected attempts to delete language from the Pentagon's fiscal 1979 supplemental money bill that would direct the Carter administration to proceed concurrently with the MX missile and its basing system.

Mr. HATFIELD. I am introducing today into the record a recent study commissioned by the Library of Congress. This study shows that deployment of the M–X will, at a minimum, increase U.S. ICBM destructive capability by a massive 750 percent. The study, by A. A. Tinagero, specialist in national defense, claimed that even after absorbing a Soviet first-strike that would destroy 500 warheads, the surviving M–X force would have over 96 percent of probability of destroying all of Soviet fixed-silo ICBM launchers.

I want to emphasize that the Library study does not include over 1,050 warheads which the Air Force wants to keep on 350 Minuteman III missiles in their silo in the northern United States.

A policy directive has apparently been given to officials within the Carter administration to deny that the M–X missile is a first-strike weapon. And, I am quite certain, Mr. Brzezinski will claim that indeed the M–X missile cannot destroy the entire Soviet nuclear triad.

I believe George Orwell most aptly described the kind of logic Mr. Brzezinski is following as "doublespeak." On one hand, Mr. Brzezinski and President Carter assure the American people that a $40 billion expenditure on a mobile ICBM system is necessary to protect U.S. land-based missiles from the "first-strike" Soviet attack against our land-based missiles. On quite the other hand, when it comes to analyzing the strategic capabilities of systems like the M–X, Mr. Brzezinski apparently prefers to consider "first-strike" as referring to a U.S. threat against the entire strategic force of the Soviet Union—land-based missiles, bombers, and submarine-launched missiles. The inherent bias in this logic is as overwhelming as the destructive capability of the M–X missile.

Virtually nothing is said of the fact that the M–X poses an immense danger to Soviet strategic capability. Little is said of the fact that the Soviet Union proposed in 1978 a moratorium on new land-based missiles—a proposal once offered by the United States. But the second time, the United States flatly rejected that offer.

A myth abounds in this debate that the present SALT II Treaty simply reflects the nonnegotiability of arms control solutions. It is inferred that the principal barrier is Soviet intransigence. I will not speak in praise of Soviet disarmament efforts, but I will not hesitate to publicly criticize any government, including my own, which rejects reasonable arms control proposals. Every goal postulated by this administration for our strategic program, essential equivalence, a solution to the vulnerability problem and crises stability, could have been attained with arms control solutions rather than armament solutions.

If we accomplish nothing else in broadening the debate on this treaty, the American people must know that their government is developing weapons as fully capable of launching a preemptive nuclear attack against the Soviet ICBM's as they are against us.

The problem is no longer one of containing the Soviet Union by maintaining America's strength—this has been and continues to be a legitimate foreign policy goal. Another, more elusive, enemy has emerged on the horizon—and that enemy is us. Our worship of the technological fix, and our faith in the "balance of terror" now holds us hostage. Our progress has brought us to a completion of the circle of nuclear madness—yesterday nuclear war was unthinkable, but tomorrow, whoever strikes just might emerge the "winner" we are told.

The immense destructive power posed by the M–X missile and Minuteman III missiles will force the Soviets toward a range of options which will make the arms race far more complex and dangerous. These options might include:

First. A Soviet "launch on warning" strategic doctrine. High officials have already indicated that the United States may adopt this policy in the coming years because of a perceived Soviet threat to U.S. missiles. What if the Soviets do the same?

Second. Abandonment of the ABM Treaty. This is another danger posed by the M–X first-strike capability. A move to defend such a development would force both the United States and the Soviet Union into a new phase of the arms race, in a costly and ultimately pointless effort to protect arsenals against counterforce weaponry.

Third. Soviet mobilization of their land-based missiles. Once the Soviets move to "hide" their missiles, uncertainty about true Soviet capabilities would stretch the SALT verification process to the limit, if not destroy it outright.

I am also critical of Mr. Brzezinsk's claim that increased U.S. counterforce capabilities "should increase Soviet incentives to avoid crises and thus reduce the overall probability of war."

This is a dangerous exercise in strategic self-delusion. First-strike counterforce capabilities on both sides, Mr. President, lower the threshold of a nuclear war in crisis situations, and make a nuclear exchange more likely.

The fact that a first-strike capability is, according to Mr. Brzezinski, "not our strategy" is totally irrelevant to Soviet perceptions. The Soviets will view U.S. development and deployment of the M–X missile with the same seriousness that we view Soviet expansion of their arsenal. Mr. Brzezinski's strategic assumptions insure a far more dangerous world in the decade ahead and a new $100 billion spiral in the arms race.

The most direct way to avoid this spiral was to add the amendment he has proposed to the SALT II Treaty providing a moratorium on new weapons development and any further deployment of existing weapons systems on both sides.

Opponents and supporters of the SALT II Treaty agree on one thing: Both the Soviet Union and the United States are presently at strategic parity. Neither side has a first-strike, counterforce capability at the present time.

Soviet leaders are on record as supporting a mutual arms freeze. I see nothing wrong with adopting their suggestions. Why must the American taxpayer spend $100 billion in the coming decade to make the world a far more dangerous place in which to live?

This moratorium amendment to the SALT II treaty would result in the following benefits:

It would freeze "further development, testing, and deployment" of those strategic nuclear systems which are now in place, and prohibit the introduction of any new strategic nuclear systems.

By halting further Soviet gains in accuracy and warhead size, it would insure the survivability of U.S. land-based missiles and subsequently, the integrity of the nuclear triad.

It would save the American taxpayer as much as $100 billion in the next decade.

It would provide the necessary groundwork for multilateral negotiations aimed at stopping the influx of new members to the nuclear club.

It would stop the move toward a counterforce strategy for both the United States and the U.S.S.R. which threatens to put a hair trigger on nuclear war during crisis situations.

Our ability to verify Soviet compliance would be significantly enhanced. If further production is prohibited, verification will be transformed from a process of delineation between subtle variations in types and numbers of weapons to a process of establishing whether there is any production, a far less ambiguous determination.

It will allow for the upkeep and limited modernization of existing strategic nuclear weapons. This would consist only of those steps necessary to insure the functional reliability of the present arsenals.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Mr. Brzezinski arguing that the M–X is not a first-strike weapon and a study by the Congressional Research Service which conclusively argues that deployment of the M–X will give the United States an overwhelming first-strike capability against Soviet land-based missiles.

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

THE WHITE HOUSE,
Washington, July 16, 1979.

Hon. MARK O. HATFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HATFIELD: The President has asked me to respond to your letter suggesting that making Minuteman III mobile might be a better idea than proceeding with the M–X: The Air Force review of this issue showed the M–X to be more cost-effective. I have asked the Department of Defense to comment in detail on the study upon which your letter is based.

Although I understand your concerns about the effect of improved U.S. strategic capabilities on crisis stability I do not share your conclusions. The M–X will not give us a first strike capability nor is that our strategy.

The real effect of an improvement in our strategic capabilities will be to reduce Soviet incentives to initiate an attack against our forces in a crisis, by giving us the ability to respond in kind. Improved U.S. capabilities are aimed at eliminating any possible Soviet advantages in a crisis. This should increase Soviet incentives to avoid crises and thus reduce the overall probability of nuclear war.

I appreciate your writing of your concerns.

Sincerely,

ZBIGNIEW BRZEZINSKI.

A COMPARISON OF THE HARD TARGET CAPABILITIES OF THE MINUTEMAN III AND M–X ICBMs*

BACKGROUND

The U.S. currently has 550 Minuteman III ICBM's deployed. These ICBM's have undergone a series of modernization modifications starting shortly after their first deployment in 1970. The Minuteman III missile carried three MK–12 multiple independently targetable reentry vehicles (MIRVs). Each MK–12 reentry vehicle (RV) is reported to carry a warhead possessing a yield of 170 kilotons. A recent modification to the MINUTEMAN III included the installation of the INS–20 guidance system. The INS–20 system is reported to provide a circular error probability (CEP) of 0.10 nautical miles to each of the RVs carried by Minuteman III.

The Air Force plans to replace the MK–12 RVs on 300 of the 550 Minuteman IIIs with MK–12A RVs. The MK–12A reportedly has a nuclear warhead possessing a yield of about 335 kilotons. The Air Force originally planned to replace all 1,650 MK–12 RVs on the Minuteman III ICBM force with MK–12A RVs. However, because of difficulties encountered in the design of the nuclear warhead carried by the MK–12A RV, the RV is reported to be about 20 pounds heavier than specified.

Because of weight increase of the warhead in the MK–12A RVs the Air Force is unable to replace all the MK–12 RVs, because the Minuteman III when armed with MK–12A warheads would lose some range. Consequently, some of the targets in the Soviet Union would be beyond reach.

The Air Force plans to replace the MINUTEMAN III missile with the mobile M–X ICBM starting in 1986. A force of 200 M–X missiles is planed for deployment in the late 1980s.

Each M–X missile is reported to be capable of carrying up to 10 MK–12A RVs. The entire force of 200 M–X ICBMs will carry 2,000 MK–12A MIRVs.

When launched by the M–X ICBM the MK–12A RV reportedly will have twice the accuracy (half the CEP) of an RV launched by the current MINUTEMAN III missile. The increased accuracy of the M–X missile is attributed to its guidance system, which incorporates improved computers and the Advanced Inertial Reference System (AIRS).

The relative capability of the M–X to destroy hard targets is a highly debated subject among proponents and critics of the M–X ICBM. Some proponents of the M–X missile argue that the MINUTEMAN III has a hard target kill capability superior to the M–X, and consequently a superior counterforce capability. Critics of the M–X disagree, and argue that the opposite is true.

PURPOSE AND SCOPE

This paper will attempt to clarify some misconceptions related to the hard target capabilities of the MINUTEMAN III and M–X ICBMs. The probability each RV launched by the M–X and MINUTEMAN III missiles has of "killing" targets of various hardness are estimated through generally accepted mathematical methods.

HARD TARGET CAPABILITIES OF THE MINUTEMAN III AND M–X ICBMS

The probability a warhead has of "killing" a target of a given hardness (in pounds per square inch [psi]) is primarily a function of the "lethality" (K) of the warhead. Lethality is representated mathematically by the following equation:

$$K(\text{lethality}) = \frac{Y^{2/3}}{CE\,P^2}$$

where Y is the yield of the warhead in megatons and CEP is the accuracy of the RV in nautical miles.

Estimates of lethality (K) of each warhead carried by current MK–12 RV-equipped Minuteman IIIs, future MK–12A RV-equipped Minuteman IIIs, and proposed MK–12A RV-equipped M–X ICBMs are shown in Table I:

TABLE I

Designation of missile	Yield per warhead (megatons)	Warhead CEP (nautical miles)	Units of lethality (K) per warhead
Minuteman II:			
MK–12 RV	0.17	0.10	30.69
MK–12A RV	.335	.10	48.24
M–X (MK–12A RV)	.335	.05	192.94

Shown in Table II are estimated values of probability that each warhead carried by current MK–12 RV-equipped Minuteman III, future MK–12A RV-equipped Minuteman III, and proposed MK–12A RV-equipped M–X ICBMs has of "killing" targets of various hardness.

* Prepared by A. A. Tinajero, Specialist in National Defense.

TABLE II

[Probability in percent]

Designation of missile	Lethality (K) of each warhead	Probability each warhead has of "killing" a target possessing hardness (psi) of:[1] 1,000	2,000	3,000	4,000
Minuteman III:					
MK–12 RV's	30.69	74.7	57.12	47.27	40.86
MK–12A RV's	48.24	88.46	73.58	63.43	56.21
M–X (MK–12A RV's)	192.94	99.98	99.51	98.21	96.32

[1] The percent probability of "killing" (Pk) a target of a given hardness (h), such as an ICBM silo, with a nuclear warhead of a given value of lethality (k) is computed by the following formula:

$$Pk = 100 \times [1 - e^{(-f(h) \times K)}]$$

where

$$f(h) = \frac{Ln\ 2}{[0.068h - 0.23\sqrt{h} + 0.19]^{2/3}}$$

CONCLUSIONS

1. When delivered by the M–X, the hard target lethality of the MK–12A is 6.29 times that of the MK–12 RV delivered by current MINUTEMAN IIIs, and 4 times that of an identical RV delivered by MINUTEMAN IIIs.

2. The aggregate lethality of (a) the current MK–12 RV-equipped MINUTEMAN III force, (b) the future MINUTEMAN III force (after arming 300 MINUTEMAN III missiles with MK–12A RVs), and (c) that of the proposed force of 200 MK–12A RV-equipped M–X ICBMs is shown in Table III.

Table III

ICBM force:	*Aggregate units of lethality*
(a) 500 MINUTEMAN IIIs (3 MK–12 RVs each)	50,639
(b) 300 MINUTEMAN IIIs (3 MK–RVs each) (43,416)	
250 MINUTEMAN IIIs (3 MK–12 RVs each) (23,018)	66,434
(c) 200 M–X (MK–12A RVs each)	385,880

From the data shown in Table III it can be concluded that the aggregate units of lethality deliverable by the proposed M–X ICBM force is 7.62 times the number of units deliverable by the current MINUTEMAN III force, and 5.81 times the aggregate units of lethality deliverable by the MINUTEMAN III force after 300 MINUTEMAN III missiles are equipped with MK–12A RVs.

3. As shown in Table II, the current MK–12 RV-equipped and future MK–12A RV-equipped MINUTEMAN III ICBMs have a considerably lower probability than the M–X missile in destroying hard targets, such as modernized Soviets ICBM silos which could conceivably be hardened to 3,750 psi.[1]

Unless the accuracy of MINUTEMAN III missiles to be equipped with MK–12A RVs is made comparable to that of the M–X (an unlikely prospect), the M–X is the only ICBM which promises to provide a credible counterforce capability in the future.

A maximum of 900 warheads could be available for counterforce purposes after 300 MINUTEMAN III missiles are armed with MK–12A RVs. In contrast, 2,000 warheads of higher lethality could be available for counterforce purposes after 200 M–X missiles are deployed.

Even after assuming that none of the MINUTEMAN III missiles armed with MK–12A RVs would be destroyed by a Soviet first strike, the U.S. would be in a better position to mount a retaliatory counterforce strike against the Soviet Union if it deploys 200 M–X ICBMs. For example, if after a Soviet first strike 1,500 MK–12A RVs survive in the postulated M–X force, or 900 MK–12A plus 600 MK–12 RVs survive in the MINUTEMAN III force (assuming that none of the MINUTEMAN III missiles equipped with MK–12A RVs are destroyed), the surviving M–X force would have over 96 percent probability of destroying all of the Soviet fixed-site ICBM launchers—whereas the MINUTEMAN III force equipped with MK–12A RVs would only be able to destroy a maximum of 900 fixed-site launchers with considerable lower degree of confidence than the M–X force.

[1] The ultimate compressive strength of concrete (the parent material of modernized MINUTEMAN III ICBM silos) is about 3,750 psi.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NOMINATION OF FRANK P. REICHE OF NEW JERSEY TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of the nomination of Mr. Reiche to be a member of the Federal Election Commission.

The Chair recognizes the Senator from Oregon.

Mr. HATFIELD. Mr. President, I am pleased to join with the chairman of the Rules Committee (Mr. PELL) in making a strong recommendation for the confirmation of Frank P. Reiche to be a member of the Federal Election Commission. Throughout my conservations with Mr. Reiche, I have been impressed with his candor, his experience, and his interest in public participation in elections.

When the Federal Election Commission was created several years ago, Congress established the goal of strengthening the integrity of our election process. Unfortunately for us all, the reality has been less than that. After a slow start, and a second congressional mandate to conform with the Supreme Court decision in Buckley against Valeo, the FEC has become a prime example of cumbersome and often unintelligible Government regulation. To many, the impact of the FEC has been to scare off traditional campaign volunteers to be replaced by campaign technicians, such as accountants and lawyers. Congressional displeasure has grown alongside this record.

Someone observed recently in a newspaper article that if a secret vote were taken the FEC would be abandoned. Sometimes I am not so sure the vote would have to be secret.

One need only consider the list of problems commonly attributed to the FEC: Long delays in audits; chronic morale problems within the agency; overly complex regulations; discriminatory enforcement practices.

At the heart of my views on the future of the FEC are two facts: First, Congress bears a portion of the blame for problems at the FEC. Within our directives for full and timely disclosure of campaign activities, we need also to provide for more effective and less burdensome regulations. Second, the individual members of the FEC share a role, equal to that of the Congress, in protecting the integrity of our elections. I know, from their appearances before the Rules Committee, that most—if not all of them—share this sense of responsibility. But the record so far indicates that we have a long way to go in bringing Congress' mandate to fruition.

So the key question in our discussion of Mr. Reiche's nomination, of course, is whether he can help remedy some of these criticisms of the FEC. I believe the answer clearly is "Yes." Coming directly to the FEC from his chairmanship of the New Jersey Election Law Enforcement Commission, Mr. Reiche would provide the FEC with one of its best qualified members. Since he does not have direct experience with Federal regulations, we cannot expect that he will have formulated views on all Federal election issues. Nevertheless, I feel strongly that his understanding of State law will bring an important new perspective to the Federal level. For me, his choice takes on even greater significance as the FEC begins its preparations for the 1980 election cycle.

Over the past 6 years, Mr. Reiche has served as the unpaid chairman of the New Jersey Commission. From my review of minutes of meetings he provided, I was impressed with the amount of time he devoted to this duty. As all of us know, meetings of this sort are often time consuming and tedious, but Mr. Reiche compiled an admirable record of attendance and sound judgment.

In addition, he is a practicing attorney and partner in a Princeton, N.J. law firm. Prior to service on the New Jersey Commission, Mr. Reiche was active in local Republican politics, serving as committeeman and municipal chairman of the Princeton Township Republican County Committee and as a member of the Mercer County Republican Executive Committee.

In his testimony before the Rules Committee, Mr. Reiche has expressed his strong commitment on at least three important philosophic points: Protecting the integrity of the electoral process; Improving the system of campaign finance disclosure, which lies at the heart of our election reforms; and in-

creasing public participation on election day.

In reviewing Mr. Reiche's knowledge of election law, I was particularly interested in the New Jersey Commission's handling of the State's system of partial public financing of gubernatorial races—a system somewhat akin to our presidential system. The New Jersey Commission was able to verify every contribution submitted for matching taxpayer money, and complete the audits of the two candidates in the race within 4 to 5 months of the election. Certainly, the Federal Election Commission, which is just now completing its audits of President Carter's campaign, could benefit from this type of expertise.

I am well aware that several of my colleagues have doubts about Mr. Reiche's record at the New Jersey Commission, particularly his views on public financing of elections. But, as one who has spent many hours on this same floor arguing against taxpayer financing, and several more hours in Rules Committee sessions examining FEC regulatory problems, I want to assure my colleauges that I have confidence in Frank Reiche's views. If we are to use public financing as the standard by which we judge public men and women, we need to step back just a moment to review precisely what Frank Reiche has said on this topic. To be sure, he told the Rules Committee his experience with public financing in New Jersey was favorable, adding that his small staff at the commission was working with only two sophisticated campaign organizations. At the same time, however, he carefully noted the problems inherent in shifting this system to the congressional level. His conclusion, in response to Senate questions, was that we need more time before we can call public financing either a good or ill-advised experiment.

There will be those who argue that Frank Reiche, in his role as chairman of the New Jersey Commission, has a record of increasing government's role in election regulations. I feel strongly that quite the contrary is true. Mr. Reiche has conveyed to me, and my review of the New Jersey Commission's deliberations confirms, a very real effort on his part to ease the burdens of compliance for candidates. His interest is not in making election law more complex, but in making it more easily understood by those who work in campaigns. Also of significance is Frank Reiche's strong commitment to involving more citizens in all phases of political campaigns. I am sure these are goals we would all embrace.

There is another good reason for the Senate to confirm Frank Reiche, and that can be deciphered most precisely by looking at the past membership of the FEC. Over the years, the Senate has confirmed a list of nominations which ranges from former Members of Congress and congressional staffers through members of the business community to lawyers. But never have we had an opportunity to send someone to the FEC with direct experience in election law administration.

This lack of prior experience may be a large part of the problem at the FEC. To my mind, this is a further argument that Frank Reiche's background is just what the FEC needs right now.

As we review all nominations to the Federal Election Commission, the Senate must ask whether any nominee will engender new trust in that office. Running concurrent with that responsibility is our continuing duty to set major policies of the Commission. I believe Frank Reiche will be a positive force in both areas—he can help with the internal administration of the Federal Election Commission, and he will be a strong voice in carrying out congressional intent. As a consequence, I am pleased to urge that my colleagues support the nomination of Frank Reiche to the Federal Election Commission.

(Mr. HEFLIN assumed the chair.)

Mr. HUMPHREY. Mr. President, it is my unpleasant duty to oppose my friend from Oregon with respect to this nomination. It is an unpleasant duty, because I have a very high respect and regard for him. As a matter of fact, when my wife and I arrived in Washington some 7 months ago and our minds were full of questions and uncertainties, Mark Hatfield was the first Member of the Senate to befriend us. His friendship was a great comfort to us, and I have the highest regard for this man. However, at the same time, I disagree strenuously with him on the merits of this nominee.

Mr. President, I suppose that, like most Members of Congress, I have a penchant for collecting wise sayings of some of history's heroes. The one that is beyond any doubt my most favorite and the one which is perhaps more apropos to our times than any I have collected is this saying of George Washington:

> Government is not reason. It is not eloquence. It is not force. Like fire, it is a troublesome servant and a fearful master.

Mr. President, if we think about it, the only check short of revolution which citizens have over their Government is the electoral process. We are fortunate in this country to have that check.

Oddly enough, some years ago Congress saw fit to create something called the Federal Elections Commission, placing in the hands of Government the power to regulate the electoral process. Nothing could be more dangerous.

We have heard in recent years about the dangers to our freedom posed by the FBI and the CIA. But the dangers these agencies pose to our freedom are nothing compared to the dangers posed to our freedom by allowing the Government to regulate the electoral process.

Well, we have the FEC. I would not have voted for it, but we have it; and it behooves us, in selecting commissioners, to take great care to be sure that those whose nominations we confirm have a healthy skepticism of Government, that those whose nominations we confirm believe as George Washington believed, that Government is a dangerous servant and a fearful master.

Mr. President, I would like to read into the RECORD some material that has exchanged hands during these weeks before the nomination of Frank Reiche reached the floor, as it did last night. The first is a letter from me, dated June 12, to my colleagues:

U.S. SENATE,
Washington, D.C., June 12, 1979.

DEAR COLLEAGUE: Each year, the Republican National Committee, the Republican Senatorial Committee and Republican candidates for national office spend untold hours and millions of dollars complying with Federal Election Commission regulations and defending their conduct before the Commission. For the 1980 elections alone, it is estimated that at least five million dollars in campaign contributions to Republican candidates and committees will be spent just to deal with the F.E.C. and its massive bureaucracy.

Does it not make sense to exercise great care, when the time comes, to fill a Republican seat on that body? Is is not sensible to be sure we support a person who upholds the majority Republican position, that less government interference in the election process is desirable, rather than more?

This week, the Rules Committee plans to act on the nomination of Frank Reiche of New Jersey. My inquiry into Mr. Reiche's background leads me to believe Republicans would act against their best interests by supporting him. Republican National Chairman Bill Brock has informed me that he opposed the nomination. There can be no doubt Mr. Reiche is a strong advocate of greater government involvement in the election process.

I believe Mr. Reiche should be defeated and another person nominated, because he is out of step with the overwhelming Republican majority viewpoint on this and other matters regarding election law.

As you know, I have been engaged in corresponding with Mr. Reiche. Twice I have put sets of questions to him, and twice he has remitted highly unsatisfactory answers. I am now urging all Republican Senators to join me in opposing the nomination. It is clear to me, on the basis of his public record and his responses to me, that Mr. Reiche is unsuited to serve as a Republican member of the F.E.C.

I am particularly troubled by Mr. Reiche's position on public financing of political campaigns. At various times he has supported it for "administrative" reasons, declared that he was not "philosophically opposed" to it; and, changing the perspective somewhat, insisted he has never reached an opinion on it. At the same time, a key staff member working under him has urged the House of Representatives to adopt public financing of Congressional campaigns (see Lewis Thurston attachment). The case is very strong that Mr. Reiche, in an attempt to win our support, has sought to portray a position of neutrality inconsistent with reality.

His responses to me largely fell into two categories: confirmation of charges by New Jersey Republican sources that he favors "more regulations, more limits, and more penalties," or statements which were unresponsive, evasive or misleading.

I am attaching a number of documents which cover these issues in more detail. A copy of Mr. Reiche's latest set of answers is enclosed, along with a paper outlining some of the flaws in his arguments. Also included are two samples of the objections increasingly being raised by prominent Republicans. One is a telegram written by four New Jersey legislators: the other is a letter by former Secretary of the Treasury William Simon opposing the nomination.

From the time of its inception, the neutrality of the F.E.C. has been seriously questioned. Recent charges that the Commission has failed to conduct a proper investigation of the Carter campaign finances have been the most recent, but by no means the only, manifestation of this. We should not further tip a balance which is already weighted against us. The damages to our Party and to our country that a one-sided F.E.C. can do are incalculable. Those of you up for re-

elections next year should be particularly concerned.

I urge you to review the attached documents and join me in refusing to consent to this appointment.

Sincerely yours,

GORDON J. HUMPHREY,
U.S. Senator.

Mr. President, I submitted two sets of questions to Mr. Reiche for which he provided replies. In summary, from the answers provided by Mr. Reiche, it seems to me that the following facts emerge:

One, Mr. Reiche sought for his New Jersey commission the power to make a final decision about whether or not to void the results of an election because of election law violations. In both sets of questions, his answer skipped around the point by saying that under his proposal, the commission would decide to void an election only after a court decided a misdemeanor had occurred. My concern, of course, is that the change he sought would confer on his agency rather than the courts the ultimate power to impose the drastic sanction of voiding an election result.

His answers describe as new flexibility what in reality amounts to an agency power grab.

Two, Mr. Reiche admits that he sought for his New Jersey commission the power to prevent a person from running for office again after a period of years after being convicted of an election law violation. Again, another power grab for his commission.

With respect to taxpayer campaign financing, he maintained at one point: "I have never advocated nor opposed public financing of elections." Yet, he admits to having urged the extension of public financing for gubernatorial general elections to gubernatorial primaries, on the bureaucrat's familiar reasoning that it would be "administratively easier" for the agency.

Convenience to the agency is a poor standard by which to measure changes in the law. Moreover, according to the testimony of the executive director of his New Jersey agency before the U.S. House Administration Committee, Reiche's agency "essentially recommended continuation of the public funding" of gubernatorial general elections. The case is very strong that Mr. Reiche, in an attempt to win our support, made an attempt to pose as uncommitted on the highly controversial issue of taxpayer campaign financing. His record indicates otherwise.

Fourth, in response to my request for access to the minutes of the executive sessions of his New Jersey Election Law Enforcement Commission, he says that his counsel advises that State law prohibits even such limited use as I propose. Then Mr. Reiche suggests the executive session minutes are irrelevant because "the vast majority of your questions relate to matters discussed by the Commission in public session and are therefore reported in the public minutes which you already have available to you." Mr. Reiche is well aware that my questions concern matters discussed in the public minutes because I have access to the public minutes. With respect to the executive session minutes, Mr. Reiche puts the Senate in a catch 22 situation: no minutes, no questions.

Fifth, a shocking example of Mr. Reiche's inability to follow a train of argument can be seen in the following: In the May 9 questions, I asked Mr. Reiche a number of questions regarding his position on taxpayer campaign financing. He described himself as undecided and went on to suggest that his opinions didn't particularly matter because, "I do not anticipate that I would, if confirmed, participate in the formulation of such policy." In my June 1 questions, I pointed out how influential an FEC commissioner could be in such policy formation. Part of Mr. Reiche's answer was that in his original answer he had said he did not anticipate he would "participate in the formulation of policy in the area of campaign finance disclosure" campaign finance disclosure was not the topic at hand; it was taxpayer campaign financing.

Sixth, time and again as you read his answers, you will see Mr. Reiche declined to answer questions on the grounds that he did not know enough about Federal elections. Why, then, should he want to serve? Ignorance of the topic and indecision on matters of major controversy should not be qualifications for service on the FEC.

Seventh, in response to my direct question as to whether or not Mr. Reiche knows of any Federal candidates who can say with certainty that they have not violated any provision of Federal election law or FEC regulations, Mr. Reiche failed to attempt any response in the first set of answers, and, in the second set of answers, declined to answer on the grounds of inexperience with Federal candidates. It was a simple question, one which could have easily been answered yes or no. But simple, clear answers, while highly desirable in an FEC commissioner, appear difficult for Mr. Reiche.

Eighth, in his June 7 answers, he admitted his commission funded Mr. Thurston's trip to give the House Administration Committee testimony in favor of H.R. 1, taxpayer campaign financing. Mr. Reiche says:

> I am aware of the fact that Mr. Thurston leans toward extended public financing to Congressional election, but question whether his support is as vigorous as it appears to you.

The attached statement and testimony presented by Mr. Thurston admit no equivocation. Mr. Reiche is either ignorant of Mr. Thurston's opinions or he is deliberately attempting to mislead us. I invite you to look over Mr. Thurston's remarks and decide whether or not Mr. Reiche's term "lean" can be correct. I believe you will agree with me that Mr. Thurston showed himself to be an all-out supporter of taxpayer campaign financing.

Mr. President, I shall read into the RECORD a letter to me from a nationally prominent New Jersey Republican, a man who has resided in that State all of his life, a man who is highly respected in the Republican councils. This letter is dated May 14 of this year:

As I'm sure you are aware, a fellow New Jersey resident, Frank Reiche, has been nominated as a Republican member of the Federal Election Commission. I strongly question the wisdom of his appointment as I feel that Mr. Reiche does not represent traditional Republican views.

The New Jersey Election Law Enforcement Commission, of which Mr. Reiche is Chairman, has a long record favoring public financing and spending limits. I find the following items particularly informative about the prospective positions of Mr. Reiche.

(1) On September 22, 1978 the Commission recommended public funding of the gubernatorial primary in addition to the general election.

(2) The Commission filed an amicus brief in the Buckley-Valeo decision favoring Valeo.

(3) The 1974 annual report of the Commission strongly favored spending limits for campaigns.

(4) The 1975 report recommended that the Commission be empowered to void election results if election violations were discovered.

(5) The minutes and records of the Commission are not open to the public.

(6) However, the Commission has shown a consistent pattern of more government, more regulation, more limits and more penalties. We do not need this type of mentality on the FEC.

It seems clear to me that Mr. Reiche would not represent the Republican party and that there will be great risks for our party if he is nominated.

With warm regards,

WILLIAM SIMON.

Mr. President, I shall read into the RECORD a telegram to me from several prominent Republican public servants in New Jersey:

> We oppose Frank Reiche nomination to be F.E.C. commissioner we believe as Bill Simon believes the E.L.E.C. which he heads shows a pattern of more government more regulations more limits and more penalties.

And that is sent by New Jersey State Senator John Dorsey, New Jersey State Assemblyman Donald Albanese, New Jersey State Assemblyman Walter Kavanaugh, and New Jersey State Assemblyman Elliot Smith.

Mr. President, I shall read into the RECORD at this time two sets of questions which I posed to Mr. Reiche and for which he provided answers:

Question 1. In 1976 the Supreme Court of the U.S. in *Buckley* v. *Valeo*, struck down several sections of the Federal election law as unduly restrictive of citizens rights to participate in the political process. The New Jersey Election Law Enforcement Commission (ELEC), which you head, had filed a brief *amicus curiae* in support of the law which was struck down.

Do you still favor the regulations your commission defended unsuccessfully before the Supreme Court? Specifically, do you still favor imposition of candidate expenditure limits?

Answer: In view of the decision in *Buckley* v. *Valeo*, candidate expenditure limits are legally permissible only in publically financed elections where the candidate receives public funds. As I stated in my appearance before the Senate Committee on Rules and Administration on May 9, 1979, as long as there are limits on contributions, loans, the amount of public funds available for such purpose, and the amount of personal funds which may be expended by a candidate on his own behalf, I favor the elimination of candidate expenditure limits in publically financed elections.

Mr. President, it seems to me that there is very little said in that answer.

Mr. Reiche is saying yes, he favors the elimination of candidate expenditure limits, provided that new limitations are imposed; namely limits on contributions on loans, on the amount of public funds available for such purpose, and the amount of personal funds which may be expended by a candidate on his own behalf.

Mr. Reiche's answer continues:

The key factors are public disclosure and preventing any person or group from gaining undue influence over a candidate. If there is adequate provision along these lines I see no reason why candidates should be limited in the amounts which they may spend. This is particularly true with respect to challengers who frequently find that they must spend more than incumbents to gain the necessary name recognition for victory.

Question 2. Your New Jersey Commission's 1975 Annual Report included a recommendation that the law be changed to permit your "Commission to void an election" where the *Commission* decides that a violation of the election law "may be deemed to have significantly affected the outcome of an election. . ."

Do you support this recommendation? Do you favor the application of this idea to Federal elections?

Answer: The recommendation in the 1975 Annual Report of the New Jersey Election Law Enforcement Commission that the Commission be permitted to void an election where there has been a violation of the election law which "may be deemed to have significantly affected the outcome of an election . . ." must be read in conjunction with Sub-sections 21(a), 21(b), and 21(c) of the New Jersey Act as originally adopted. Briefly stated, Sub-sections 21(a) and 21(b) require a finding that a person has willfully and knowingly violated the Act before the provisions of Sub-section 21(c) with respect to the voiding of an election may be invoked. Our Commission has been consistently advised by counsel that this finding amounts to a misdemeanor which can be determined only by a court of law, not by the Commission. In addition, this would, in effect, be a criminal finding which must be proved beyond a reasonable doubt. Thus, only if a candidate or someone with the responsibility to report under the New Jersey Statute willfully and knowingly violates the Act and is adjudged guilty of a misdemeanor would the provisions of Sub-section 21(c) apply.

In making the recommendation that the Legislature delete the requirement that the election of a candidate be void if he is found guilty of a willful and knowing violation of the Act, the Commission was attempting to avoid the automatic application of this section to a situation where the violation had little or no effect on the election. By this means the Commission sought to introduce a measure of flexibility in interpreting this otherwise drastic penalty. I agreed with the recommendation when made and continue to hold this belief. I have not specifically considered the possible application of a similar provision to Federal elections, but strongly believe in effective sanctions against candidates and others involved in the election process where they willfully and knowingly violate our election laws to a point where they are adjudged guilty of misdemeanors by a criminal court.

Question 3. Your New Jersey commission, in its 1974 annual report encouraged the legislature to consider enacting a provision which would prohibit candidates from running for public office for a period of time after being found guilty of a violation of the state election law act.

Did you approve of this suggestion? Would you favor the extension of this idea to Federal candidates? Do you know of any Federal candidates who can say with certainty that their campaign committees have not violated any provision of the Federal election law or any of the regulations of the Federal Election Commission?

Response: Here again, our recommendation (which, incidentally, was included in our 1973, and not our 1974 report) must be viewed together with other recommendations specifically related to the amendment of Section 21. Please note that this recommendation, which I supported, would apply only where a prospective candidate has been found guilty of a willful, knowing violation of the Act, i.e. a misdemeanor. We are therefore not talking of any minor or inadvertent violation, but only an obvious and egregious violation. This recommendation has never been adopted by the New Jersey Legislature.

With respect to the possible extension of this idea to Federal candidates, I would want to study the matter further before ever agreeing to such a suggestion. I would not support the extension of this recommendation to a situation in which a candidate or political committee had inadvertently, and perhaps even negligently, but nevertheless unintentionally, violated the Act.

Mr. President, this gentleman who seeks a seat on the Federal Election Commission, it seems to me, states in that reply that he has not reached certain fundamental decisions regarding the regulation of the electoral process by the Federal Government. He is unable to make up his mind he says, whether the Federal Election Commission should have the power to void an election. I must say that frightens me. I hope I never see the day when the FEC has power to void an election. I think we ought to leave that with the court. Continuing:

Question 4. Do you favor spending limitations on public questions, that is, on referenda and/or lobbying? Did the New Jersey Election Law Enforcement Commission have a position on application of spending limits to public questions?

(The Appendix A of the 1974 Annual Report of the New Jersey Election Law Enforcement Commission contains the following language: "The Commission further recommends that the Legislature consider favorably the application of spending limits to public questions." The *Buckley* v. *Valeo* case threw out spending limits except where accompanied by taxpayer campaign financing for candidates. It is likely the Supreme Court would treat referenda spending limits similarly.)

Response: The issue of spending limitations on public questions is moot in view of the United States Supreme Court's decision in *Buckley v. Valeo*. The New Jersey Election Law Enforcement Commission has recognized the full implications of this decision and has recommended to the New Jersey Legislature that the spending limits contained in the original Act be restricted and applied to publicly financed elections. The key to curbing undue influence in matters affecting public questions is full disclosure, not spending limits.

Question 5. The 1975 Annual Report of your commission, page 14, contains a recommendation for legislation which would transfer "much of the responsibility for general administration of elections" from "those officials now charged with such responsibility to the Election Law Enforcement Commission."

Were any of these unspecified officials local officials? Did you agree with proposed centralization of power over the election process? Would you favor decreasing the role of state and local governments in the federal process? What functions would you have the federal government or the Federal Election Commission assume from the state and local officials?

Response: It should be remembered that the aforementioned recommendation was not made by the New Jersey Election Law Enforcement Commission, but was instead proposed by the New Jersey Election Law Revision Commission which was charged with the responsibility of recommending changes in New Jersey Election Laws generally. It is possible that the recommendation of the Election Law Revision Commission, had it been implemented, might have resulted in some transfer of authority from local officials to State officials, although it is my recollection that the principal transfer of authority would have been from county election officials to State election officials.

Authority over election matters in New Jersey is widely diffused. It is possible to obtain one answer concerning election procedures from one source and an entirely different answer from other sources. To the extent that some centralization of authority would improve the consistent administration of New Jersey Election Laws and thus encourage, not discourage, participation in the electoral process, I would consider said transfer beneficial. It is nevertheless obvious that responsibility for the administration of election laws in New Jersey and throughout the United States must continue to rest largely with officials on the local scene. I do not have in mind any specific functions which the Federal Election Commission should assume from State and local officials.

Question No. 6: What is the nature of your Republican credentials as a prospective Republican member of the Federal Election Commission? Mr. David Norcross, now New Jersey state Republican chairman, was the first executive director of your state election Commission.

Was he consulted prior to your appointment? Did he endorse your appointment at any time? Please describe your record of Republican campaign activity.

Response: I have been active in Republican politics since my high school days. I served as a member of the Princeton Township Republican County Committee for almost ten years and as its chairman for the last two years. In my capacity as Municipal Chairman, and before that time as well, I served as a member of the Mercer County Republican Executive Committee. From 1966 to 1968 I was President of the Republican Club of Princeton. In 1969 I served as Mercer County Campaign Coordinator for former Governor William T. Cahill. Naturally I have had to refrain from participation in partisan politics since my appointment to the New Jersey Election Law Enforcement Commission in 1973. I did not consult with David F. Norcross prior to my nomination, but rather informed him as a matter of courtesy of my interest in serving on the Federal Election Commission and of the fact that I had communicated my interest to Republican Leaders on Capitol Hill. I believe he has endorsed my appointment, but this is a matter which should be determined by direct contact with him.

Mr. President, I have been in direct contact with Mr. Norcross, the New Jersey State Republican Chairman, and he does not support this nomination. Continuing:

Question No. 7: The Newark, N.J. Star Ledger, September 22, 1978 reports that your New Jersey Commission has recommended "sweeping changes" in the election law which would, among other things, extend taxpayer financing of gubernatorial elections to primary contests.

Do you favor this? Your Commission executive director, Lewis Thurston, is quoted in the same newspaper story as saying, "We ought to attempt to find a way to publicly finance legislative elections." With respect to New Jersey state legislative elections, do you agree with the quoted statement of your executive director?

Do you favor the extension of the taxpayer campaign financing idea to federal legislative elections?

Response: One of the greatest difficulties which our New Jersey Commission faced in administering the public financing provisions of the New Jersey Statute in the 1977 Gubernatorial General Election was the complex task of sorting out contributions made to the gubernatorial candidates during the primary election (no contribution limit) and during the general election (a $600.00 contribution limit). If you are going to have public financing, it is administratively easier to monitor a situation in which the same or similar financial ground rules apply to both primary and general elections. This should not be construed as any comment upon the advisability of public financing as a general concept. I have never advocated nor opposed the public financing of elections, not because I have not considered the matter, but because I have mixed feelings with respect thereto. My mind remains open with respect to the desirability of public financing.

Mr. President, if the Federal Government adopts taxpayer funding of congressional campaigns, along with that funding will come, as they always come with Federal dollars, more rules and regulations and a greater grip by the Federal Government over the electoral process, which, as I have said, is the only check citizens have over their Government.

I would hope that a nominee to the FEC would have thought through some very basic philosophical considerations respecting the advisability or inadvisability of giving the Federal Government greater control over the electoral process.

Mr. Reiche, in his reply, states:

I have never advocated nor opposed the public financing of elections, not because I have not considered the matter, but because I have mixed feelings with respect thereto. My mind remains open with respect to the desirability of public financing.

His reply goes on:

One should note however a sharp difference between the public financing of executive elections, e.g. the presidency or a governorship as contrasted with the public financing of legislative elections. I do not agree with anyone who suggests that we must find a way to finance legislative elections publicly. As I testified before the Senate Committee on Rules and Administration, in the case of public financing of executive elections you have rather sophisticated staffs who develop close working relationships with the enforcement agency, as was done in New Jersey. In addition, you are obviously dealing with a limited number of candidates, even where public financing applies to primary elections.

Mr. HELMS. Mr. President, will the Senator yield, on condition that he does not lose his right to the floor?

Mr. HUMPHREY. On that condition, yes.

Mr. HELMS. I wonder if the Senator would be willing to have the absence of a quorum suggested, on condition that he does not lose his right to the floor and that his resumption after the quorum call not be considered a second speech.

Mr. HUMPHREY. I am willing.

Mr. HELMS. Mr. President, I ask unanimous consent that a quorum call under those circumstances be in order.

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

Mr. HELMS. 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. HUMPHREY. 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. HUMPHREY. Mr. President, to resume the nominee's reply to question 7:

Response: This contrasts sharply with publicly financed legislative elections. The logistical problems associated with the potential public financing of Congressional elections are staggering. Again, as I testified before the Committee, while I am not philosophically opposed to public financing of Congressional elections, these logistical problems must first be solved if this is to represent a viable governmental proposal. Furthermore, it is Congress and not the Federal Election Commission which makes policy in this area; hence, I do not anticipate that I would, if confirmed, participate in the formulation of such policy.

Mr. President, again Mr. Reiche makes the point that he is not philosophically opposed to public financing of congressional elections. He is worried more about logistical problems than he is about the philosophical considerations. He states that it is Congress and not the Federal Election Commission which makes policy. True. Let us hope it always stays that way. But, at the same time, Mr. President, Congress does not make perfect laws because we are not perfect men, and our public servants at the Federal Election Commission, like our public servants in every agency of the Government, must interpret the law, must interpret ambiguities, must interpret gray areas, and in so doing I would argue they make policy in some degree.

Furthermore, they are not operating in vacuum at the FEC any more than public servants do elsewhere. They hire staff. The personal philosophies of the Commissioner more than likely are reflected in the persons he hires and in their actions. We all know, Members of this body know, painfully well that because of the staggering workload, because Government has taken upon itself so many responsibilities, the workload is such that we often have to leave much of the work to our staff and often with very little supervision. Continuing:

Question 8: Yesterday, May 8, 1979, one Debra Kostivic, a staff member of your commission in Trenton, declined to provide Mr. Henry Luthin of Riverdale, N.J., any minutes of commission proceedings or even records of votes cast in commission decisions.

Do such minutes and records of votes cast by commission members exist?

Will you please provide me with copies of these minutes and records of votes cast?

Response: I have conferred with officials of the New Jersey Election Law Enforcement Commission in Trenton to determine the circumstances surrounding the request by Mr. Henry Luthin for information concerning Commission proceedings. According to my information, Miss Debra Kostival, a valued member of our staff who has been with the Commission since its creation in 1973, offered to have Mr. Luthin examine the minutes of our public sessions in the office and further offered to have copies of such minutes reproduced after she had obtained the approval of the executive director of the Commission who, unfortunately, was not in the office at that time.

Mr. President, I ask unanimous consent that I may be permitted to yield to the Senator from Utah without losing my right to the floor.

Mr. HATCH. I further ask unanimous consent that when the Senator resumes it not be considered a second speech under the rule.

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

Mr. HATCH. I thank my distinguished friend from New Hampshire.

Mr. President, I rise in support of Senator HUMPHREY's position on this nominee. I do not know Mr. Reiche, and I have no particular fault to find with Mr. Reiche, other than some of the issues which have been brought to my attention by my friend and colleague from New Hampshire, other Members of the Senate, and other members of the Republican Party concerned with this nomination. I have no axes to grind. I have to acknowledge that for all that I know Mr. Reiche is an extremely competent and very fine man.

I have listened to my other very dear friend and colleague from Oregon, Senator HATFIELD, and he has expressly mentioned many aspects of Mr. Reiche to me which would cast him in a favorable light.

Knowing my colleague from Oregon I have to accept what he says. There are very few Members in the Senate who have the respect and who have the appreciation of fellow Senators as much as our dear friend from Oregon.

However, I am concerned, because the subject has been raised, that Mr. Reiche may or may not be in favor of taxpayer financing of congressional elections.

As I view the matter, I think that it is a cloudy situation. I believe that his interrogation by the other distinguished Senator from Oregon, Senator PACKWOOD, would indicate that he is in favor of taxpayer financing of congressional elections and imposing the cost of Federal elections upon the taxpayers of this country, which I am totally against. I think it demeans the elective process; it gives undue advantage to certain special interest groups in our society, and I think even the Harvard report that recently came out confirms that.

I also cite a resolution by the Republican National Committee which says:

Proposed legislation calling for the Federal financing of congressional elections is not in the interest of America's free and open electoral process. Such financing contradicts the entire spirit of competitive elections in that it gives undue advantage to incumbents as opposed to challengers. In addition, the

right of all Americans to participate freely in the electoral process by financially supporting the candidates of their choice must not be denied. The Republican National Committee opposes the Federal financing of Congressional elections and calls upon all Republican elected officials to join in opposition to this ill-advised legislation.

One of the first battles we had here in the Senate as I arrived in 1977 was really the preliminary infrastructure of taxpayer financing of Federal elections and the constant battle in the House to impose this on the American taxpaying electorate and also on the two parties of this country, I think much to the detriment of the two party system.

I cite with particularity the New York Times Sunday editorial "Man in the Middle" by Joseph F. Sullivan, dated July 8, 1979. He said:

President Carter and conservative Republicans are locked in another battle over the appointment of a Republican to the Federal Election Commission, and for the second time the man in the middle is a New Jerseyan.

Frank P. Reiche of Princeton, chairman of the state's Election Law Enforcement Commission, was nominated by Mr. Carter recently to fill the third G.O.P. slot on the six-member Federal agency. Although his appointment would give the commission a 3–3 division along party lines, the conservatives are afraid that the ideological split would be 4–2 in favor of the liberals.

William E. Simon of New Vernon, the former Secretary of the Treasury, and Harlan K. Schlicher Jr. of Mountain Lakes, co-chairman of the Jeffrey Bell Finance Committee in last year's New Jersey Senate race, have been in the forefront of the conservatives' drive to block Mr. Reiche's confirmation by the Senate.

Mr. Simon has written to Republican leaders across the country and to New Jersey party members, pointing to the state commission's consistent support of public financing of election campaigns and spending limits, two red flags in the conservative pasture.

"The commission has shown a consistent pattern of more government, more regulation, more limits and more penalties," Mr. Simon wrote. "We do not need this type of mentality on the F.E.C."

Nearly two years ago, Mr. Carter nominated Sam Zagoria, a native of Somerville and a former aide to then-Senator Clifford P. Case, to the commission. However, he withdrew the nomination after a 10-month standoff engineered by conservatives.

I think that is not quite the truth. A 10-month standoff engineered by Republicans. Frankly, I think a lot of the credit should go to the senior Senator from Oregon, my friend, Senator HATFIELD. It was not because he had any particular gripes or disagreements or lack of feeling for Mr. Zagoria; it was because of the principle involved in this matter. Continuing:

To avoid a similar fight, the President accepted a list of potential nominees prepared by the Senate minority leader, Howard K. Baker Jr., Republican of Tennessee. An earlier list was termed "unacceptable" by Mr. Carter because it did not include any supporter of public financing of Congressional campaigns.

When Mr. Baker's list containing Mr. Reiche's name reached the White House, President Carter had no trouble making up his mind. However, the fact that the list included Mr. Reiche has made the Tennessee Senator a target of criticism by G.O.P. conservatives, even though he was a leader in the fight to block Mr. Zagoria the last time out.

Senator Gordon J. Humphrey of New Hampshire is one of the most-outspoken critics of the Reiche nomination, and conservatives point out that Mr. Baker may have hurt his own Presidential chances.

I add parenthetically, I do not think that is true at all. I do not think any conservative feels that way. I have to add that almost all of us on the Republican side of the U.S. Senate have inestimable esteem for our distinguished minority leader and follow him with a great deal of zeal. I, personally, have the highest esteem for my colleague from Tennessee. I want him to know personally that the fact that I am speaking for and in behalf of my friend from New Hampshire and along side of him is no reflection upon our distinguished minority leader at all. I do believe that this is a problem that he has inherited, that he now has to live with. I understand it, and I understand his decency in living with it.

I also understand the fact that he has given his word and now must live up to it. I believe that Senator BAKER is a man of impeccable integrity and honesty and, as one of our potential Presidential candidates, he certainly has everything it takes to lead this country in the future.

So I do not think that the fact that Mr. Reiche's nomination has been brought up will hurt the Presidential chances of my friend from Tennessee.

To go back to the article:

Since World War II, no one, Democrat or Republican, has won the Presidential nomination without first winning the New Hampshire primary.

I can say this: I think that New Hampshire is a very, very important State. I add parenthetically that certainly all Presidential candidates have to be concerned about New Hampshire. Having gone there myself to speak for one of our Republican Presidential candidates on at least two occasions, I must say I am very awed and impressed by the beautiful, wonderful State of New Hampshire.

I might add that during the last election campaign, I did campaign for Senator HUMPHREY and we went all over the State, and it is a most beautiful State, with tremendous prestige and importance in Presidential elections on both the Democratic and Republican side.

But it is true that no one, Democrat or Republican, has won the Presidential nomination without first winning the New Hampshire primary. Continuing:

Thus far, 16 Republican Senators and William Brock, the Republican national chairman, have joined the movement to block Mr. Reiche's confirmation.

Last week in Minnesota, the Republican National Committee adopted a resolution opposing the appointment of any Republican to the Election Commission who was not first cleared by the national committee.

The G.O.P. conservatives are convinced that they must have strong partisans on the commission to protect their interests in the post-census Congressional elections and in next year's Presidential campaign. They also contend, probably with some good reason, that they will never be able to force a hard look at President Carter's 1976 campaign financing without another conservative on the commission.

This week could prove crucial to Mr. Reiche's appointment. The conservatives believe they can line up a majority of Republicans in the Senate to publicly oppose the confirmation. Even though the Democrats would still have enough votes to confirm Mr. Reiche, they have never confirmed a G.O.P. nominee who was opposed by a majority of his own party in the upper house.

That is an interesting article, and I suspect that what it says is true. What I do want to establish is that I do not believe that a majority of the Republican Senators on the floor of the Senate, if tested, would be in favor of the Reiche nomination, regardless of his merits or demerits. Since I do not know the man personally, I cannot personally judge what his merits or demerits are, other than this one issue, that of financing congressional elections, and also on some other indications which I have been given, which have indicated to me that he may not be the type of partisan Republican which is necessary in order to maintain that 3-to-3 balance.

I have to admit that the Democrats have certainly placed the most partisan people they can find on the Commission, I think to their advantage. I understand that. Personally, I would do away with the Federal Election Commission, if we could, because I think it is a very dangerous instrumentality that could cause the loss of any election in this country, at any time, to the detriment of very innocent people. I have seen some awfully odd things in my day concerning that very point.

Not speaking of the Federal Election Commission, I can remember my own election as a brand new citizen-candidate, a neophyte in political terms, somebody who did not understand all the give and take of politics, who, all of a sudden was accused of some wrongdoing by a national reporter back here, who was really, in essence, trying to help his good friend, my Democratic opponent, because they agreed ideologically. He knew what he said was wrong. Nevertheless, I had to live with that throughout my campaign because, even though it was rebutted completely and fully, not everybody read it the second time, not everybody knew it was rebutted, so I had to meet that criticism throughout my campaign.

Others know this problem. Talk to the distinguished Senator from Iowa, ROGER JEPSEN. He was mistreated as badly as any man I have seen in his campaign—not only, it seems to me, by the Federal Election Commission, but by our own Ethics Committee here in the U.S. Senate—or, should I say, members of the staff of the Ethics Committee of the U.S. Senate. I lived through that one, too. I can tell you, it was not right, it was not fair.

Yet we have a partisan Federal Election Commission that everybody understands is partisan—three totally dedicated partisan Democrats, and we now have two dedicated partisan Republicans. I think what the distinguished Senator from New Hampshire is saying is that we should have three, so we can offset, during those gut issues when lives are at stake and political futures are at

stake, what may be a prejudice against Republicans.

I do not want my friends on the Democrat side to be abused, either. That is why I do not like the Federal Election Commission and the whole set of election laws to begin with. To begin with, they have not made campaigns better. They have not brought about the sanctimonious rise of ethics and prestige and glory to the election process in this country that was forecast by those who believed in the Federal Election Commission. If anything, I think they have added more to the woes of those who have to run and those who have to choose whom they support than anything in recent history.

I am concerned. I am concerned because if, in fact, Mr. Reiche, as has been proposed, is not a partisan Republican, there could be a change to a 4-to-2 ratio. This imbalanced ratio would be detrimental to the whole process, and certainly to my party.

If, in fact, it becomes a liberal-conservative conflict, which I do not think it is right now, I think it is a Republican-Democrat offset, or should I say standoff—that is a bettter word—but should it become a liberal-conservative problem, I think the country will not be served, nor will either party be served in the end, because ultimately tides change, people change, no matter who is abused. The law of averages seems to even things up.

That is why I would suggest to my friends on the other side of the aisle that if a majority of the Republicans in the U.S. Senate do not want Mr. Reiche as their nominee on the Federal Election Commission, they should honor the recommendation by a majority of the people on this side of the floor.

I would want to honor their demands if we had a Republican President trying to do the same thing for them.

Probably the thing I find the most offensive of all, I was never opposed to Mr. Zagoria personally. I did not even know the man. All I know was that as a condition precedent to his nomination, the President of the United States said that he had to believe a certain ideological way.

To me, that just is not right. It does not smack of fairness. It does not smack of honor. It does not smack of dignity. It does not smack of justice. I resented it at the time, without reflection on Mr. Zagoria; to this day without reflection on him.

It appears to me we have precisely the same thing. I think we have a problem here. That is, if Mr. Reiche is another Mr. Zagoria, who believes in taxpayer financing of Federal elections, then regardless of the fact that this time his name was one of those who was recommended, and that is the clear-cut difference, then the wishes of the Republican Party as enunciated in this Republican National Committee resolution ought to be given grave consideration and I think ought to carry the day on this matter.

I do not think the President of the United States should stipulate in advance, as a condition precedent, the ideological perspective of people he appoints to the Federal Election Commission. I deeply resent that taxpayer financing of congressional elections, which has been highly criticized and I think largely discredited. I believe this should be reason enough for disapproving anybody's nomination to the Federal Election Commission.

I am very concerned that Mr. Reiche has not come out and said as a Republican that he is against taxpayer financing of elections.

Now, there is one thing that perhaps many will argue here, that is, what difference does it make, because he will not be making that statute. We in the Senate will make the determination, and those in the House, and that it is a hotly contested and debated subject and, as I mentioned before, a largely discredited one.

I think the Harvard Review discredits the approach of the Federal Election Commission, and I think many other bipartisan commentators across the country have also stood against the Federal Election Commission and its approach, and the Federal election laws in this country, which may very well be the basis for special interest domination and control of the U.S. Congress.

There will always be special interests and I suppose it depends on whose special interests we believe in.

But if the purpose of the Federal Election Commission was to do away with special interest control of the Congress, or should I say of certain Congressmen and Senators, and there are some, I suppose, who may fit in that category, I hope not, but there are some, then I think they are going about it the wrong way through the whole Federal election system of laws that we have.

Back to Mr. Reiche, the thing that I resent personally is that since this has caused so much trouble, and since the Republican position as a national party and our position consistently as Senators on the Republican side, at least in the one great filibuster we had in 1977, has been against the taxpayer funding of congressional elections, I think Mr. Reiche should have come out directly and said, "Look, I'm a Republican and I will abide by the wishes of my friends and colleagues, Republicans, in the U.S. Congress and in the U.S. Senate."

But he has not done that, and that leads up to the severe problem which I think the distinguished Senator from New Hampshire has raised. I commend him.

It is not easy to stand up in these type matters, to stand up for principles we believe in when, basically, we know a majority in the U.S. Senate, including the Democrats, would be against us.

It is not easy to stand up and talk about a nomination like this. How well I know that.

It is not easy to have extended debate on the floor of the U.S. Senate. I suppose in my short 2½ years here I have spent as much time on the floor in extended debate as any person in the same 2½-year period.

I am not claiming any credit for that. I wish I had not had to do that.

It is not easy to stand up when fellow Members of one's own party disagree with him, for whom we have, like I say, inestimable esteem and respect.

It is not easy to stand up and talk about subjects like this.

It certainly is not easy for me to stand here and chat about Mr. Reiche because all I have is information which has come from others, but which appears to me to be true.

Frankly, again, I would recite and state that I have no personal complaints of Mr. Reiche other than his stand on taxpayer financing of congressional elections, and perhaps some other matters that will come up during this debate.

I am concerned that my colleagues on the other side understand what is going on here.

I believe that this body will not always be controlled by Members of the majority party, whether that is good or bad, and I think it would be good and healthy if this body became evened up. I think it would be healthy for the Democratic Party. It certainly would be healthy for the Republican Party.

I believe that if we, literally, do what is right in this case, we will listen to what the majority of the Republicans have to say on the floor of the Senate.

Now, if the majority are for Mr. Reiche, I suppose I will have to go along with the majority. However, I do not believe they are.

I will say this to my friends on the other side of the floor. If we have a Republican President in the future and a Republican control of the Senate, which may or may not be likely, but should that occur, I would certainly want them to be able to pick their Federal Election Commission appointees. I would encourage our President of the United States and would fight for his right to have his own people appointed, since this is clearly a political Commission, and it is clearly made up of two different, offsetting partisan groups.

Should Mr. Reiche win this battle, one way or the other—and I am not so sure that he wants to win or does not want to win—but should he be appointed, then I hope that Mr. Reiche will consider the fact that he represents the Republican side of the Federal Election Commission and will act accordingly, so that we do not lose any more from our minority side of the floor merely because of officious or offensive or downright dishonest acts of the Federal Election Commission.

Heaven knows that those of us who run for these offices have enough to contend with, without a Commission that is not balanced. Our society is made up of balances. Our Constitution has checks and balances—separation of powers, concurrent majorities. We are a Federal Republic. We have constant offsets to power because our early leaders of this country were afraid of too much power being centered in any one person or any one group or any one State or any one region.

We are afraid of centralized power, although through the intervening years, over the last 40 years, we have moved more and more to gross centralized

power right here in Washington, and we all know how we have been suffering because of that. People all over this country are upset because of the centralization of power—in derogation, I think, of the Constitution of the United States.

(Mr. BAUCUS assumed the chair.)

Mr. HATCH. In the Los Angeles Times of November 3, 1977, J. F. terHorst wrote an article entitled "Bipartisan Chips Rise and Fall," in which he said:

Maybe what the country needs is somebody to check up on the President's biorhythms. One moment finds him caving in to Congress, especially Speaker Tip O'Neill. The next finds him confronting Congress. Now he is doing both at the same time, on the same issue, and in a way that jeopardizes the very spirit of bipartisanship that he says the country needs.

What's more, this scrap finds President Carter with his truth down.

Involved are his nominations to a pair of seats on the six-man Federal Election Commission. In the whole gamut of government, nothing is so politically sensitive as the FEC, which serves as the watchdog over campaign spending and disclosure for all presidential and congressional races. That's why, from the start, it was set up as a bipartisan panel, with three Democrats and three Republicans. With equal membership, it was argued neither party would have an advantage over the other.

Carter's long-delayed nominees are now before the Senate for confirmation. His choice for the Democratic seat is John W. McGarry, a Boston lawyer on the House Administration Committee, whose distinguishing feature is that he is O'Neill's protege.

Never mind that Carter decided to placate the Speaker instead of picking a strong Carterite for the FEC. And forget that O'Neill already has another FEC protege in Robert O. Tiernan, whose travels and phone calls billed to the FEC have embarrassed it. The important thing to remember is that, in picking McGarry, Carter at least honored the established principle of naming an appointee approved by the Democratic leadership on Capitol Hill.

Now we turn to the President's choice for the Republican seat—and discover that he threw the established principle out the window. He picked Sam Zagoria, a former reporter, former assistant to Sen. Clifford Case (R-N.J.), former member of the National Labor Relations Board, and currently the labor-management director for the U.S. Conference of Mayors. Zagoria may be well qualified for the FEC, but he is not the nominee of Capitol Hill's Republicans. He is Carter's Republican.

In picking Zagoria, Carter seems to have gone back on the promise that he gave Senate Republican Leader Howard Baker and House Republican leader John Rhodes in February. In line with his pledge then, they sent him the names of two Republicans for the FEC vacancy—Robert P. Visser, who served as legal counsel for the President Ford Committee, and James F. Schoener, minority counsel on the Senate Rules Committee, an ex-judge from Michigan and former chairman of the bipartisan Michigan Election Commission.

That was probably one of the tough appointments of all time to the Federal Election Commission—or at least recommended appointments to the Federal Election Commission. Continuing:

But Carter balked, delayed and finally, in May, asked for additional names. He wrote Baker and Rhodes: "I also expect all of my nominees to the FEC to be supportive of . . . financial disclosure and reporting requirements, and public financing (of congressional elections)."

The Carter letter sounded as though Visser and Schoener had been rejected because they were not supportive. But the fact is that no one at the White House ever asked them where they stood on the Carter criteria. The fact is that neither has opposed financial disclosure and reporting, and that Schoener is more supportive than many Democrats of public financing for all federal elections.

Indeed, Schoener had been cleared for the $50,000 FEC slot by the Democratic National Committee and by Democratic Senate leader Robert Byrd. What nixed Schoener, apparently, was his objection as minority counsel on the Rules Committee to the "instant voter registration" scheme that the White House organized labor tried to enact into law.

Carter, it would seem, has engaged in a nasty little piece of political deception. His promise of consultation with Baker and Rhodes turns out to be hollow.

But there is a larger issue here than just the skewing of the bipartisan tradition on the Federal Election Commission. There are more than a dozen policy-making bodies in government, and the laws specify a political balance, no matter which party is in the White House.

So the question must be asked: Is it also Carter's intention to fill the GOP vacancies on these powerful agencies with persons whose views are those of a Democrat wearing a Republican label? If so, bipartisanship is as good as dead, and Carter is heading for even more trouble on Capitol Hill than he already faces.

That is what irritated all of us so much before. That is what irritated, partially, my friend from Oregon, who I think played a major role in stopping the Zagoria nomination. That is what irritated me. That is what irritated a number of people.

The fact is that we do not have exactly the same problem here, because the New Jersey delegation wanted Mr. Reiche's name put on the list, and the minority leaders in the Senate and the House did so at their request. Even though the present member of the Commission is willing to stay, Mr. Carter immediately jumped on this nomination—I think we know for reasons that I have already explained.

It really concerns me, because if that is so, if we have to have Mr. Reiche because he needs Mr. Carter's ideological stance, then I personally resent it!

However, if Mr. Reiche is a partisan Republican and will act as such, will protect our candidates from oppressive conduct and from evil, vile, and wicked conduct on the Commission—which probably has the greatest opportunity to act in an evil and vile way—then I would consider supporting Mr. Reiche's nomination.

I am concerned because the press certainly has understood this issue. They certainly have understood that this is a political issue. There is no question that Thomas Everett Harris is a very partisan Democrat, and some of my colleagues have raised the question whether Frank B. Reiche is a very partisan Republican.

As a young man who was raised in Pittsburgh, Pa., and who was raised a liberal Democrat, who came up under the regime of David Lawrence, who was one of the alltime great political bosses of this country and one of the shrewdest political geniuses this country has ever produced, I understand how power is distributed.

I might add that I doubt seriously that Pittsburgh ever will be a Republican city again because of the power distribution and the upper hand that was gained by us Democrats at that time, during those days of the David Lawrence regime, and to this day I have fond memories of that and have a great deal of respect for the now deceased David Lawrence. He was a great political leader, and he knew how to manipulate people. He knew how to build dynasties, and he knew how to make whole areas become just one-party areas.

He probably knew it as well as any political boss in America and I think what really put Mayor Daley to shame in his total knowledge of how to put the Democratic Party into total control of whole areas of Pennsylvania.

Of course, he played a role in national politics as well and deserves a great deal of consideration and a great deal of credit for many of the things that he did.

As I got older, I started to look at what was happening to our country and saw the lack of a desire of this Congress to balance the budget now 43 out of the last 47 years. I see an $830 billion national debt with interest that has to be paid every year of approximately $65 billion. I see $7 trillion unfunded debts, debts we have to pay in the future but no projected revenues to pay for them. I see from 600 million to 1 trillion of our dollars floating over the world through Eurodollars and the like, debilitating our dollar and making us the laughing stock of the world monetarily. I see the constant Keynesian policies of Lord Keynes through the Keynesians here in the U.S. Congress who believe only through deficit financing can we stimulate the economy. Almost all of these people happen to be Democrats, and they controlled this Congress actually 43 of the last 47 years, as I recall.

That is not good for Congress; that is not good for this country.

As I saw these various things, I came to the conclusion that perhaps my perspectives have changed and I perhaps had to change my party, and for many other reasons and many other specific reasons I changed and became a Republican.

Mr. President, there was an interesting editorial in the Nation, as I recall, on May 19, 1979. It was entitled "Carter's Campaign Finances" by Peter Peckarsky. It was copyrighted in 1979 and is also entitled "Special Report."

He says:

During the past seven months scattered but increasingly linked reports have appeared in the New York Times, the Washington Post, on ABC television and most notably in the columns of William Safire, that cumulatively point to serious financial improprieties in the financing of Jimmy Carter's 1976 Presidential campaign. On the basis of two years of research, more than 1,000 interviews with more than 200 people and a review of nearly 20 linear feet of documents, it is now possible to construct a mosaic of detail that, for the first time, provides a complete and plausible theory about the

financial irregularities that may have put Jimmy Carter in the White House.

I may add, parenthetically, that I would not be quoting this if it were not an article in the prestigious magazine entitled the "Nation." It is a very well-written article, and he writes on some issues in here that I think are extremely interesting and very important issues.

Mr. Peckarsky goes on to say:

Before going any further, let us recapitulate what facts have already been made public. First, on October 19, 1978, *ABC News* reported (from information supplied by this correspondent) that discrepancies had been found in President Carter's tax returns. Second, as highlighted by William Safire in his column of November 6, 1978, Billy Carter took the Fifth Amendment in an appearance before a Federal grand jury investigating Bert Lance's financial dealings. Third, accounts surfaced in the national press, derived from a report of January 17, 1979, by the National Bank of Georgia, of which Bert Lance was formerly president, that there had been delays in the repayment of loans made by the bank to Carter's Warehouse. Fourth, *The Washington Post* on March 11, 1979, raised charges that Billy Carter had altered records of the Carter family peanut warehouse and failed to make timely payment of $500,000 owed by Carter's Warehouse to the National Bank of Georgia. The fifth charge, a matter of public record in 1976, concerned the extension of $645,997 in credit by the Gerald Rafshoon advertising agency to the Carter campaign. And finally The Washington Post reported on April 8, 1979, that some bank loans to Carter's Warehouse, although due in the winter and spring of 1976, had not been paid back in full until July 14, 1976.

Thus far these separate bits add up to a suggestive, but far from coherent picture. In the following article, bringing to bear additional information, I shall demonstrate how funds may have been improperly transferred from the Carter family business to the Jimmy Carter Presidential campaign. This information also raises new questions concerning the role played by Gerald Rafshoon, assistant to President Carter for communications, in the financial affairs of the campaign.

On December 12, 1974, Jimmy Carter announced his President candidacy. Almost immediately, his campaign committee, the Committee for Jimmy Carter, faced a problem: as of January 1, 1975, it had to comply with the Federal Election Campaign Act, which limited individual contributions to a Presidential campaign to $1,000 and forbade direct corporate contributions altogether.

On January 22, 1975, Bert Lance, Carter's longtime friend and commissioner of the Georgia Department of Transportation when Carter was Georgia's Governor, became president and chief operating officer of the National Bank of Georgia. Although the bank's major experience was in urban lending, Lance soon made Carter's Warehouse in rural Plains, Ga., one of the bank's biggest customers.

Carter nominated Lance director of the Office of Management and Budget in early 1977. But an investigation into Lance's banking activities led to his resignation on September 20, 1977. The main Justice Department probe of Lance has resulted in one indictment, is expected to produce more, and led to the appointment of a Special Counsel to investigate loans made by the National Bank of Georgia to Carter's Warehouse, a partnership owned by Jimmy Carter (62 percent), Billy Carter (15 percent) and Lillian Carter (23 percent).

The key to unraveling the intricacies of President Carter's campaign finances is understanding that $1 million in loans made in 1975 and 1976 by the National Bank of Georgia to Carter's Warehouse for purchasing a peanut sheller and for warehouse construction actually made little or no business sense. The reasons why this is so are explained on page 571, but the upshot is that the sheller purchase may have been a pretext that enabled Bert Lance's bank to loan President Carter's business an additional $5.8 million ($2.2 million in 1975 and $3.6 million in 1976)—ostensibly for buying peanuts to be processed with the new sheller. Actually, the sheer magnitude of these loans may have provided an opportunity to divert some of the money for use in the Carter campaign.

In fact, three separate sources attest that about $500,000 of these National Bank of Georgia loans—and perhaps more—was not properly accounted for on three separate occasions. The first two sources consist of documents that have already come to public light. But the third source's information involves a $500,000 shortage that coincided with the 1976 campaign and thus provides a reasonable and extremely troubling explanation of how National Bank of Georgia loans actually may have found their way into the Carter Presidential campaign.

The first discrepancy arose out of the Carter loan agreement which provided that the National Bank of Georgia would extend loans up to a maximum of 80 percent of the value of the peanuts in the Carter warehouse. In other words, the peanuts represented collateral on the bank loan. As the shelled peanuts were sold, i.e., as the amount of collateral on hand diminished, Carter's Warehouse was obliged under the terms of the loan to pay back the bank.

At the end of 1975 Carter's Warehouse had an outstanding loan of $1,690,000 from the National Bank of Georgia. For this loan to be properly secured, the warehouse should have had $2,112,500 worth of peanuts on hand. But in fact, an unaudited, uncertified Carter's Warehouse balance sheet of December 31, 1975, listed the market value of the peanuts on hand as only $1,499,403—or some $613,097 less than the loan agreement required.

The second public source to confirm another large discrepancy emerged on January 17, 1979, when the National Bank of Georgia Special Committee reported that on June 7, 1977, Robert Flynt, then the National Bank of Georgia's vice president in charge of Carter's Warehouse accounts, wrote Billy Carter to request payment of $500,000 to balance the peanut loan account. The overdue money was needed because Carter's Warehouse had withdrawn $476,000 worth of peanuts from storage without paying for them, meaning that there were no longer enough peanuts on hand to secure the bank loan.

Finally, a third, independent source—a person close to the Justice Department investigation now in progress—says that in the month before the decisive April 27, 1976, Pennsylvania Democratic primary, about $500,000 was transferred from Carter's Warehouse accounts at the National Bank of Georgia to Billy Carter's personal accounts in the same bank. Shortly after this transaction, Billy Carter reportedly withdrew the $500,000 from his personal accounts.

Thus, in addition to the two documents already on the public record, now a third piece of the puzzle is offered which also indicates a mysterious $500,000 discrepancy. This new source, whose previous reports on Carter's finances have proven correct, also says that "About $500,000 was redeposited into Billy Carter's National Bank of Georgia accounts in May and June 1976. Justice doesn't know where this money came from, but they were told that the money was then transferred from Billy Carter's personal accounts to the Carter warehouse accounts and then used to repay the delinquent peanut commodity loan."

On March 11, 1979, the Washington Post carried a story that quoted Jimmy Hayes (a bonded warehouseman who worked with Billy Carter) as saying that in the spring of 1976 he and Billy Carter repeatedly altered warehouse records; Hayes also said that Billy Carter had failed to make payments totaling $500,000 owed to the National Bank of Georgia. Billy Carter did not sign the overdue checks until June 1976, well after the pivotal Pennsylvania primary. Hayes was subsequently interviewed by F.B.I. agents. Although Hayes later publicly denied the quote attributed to him in the Washington Post, no one has previously reported what Hayes told the F.B.I. I can now report that after Hayes talked to the F.B.I., my source told me that Hayes confirmed the Washington Post account to the F.B.I.

Hayes has since refused to comment, other than to refer all questions to his first attorney, Ralph Smith of Bainbridge, Ga. Smith, nephew of President Carter's trustee and campaign organizer, Atlanta attorney Charles Kirbo, also refused to comment. Peter Geer, of Albany, Ga., whom Hayes says now represents him, will not comment. Hayes, Sue Chambliss and David Reeves—all former employees of Carter's Warehouse—testified on May 3 before an Atlanta Federal grand jury investigating the warehouse finances.

In mid-January 1979, Assistant Attorney General Philip Heymann of the Criminal Division ordered a fast, thorough investigation of the Carter warehouse finances. In a series of interviews with this reporter, Heymann said that he had ordered his investigators to look into the question of whether money was diverted from President Carter's business to his campaign. When asked on April 5, 1979, whether the department had traced the money withdrawn from Billy Carter's accounts in the National Bank in the month before the Pennsylvania primary, Heymann replied that "the picture of somebody walking away with a satchel of money doesn't fit." When this reporter said that he had not meant to convey the impression that the money was moved in satchels, Heymann indicated that he wished that his earlier comment would not be reported and refused to comment further on the investigation.

The Justice Department's attempt to trace the flow of funds out of and back into Billy Carter's accounts was halted by Special Counsel Paul Curran on March 20, 1979, the day he was appointed, according to my source. When asked whether the F.B.I was continuing its investigation, Curran refused to comment. When asked whether about $500,000, transferred from Carter's Warehouse accounts to Billy Carter's accounts, was withdrawn from the National Bank of Georgia in the month before the Pennsylvania primary, Curran hesitated a long time and said, "I don't know that." When asked whether the money was redeposited in Billy Carter's accounts in May or June, Curran said he would not comment on each allegation. I asked my source if there could be some explanation for Billy Carter's withdrawing the money other than a diversion of funds to the campaign. The source replied: "If you believe that there's any other explanation you'd have to believe in the tooth fairy."

Jimmy and Billy Carter, Carter spokesman Jody Powell and Charles Kirbo, all of whom have previously denied that the money was illegally diverted from the warehouse to the campaign, as well as Robert Lipshutz, campaign treasurer, and Lillian Carter, were unavailable for comment. John Parks, Billy Carter's Americus, Ga., attorney, refused to comment.

Both the source and a subsequent newspaper account indicated that Curran has in fact instructed the F.B.I. to resume tracing the money. Curran is believed to be focus-

ing on the activities of Carter's Warehouse and Gerald Rafshoon Advertising Inc., of Atlanta, which was the Carter campaign's advertising agency.

THE RAFSHOON CREDIT

By May 31, 1976, Rafshoon's agency had extended credit of $345,997 to the Carter campaign, according to documents on file at the Federal Election Commission. The debt had grown during the early months of the campaign; the campaign committee owed Rafshoon $207,000 at the end of February 1976, $176,000 at the end of March and $350,000 at the end of April. The campaign's peak indebtedness to Rafshoon occurred during a period that roughly corresponds to the period from March 23 to May 20, 1976, when a Supreme Court decision halted Federal Election Commission certification of matching payments to candidates and made campaign financing more difficult.

Federal election law prohibits corporations from contributing to Presidental campaigns or from extending credit to these campaigns except in the normal course of business. In an interview, John Murphy, the Federal Election Commission's general counsel in 1976, interpreted the law to mean that if a corporation extends credit far beyond its usual billing cycle, or at a time when a campaign's credit rating is so feeble that no corporation would reasonably extend credit to it, there is a legitimate question as to whether the credit is an illegal corporate campaign contribution. Rafshoon's agency's actions seem clearly to have been outside the scope of normal industry practice. When I asked Harry Paster, senior vice president of the American Association of Advertising Agencies, what standard industry practice is in billing political campaigns, he replied: "Cash in advance."

Pennsylvania was the make-or-break primary for Carter. While Arizona Representative Morris Udall spent $217,363 and Washington Senator Henry Jackson spent $167,150, Carter, even though his campaign debt was almost $1 million at that point, spent $472,117—perhaps due to the $645,997 credit from Rafshoon's agency, much of which went toward media buys. Jackson and Udall spent almost all they had and lost. It was in Pennsylvania that Carter virtually wrapped up the nomination.

Robert Lipshutz, treasurer of the Carter campaign committee, who is now Carter's White House counsel, said to me that he does not know and did not ask about the source of Rafshoon's largess. Lipshutz claims that the Federal Election Commission said that the credit extension to the Carter campaign was "permissible." But a spokeswoman at the F.E.C. told me that she could find no record of the commission having told anyone at the campaign committee this. John Murphy, formerly at the F.E.C., said that he is sure there was no formal communication about the credit, and doubted that there was any informal communication.

On December 16, 1978, when I asked about the credit from his firm to the campaign committee, Rafshoon said: "I know what you're working on and you're screwed up." When I asked him where his corporation obtained $645,997 to loan the Carter committee, Rafshoon referred all questions to his attorney, William Stack Jr. of Atlanta. But both Stack and Howard Rothchild, who was an agency vice president at the time, told me they did not know where Rafshoon had obtained the money that enabled his agency to extend credit to the campaign committee. Finally, on January 3, 1979, Rafshoon came up with an explanation to this reporter: his suppliers extended credit to his firm and the firm took little or no profits. But he refused to say which suppliers had extended credit, how much credit extended or what his agency's net profit margin was.

The explanation that the money came from profits does not hold water. The average net profit of an agency in Rafshoon's class is about 1 percent, according to figures supplied by Paster of the advertising association. If Rafshoon's profit margin was 1 percent of his firm's published 1976 total billings of $7 million, the 1976 net profits would be $70,000 and the credit to the Carter campaign committees would have represented a total of nine years' net profits. If Rafshoon's version is correct, the money for credit extended by the agency to the campaign committee would have had to come almost exclusively from suppliers. One of the agency's major suppliers, however, Williams Printing of Atlanta, which billed that agency a total of approximately $100,000 for campaign committee work, was always paid within thirty to forty-five days, according to John Pope of the firm. Don Sharp, Rafshoon's print production manager in 1976, said to me: "There were no long-term extensions of credit by suppliers." Pat Winstead, production coordinator at the Magus Corporation in Philadelphia, which produced the Carter campaign's television ads, told me that Rafshoon's corporation usually paid within thirty to sixty days.

Given that most of the ad money was spent for radio and TV time, for which stations require cash in advance, it is difficult to understand how credit from suppliers would have provided the agency with the money it needed to pay the broadcasters—unless the suppliers were supplying money (instead of materials). Rafshoon's explanation that the money for the credit came from suppliers and profits appears untenable on both counts. When asked whether the credit extended by his corporation to the Carter campaign committee was an illegal corporate campaign contribution in light of standard industry practice of demanding cash in advance from political campaigns, Rafshoon told me: "I do things differently."

Where did Rafshoon get the money? In April 1976, when the campaign committee's debt to Rafshoon's agency increased to $174,000, Bert Lance came to the rescue. On April 19, 1976, according to a National Bank of Georgia special report and a financing statement, the bank extended Rafshoon's firm a credit line of $155,000 secured by the agency's accounts receivable (including the receivables from the insolvent campaign committee). When asked where he would have obtained the money to extend credit to the Carter campaign without the loan, Rafshoon said: "I don't know."

But the Georgia bank only provided a credit line to the agency of $155,000 (and actually loaned less than that, according to Rafshoon's attorney, Stack). That leaves $490,000 or more unaccounted for (since the total credit to the Carter campaign committee was $845,997)—about the same amount of money that the Justice Department allegedly discovered was transferred from the Carter's Warehouse accounts to Billy Carter's personal accounts in the National Bank and then withdrawn in the month before the Pennsylvania primary.

If Rafshoon's agency did obtain its money from Billy Carter, the cash may have moved in this way: Bert Lance's National Bank of Georgia extended a loan to Carter's Warehouse specifically for the purchase of peanuts to be shelled. A condition of this loan was that receipts from the sale of these shelled peanuts would be used to pay back the bank's loan. However, Billy Carter failed to apply the receipts from the shelled peanuts to paying off these loans, instead transferring around $500,000 from the warehouse accounts at the National Bank to his own accounts at the bank. He then gave this money to Rafshoon, who in turn used it to pay Jimmy Carter's advertising bills. In May and June 1976, after Carter won the Pennsylvania primary and private contributions, bank loans and Federal matching funds started flowing in, the campaign committee reimbursed Rafshoon's agency. Rafshoon then returned the money to Billy Carter, who redeposited it in his own accounts, and then transferred it to Carter's Warehouse accounts. Then, when there were sufficient funds in the warehouse accounts to cover the checks, Billy Carter repaid the now delinquent National Bank of Georgia loan with warehouse checks. Thus he made up for the $500,000 in checks Jimmy Hayes had said that Billy Carter refused to sign in March and April.

If such a manipulation of funds knowingly took place, Bert Lance, as an officer of the bank, could be charged with a misapplication of the bank's funds, a felony under 18 United States Code section 656. Billy Carter—and perhaps Jimmy and Lillian Carter—might similarly have committed a Federal felony by making a false loan application to an F.D.I.C. bank in violation of 18 U.S.C. 1014. If Robert Lipshutz and Gerald Rafshoon were aware that the National Bank of Georgia's money was being used to pay for the Carter campaign's TV, radio and newspaper ads, then they may have violated Federal election law by participating in which would appear to be an illegal corporate campaign contribution from the bank to the campaign in violation of 2 U.S.C. 441b. Further, everyone involved in this scheme might be charged with conspiracy to violate Federal law under 18 U.S.C. 371.

On February 11, 1979, Billy Carter was scheduled to appear on the CBS news program Face the Nation. The appearance was abruptly canceled by Billy Carter's attorney the day before, after Rafshoon's secretary called CBS to say that Rafshoon was "quite upset" and "disappointed" that Billy Carter was to appear. Rafshoon refused to discuss his actions.

On February 23, Billy Carter entered an Americus, Ga., hospital for treatment of bronchitis. On March 6, Billy Carter entered a military facility in California for alcoholism treatment which lasted seven weeks. Coincidently or otherwise, this gave Billy Carter a convenient excuse for avoiding Federal investigators as the three-year statute of limitations on prosecutions of criminal violations of Federal election law during the 1976 spring primaries was about to run out. Then, on or about March 1, 1979, the President, acting through his trustee, Charles Kirbo, paid his brother about $314,000 for some land in Plains, Ga. The net profit to Billy Carter on the sale was about $190,000, according to Don Carter, the Gainesville, Ga., realtor who handled the sale.

In a previously unreported development, Billy Carter on April 25, 1979, as soon as he left the California institution, was briefed in the White House by President Carter in the presence of Presidential aide Hamilton Jordan on the Carter's Warehouse-National Bank of Georgia arrangement in case Curran subpoenaed Billy Carter. My source also said Billy Carter testified before an Atlanta Federal grand jury on May 9, 1979.

THE FRIENDLY INVESTIGATION

While the press has shown considerable interest in the questionable transactions surrounding Carter's campaign financing, they do not have the legal authority (i.e., subpoena power) to get the necessary documents. Meanwhile, the actions of the Federal agencies charged with enforcing the campaign laws have been chaarcterized by perplexing ineptitude and delay.

Federal Election Commission audits of President Ford's primary and general campaigns were released in March 1978. The Carter primary audit was not released until April 2, 1979. The delay in the release of the Carter audit apparently resulted from

inadequacies in the audit and dissatisfaction by the audit staff and the F.E.C. General Counsel's Office with Carter campaign documentation. Also, the F.E.C. allowed the campaign committee months to produce requested documents. And the F.E.C. General Counsel's Office delayed the necessary legal work.

F.E.C. General Counsel William Oldaker is charged with determining whether the Carter campaign falsified and doctored campaign books or otherwise violated the campaign laws. (Incidentally, accordings to The Rocky Mountain News, Oldaker, then an Equal Employment Opportunity Commission regional attorney in Denver, was demoted on July 27, 1973, and suspended for nine weeks for falsifying records.)

The Carter campaign committee knew that the F.E.C. would begin an audit of its books on November 15, 1976. On November 10, 1976, the committee filed amended reports covering the period from January 1, 1975, to September 30, 1976. The F.E.C. audit staff had done its pre-audit preparation by reviewing the original reports for about one month on the assumption that it would be auditing the original reports. On November 10, the audit supervisors held a meeting to decide whether to reschedule the audit to permit proper pre-audit study of the amended reports or to go ahead as planned. Because staff time had already been committed, the decision was made to audit the amended reports with the full knowledge that, as a meeting minutes state, there might be an "audit of 'doctored' reports."

F.E.C. Assistant General Counsel Kenneth Gross was in charge of deciding legal questions facing the audit staff. One such legal question was whether the documentation of the Rafshoon corporation's credit extension to the campaign committee was adequate. Gross worked on the Carter campaign and was associated with campaign treasurer Robert Lipshutz's law firm upon his graduation from law school in 1975. Thus, Gross was reviewing the propriety of a campaign in which he worked and whose finances were controlled by his first employer after law school. When the Rafshoon question was presented to Gross, he instructed the audit staff to drop the matter, according to a source. F.E.C. chairman Joan Aikens said that the F.E.C. audit staff did not review the Rafshoon corporation's books because there was no reason to do so (i.e., campaign committee documentation of the campaign's dealings with the advertising agency was deemed to be adequate). Aikens also said that the F.E.C. did not review the books of Carter's Warehouse or Billy Carter. F.E.C.'s William Oldaker said that he told Gross not to work on the Carter audit. When asked whether Gross addressed the legal issue of the sufficiency of the campaign committee documentation of the Rafshoon account payable, Oldaker said he was not sure. Thus, no subpoena of the books of the major account payable of the campaign was deemed necessary. Interestingly enough, there is no mention of Gross in the voluminous audit papers released by the F.E.C. Lipshutz and Powell did not return telephone calls placed to discuss their knowledge and the President's knowledge of Gross's role in the F.E.C. audit of Carter campaign finances. F.E.C. spokesman Fred Eiland, speaking for Gross, said Gross did not address legal issues related to the Rafshoon credit.

As early as June 1977, some would argue, it was obvious from President and Mrs. Carter's Federal income tax returns why Jimmy and Billy Carter should have been called before a Federal grand jury and what they should have been asked. Yet the Justice Department waited until October 25, 1978, to call just Billy Carter before the Atlanta Federal grand jury investigating Bert Lance. When asked on November 22, 1978, about the delay, Walter Barnes, a department attorney on the Lance team, said: "No comment. There are many things I would like to say but the explanations will have to wait until after an indictment. I might not be able to speak even then."

There is an explanation, however. The effective-date section of the Special Prosecutor provisions of the Ethics in Government Act of 1978 allowed President Carter to prevent the legislation from applying to the investigation of his finances until April 24, 1979. The Special Prosecutor bill provided that the legislation did not cover information "related to a matter which has been presented to a grand jury" and which is "received by the Attorney General within 180 days of the date of enactment of this Act."

The bill passed Congress on October 12, 1978. Sometime in the week of October 16–20, 1978, Billy Carter was subpoenaed, according to a Justice Department source. Not until the day after Billy Carter claimed his Fifth Amendment right not to incriminate himself in front of the grand jury did President Carter sign the bill. Thus, he delayed the application of the Special Prosecutor legislation to the investigation of his finances for six months.

Philip Heymann told this reporter that the Carter loans first came to his attention on August 13, 1978, as a result of the Lance investigation. When asked why it took so long to inquire into the loans, Heymann said he did not know. He cited the mammoth nature of the Lance investigation as a possible cause for the delay. Heymann said he was unaware that there had been press attention to the loans as early as November 1976.

CONCLUSION

Although serious questions had been raised as early as October 19, 1978 (on the ABC News report), the Justice Department's investigation of the numerous questionable transactions surrounding President Carter's personal and campaign finances did not really move into high gear until January 1979—after William Safire's question-raising columns—when Heymann ordered the inspection of Carter's Warehouse finances.

Because of the delay in appointing Special Counsel Paul Curran, President Carter and all his men are at the point where the three-year statute of limitations on prosecutions of criminal violations of the Federal election law in the 1976 primaries is about to run out. Prosecutions for banking law felonies, however, have a five-year statute of limitations and are still possible.

The responsibility is now Curran's to conduct a thorough investigation, and find the answers to the following questions, among others:

(1) Did the Internal Revenue Service properly audit President and Mrs. Carter's 1975 and 1976 Federal income tax returns? In particular, did the I.R.S. find proof (i.e., canceled checks) that all of the $1 million investment on which the Carters claimed an investment-tax credit was in fact spent on qualified business investments?

(2) What did Billy Carter do with the money he allegedly transferred from Carter's Warehouse accounts to his own accounts in the National Bank of Georgia and then withdrew before the Pennsylvania primary?

(3) Where did the advertising agency then owned by Gerald Rafshoon obtain the money it used to extend credit of $645,997 to the Carter campaign committee, including large sums for radio and TV time and newspaper space?

(4) When campaign treasurer Robert Lipshutz authorized repayment to Rafshoon's agency for the credit it had extended, did he know that Rafshoon may have intended to use this money to repay the Carter's Warehouse loan?

(5) Did Lipshutz and/or President Carter know where Rafshoon obtained the money that made the advertising credit possible?

(6) Did Lance know that the sheller-warehouse construction loan by his bank was dubious? Did the construction loan or the peanut loan constitute a misapplication of bank funds?

(7) Did Billy Carter withdraw money from Carter's Warehouse accounts just before the Pennsylvania primary instead of repaying the bank's peanut loan, and did Lance know about it?

(8) What was Gross's role in the F.E.C. audit of the Carter campaign committee books? If the role was improper, what was Lipshutz's role in placing Gross in the key F.E.C. position to control the Carter audit?

(9) What role was played in this extraordinary sequence of events by Attorney General Griffin Bell and his former law partner, Charles Kirbo?

(10) Did the March 1, 1979, payment of about $314,000 to Billy Carter by his brother's trustee (Kirbo) constitute an attempt to buy Billy Carter's silence and thus to obstruct justice?

As the evidence presented in this article strongly suggests, these questions have reached the flash point of scandal. Even worse, perhaps, than the campaign financial irregularities themselves, is the possibility that with the complicity of close Presidential associates and complacent Federal investigatory agencies, what we have is yet another cover-up.

The evidence presented here goes deeper than what the press has vaguely and too glibly dubbed "Peanutgate." What it appears to constitute is nothing less than a prima facie case that funds from Bert Lance's bank were illegally used in the Carter campaign. If he had lost, candidate Carter could have expected that the alleged irregularities would have vanished in the post-election mists. If elected President, however, he could expect to assume control over the investigatory apparatus of the Government and control its inquiries. Can this really have happened so soon after Watergate?

Now, an independent Special Counsel has been appointed who is charged with uncovering the truth. Although hobbled by an inability to offer potential witnesses immunity from prosecution without Justice Department approval, Paul Curran has been invested with a public trust to seek the answers to the questions that the evidence insistently raises. One hopes he is able to provide them sooner rather than later.

On the night of December 12, 1974, when he announced his Presidential candidacy, Gov. Jimmy Carter said: "There are a lot of things I would not do for an office or honor in the world." Now it is vital that the people know just what he did do in pursuit of the Presidency of the United States.

THE BANK LOAN

The $1 million in loans made by the National Bank of Georgia to Carter's Warehouse made little or no business sense.

According to National Bank of Georgia executive vice president William Green, his bank "will not loan money to purchase an asset when cash flow from the asset will not amortize (repay) the loan unless there are other adequate sources of cash." When the loan was made there were no apparent adequate sources of cash available, aside from Carter's Warehouse income. If the loans were handled normally, the loan officer should have been able to demonstrate that Carter's Warehouse would repay the loan before recommending loan approval.

The Carter warehouse's two sources of profits were from shelling peanuts and nonshelling operations (e.g., rental of warehouse space and sales of farm supplies).

The annual profits earned by Carter's

Warehouse from nonshelling operations in 1970–74 were in the range of $72,000 to $81,200, according to Carter's Federal income tax returns. One main source of these profits was rental of warehouse space. However, starting in 1975 when Carter's Warehouse purchased the sheller, the warehouse needed the space for itself and could not rent it. Thus, profits from nonshelling operations could be expected to be significantly reduced in 1975 and later years. Further, the reduced profits would have to be used to support the partners and their families and would not be available to repay the loan.

The construction would have made business sense only if the expected shelling profits substantially exceeded the annual payments due on the loan. But expected shelling profits were less than the loan payments.

The annual principal due on the loan was $144,000. The initial rate on the loan was 10.85 percent, prime plus 3.6 percent. The rate was later reduced, for some publicly unknown reason, to prime plus 1.5 percent. National Bank of Georgia executive vice president Gerald Sullivan said a reasonable rate on a "speculative $1 million warehouse loan" was prime plus 4 percent.

Carter's Warehouse would thus be paying $108,000 annual interest before it began reducing the principal. The family business needed at least $250,000 per year ($144,000 for principal and, say, $106,000 for interest) just to repay the loan.

Executives at three different commercial peanut shellers in southwest Georgia independently confirmed that the expected net pre-tax shelling profit per ton is $10.

At $10 per ton, the firm had to shell 25,000 tons annually to service the loan.

But, according to Tony Leroy, who manages Carter's Warehouse for its lessee, Gold-Kist Inc., the sheller shells only 600 tons a week "with luck." Assuming a normal twenty-six-week shelling season, the sheller could shell only 15,600 tons. In the 1975 crop year, Carter's Warehouse purchased and presumably shelled 6,700 tons according to Department of Agriculture records obtained under the Freedom of Information Act. In 1976, the Carter warehouse shelled 10,000 tons. In both 1977 and 1978, Gold-Kist shelled 14,000 tons. Further, the Carters did not have the money to purchase 25,000 tons.

In 1975, when 25,000 tons cost $9.8 million, Carter's Warehouse only had a $3 million line of credit and spent around $2.8 million for peanuts. In 1976, when 25,000 tons cost $10.3 million, the business had a $9 million credit line and spent $4.4 million for peanuts.

In short, Carter's Warehouse could not repay the loan from profits.

Mr. President, just to make myself clear on this issue, I have nothing against Mr. Reiche. I hope he is a good, solid Republican who would make a good member of the Federal Elections Commission. I have no desire to cause any disdain for Mr. Reiche or to cause him any pain here on the floor of the U.S. Senate. But I am concerned about the Federal Election Commission, about keeping it with its balance of Republicans and Democrats so that neither side has an advantage over the other side so that all things for all intents and purposes can be fair; also in having intelligent people on the Commission so that when bipartisan issues do arise they will be resolved in the most intelligent of all fashions.

I am also intensely interested in making sure that our minority leader realizes that we support him as minority leader and that we have a great deal of respect, fondness and admiration for his leadership, and a willingness to follow him as a leader on the Republican side of the U.S. Senate.

He is one of my dear friends. He knows it, I know it, and nothing that happens here is going to change that friendship. Nor do I believe that anything that happens here will change his ability to run for President of the United States, to make a good run at it, and to do the best he can.

But I am concerned that when a majority of the Republican Senators in the U.S. Senate are basically against this nomination, and our colleagues on the other side understand that they should support him, understand that things change, understand that I personally would be very upset if a majority of the Republicans are overridden—I understand the position that the distinguished minority leader is in, and the distinguished minority leader of the House; the minority leaders of both the Senate and the House, for that matter, are essentially standing up for the same things.

I understand these technical and difficult political situations we occasionally find ourselves in. I think they understand why some of us feel strongly about this issue, and the way the President has approached this issue, in a most partisan and a most didactic way, and I think in a very improper way, especially in the light of the historical record surrounding President Gerald Ford.

President Ford did not bat an eye. He went right to the Democrats and said, "Look, who do you want? We will appoint them."

The thing that most offends me about this appointment—with nothing I say meant to be detrimental to these gentlemen personally—is that we have a President of the United States, with an appointment that should be clearly partisan, demanding that these persons have certain ideological beliefs and standards, on the basis of which their nomination should be carried. I just resent that, especially when our party's President of the United States showed such respect and such feeling for our colleagues in the Senate on the other side of the floor.

I think that this is a time for the President to have the same type of respect as President Ford showed for the Democrats. I think the same type of respect ought to be shown to us as Republicans. I would hope that in the future we do not get into these little battles, but can view these appointments in a manner befitting both parties, so that we do not have to get into hassles like this on the floor of the U.S. Senate. I am sorry we are here on the floor of the Senate with it. I do not like to be here. I do not like to fight this kind of battle. As a matter of fact, I do not like to see the problems arise to begin with, because there is really no reason for them to arise.

But unfortunately, because of what I guess one can call extraneous circumstances, this problem is here. We have to live with it, and I suppose wait and see what happens.

Before I finish, Mr. President, I would like to pay my respects to my friend and colleague from New Hampshire. He sits on the Committee on Labor and Human Resources with me, and takes an active role there. Since he has come to the Senate, he has not sat back and waited to mature; he has gotten in there and tried to learn as fast as he can and participate in the best manner that he can. I think he is representing his State very well, and I personally am very proud of him, and know that many in his State are very proud of him as well.

As I say, I think he stands for something. He stands for many, many good and solid principles of America which have made America great. Above all, he stands for the enhancement of the private sector over the enhancement of the public sector. He stands for reducing taxes, and of course for solving some of these problems I have heretofore mentioned in my remarks here today.

So I have not only boundless admiration and warm feelings for my colleague from New Hampshire, but a deep respect for him as well. I think he needs to know that. That is one reason why I am here today, and one reason why I am willing to back him in his very heartfelt belief that Mr. Reiche's nomination is a very improper one under the circumstances, keeping in mind that these are tough debates and tough battles, and they are not easy for anyone.

Mr. President, I ask unanimous consent that my speech not be considered a second speech under the rules, and I yield back the floor to the Senator from New Hampshire.

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

Mr. HUMPHREY. Mr. President, I thank the Senator from Utah for his kind words about me and my State, and for his participation in this debate.

Senator HATCH, in fact about this time a year ago, was a source of great inspiration to me, because he, like me, politically speaking came from nowhere. He was unknown. No one gave him a chance of winning, and yet he did win. And his victory, which preceded mine, was, as I say, a very great inspiration to me. I am proud that I was able to emulate his stunning victory, and I am even more proud that in large measure my upset victory was made possible by his campaigning on my behalf in my State of New Hampshire. It added immeasurable credibility to my candidacy, and I am greatly indebted to Senator HATCH for that assistance in my campaign.

Mr. HATCH. I thank my good friend from New Hampshire.

Mr. HUMPHREY. Like Senator HATCH, I do not wish to cause anyone involved in this any pain, and certainly not the nominee. I have never impugned his integrity or honor, or his character. I do not question that he is a good man, and that he has good intentions. I question simply whether he is the right man for this particular, peculiar job.

It is difficult to raise this issue on the Senate floor because it is a party issue. I regret that it has come to this pass, but it has, and we must act accordingly.

Before I directly address the matter of my reservations about the nominee, Mr. President, I wish to continue reading into the RECORD the document the reading of which I interrupted some time ago. I will resume where I left off:

We keep detailed minutes of both public and executive sessions of the Commission. The minutes of the public sessions are available for examination and reproduction to anyone. I have asked, in accordance with your request, that a copy of such public minutes for the last three years be provided to you. The minutes of the executive sessions, which relate largely to investigative matters, litigation and personnel, are not, for obvious reasons, made available under New Jersey law for inspection by the public.

Mr. President, it happens that the Republican Party—my party—has a very definite and clear position on the issue of public financing of congressional elections. That policy, the official policy, is enunciated as a resolution of the Republican National Committee, adopted at a meeting of the Republican National Committee, here in Washington, D.C., on January 24, 1979, which states as follows:

Proposed legislation calling for Federal financing of congressional elections is not in the interests of America's free and open electoral process.

Such financing contradicts the entire spirit of competitive elections in that it gives undue advantages to incumbents as opposed to challengers. In addition, the right of all Americans to participate freely in the electoral process by financially supporting the candidates of their choice must not be denied. The Republican National Committee opposes the Federal financing of congressional elections and calls upon all Republican-elected officials to join in opposition to this ill-advised legislation.

Mr. President, in many places in the RECORD, in many different ways, Mr. Reiche, the nominee, has been asked his views on this issue. At times he replies that he is not philosophically opposed to it. In other places he replies that he has not made up his mind. Frankly, it has been difficult to pin him down on this issue. But I believe that our distinguished colleague, Senator PACKWOOD, of Oregon, did finally get a definitive reply in an interview which he conducted with the nominee some 2 weeks ago, approximately, and which, with the permission of Mr. Reiche, was taped. A transcript of that tape has been made and Senator PACKWOOD has authorized me to use it in any way I choose.

I would like to read a very brief excerpt from it because I think this finally gives us the answer to the question of whether the nominee embraces his party's position on the one issue which is perhaps more cardinal than any other bearing on the electoral process, namely, the question of whether taxpayer funding should be extended to congressional elections.

Senator PACKWOOD asked this question:

Let me ask you this: If in case I have come to the conclusion that I want to make sure that I support somebody for that position who is opposed to public financing of congressional elections, should I vote for you or against you?

Mr. REICHE. If you come to that conclusion, you should vote against me.

Not only have we that clear statement from the nominee with regard to the issue of taxpayer financing of elections; it happens also that the New Jersey Election Law Enforcement Commission, of which Mr. Reiche is and has been the chairman for some 6 years, authorized the executive director of that commission, Mr. Louis Thurston, to journey to Washington at the expense of the taxpayers of New Jersey, to testify before a committee of the House of Representatives in favor of legislation that would extend the taxpayer financing to congressional elections. Indeed, the very first words out of the mouth of Mr. Thurston were these:

I am in favor of the concept of using public funds for elections and extending its application to congressional elections.

I might add that this was a prepared statement, Mr. President. It appears on the letterhead of the State of New Jersey Election Law Enforcement Commission.

I wonder how many times Mr. Thurston has testified before Congress. Surely, it is not such old hat to him that he never mentioned to his chairman that he was coming down, and never mentioned to the chairman the kind of things he would advocate. His statement is on the letterhead of the New Jersey Election Law Enforcement Commission. The chairman of the commission, Mr. Reiche, the nominee, admits that Mr. Thurston was here under the authorization of the commission, that they paid his expenses. Mr. Reiche says that they did this because they like to share their experience with others, referring, of course, to the program of taxpayer financing of gubernatorial campaigns in that State.

Mr. President, lobbying or testifying in favor of extending public financing to congressional elections is not sharing experience because they have not had that experience in New Jersey. That is called advocacy. It is called advocacy with taxpayer dollars, and it worries me that Mr. Reiche permitted that, authorized that, and knew about it beforehand. I wonder what kind of actions he will permit of his staff members if confirmed to this position on the FEC. It had to be a momentous occasion for Mr. Thurston to testify before Congress. Surely he talked about it before the commission and they knew what he was going to do. I think Mr. Reiche, as chairman, must take responsibility for the tenor of the testimony.

Mr. Reiche has been questioned by me and others regarding the very important subject of his views, vital to the subject of his views, on the expansion of powers for the Federal Election Commission. In my opinion, I think this would be borne out by any reading of the minutes of the hearing of the two sets of questions which I submitted to him and to which he responded, and by the transcript of the interview of Mr. Reiche by Senator PACKWOOD.

I think the reading of those documents will bear out that the nominee was evasive in response to the question of to what extent he would like to expand the powers of the FEC or see them expanded. I think it is fair to say that the nominee was evasive. Frequently he pled ignorance, he pled lack of experience. I do not think that is a very good answer because to my way of thinking one should come to this post with some clearly defined ideas about the role of the FEC and about how much larger a role we want to see it play in our electoral process.

We do not want to see a Commissioner representing my party's interest who is learning the job on the job and who is formulating some deep philosophical opinions after he gets there or while he is there. I want a Commissioner to take his seat already having given very serious and deep thought about the dangers to our freedoms posed by placing into the hands of the Government control over the electoral process, which process, as I have stated, is the only check short of revolution which free citizens have over their Government.

It seems to me that giving greater powers to the FEC is like putting the fox in charge of the chickens.

As my distinguished colleague from Utah has pointed out, the party of our opposite number in this body has done very well in filling its three seats on the Commission with very shrewd, knowledgeable, and highly partisan members. At some time in the future a Republican seat will become vacant. A nominee has been put forward to fill that seat by the President, and now the question is whether or not the Senate will confirm that nominee. A substantial number of those on this side, despite whatever feelings we may have for the nominee in other respects, do not think that he is the right man for this particular job. I join with Senator HATCH in urging my colleagues on the other side of the aisle to forbear, as they have done out of fairness and decency in the past, and allow us of this side to choose which nominee will serve our party in that seat which is to be vacated.

Mr. President, there is no emergency about filling this seat for which Mr. Reiche has been nominated. There are, as the Chair knows, three Democratic and three Republican members of the Commission. There are three Democratic members sitting today; there are three Republican members sitting today. Mr. Vernon Thomson, whose seat will be vacated by virtue of the expiration of his term, is willing, even anxious, to continue serving and may do so under law. The statute states that a Commissioner may remain in his seat until his nominee is confirmed by the Senate. So we have no emergency. There is no rush. Our side is represented fully, as is the other side.

There has been some misinformation about Mr. Thomson's willingness to go on serving. Some have said that they have been told by Mr. Thomson that he is anxious to leave. The implication, of course, is that we should hurry up and confirm a successor.

That is not correct. Mr. Thomson has told me verbally and even in writing that he is willing to stay on. I want to read

into the RECORD a letter from him to me, in response to an inquiry I made dated July 18, 1979:

DEAR SENATOR HUMPHREY: With regard to your inquiry, this will indicate my willingness and desire to continue serving on the Federal Election Commission.

I own my home in Virginia. I reside in Virginia. My wife is deceased. My children live in this area. I intend to continue to reside in the Washington area.

I have served on the Commission since its inception; first as the choice of the Republican Leadership of the House of Representatives, and after *Buckley* vs *Valeo* through the appointment of President Ford. During the Presidential election year of 1976 and the Commission's initial regulations I served as Chairman of the Commission.

I enjoy my service on the Commission. I am available and willing to continue my service on the Commission, and will be available for such service indefinitely.

VERNON W. THOMSON,
Commissioner.

Mr. President, the nomination we are considering today does not have the support of the chairman of the Republican National Committee. The nomination which we are considering today does not have the support of the chairman of the Republican Party in New Jersey, the nominee's State of residence. I think that is very significant.

We on this side have more than our usual responsibility in considering this nomination, more than the usual responsibility we have in considering an executive nomination, because we have an obligation, not only to the citizens of this country but also to our party as well, to see that we are represented on the FEC by someone who closely embraces the Republican point of view.

As I have stated, if there is one cardinal official policy of the Republican Party that bears on the electoral process, it is the official Republican policy which opposes extending taxpayer funding to congressional campaigns. The nominee does not embrace that cardinal Republican policy. If he does not begin from the point of view of the Republican Party as expressed by its official resolutions, then how can we be certain that in other areas not clearly enunciated, he will faithfully represent the views of the Republican Party?

That is the essential basis of my opposition to this nominee. I think we are entitled on this side, as our distinguished colleagues are on the other side, I think that my party across this Nation, as the party of the other side across this Nation, is entitled to have the kind of representation it wants on the FEC.

I must say that I regret exceedingly what appears to be the intention of the present administration, which is not, as everyone knows, in the hands of my party, to force on my party someone who does not clearly embrace the cardinal Republican position of opposing taxpayer funding of congressional campaigns.

I think there are strong parallels, as Senator HATCH pointed out, between the attempt of the present administration to force on our party Mr. Zagoria and his views, which were not closely that of the Republican party—at least, it was alleged in those days—and the attempt of the President to force this nominee on our party. The nominee admits unequivocally that he does not embrace that cardinal policy to which I have alluded several times.

Mr. President, I want to read some comments made jointly by the minority leader in the House and the minority leader in the Senate regarding the Zagoria affair, some 2 years or so ago. As is known, our party, under the skillful leadership of our minority leader, successfully avoided being forced to accept a nominee who did not enjoy sufficient support in our party.

Our leaders said at that time that the previous attempt to force on our party someone who did not clearly embrace important official Republican views, "the former attempt breaches the spirit of the law."

They pointed out that the Republican member of the Election Commission "plays a unique partisan role"—partisan role—"that should reflect the general consensus of the minority party's views."

They said:

While certainly we, too, believe that a nominee should be sympathetic to the aims of the Commission itself, and possibly even with the nature and type of Federal disclosure and reports now contemplated by the act, the whole issue of public financing, of Congressional races in particular, is still very much a subject of National debate.

They said:

Your implicit rejection of our initial choice for this vital post apparently reflected your decision that our candidates' views be those of a Democrat wearing a Republican label.

They said, finally:

One may seriously ask the question whether it serves any purpose at all to have bi-partisan commissions if the membership is to be stacked to accommodate only the view of the White House and the Majority party in Congress.

Speaking of the President's attempt to force on us a candidate who did not enjoy sufficient support in our party, they said:

Your action sadly appears to be an evasion of legislative intent and another step on the road to the imposition of one party rule.

Our distinguished minority leader waxed eloquent on the subject that was at the center of the controversy 2 years ago, as it is at the center today, when he said, during the debate on the FEC itself enacting legislation a couple of years previous. He said:

I think there is something politically incestuous about the Government financing and, I believe, inevitably then regulating, the day to day procedures by which the Government is selected. I think it is extraordinarily important that the Government not control the machinery by which the public expresses the range of its desires, demands, and dissent.

Mr. President, there can be no question whatever where the Republican Party stands on this vital issue. Yet, the nominee we are asked to confirm does not find himself in agreement with that position.

Indeed, Mr. President, his views, unfortunately, on this particular topic, taxpayer financing of campaigns, are much closer to that of the other party.

I am sorry to have to say that, but it is true. Our party is on record by official resolution of the Republican National Committee as opposing the extension of taxpayer financing to congressional elections.

A plank in the party of the Democrat program calls for the extension of taxpayer financing to congressional elections.

It is alarming to me, to say the least, that we are being asked by a Democrat President to confirm a Republican whose duty will, in part, be to represent our party on the Federal Election Commission, a nominee who does not embrace the official Republican policy on the cardinal question that bears on the electoral process, but whose position is, instead, much closer to the official position of the other party.

Mr. President, how can we expect to be adequately represented, those of us on this side, by this man who, whatever his good intentions might be, has shown himself by his own statements to be not the man for this particular job.

This is not just another job in the bureaucracy. It is not just another commission. It is not just a routine nomination.

It is difficult to deal with this on the floor because it is a very partisan issue.

I am afraid that what makes the nominee something less than attractive to many of us on this side will make him attractive to the other side, because our parties have totally different points of view on this particular question.

It is regrettable the nomination has reached the floor, because, for the reasons the nominee is unattractive to many of us, he is attractive to those in the other party.

But I am confident I need not worry about that aspect. I am confident that the appeal of Senator HATCH, myself, and others who will follow me, to our Democrat colleagues, to their sense of fairness and equity, even to their concerns about the future status of their own party, as a majority party or a minority party, will not fall on deaf ears. I trust they will allow us, as they always have in the past, to decide this question ourselves.

Mr. President, in a conversation I had with Senator HATFIELD some time ago, he expressed his wish to be heard, to rebut the remarks in opposition to Mr. Reiche, and when he returns to the floor I shall certainly give up the floor and give him the opportunity to do so.

In the meantime, I wish to read into the RECORD several documents which are pertinent to the consideration of this nominee.

Mr. President, as I have stated, I was graciously permitted by the Rules Committee to put two sets of questions before the nominee.

I am very grateful for that opportunity, incidentally. The chairman of the committee (Mr. PELL) and the ranking minority member (Mr. HATFIELD) have been more than cooperative, more

than fair, in permitting me to put questions to the nominee.

I am not a member of the Rules Committee, but they have been especially gracious to me. I want to say publicly how grateful I am to them.

The cover letter on this second set of questions is dated June 7, 1979:

DEAR SENATOR HUMPHREY: Enclosed herewith are my responses to your recent series of questions. I trust this will provide sufficient information to assist you in your deliberations.

Sincerely,

FRANK P. REICHE.

Continuing:

I wish to acknowledge receipt of your letter dated June 1, 1979, in which you pose additional questions related to my proposed nomination to the Federal Election Commission (FEC). Contrary to your impression that I favor "increasing bureaucratic intrusion into the election process", such is not the case. I do favor streamlining our campaign finance disclosure laws in an effort to encourage, and not discourage, the participation of as many Americans as possible in our electoral process.

You have characterized my answers to your prior questions as "unresponsive" which, if true, would be a result I certainly did not intend. In preparing those answers, I consciously sought to be directly responsive to you. It should be noted, however, that many of your questions pertained to practices and policies on the Federal level, and hence represent matters of which I have limited knowledge and on which I am therefore unable to express an opinion at this time.

I will first read my question, Mr. President, and then the nominee's response.

1. The New Jersey Election Law Enforcement Commission (ELEC), which you head, has issued a steady stream of legislative recommendations to the New Jersey Legislature. The Federal Election Commission frequently issues advice to the Congress regarding changes in the Federal election laws. Therefore, your answer to me that "I do not anticipate that I would if confirmed, participate in the formulation" of future, major changes in the Federal election laws, appears quite wide of the mark. The Congress does make the laws, but the influence of FEC commissioners can be great, as your New Jersey commission no doubt realizes, from having urged changes so often on the state legislature. Or, is it your intention, if confirmed, never to express your opinion of proposed Federal election law changes, or to issue praise or criticism of the present law?

The response is:

In expressing the view that I do not anticipate that I would, if confirmed, participate in the formulation of policy in the area of campaign finance disclosure, I was merely attempting to emphasize that responsibility for policy determinations rests with Congress and not with any agency associated with the Executive Branch. Obviously, the experience of the enforcement agencies involved can be helpful to the Legislative Branch in its deliberations. Accordingly, I would be happy, if serving as a member of the Federal Election Commission, to discuss with members of the Legislative Branch my experience as a member of the FEC to the extent that it may bear upon the Legislature's consideration of proposed statutory changes, recognizing that any comments or statements by me would be made for informational or advisory purposes only and that decisions affecting all policy changes are made by the appropriate legislative body (Congress in this instance).

You confirmed your support of a change in the New Jersey law which would bypass the courts and grant your commission wide discretionary powers to void the results of elections if, in the opinion of the commission, an election law violation affected the results of an election. In response to my question as to whether or not you favored application of this idea to Federal elections, you responded that you "have not specifically considered the possible application of a similar provision to Federal elections . . ." I now ask you again to consider the matter and respond in a clearer manner.

With respect to the possible voiding of elections by the New Jersey Election Law Enforcement Commission, apparently my response to a similar question in your prior letter was misunderstood.

Mr. HELMS. Mr. President, I wonder if the distinguished Senator would yield to me, by unanimous consent, with the understanding that he not lose his right to the floor and that when he resumes his speech, it will not be counted as a second speech.

Mr. HUMPHREY. Under those conditions, I am happy to yield.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, it is so ordered.

Mr. HELMS. I thank the distinguished Senator from New Hampshire.

Mr. President, first, I commend the Senator from New Hampshire for going into some detail concerning a matter of great importance that may not otherwise be understood by a great many Americans.

The Senator from New Hampshire and the Senator from North Carolina and others are in a sort of adversary position with the distinguished Senator from Oregon (Mr. HATFIELD), but not in an unfriendly way, because I respect MARK HATFIELD as much as any man serving in the Senate. Nor is it a personal matter directed at the nominee in question. It is a fundamental principle that must be of concern to all Members of the Senate.

The perception of the operation of the Federal Government is vastly important. It is not only a matter of what this Government does. It is a matter of the people understanding what the Government is doing and the perception of the American people.

Throughout the history of this country, the free press has served as an effective watchdog over political abuse, corruption, misfeasance, malfeasance. That is the reason why Thomas Jefferson once commented that he favored a free press above almost everything else.

Mr. President, I am not speaking of the pet crusade of one reporter or one editor or one newspaper. The working press of this country is showing strong skepticism about the ability of the Federal Election Commission to fulfill the task for which it was created.

I am hearing from people not only from my own State but from other States as well, who state the belief that the Federal Election Commission should act as a truly bipartisan election watchdog. By "truly bipartisan," they mean, obviously, that the FEC should broadly represent a cross-section of the political views of the two major political parties.

But what had we had the past couple of years? Newspaper headlines have dubbed the Federal Election Commission "a referee cheerleader," "a sleeping watchdog," "a farce."

One of the Washington newspapers has charged that "plenty is wrong with the FEC." Other headlines I have in my files state "Federal Agency Plays Shabby Game," "FEC Actions Tilted to Favor Big Labor," "Labor's Weapon," "How the FEC Helps Big Labor." And on and on and on.

The question is no more one of whether these charges are true than the fact that the perception exists. That is why it is important to have in positions of authority—not only in terms of the FEC but also in all agencies and departments of the Federal Government—people who take clear, unequivocal stands and who, when partisanship is indicated, practice partisanship.

I recall the late, great Senator Vandenberg and the accolades he properly received because he entered into a bipartisan foreign policy posture.

I have just come from the Foreign Relations Committee, of which I am a member. Witnesses are appearing daily, and have done so for a week or so, in connection with the so-called Strategic Arms Limitation Treaty—SALT II, as it is known.

I stated to the distinguished outgoing U.S. Ambassador to Russia that the American people are concerned about their perception of our Nation in terms of what obviously is a weak posture each and every time there is a confrontation with the Soviet Union.

Our Embassy in Moscow is being bombarded with microwaves by the Soviet Union. What did the U.S. Government do in response to this?

We protested, and the Soviet Union said: "Oh, we are not doing any such thing."

Our Government knew and our Government knows that the Soviets are doing this. They stopped for a week or so, but about 2 weeks ago they resumed. And the matter is just lying there.

The point is that these microwaves are harmful to the health of the U.S. citizens who are employed in our Embassy there. If we do not have the will to act to protect their health, let alone standing up to the Soviets for an obvious violation of all that is decent, then what sort of perceptions are the American people expected to have?

I am not going to offer a lecture on SALT II. That will come another day. But I am speaking of the perception of the American people with respect to their Government.

In connection with this nomination, I am concerned about the perception of the nominee. I offer no criticism of the man's character. I am sure it is good. There is nothing personal in the fact that I questioned his having been nominated.

It is a matter of perception and it is a matter of where he has stood and where he now stands. It is a question of the Federal Election Commission itself and how the FEC is perceived across this country.

I saw an editorial not long ago in the distinguished newspaper in Oklahoma,

the Tulsa World. Let me read what the editor of the Tulsa World had to say. This editorial indicates the skepticism and the perception of the FEC.

To present a brief cross-section of the Nation's editorial criticism of the imbalance on the part of the Federal Election Commission, the Tulsa World wrote:

The Federal Election Commission is supposed to be a sort of referee of Federal election campaigns, enforcing the rules with an even hand against all contestants.

In fact, the F.E.C. has combined the job of referee with that of cheerleader for favored contestants.

Ponder those words, Mr. President. That is the perception of the FEC in the mind of a distinguished newspaper editor of this country.

Do we wonder why there is confusion in the minds of the American people, why there is skepticism, why there is hostility toward the Federal Government? The editor of the Tulsa World went on to say with reference to the FEC:

For example, the National Education Association violated the law with a so-called "reverse checkoff" scheme in 1974 whereby $400,000 in political contributions was deducted from members' paychecks without advance permission. The FEC at first refused to act although FEC Commissioner Thomas Harris, a longtime labor lawyer and AFL–CIO lobbyist, later admitted he knew all along the "reverse checkoff" was at least of questionable legality.

That is the reason, Mr. President, that so many Americans are raising questions about their Government in terms of public confidence.

The editorial went on to say:

Finally, on complaint of the National Right to Work Committee, the FEC prosecuted the NEA violation, but ordered no penalty; just a slap on the wrist and an order to refund the illegal deductions to members if they request it.

Let me go back, Mr. President.

The NEA deliberately violated the law and $400.000 in political contributions was involved, $400,000 that had been taken from members' paychecks without their permission.

So the Tulsa World obviously is concerned, and I say to you, Mr. President, that the whole Federal Government was not well served by the perception of the FEC in this one matter.

But this gentle, boys-will-be-boys approach apparently applies only to unions and similar groups like the NEA.

An outfit called Gun Owners of America believed that it had obtained FEC staff approval for some financial arrangements involving two affiliated committees. The organization was later fined $11,000. When counsel complained that his clients were only doing what they had been advised to do by FEC officials, he was told by an FEC lawyer:

With so many Congressmen and Senators beholden to unions for campaign contributions, it was a simple matter to arrange that key FEC positions be filled with hand-picked union functionaries. Even the head of the FEC is a former union lawyer.

This is how the union-packed commission works:

The nation's largest single union, the National Education Association, automatically and illegally took $400,000 from teachers' paychecks for political contributions without obtaining the teachers' permission.

The FEC refused to take action on this violation of election laws until the National Right To Work Committee obtained a court order forcing its hand.

The NEA was let off with no fine and no penalty. The FEC also issued an advisory opinion (under illegal conditions) excusing candidates, including more than 200 present Congressmen and Senators who accepted illegal contributions from the NEA.

By issuing this statutory advisory opinion, the FEC usurped the right of anyone else to go after those candidates who pocketed the illegal contributions.

That is only one example of the FEC's determination to protect union-supported candidates from penalty of law.

The AFL–CIO was convicted of illegally taking $312,000 from its general treasury and putting it into its political kitty, again after the FEC was prodded into action by the National Right To Work Committee.

It received a meaningless $10.000 fine which was heralded as a $302,000 victory at union headquarters and so delighted the FEC lawyer he chortled, "I'm pleased as punch."

Since the National Right To Work Committee seems the only group with enough guts to stand up to the FEC, it is being punished with multiple lawsuits, tying up committee funds and staff.

The FEC is now seeking in a court order to force the Right to Work Committee to make public the names of past and present members, a clear violation of the privacy of more than two million Americans.

Ironically, it's the same demand of some 12 unions in a multi-union suit against the committee now in its sixth year of litigation. The FEC does the union's work for them.

But good must win this battle even if it means scuttling the FEC.

Across the Nation in Mount Vernon, Wash., the editors of the Scagit Valley Herald joined the protest against a biased Federal Election Commission when they headlined the Commission—"Labor's Weapon."

He went on to write:

Born in the wake of the Watergate scandal to clean up federal elections, the Federal Election Commission is a rather obscure federal bureaucracy fast on the way to becoming nothing more than a tool of top union officials.

Because its thumb rests on the jugular vein of representative government, the Federal Election Commission (FEC) provides an ideal instrument through which union officials can gain by government fiat that which they can never gain through the voluntary choice of the American people.

With the connivance of union-controlled public officials, key FEC positions are being filled with handpicked union functionaries. Look at some of the FEC's handiwork:

The nation's largest single union, the Nation Education Association (NEA), automatically and illegally takes an estimated $800,000 from teachers' paychecks for political "contributions" without asking the teachers' permission..

The FEC refused to act on the gross violation of election laws until the National Right to Work Committee obtained a court order, prodding the commission to perform its duty. The FEC withheld evidence and argued the weakest possible case.

The result—a federal court verdict against the union with no fine, no penalty. Just a gentle slap on the wrist and an order to set up a fund for teachers to get a refund if they request it.

Another predictable example: The AFL–CIO is convicted of illegally funneling $312,000 from its general treasury into its political war chest. Their penalty: a meaningless $10,000 fine. Following the decision, an AFL–CIO spokesman chortled: "We made $302,000!" The FEC lawyer announced: "I'm pleased as punch!"

Again it was a case of the FEC making a half-hearted effort to enforce the law only after the National Right to Work Committee filed complaints and obtained a court order.

But when it comes to the National Right to Work Committee, a prime target on the "enemies" list of top union officials, actions of the FEC stand out in stark contrast. Consider this:

The FEC has gone to court seeking to force the Right to Work Committee to pay $382,374 in fines, penalties and other charges. Why? Because the FEC claims that the Right to Work Committee does not conform to the FEC definition of the term "members." The catch-22 of this is that the FEC has no definition of "members."

The resulting legal battle has tied up committee funds and staff. More importantly, since October, 1976, it has blocked committee members from participating in the election process through the Right to Work Committee's political action arm, the Employee Rights Campaign Committee.

Remember now, the National Right to Work Committee is one of the organizations in the forefront recently of exposing the so-called labor law "reform" bill for the fraud it was.

Now comes the FEC seeking a court order forcing the Right to Work Committee to make public the names of its past and present members—in effect, to violate the privacy of some two million American citizens and expose them to the vengeful schemes of union officials.

Not surprisingly, this is the very same demand being made by the AFL–CIO and 12 other unions in the multi-union suit against the committee now entering its sixth year of litigation. Clearly, big labor has delegated to the FEC the job of harassing, ham-stringing and, they hope, destroying the National Right to Work Committee.

Now it is one thing for the union officials and Right To Work supporters to clash over each others' political principles and activities. But when the Nation's press points out that an agency with the overwhelming political power of the Federal Election Commission has joined one side of the political sphere, to do battle against another side, something has gone drastically awry.

Furthermore, Federal Election Commission harassment against a person or organization which seeks to call on the Commission to enforce the law in an even-handed manner has a chilling effect on the rights of those who legitimately seek to do so. Organizations such as the National Right To Work Committee have found how exhausting and expensive the FEC can make the exercise of their lawful rights.

What level-headed person is going to go before a biased Federal Election Commission with a complaint against the political campaign abuses of union officials when they know from the experience of others that the Commission will ignore the complaint and, instead, attack the plaintiff?

Mr. President, I understand that the distinguished Senator from Oregon (Mr. HATFIELD) is prepared to make some comments.

I thank the distinguished Senator from New Hampshire for yielding to me.

Mr. HUMPHREY. I thank the Senator from North Carolina for his assistance, and I yield the floor, Mr. President.

The PRESIDING OFFICER. The question is on the nomination.

Mr. HUMPHREY. Mr. President, it was my understanding that the Senator from Oregon wanted to be recognized at this point.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I certainly am happy to have the Senator from North Carolina finish his remarks if he so desires. I am not in a great hurry to assume the floor. But if the Senator is finished, I will be happy to take the floor.

Mr. President, this indeed is not an assignment of my own choosing. Whenever we have had what we might call partisan issues in the Chamber, issues that tend to separate distinctly Democratic interests from Republican interests, it has been my great good fortune to lead the battle for the Republican side.

I refer back to the days when we fought out the issue with great vigor relating to the New Hampshire senatorial contest.

I recall the battle in the Chamber when we raised the question of the seating of Senator HENRY BELLMON of Oklahoma.

I recall vividly when we had the issue of public financing of congressional elections.

I think the record will show that in each and every case these issues emanated from the Rules Committee and, as the ranking member of the Rules Committee it was my responsibility to carry the Republican cause on the floor of the Senate.

I might say I did so with relish, I did so with great joy, and with a great sense of satisfaction that on those three occasions every single vote that was called on the floor, every rollcall, presented a united Republican front. There was not one Republican who veered from the party position. I think that in itself is a remarkable achievement, considering the high degree of individuality we have in both parties, particularly the Republican Party.

So I say to my friend from New Hampshire (Mr. HUMPHREY) that I, like he, as he indicated in his opening comments, do not personalize this issue.

I also thought, for the sake of the record, wanted the Senator from New Hampshire to understand clearly that I have impeccable credentials as a partisan Republican, based upon the issues and matters which have come to this floor in previous years that could be labeled as party or partisan issues.

I do not take a backseat to anyone in terms of establishing and shouting from the housetops my Republicanism, and I do not really think that should be the issue at hand.

I am also a little bit concerned when there are those who tend to lead people to believe that they represent true Republicanism whereas people with various other viewpoints may have less loyalty or less reason to be called Republican.

It seems like my party is constantly engaging in public discussions on this issue when we actually should be mobilizing our efforts to fight the Democrats.

As a consequence, I might just observe that when we engage in this kind of intraparty battle or when we begin to raise these various criteria as to what constitutes a good Republican, we usually end up losing. Massachusetts and New Jersey in the last senatorial campaigns are two examples and, therefore, I think that in order to face this great possibility of a Republican takeover in 1980 this is neither the place nor the time to begin to raise again in the public arenas what we consider to be "the true, faithful, partisan Republican," and what constitutes less than that.

Mr. President, I think it is also very important to note that there is strength in diversity. I would hate to think that everyone believed as I believe on every political issue.

Walter Lippmann once commented that when everyone is thinking alike no one is thinking very much, and I think there is strength and diversity of our party, so that I am proud to say that when I was the Governor of my State and, therefore, the titular head of my party, I had the responsibility to appoint people to vacancies, to fill vacancies of two constitutional offices, the secretary of state of Oregon and the State treasurer for the State of Oregon.

I had the responsibility of appointing a U.S. Senator; I had the responsibility to appoint a superintendent of public instruction, which is a statutory statewide elected office in my State, and in each one of these instances I appointed someone from the conservative wing of my party or from the conservative Democrat Party.

So my liberal brethren would say to me, "Well, I thought you were a good liberal. Why are you appointing all these conservatives to these high-policymaking positions?"

I would say, "I am looking for qualification rather than labels. I am looking for the eminently qualified person rather than what kind of pedigree that person might have in terms of party activity," or this or that or the other thing.

I might say that as a result I think the administration that I headed up gained the respect of Democrats, Republicans, moderates, liberals, and conservatives. In other words, it was a composite of all Oregonians rather than attempting to set up a monolithic structure of people who all believed and thought alike and marched in the same lockstep.

I only wanted to make comment on that because I would like to keep this discussion and debate on the issue, and that is the qualifications of Frank Reiche to be a member of the Federal Election Commission.

We can bring forth the basic support information, as has been indicated by Mr. HUMPHREY, that there are certain well-known Republicans who are in opposition to Mr. Reiche's nomination.

I have here before me for the RECORD today a communication from one of the rank and file vineyard workers in the party, who is the chairman of the Mercer County, N.J., Republican organization, Mr. Robert A. Gladstone. He says:

> Frank Reiche is an extremely well respected Mercer County Republican. He is a credit to our Nation, State, County and Party. Please do your best to effect his confirmation to the position of Commissioner of Federal Election Commission.

This is the home area of Frank Reiche, and I think we all recognize that while a prophet is without honor in his own country, where one's own hometown political leadership and associates are willing to stand up and give testimony to the ability and to the qualifications of a man, I think it is very significant.

I do not know how well Mr. Simon knows Mr. Reiche. I do not know if Bill Simon ever met Mr. Reiche. They may have been good friends for all I know. But I would hate to think that I had to depend upon unanimous Republican support for anything that I represent in my State. I have said frequently that I end up usually in every primary having to fight my own party and then the Democrats in the fall because I never had a free ride in my political life of 29 years of public office.

I think there is also another way in which we can judge a man and that is by our colleagues in the House of Representatives. I have just been handed by a very distinguished Congresswoman, Mrs. MILLICENT FENWICK of New Jersey, who has served the State of New Jersey in the Congress of the United States for a number of years, a document in which she indicates the following:

> DEAR SENATOR HATFIELD: We understand that the nomination of Mr. Frank Reiche to be a member of the Federal Election Commission will come before the Senate in the very near future. As Members of the Congressional Delegation from Mr. Reiche's home state, we hope you will support this well respected individual. We enclose a letter of support from his Republican County Chairman, Mr. Robert Gladstone.
>
> With all good wishes,
>
> Sincerely,

This is signed by four of the five Republican Members of the New Jersey State delegation to the U.S. House of Representatives, the fifth person, Mr. FORSYTHE, being ill and not being able to be present to sign this document, but it does carry the names of Congresswoman MILLICENT FENWICK, Congressman HOLLENBECK, Congressman RINALDO, and Congressman COURTER—four of of the five and, according to verbal information, the fifth Member, Mr. FORSYTHE, would have been happy to sign it as well. But I think this represents a testimony to the acceptance of the status and the stature of Mr. Frank Reiche within the Republican Party of this State.

Frank Reiche has political credentials of his own. He does not have to rely upon other people to give testimony because his own record speaks for itself.

Mr. Reiche was the Republican county committeeman for New Jersey for 8½ years. He was president of the Republican Club of Princeton, N.J., from 1966 to 1968. He served on the Republican Executive Committee of Mercer

County from 1968 to 1972. He was Mercer County campaign coordinator for William Cahill in 1969, who was the Republican candidate for Governor. He was chairman of the Princeton Township Republican County Committee from 1970 to 1972 and, as I have indicated, he certainly has the credentials of a man who has served well in the vineyard of the party and is identified with the Republican causes.

But as I earlier stated, it seems to me that that is not the basis nor should it be the criterion to evaluate a man's credentials. I may be speaking heresy, but I do feel that there are people of the Democratic Party persuasion who have great ability and great credentials to serve on the Federal Elections Commission, or any other commission. I do not think credentials and ability are restricted to one party.

But I would like to turn to another factor, and that is that this matter has been going on and has been under consideration by the Senate for an inordinate length of time. I think one of the problems that the Congress of the United States faces with the American electorate today is that we give the image, at least, of being unable to act on issues and questions, that we are indecisive and dilatory, that we continue to talk, talk, talk and do very little on the action front, when action is called for.

Let me recount for the record the timetable of Mr. Frank Reiche's nomination. I think my colleagues, in all fairness, regardless of their lineup for or against Mr. Reiche, will have to admit that the Senate of the United States is really at a point where we should be making a decision.

On May 1, Mr. Reiche's nomination was submitted by the White House to the Senate for confirmation.

On May 9, the Rules Committee held a hearing on the nomination, and I personally, as a member of the Rules Committee, requested informally 1 week to review the nominations and for responses to written questions. This was before any questions were raised by any other Members of the Senate. I felt that this was of such importance and significance to all the American people, not only candidates and potential candidates but to all the American people, and that this Commission was in such need for well qualified people, that I was not about to see the committee rush in to some decision. So I asked for the week's delay.

Then on May 10, Senator HUMPHREY sent a letter to me outlining some questions that he had that he wanted Mr. Reiche to respond to. Mr. HUMPHREY's letter was dated May 9.

This was a legitimate request, and I saw no problem at all in accommodating the request of Senator HUMPHREY.

Then on May 15 Mr. Reiche responded to two sets of questions, one the set I referred to previously, that had developed out of the first hearing, and the questions submitted by Senator HUMPHREY.

The week of May 21 the Rules Committee delayed action on the nomination until after the Memorial Day recess, again accommodating Mr. HUMPHREY, who asked that this delay occur because he wanted time to review the answers submitted by Mr. Reiche. That did not seem unreasonable, so the nomination was delayed again.

But interestingly, on May 22, Senator HUMPHREY sent out a "Dear Colleague" letter which expressed concern about Mr. Reiche's nomination. I would like to quote one sentence from Mr. HUMPHREY's letter to his dear colleagues:

> I believe Mr. Reiche's views are too close to those of Democrats who sit on the FEC.

He attached to his "Dear Colleague" letter the first responses from Mr. Reiche.

On June 1, Mr. HUMPHREY sent a second set of questions to Mr. Reiche, and on June 4, Senator HUMPHREY called and requested of me a further delay, and submitted a similar request to Senator BAKER, the minority leader of the Senate, who is also a member of the Rules Committee; and on June 5 Senator BAKER asked Senator PELL, who is chairman of our Committee on Rules and Administration, for an additional delay in reporting the nomination. On June 5, the Rules Committee agreed to delay the matter an additional week. I made the motion, as a member of that committee, to delay both nominations for a week in order to give Mr. Reiche time to respond to Senator HUMPHREY's second set of questions.

On June 7, Senator HUMPHREY sent a letter to me suggesting it was time for President Carter to withdraw the Reiche nomination. That was before Mr. Reiche had a chance to respond to the second set of questions, for it was on June 8 that Mr. Reiche responded to the second set of questions.

On June 14, on the Rules Committee's final consideration of the nominations of Mr. Harris and Mr. Reiche, they voted to report the nominations to the floor. That vote was 9 to 0; there was not one dissenting member of the Rules Committee on either side of the aisle who had indicated other than support for Mr. Reiche, either by voting to send his nomination out or by failing to cast a vote.

Mr. President, there have been raised today a number of issues, and I am going to take them up one at a time.

The first issue that has been raised goes back to the Zagoria nomination that was sent up here to the Hill and then withdrawn by President Carter, and Mr. Zagoria became more the victim than anything else of that particular exercise in parliamentary maneuvering. There had been an understanding between Senator BAKER and Representative RHODES with the President of the United States, Mr. Carter, that he, like President Ford before him, would respect Republican precedent and appoint members to the Federal Elections Commission based on the recommendations presented by the leadership of the minority, as Mr. Ford had made his recommendations to the Federal Elections Commission based upon the nominations of the Speaker of the House of Representatives, Mr. O'NEILL, and to my recollection the majority leader of the Senate (Mr. ROBERT C. BYRD).

Mr. Zagoria was not on the list submitted to President Carter by Representative RHODES and Senator BAKER, and the Senator communicated to me his unhappiness with the President's failure to follow through on the understanding. Representative RHODES communicated the same to me, and it seemed appropriate, therefore, to urge the President to reconsider and to submit names from such a list, based on the original agreement.

As a consequence, Mr. Zagoria's name was pulled down and Mr. McGarry's name was pulled down. I will not go into the circumstances surrounding the McGarry nomination; that was another matter entirely. In place, a new name was submitted to the Senate of the United States, that of Mr. Max Friedersdorf, who had been on a list submitted to the President by Senator BAKER and Representative RHODES.

It is interesting to note that Mr. Max Friedersdorf, who had been an employee of the Ford White House and then, after Mr. Ford's defeat, became an executive staff person of the Senate policy committee, which is the Republican policy committee of the Senate and, therefore, obviously had long and very intimate relationships with the Republican Party, and good Republican credentials, was a well-qualified and able man—but, Mr. President, we did not put the litmus paper test to Mr. Friedersdorf that we are now raising in relation to Mr. Reiche. For I have before me a document which is the statement of Mr. Max Lee Friedersdorf, the nominee for Commissioner of the Federal Elections Commission, as his testimony was given before the Rules Committee in our hearings, and I would like to quote just one or two sentences from that hearing, because we hear now, today, the objections raised to Mr. Frank Reiche, solely—I say solely not to ignore these peripheral issues, but the real guts of the issue today is whether or not he is for or against public financing of congressional elections.

All of the other issues which have been raised are, in my opinion, periphery to the real gut issue, to the stance of Mr. Reiche on public financing.

By the way, if I may just digress for a moment, I think it was very interesting that my good friend, the Senator from Utah, was bemoaning the fact the President was making a condition precedent of his nomination of Mr. Zagoria on the fact that Mr. Zagoria would be a supporter of public financing.

This was criticized by my colleague. The President was subjected to severe criticism today on the floor for making a single-issue test of a man's nomination to the Federal Election Commission. And yet we see the opponents of Mr. Reiche today taking that same single issue and reversing it 180 degrees and saying:

> This is the test of whether we will accept the Republican nominee to the Federal Elections Commission, that he is not only opposed to Federal financing but my col-

league from Oregon, Mr. Packwood, in his interview also made it very clear that he not only expected him to be opposed but to raise a battlecry against it and to become a warrior in opposition to public financing.

Well, listen to the record. The question was put to Mr. Friedersdorf, our well-accepted Republican nominee, most recently about public financing:

My personal opinion, I have mixed emotions. I think that if public financing enables more people to seek public office, perhaps that would be good. If it works to forever impregnate against people, defeating incumbents, maybe it is not good. But I do not have—I am still searching in my mind what would be the right thing to do on public financing.

Mr. President, there was no great marching on the floor with all kinds of arguments and documentation, that somehow this man's credentials, this man's ability, this man's loyalty, this man's partisanship is all going to hinge on that one issue of public financing.

I have always been of the view that if you are going to set criteria for the qualifications of someone to an office, to a board or to a commission, they ought to apply across the board. They ought to apply to all people who are considered. I have never been much for this idea of changing the rules of the game after the game has commenced, developing new criteria, new qualifications, which are not applied to all people who serve on that board, commission, or office.

Well, Mr. President, let us be honest with ourselves. I think we are in a little bit of game play. I am not ascribing unworthy motives. I am only observing as one who has been in political life or elective public office for 29 years, and one who has been in political activity for nigh on to 50 years—I started in the fourth grade trying to get Mr. Hoover reelected. I think I can speak with a little authority on political activity. Why are we raising the public financing issue in relation to Mr. Reiche? Why? It is a strawman. I suggest it is a strawman. Let me just recount one simple fact of political life. Mr. Reiche is not going to make the determination on public financing. He is not going to make the decision. The whole Federal Election Commission together is not going to make the decision. The decision will be made in the U.S. Congress. Why are we making a mountain out of a molehill? Why are we creating a strawman in Mr. Reiche's confirmation?

Mr. Reiche should either be a proponent or an advocate or a warrior opposed to public financing, once he is confirmed, and I want to say to my colleagues he will be confirmed. No one on that Commission should be doing the business in the political arena of advocating or trying to defeat the issue of public financing. That is the duty, the responsibility, the prerogative of the U.S. Senate acting in conjunction with the U.S. House of Representatives. I do not want the Commission involved in that kind of politicking. The Commission has enough business. If it were doing the business as it should, not only today but in the days ahead, it will not have time to be involved.

Let me put a caveat to that. I think that if the Rules Committee of the Senate should call members of the Election Commission before it and say, "What is your judgment; what are your ideas?" That is another matter. We would expect a response from any commission. In fact, I have heard many of my colleagues be highly critical toward commissions and agencies which were reluctant to give their professional judgment or viewpoints on an issue at hand.

But let us look at the record. I am not yielding 1 inch to the proposition that Mr. Reiche is an advocate of public financing: I think that record has been misrepresented. I think that record is false. I have had many conversations with Mr. Reiche, both in the Rules Committee officially and informally. I would like to say as it relates to the Packwood interview, whoever picks up that interview ought to read the entire interview and not just excerpt one or two sentences. I think if they read the full Packwood interview they would come out at most with the understanding that his position probably parallels Mr. Max Friedersdorf and at least that he has, as he has stated many times, grave reservations about public financing of campaigns in the legislative body.

First of all, Mr. President, in testimony before the Rules Committee, Mr. Reiche said that while he was not philosophically opposed to the concept of public financing under every circumstance, he felt there were many problems in trying to transfer this type of system to the congressional level, and he cautioned that the larger administrative problems of public financing at the congressional level were absent in the New Jersey gubernatorial system.

In the last response to the question submitted by Senator HUMPHREY, Mr. Reiche stated that it is too early to tell whether public financing is a good or ill-advised experiment.

There is a statement of a very forthright, honest, candid man. But it does not vary at all from Mr. Friedersdorf's criteria, statements, and viewpoint.

Significantly, I think we must recognize, too, that by virtue of his experience in New Jersey, Mr. Reiche was able to point out how the system worked in New Jersey and actually present a stronger argument against the measure at the congressional level. By raising the logistical problems inherent in such a system, Mr. Reiche made more negative comments than have past nominees to the Federal Election Commission.

I might say, in addition, there is no one in this Senate who feels more abhorrent towards public financing than I do. My record is clear. I have led the battles in the committee and I have led the battles on the floor opposing public financing:

I believe again that I can make some judgments on words, on nomenclature, and intent as expressed by Mr. Reiche.

There is a second issue I would like to refer to which has been raised, and I think this is again only a partial representation.

The charge has been made that Mr. Reiche did not cooperate in providing the minutes of executive sessions of the New Jersey Commission. Well, really, it is almost ludicrous to even respond to this because the facts are so clear.

Mr. President, Frank Reiche declined to provide the minutes of the executive sessions on the advice of the New Jersey Commission's counsel that, as a matter of New Jersey law, the materials should not be disseminated. It was not a discretionary matter on the part of Mr. Reiche. This decision came after taking into account the nature of the material that was suggested by Mr. HUMPHREY.

Mr. Reiche has advised the Rules Committee that only three topics are discussed in executive sessions: No. 1, pending litigation; No. 2, pending investigations; and No. 3, personnel matters. Moreover, two of these three items that are discussed in executive sessions become public information just as soon as the findings are complete or the pending investigations or the litigation is complete. His decision seems to comport with the dictates of open government; namely, that some information may be legitimately withheld until all the findings are in.

There is another charge that has been made. That is that Mr. Reiche's recommendations to expand public financing in New Jersey to primaries show that he is not Republican enough.

Well, a careful review of the history of the Senate votes on public financing, especially amendments to include primaries, shows that when you try to apply party labels to votes, you do so at your own risk. Let me remind the Senate that in 1977, during our debate on public financing, I realized that any system of public financing would create problems of a larger disadvantage to challengers. The problem is even more acute when primaries are excluded and, as a consequence, I offered an amendment to add the primaries to the bill.

I want to say, and I made it very clear, that even if the Democratic majority, which rode over us against this amendment of mine, had prevailed, I was still opposed to the bill, but I thought it was a major flaw in a bill. I felt that, even if I were on the losing side of a bill, I would like to make it as workable, as reasonable, as possible through amendments, even if I opposed the final passage of the bill.

Let me remind the Senate for the record that although my amendment to add primaries failed, the amendment had the support of 32 out of my 38 Republican colleagues. This is even more significant when you consider that three other Republicans were not present for the vote.

At this time, Mr. President, I ask unanimous consent to have printed in the RECORD, from the CONGRESSIONAL RECORD of 1977, the yeas and nays on the issue of adding primaries to the public financing bill, showing the vote of the Republicans.

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

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I also announce that the Senator from Hawaii (Mr. INOUYE) is absent because of illness.

Mr. STEVENS. I announce that the Senator from Connecticut (Mr. WEICKER) is necessarily absent.

I also announce that the Senator from Maryland (Mr. MATHIAS) is absent on official business.

I further announce that the Senator from Oklahoma (Mr. BARTLETT) is absent due to illness.

The result was announced—yeas 37, nays 56, as follows:

[Rollcall Vote No. 317 Leg.].

YEAS—37

Baker, Bellmon, Brooke, Case, Chafee, Curtis, Danforth, Dole, Domenici, Garn, Goldwater, Griffin, Hansen;

Hatch, Hatfield, Hayakawa, Heinz, Javits, Johnston, Laxalt, Leahy, Lugar, McClure, Metzenbaum, Morgan, Nelson;

Packwood, Pearson, Roth, Schmitt, Schweiker, Scott, Stafford, Stevens, Tower, Wallop, Young.

NAYS—56

Abourezk, Allen, Anderson, Bayh, Bentsen, Biden, Bumpers, Burdick, Byrd, Harry F., Jr., Byrd, Robert C., Cannon, Chiles, Church, Clark, Cranston, Culver, DeConcini, Durkin;

Eagleton, Eastland, Ford, Glenn, Gravel, Hart, Haskell, Hathaway, Helms, Hollings, Huddleston, Humphrey, Jackson, Kennedy, Long, Magnuson, Matsunaga, McIntyre, Melcher;

Metcalf, Moynihan, Nunn, Pell, Percy, Proxmire, Randolph, Ribicoff, Riegle, Sarbanes, Sasser, Sparkman, Stennis, Stevenson, Stone, Talmadge, Thurmond, Williams, Zorinsky.

NOT VOTING—7

Bartlett, Inouye, Mathias, McClellan, McGovern, Muskie, Weicker.

So Mr. HATFIELD's amendment was rejected.

(Mr. BRADLEY assumed the chair).

Mr. HATFIELD. Mr. President, I am sure many supporters of this amendment correctly believe, as I felt, that any scheme of public financing, to be more equitable to incumbents and challengers alike, must include coverage of primaries.

Let me also say that I have here, Mr. President, an interesting vote that took place in the New Jersey Legislature last week on this very issue. Mr. HUMPHREY has seen fit to raise this as one of his objections to Mr. Reiche. I think it ought to be noted that in the New Jersey Assembly last week, there was a vote taken to extend public financing of the gubernatorial elections to the primary elections. A majority of New Jersey Republican assemblymen voted in favor of the extension to the primaries. I include in this group who voted for the extension of public financing to the gubernatorial primaries in New Jersey two of the three assemblymen who wrote the letter to Senator HUMPHREY opposing Mr. Reiche's nomination, Mr. Kavanaugh and Mr. Smith. The third assemblyman voted against extension.

The fourth signer of the letter is a senator and the senate has not voted on this measure.

Out of the total Republicans of the New Jersey Assembly, 15 voted for the extension of the public financing to cover the primaries; 10 voted against the extension, and 1 abstained.

I believe this conclusively shows that Frank Reiche's views on this particular point of public financing reflects not only commonsense and his clear understanding of the impacts of such a system. Especially in the light of the senate vote last year and the assembly vote in the New Jersey Legislature last week, I suggest great caution be exercised when applying party labels to all of the nuances of public financing debates.

Mr. President, we have had another issue raised. That is the executive director of the New Jersey Election Law Enforcement Commission, Lew Thurston, gave strong testimony in favor of H.R. 1 during House hearings on the bill. This is the public financing bill over in the House. I concede that Mr. Thurston may support public financing. I am not arguing that point of fact. Also, I think it is very clear from the record that Frank Reiche has explained his commission's clear policy on such appearances before committees. Responding to a question from Senator HUMPHREY, Mr. Reiche wrote this response:

> We have always emphasized to Mr. Thurston and to anyone else associated with the Commission that they must carefully avoid giving the impression that they speak on behalf of our Commission on such occasions. It is my understanding that Mr. Thurston was careful in this regard when he appeared before the Committee on House Administration in March.

Mr. President, I cannot help but recall, again, from experience. In our State, like many small States, we have much citizen participation in our government. The Governor appoints many boards and commissions, but the commissions in turn appoint an executive full-time secretary or director, whatever his title may be. It used to be a source of great consternation and perhaps, even, at times, great frustration to me to have a commission that I appointed representing a certain political issue that I supported, then have the professional executive of that commission go before a State legislative committee and testify to the opposite. But what is the alternative?

It seems to me that if we are going to put such experts and professionals into straitjackets and say, no, they have no right to give their professional opinion and their professional judgment to a legislative committee, we are denying ourselves, at the Federal level as well as at the State level, the kind of professional expertise and input in our decisionmaking and legislative process that we should have—even at the risk of having that professional take an opposite position to that of his commission. I accepted that long years ago, and I must say it was with difficulty. That does not mean that I did not even flinch on occasion, after I had come to realize the validity of that particular political philosophy.

The charge has been raised that Frank Reiche favors a power grab—that is the term, "power grab"—by the New Jersey Election Commission in the power of authority to void elections. I need not give the detail of the response to this. The chairing of the Senate at this moment is effectively being handled by the junior Senator from the State of New Jersey. I am sure he is fully aware of the New Jersey law and the New Jersey experience.

Let me remind the Senate that we should understand that the present New Jersey statute, which was passed by the New Jersey State Legislature, calls for the automatic voiding of elections in cases where a court determines that there is a knowing and willful violation. What the New Jersey State Commission proposed and Frank Reiche enforced was a change in the statute so that the elections would not always, under all circumstances, be voided automatically. By the proposed change, Reiche hoped to add one more judgment, one more option, before election results could be voided.

Mr. President, this is a very drastic action. This strikes at the very heart of our democratic system, the voiding of an election that has been carried out by the people.

Now, on the proposal also that the law be amended, that in addition to the court decision the court would still have to have a finding, there would have to be a finding in addition, not just that a violation occurred, but the violation actually significantly affected the outcome of the election, or the dignity of the electoral process, before the balloting would be voided.

I do not know about New Jersey, but I know in many States there may be only one name on the ballot and not an opponent for every position. How could a violation of an election have proceeded under their system? It could not have affected the outcome of the election.

There are many other examples that could be used. But, to me, this was representing not a centralization for a power grab effort, but, rather, to decentralize and to more effectively try to carry out the will of the people.

This was an action of decentralizing power rather than centralizing power.

It was to provide an additional deliberative judgment before taking the drastic step of overturning an election.

Well, Mr. President, I am not anxious nor do I feel time is important from the standpoint of rebuttal. I am ready to go to a vote.

I do not know of any issue that has been more effectively canvassed. I say this as a compliment to my colleague. I know of no issue that has been more effectively canvassed, and presented, and reiterated, and underscored, and repeated in the minority community of this Senate than the Frank Reiche nomination.

I would hate to think of the number of hours that have been spent in terms of if we were getting paid by the hour, I say to my colleague, because I am sure that his hours and labors on this have been certainly effectively communicated.

I do not know what the time frame is as far as my colleague's hopes and desires are.

I do say that I think there is a point of reasonableness. We have tried to accommodate the Senator from New Hampshire in every request he has made on information, delay, time frame, time schedule. I am still of the same mind. I want to accommodate, as of this moment, any desire on the part of the Senator

from New Hampshire for required time or necessary time.

But I must say that I do feel there comes a time when reasonableness must prevail. We must give the opportunity to our colleagues to express themselves by a vote up or down, or a procedural vote. Again, I am very flexible.

I do feel that these are times when we have difficulty in getting good people to enter the public arena. There are so many discouraging factors today for good people, able, qualified people, to offer themselves into public life and public service.

Here we have a man who is extraordinarily well qualified. I must observe that I have not heard one word from my good friend from New Hampshire, I have not heard him raise one word against the integrity, or question the integrity, or the qualifications, or the ability, the background, the expertise, the great knowledge, that this man, Frank Reiche, represents, possesses, or embodies.

But his objections are raised on an issue that, I would like to remind him again, Mr. Reiche will not determine, will not have a vote on, and that is the issue of public financing.

I want to reassure my colleague from New Hampshire that I shall continue with the tenacity of the past that I have already demonstrated in opposition to public financing for congressional elections, and I would vote for repeal of public financing for Presidential elections.

I think that there are far greater needs for public funds, to provide help for the poor and needy, than to be putting it into the political coffers of candidates.

But, second, I am concerned that once the Federal Government puts money into the coffers, the Federal Government has the basis for control, and the Federal Government today has reached out tentacles for bringing in power and authority in so many subtle and so many direct ways that I do not want to risk the political party becoming subjected again to that kind of Federal octupus control.

I would like to say these are not just words on my part, but I am one of the few Senators on the floor who voted against the public revenue sharing proposal because it appeared to me at that time, and still does, that when the Federal Government collects the taxes and brings them to Washington, redistributes them back into the local governments, that that is not strengthening federalism. That is weakening federalism and making local governments more dependent on the central power structure of the Federal Government than ever before.

It is a narcotic. It is an opiate. It makes the local governors, county commissioners, and mayors, bagmen to come back and get more money for local programs and problems on which they have not had the courage to stand up and ask the people for additional taxes because, no question, if we separate tax collecting from tax spending authority and responsibility, we have weakened the federal system of government.

Again, I want to say in making these comments to the Senator from New Hampshire, I will take a backseat to no one, including the Senator, or anyone else in the Senate, as far as concern for the centralization of power trend in this Government.

The only point we may develop is that I am just as concerned about economic centralization of power in the big corporations in America and the big labor unions in America as I am about centralization of political power in the hands of the Federal Government.

I think the whole move towards centralization has to be halted and reversed.

I only add that as an addenda because, obviously, I stand here as a liberal Republican and that immediately raises certain questions, perhaps of loyalty, or Republicanism, or credibility, or whatever.

But I just want to say that these labels are rather misleading because I can track my political philosophy that started at a very early age to two basic documents.

One is called "American Individualism," the second is called "A Challenge to Labor," and the author of both these books was Herbert Clark Hoover, the last truly liberal President, in my opinion, we have had.

Now, unless that shocks everyone, I shall move on to say, Mr. President, I yield the floor.

Mr. HUMPHREY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I am not the least shocked by the political underpinnings of my good friend from Oregon, because having been treated to a visit to the personal library of Senator HATFIELD, I saw that he has probably one of the country's largest collections of literary works on Hoover.

He is perhaps the Nation's preeminent expert on Hoover. So I am not the least bit surprised by that.

I say that only to emphasize that Senator HATFIELD and I are friends.

It was interesting to listen to the recitation of the offices which Senator HATFIELD has held before coming to this body, but it is not necessary for him to do that, because I have not mentioned his Republicanism. Neither have I raised as yet—nor will I—the labels, except for this one instance, of liberal and conservative. I have not raised them and I will not.

Mr. Reiche, no doubt, is a man of high integrity and honor and good intentions, and I have not questioned these attributes in the past, nor will I.

The question is whether this nominee is the right man for this job. My party's position on the issue of extending taxpayer funding to congressional campaigns is not my utterance, though I embrace it wholeheartedly. It is the utterance of the Republican National Committee.

Yes, Mr. Reiche is well qualified. He is an attorney. He has participated in party politics for some time. He is the chairman of the New Jersey Election Law Enforcement Commission.

I have not questioned and I do not question that kind of qualification. But this is not a routine appointment. This is not an appointment to a routine Government commission. This is a unique position which requires, in addition to basic qualifications, a strong partisanship. It is that partisanship in which my concern lies with respect to this nominee.

I am sure that Senator HATFIELD and I could spend the day, if we wanted to conduct the necessary research and groundwork, trading endorsements for the nominee, especially those coming from the State of New Jersey. But my colleagues and I on this side, in pursuing the interests of our party, must consider not only the views and the wishes of our party members in New Jersey but the views and wishes of our party members in the other 49 States as well.

I dare say that in the conduct of his duties, the chairman of the Republican National Committee has the same obligation; and in the conduct of his duties, in his pursuit of protecting our party's interests, the chairman of our party, the Republican National Chairman, has opposed this nomination. This nomination does not have his support. It does not have the support of the leader of our party.

As a matter of fact, the delegates to the recent Republican National Convention in Minneapolis apparently were so upset by this particular nomination that they passed a resolution requiring that, in the future, our party's nominees to the FEC be cleared with the Republican National Committee. There is a great deal of dissent and a great deal of dissatisfaction about this nominee.

Mr. President, Max Friedersdorf is not the nominee under consideration. Rather, it is another man, and it is another man for another vacancy.

But, more important, this is not the 95th Congress; this is the 96th Congress. This is a new Congress. This is a new nomination. This is a new nominee. I believe the merits of the nomination should be considered in that context.

I point out, by way of a distinction between my party's consideration of Mr. Friedersdorf and our current consideration of Mr. Reiche, that since the date when Mr. Friedersdorf's nomination was confirmed, our party has taken an official position on the one electoral issue that bears upon this office—or certainly one of the cardinal positions—namely, that of extending taxpayer funding to congressional campaigns.

Our party now has an official position on this. As I have said, that official position, as has been enunciated this year by a resolution of the Republican National Committee, is that our party opposes extending taxpayer funding and urges all elected Republican officials, in their turn, to oppose it. That is the official position of our party. It is so, I suspect, because our party fears the further controls from the electoral process that inevitably will come with greater Federal largesse in financing these elections.

It happens that the other party, the Democratic Party, views the matter dif-

ferently. The other party calls for expending taxpayer funding to congressional elections. In a manner of speaking, there is a contest being waged between the parties on that question.

I intend to read the full text of the interview between Senator PACKWOOD and the nominee, Mr. Reiche, as well as some other documents.

I am not playing a game. I must say that I was a little disappointed in my friend from Oregon raising that matter. I am not playing a game, and he is not, either. Both of us have many important things to do, just as all of us in this body have, and we have no time for games. This is not a game.

Senator HATFIELD claims that examining Mr. Reiche's views on taxpayer funding is a strawman, that Congress makes policy, not members of the FEC.

Well, yes and no. Yes and no, Mr. President, because this body, made up of human beings, does not make perfect law. It does not write perfect statutes. Much of the legislation we pass is ambiguous. It must be interpreted. Who can say that the views of our public servants do not enter into their interpretations when they must make those interpretations.

However, it goes beyond that. Our public servants—the members of the FEC included—do not operate in a vacuum. Not only must they interpret gray areas of the law, in which cases, their personal points of view come into play, but also, they select and hire staff, and frequently staff members will reflect the point of view of the person who hires them.

Because the FEC is as busy as the rest of this Government—far too busy, in my opinion—it is necessary for them to delegate reponsibilities to these staff members, staff members who often are supervised insufficiently.

If the nominee who is to represent our party on the FEC, whose duty in part is to protect our partisan interests, does not have as his point of view the Republican point of view which has been made official by resolution of the Republican National Committee on the issue of taxpayer financing of elections, if he does not have that as his point of view, then what kind of actions can we expect on his part in other matters?

Regarding the testimony by the executive director of the New Jersey Election Law Enforcement Commission, I point out that his prepared testimony was typed on the letterhead of the New Jersey Election Law Enforcement Commission. I point out again that Mr. Thurston was here under the authority of the commission, was paid to journey to Washington to testify and to advocate extension of taxpayer funding of congressional elections. He was paid to do these things with the tax funds of the State of New Jersey. Surely Mr. Reiche knew his executive director was coming to Washington. After all, the trip was authorized by the commission which Mr. Reiche chairs.

And Mr. Reiche claims he feels that all of this was right because the New Jersey Election Law Enforcement Commission believes in sharing its experiences.

I will point out again, Mr. President, that the New Jersey Law Election Law Enforcement Commission has no experience with the funding of congressional elections, no experience whatever, and Mr. Thurston's testimony, therefore, was not sharing but it was advocacy, paid for by the taxpayers of New Jersey.

Mr. President, it seems to me, it comes down to this: Is the Republican Party entitled to someone who embraces the official Republican Party point of view in the one cardinal matter that bears on the electoral process which is presently before the American people in the debate between our two parties? I believe we are. I believe, further, that Mr. Reiche in his testimony and his answers to the questions which I was allowed by the graciousness of the committee to put to him and in his interview with Senator PACKWOOD, has clearly established that he does not embrace that Republican point of view. He says he has not made up his mind. He said we have not had enough experience. He said he is not philosophically opposed.

Mr. President, my party wants someone protecting its interest on that Commission, someone who has made up his mind about some of these very fundamental things. Do we want to give greater power to the FEC? Or do we want to be sure that it does not have greater power than it has today? And I am confident that the position of the Republican Party is that the FEC shall not have greater power.

Senator HATFIELD spoke eloquently about the Federal octopus which has spread its tentacles across this land, into every State, into every city, into every town, and into every household.

That Federal octopus was created right in this Chamber and in the adjoining Chamber of the House of Representatives. This octopus did not grow on a tree. It did not come up out of the ground. It did not materialize out of thin air. It was the result of the kind of leadership, bankrupt in my opinion, which has dominated these Houses almost without interruption for 47 years.

The question before our country today in this difficult hour, is shall we continue the kinds of policies that have led to this octopus which is choking the life out of our country, shall we continue those kind of policies, or shall we, as our British cousins have done, break with the past, and admit the foolishness of the policies which have been pursued in recent decades? That is the question before this country, not the materialism, of our people. The question is are we going to continue to allow the Federal Government to grow at the expense of the sovereignty of our States and the freedom of our people? That is the question.

I want someone, Mr. President, representing my party because I believe in my heart that the Republican Party is the force that will move our country away from the disastrous course on which we have been set. I want someone representing my party on that Commission who feels strongly about the dangers of Government.

I began my speech by quoting George Washington who pointed out wisely that Government is not eloquence, it is not reason; it is force, like fire it is a dangerous servant and a fearful master. And I submit, Mr. President, that because of the legislation enacted by this body and the other over the past 40 years, we are much closer today to living under a Government which is our master instead of our servant.

The question is how much power to Government? There is no more dangerous agency in this Government today, including the FBI and the CIA, than the Federal Elections Commission.

What check do the citizens have over their Government short of revolution? Only one, the electoral process. I think it was a perfectly dangerous if not stupid idea to create the FEC in the first place. It was putting the fox in charge of the chicken coop. It was giving to Government powers to subvert the only check that citizens have over that government. Creating the FEC was surely one of the unwisest actions of the Congress in recent years.

But it is there and I cannot repeal it with this speech or with any action that I can take.

But I can insist and must insist that the nominee chosen and confirmed to represent my party on that Commission be someone who has a fear of Government, fear of becoming the servant of Government.

Mr. Reiche does not strike me as that kind of man, and I will expand upon this at a later date.

But I believe that my friend from Nevada, Senator LAXALT, wishes to speak.

Mr. President, may I have the attention of the Senator from Oregon because he has a special interest in the unanimous-consent request I am about to make? I ask unanimous consent, Mr. President, that I be allowed to yield to the Senator from Nevada without losing my right to the floor and request further that upon resumption of my remarks that they be considered a part of the same speech which I am now giving.

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Mr. President, reserving the right to object, is this the first or the second speech of the Senator from New Hampshire?

Mr. HUMPHREY. It is the second.

The PRESIDING OFFICER. It is the second.

Mr. HATFIELD. The second speech. I will not object.

Mr. HUMPHREY. I thank the Senator from Oregon.

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

Mr. LAXALT. Mr. President, first of all, I feel as if we are having a repeat performance of yesterday's situation. Once again I commend my colleague from New Hampshire for having been here such a short time and having the courage of his convictions not only in the sense of just indulging in rhetoric

but the translating that rhetoric into effective political action because he feels keenly about a given issue.

You do not have too much around the Senate any more—and that is not meant in criticism or derogation of this body—but in the short time I have been here I see a dilution in terms of individual Senators or, for that matter, a group of Senators, willing to take the time and effort required to be on this floor to speak in a filibuster situation or otherwise—and undeniably we are distracted, all of us are heavily committed with other obligations in our offices and on committees, particularly at this time of the year—but to see someone like the junior Senator from New Hampshire perform in the manner that he has on this floor, and otherwise, I think, speaks well not only for him but for the future of this body because of this present class where we find a number who operate, reason, and function much like GORDON HUMPHREY.

It is for that reason and in support of what he is trying to do and in support also of my own convictions in relation to this particular nomination that I stand, Mr. President, in support of Mr. HUMPHREY and in opposition to this nomination.

Now, it has been said around here for the last several months that perhaps we, as Republicans, should closet the fact that we oppose this nomination on the ground that Mr. Reiche is not partisan enough, and I guess the message to be derived from that type of observation is that we, as Senators in this great and honorable body, should not indulge in the cheapness of politics; that we ought to be above the gutter.

But, as the Senator from Oregon, very capable Senator from Oregon—and I do not know anybody in this body whom I respect more than MARK HATFIELD—indicated there are times when politics have to be the order of the day and should be, and we, as Republicans, have on a rather infrequent basis, when our partisan interests have been involved, stood as Republicans in this Chamber and, I might say, refreshingly effective in those rare instances where we did stand as a party.

So I, for one, do not apologize for the fact that I object to this nomination, to this man.

I do not even know him except by reputation and the reading I have done. I gather he is a fine man in every sense of the word. He is honest, does a good job in the present situation. But in our estimation, he does not meet the criteria as Republicans that we need on that Commission because in the recent history of that Commission—and I was involved to some extent with the Commission when I was involved as the national chairman for Ronald Reagan—we found very quickly that in making vital campaign decisions that more often than we liked we had to think in terms of how a given campaign decision would affect the bureaucrats downtown and how they would react to it, which injected a wholly new element in Presidential politics.

I have had a feeling, as a result of that experience and since that the FEC, in its present composition—and probably we are to blame for that—is a hard ball political game, and anticipating that, as we all know, the composition of that body was weighted so that each party was protected, recognizing that if you come down to a hard partisan basis you had better make sure both parties were protected, and you had better make sure—even a given party out of power here and downtown in the White House—that nevertheless the minority party, whatever it might be, would have its flanks protected in the process.

So on these tough partisan issues we have had a number of issues, I guess, on a partisan basis, where there has been a split vote. That is why we are concerned really with having someone with strong partisan convictions represent our interests on the FEC. I do not consider that to be bad.

Admittedly—and I do think that we are going to have to take a careful look at how the FEC was structured in terms of the present legislation which authorizes that body in very deeply controversial matters, politically controversial matters, to investigate a given complaint, deliberate on it, try it and mete out a sentence—we have the whole structure here within one commission.

The more I observe the conduct and operation of the FEC, the more I am convinced that essentially and inherently that process is wrong. You cannot have within the same political house all these various functions where they actually do their own investigating, they do their own prosecuting and, eventually, they do their own judging.

It is for this purpose this morning during our confirmation hearings with Mr. Civiletti, who will undoubtedly be confirmed very shortly by the Senate to be the Attorney General—and he will do a competent job and I wish him well—but during the course of those hearings I questioned him on the essential policy question of whether or not these functions within the FEC should now be diverted to the Justice Department so we would have an independent look over there.

If I understand his answer correctly, he tended more or less to agree with it as a matter of political philosophy and as a matter of political science.

If we are able to move these functions over, so much the better, because then we are not going to have these problems and these vulnerabilities and these risks all within the same house. But until these functions are taken from the FEC—and I hope that is not going to be too long—and put over into Justice we, as individual Senators, or the Congressmen down the road or anybody who is subjected to the jurisdiction of the FEC, have a great political vulnerability, and in that situation we are intensely interested, as I said initially, in having our political flanks protected by someone, when a matter comes in on a partisan basis, who is going to stand up and be 100 percent partisan whether or not he comes from the Democrat side of the aisle or ours.

Now, Mr. President, to me it is a curious political circumstance that the nominee in question, the chairman of the New Jersey Law Enforcement Commission, has been proposed to the Senate by the very distinguished President of the United States in the interests of a bipartisan election commissioner.

The views of the gentleman from New Jersey on this vital matter of Federal election campaign procedure in no way reflect the position of the Republican Party or the vast majority of Republicans. I refer specifically to the nominee's stated support of U.S. taxpayer-financed Federal election campaigns. Such a position is directly repugnant to the letter and spirit of the Republican Party platform approved by the Platform Committee for presentation to the Republican National Convention August 7, 1976 in Kansas Cty, Mo.

On page 4 of the platform text it is clearly stated:

> That since power has flowed to Washington, the ability to attend to our problems has often dried up in our committees and States. This trend must be reversed. Local government is simply more accountable to the people and local people are perfectly capable of making decisions. We reaffirm the long-standing principle of the Republican Party that the best government is the one closest to the people.

Now, Mr. President, why are we, as Republicans, exercised by public financing of elections?

Well, I can remember in my younger days that I used to feel that public financing of elections was great, because you had all these nefarious special interests running around this country buying candidates and buying officeholders, and would it not be a perfect solution if, instead of all that, we had taxpayer funding, and thereby we would isolate those nefarious special interests and we would have a fair system?

Well, that position, based on my own experience, was sheer naivete. It does not work that way.

First of all, I find nothing objectionable whatsoever in having the business and other interests in this country fully involved in the election process. I find nothing objectionable about that at all. There has been some objection, here in the last couple of years, that AMPAC, the medical PAC, buys votes. We had an example of a doctor in this country with 11 boats? That did not speak very well for the doctors of this country.

I do not think there is the least bit of harm involved in having that kind of involvement. I happened to read, in the last couple of days, that 70 percent of the people of this country do not know who the parties to the SALT agreement are. I can hardly believe that. That is a survey that has come down within the last month or so. I find that terribly hard to believe.

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

Mr. LAXALT. Surely.

Mr. HATFIELD. I can only add to that kind of consternation by saying a few weeks ago, a month or maybe 6 weeks, a survey showed that over 50 percent of the American people did not know we imported oil.

Mr. LAXALT. That was an amazing statistic. It was a New York Times sur-

vey. Fifty percent of the American people did not know we imported oil.

Well, aside from the correctness of these statistics, that 70 percent of the people of this country do not know that the United States and the Soviet Union are the parties to the most important matter that we who are now in this body will probably ever discuss on the floor of the Senate, and 50 percent do not know that we import oil, certainly speaks to a most essential point: we need more political awareness and political involvement in this country, because, as I found in connection with the ratification of the Panama Canal treaties, one of the most important issues we have fought in this body, and I fought it tooth and nail for months, up and down this country, the only reason that we came even as close as we did was because finally the people got involved and raised unmitigated hell about the Panama Canal Treaties.

Had we had the same climate then, to the extent of not having any real political involvement or interest on the part of the public generally, I would expect that that vote would not have been nearly so close. And I would rather imagine, on the same basis, that one of the essential difficulties we find in the discussion of SALT now is that there is very little public awareness or interest, so that in this vital area activity on the part of the public, in connection with their making their wishes known to us in the Senate and to Congress generally, may be lacking.

So the reason why many of us were concerned and are still concerned about public financing is because the thrust of it is to reduce private involvement in the electoral process, and substitute the governmental processes in Washington, D.C. in lieu of it; and to me that is as unhealthy as it can be.

In addition to that, on both sides of the aisle we oppose public financing because essentially what it does it locks incumbents into place. We have enough advantages in this place already in terms of freebies, free mailings and all else, to give us, if we do a reasonably good job, considerable advantage insofar as a challenge is concerned.

I have not been here so long that I do not remember what it is like being a challenger for the U.S. Senate. It is tough; it is uphill when you wrestle with one of these incumbents and attempt to replace them. It is a difficult thing to do, as any challenger will attest.

To strengthen that hand even more by way of public financing and limiting the challenger as to what he can spend in one of these races, Mr. President, I think puts the incumbent at an undue advantage in the situation.

But in addition to all that, and to me more important, is that we substitute the integrity of the local election process with a Washington process. And finally, in all these delicate areas, whether it is a Senate race, a House race, or whatever, we have bureaucrats in the FEC involved in making campaign decisions. Beyond that, from the standpoint of sheer practicability, we all known the FEC has not even completed its work, 3 years later, on the last Presidential election campaign. There was an extensive article in the Washington Post not too long ago demonstrating conclusively that the audits required by that Presidential campaign have not yet been completed.

Can you imagine what we would do to the process, to the FEC, and to all these various candidates if we imposed upon them performing audits on 535 additional races?

You can say, "We will staff it up and tool it up, and provide the financial resources, which in turn will provide the manpower, and we will get the job done." I do not believe it, Mr. President.

So, for all these various points, many of us in this body strongly felt that public financing was harmful to the process, and we resisted it. It is apparently clear in the estimation of some, and I know there is a conflict—Senator HATFIELD has indicated some in his discussion—as to whether Mr. Reiche is really all that positive on the issue of public financing. He has given some indication that he seems to favor public financing, but that may not be his position. He may be ambivalent.

Well, if that be the situation one of our Republicans sitting on that Commission, I as a Republican am terrified. I do not even want to take a 5 percent risk on that point. So I have to talk about this as being a partisan situation, witn a man on it who is, as a Republican member ambivalent. Feeling as strongly as we do about public financing, that we need to have a majority of the Republicans on the Commission opposed to public financing, it does not make any sense at all for us to have this nomination imposed upon us, and that is essentially where we are going.

The present Federal Election Commission is dangerously remote from the people of these United States. It is by its very nature inimical to the principle of local control of Government's most urgent process, that of electing its Representatives. It already threatens to grow beyond the power of Congress and become almost a law unto itself. It threatens any Member of Congress daring to question its perquisites with crippling harassment. In short, Mr. President, the tail is coming to wag the dog.

A timely and eloquent warning is given us by the Honorable WILLIAM L. DICKENSON, of the Second District of the great State of Alabama, in a recent book, "Can You Afford This House?" I would like to read into the record the chapter entitled, "Manipulating Federal Elections—And Calling It Reform." It states:

> The seventies will be remembered as a decade of reform. Spurred on by Watergate, various congressional scandals, and Koreagate, the majority in Congress seized the opportunity to extend Government regulation to the one area that our forefathers deemed most sacred—our election process.
>
> In 1971, the Federal Election Campaign Act was adopted, which included stringent reporting requirements of a candidate's expenditures and receipts. The act has not been a complete success—

And that is certainly an understatement. Continuing:

> As evidenced by the fact that it was amended in 1974 to establish the Federal Election Commission (FEC) and again in 1976 to correct defective provisions ruled unconstitutional by the U.S. Supreme Court. As though following a pattern, further amendments to repair a hasty and ill-drafted piece of legislation will be considered in 1978.
>
> It has become almost standard procedure to complicate federal election laws with new and even more controversial provisions. The public financing of Senate and House elections has become a favorite subject of the majority party, along with instant voter registration. It is ironic that such complicated and controversial schemes are proposed in the face of the confusion and difficulty with the present election laws. At a time when the public is demanding honest and fair elections, the first order of business should be to clarify the present law so that everyone can understand it.
>
> Public financing of congressional campaigns has been urged as the most effective way to reduce the influence of special interests, promote more political participation and competitiveness, and improve the public image of Congress. These goals are surely worthy ones; however, what the proponents of public financing say it will do, and what it actually will do, are two different things.
>
> In reality, the concept of publicly financed federal elections works as an ingenious method to keep incumbents in office.

This is a point I was trying to make a while ago. Continuing:

> The Federal election laws are supposed to ensure fair and honest elections. It can hardly be fair to challengers to limit them in what they can spend by a grant of federal money in a dollar amount equal to that which an incumbent would receive, because no consideration is given to the tremendous amount of publicity that an incumbent receives by virtue of his status as a Federal officeholder; nor is consideration given to the use of the frank (free mailing privileges), newsletters, and other devices which give the incumbent a sizeable advantage in the next election.
>
> In order for a challenger to defeat an incumbent, he must outspend the incumbent by a significant margin. In accordance with the *Buckley* v. *Valeo* decisions, which held that spending limitations cannot be imposed upon a candidate who does not accept public moneys, enactment of a public financing bill would force the challenger to refuse Federal money in order to have a shot at getting elected. At the same time, public financing would act as a gift to the incumbent of taxpayer money, to finance his campaign. Based upon the realities of the election process, the public financing concept is little more than an incumbent reelection insurance plan with the premiums being paid for by the taxpayers.
>
> Another misconception about public financing of Federal elections is that it would reduce the ability of special-interest groups to buy candidates. If this is really a problem, the solution lies in full public disclosure of each candidate's contributions and expenditures, without all the built-in exceptions. As the old saying goes, "Where There's a Will, There's a Way." There will always be attempts to influence legislation. Any attempt to limit or prohibit contributions to candidaes by special interests will be met with alternative means to accomplish the same result, perhaps to the point of actually encouraging newer, more subtle methods of influencing the candidates.
>
> The current law does not provide equal treatment for all interest groups. The most notable imbalance is the exemption granted to labor organizations for registration, get-out-the-vote drives, and "volunteer" election-day activities, which are not required to be reported to the Federal Election Commission. It is grossly unfair to grant preferential treatment to big labor and at the

same time deny business's political action committees (PACs) similar treatment. The number of stockholders in this country exceeds the number of union members by more than four million. Their interests deserve to be expressed and protected no less than those of the union members. If money from corporate PACs is an evil influence, it is no more so than that contributed by labor.

Public financing of elections has another drawback that has not been fully understood by the American taxpayer. No matter how you view it, public financing is one of the biggest ripoffs of taxpayers that have been proposed in recent years. The money that will go to finance an election has to come from tax dollars. It is not additional money contributed freely for that purpose by the American people. Only 3.4 percent of the taxpayers in Maryland were willing to add $2 to their tax payment to remove the "evils of private money in state elections." The present presidential checkoff system, which does not require the taxpayer to add an additional dollar to his tax bill, indirectly results in more taxes for the American people, or fewer services, or both. Put simply, if taxpayers pay $100 into the Treasury and the Government spends $100 for various Federal services, diverting one dollar to political campaigns would leave the Treasury with a balance of $99 to finance those same Federal services. The result is that either some of the services will have to be reduced, or additional taxes will have to be collected. Everyone ends up financing political campaigns to some extent, whether or not he utilizes the checkoff provision on his tax return.

The proponents of public financing may attempt to sell their proposal to the people by raising the national debt ceiling to avoid any direct effect upon the taxpayers. What this really amounts to is forcing the people to pay for incumbents' campaigns without realizing it. The proponents have an easy task selling their plan to the public because most people do not understand what happens when the national debt is raised. The result is higher prices and less buying power for the taxpayers.

Various voter-registration schemes have been introduced by Democratic Members of Congress allegedly to increase voter participation, but these schemes seem to me to be at the expense of honest elections. Not only do postcard and same-day registrations plans create administrative nightmares for election officials, they make it remarkably easy to cast fraudulent votes. The criminal provisions that accompany the registration plans will not prevent fraud. Even if convictions are obtained and the guilty punished, the American people's confidence in their elected representatives will be severely shaken. Enactment of a voter-registration law without sufficient safeguards to prevent fraud will only result in more confusion and a deeper belief by the public that politicians are crooked. The ultimate result will be increased voter apathy, exactly the opposite of what instant voter-registration proponents assert it will do.

If the obvious potential for fraud is not enough to spell defeat for easier voter-registration schemes, then the overwhelming objection to instant voter registration by state election officials and the U.S. Department of Justice should be. State election officials, expert in the area of voter-registration problems, agree that greater voter participation is a worthwhile objective, but that end does not justify creating a public joke by encouraging stolen elections. The prospect of longer lines at the polls and an insufficient number of volunteers to help run the elections will only encourage voters to stay away from the polls.

The Justice Department's opinion, as reflected in a memo dated April 1, 1977, stated that the relaxation of what few safeguards presently exist will deprive the states of their ability to prevent fraud and judge the qualifications of voters. The alternative safeguards presented in H.R. 5400 were viewed as inadequate by the Justice Department, which through its experience is aware that those who will commit election fraud are not going to be deterred by the enactment of still another criminal statute.

In view of all the criticisms of instant voter-registration proposals, one must ask if the proponents of such schemes have something in mind other than the best interest of the American people. Both Republicans and Democrats want more people at the polls. The question is how to achieve this worthy objective in a manner fair to all sides. The Washington Post editorialized on July 17, 1977, that "bolstering election administration seems to be a secondary interest for the Democrats. Their first hope is to get more people to the polls. They ought to try to do that in the customary ways, through good grass-roots organizations, attractive candidates and issues, and strong campaigns."

Numerous studies have been conducted in recent years in the effect of our registration laws on voter turnout. The consensus is that the registration laws are not the cause of low voter turnouts for elections. More important, most nonvoters have indicated that they are turned off by the candidates.

In fact, in response to a question in a survey compiled by the Hart Research Associates, nonvoters said that the factor which would most likely get them to vote in the future would be "having a candidate worth voting for." It is clear from most of the studies that the best way to get more people to vote is to give them attractive candidates who are willing to discuss issues of interest to the people. Candidates who straddle the fence on controversial issues do not stir the interest of the people.

The Justice Department's opinion, as reflected in a memorandum dated April, 1977, stated that the relaxation of what those few safeguards suggest will deprive the States of the ability to prevent fraud and judge the qualifications of voters.

This is the point I spoke to originally, that essentially, what you do by going the route of Federal financing of elections is to substitute the Washington process for the local process. As far as I am concerned, having been involved to a certain extent in both, I think it would be a terrible result as far as the process itself is concerned. Continuing:

The voter-registration laws have been liberalized considerably in recent years to get more people to vote: Longer registration hours, more registration places, and less discrimination against minorities. Despite all that, and more, the levels of voter registration and voter turnout have declined since 1970. In view of the findings of recent studies, and the failure of liberalized voting laws to increase voter turnout, it is doubtful that a new voter-registration law, allowing registration on election day or by mail, is the answer. Voters who are informed and who care about how their government is operated will continue to take an active part in the political process. To increase the voter turnout, we must emphasize more the attitudinal factors, which motivate people to go to the polls, than the structural factors.

The political process through which this country has achieved greatness is undergoing considerable strain. The establishment of the Federal Election Commission marked an intrusion into an area that, except for rare occurrences, had worked well for almost two hundred years. It should be remembered that political parties are nowhere mentioned in the United States Constitution. They evolved as practical mechanisms to make good government achievable. Throughout our history, the courts have declined to hear cases involving political issues. Now, through legal restrictions and bureaucratic regulations and complexities, potential candidates may be driven from the political arena, thereby depriving the public of new ideas and views which could help make our country strong.

Originally, the Federal Election Campaign Act was designed to curtail abuses in the election process, and ensure fair and honest elections. Unfortunately, it now appears that the predictions of many congressmen who were opposed to the establishment of a federal bureaucracy to oversee the federal elections are coming true.

Each year the FEC's budget increases as more people are added to its payroll. There has been an increase from 197 employees in 1977 to 240 employees for 1978, plus a budget increase from $6 million to $7 million.

As I indicated a little while ago, in a piece done in the Washington Post several weeks ago, it is suggested that even with this tremendous increase in funding and manpower, the job still is not getting done, even though their activities are confined almost entirely to the Presidential races of 1976. Continuing:

Candidates are more confused than ever in their attempts to comply with the law, because of the bureaucratic red tape now interlacing the Federal election law, and the crucial but mainly arbitrary decisions made by the FEC in interpreting the FECA.

The 1976 elections gave insight into the problems that face some candidates. A number of candidates for President who had received matching payments to finance their campaigns were told, months after the elections were over, that they had to refund part of the already spent matching payments to the U.S. Treasury because they were not eligible or were not entitled to the full amount that they received.

If senatorial and congressional elections become publicly financed, this will result in an estimated 936 candidates who will have to be audited by the FEC every two years, in addition to the audit of presidential candidates! No one has attempted accurately to estimate how many additional employees the FEC will have to hire, or to estimate how much administering a public financing law will add to the FEC's budget. The FEC, with its 200 employees and $7 million budget, had not by the end of 1977 completed its audit of the presidential candidates for 1976. It is conceivable that, unless the FEC grows into a superagency overnight, our election process will become bogged down by uncompleted audits and litigation every two years, at a cost that will outrage taxpayers—at least $100 million every two years.

The FEC's random audit practice also demonstrates the commission's insensitive approach to the political process. The practice of randomly auditing candidates and sending confirmation letters to contributors not only shows that the FEC does not understand the political process, but also reveals an impracticality in the face of the number of unfinished audits and unprocessed complaints currently before the commission. Such audits should be limited to situations based upon a reasonable cause to believe that the federal election law has been violated by the officeholder. The implication that the candidate has done something illegal might very well cost him his reelection as well as his good reputation.

It is to be hoped that members of Congress will put aside any preoccupation with

schemes that complicate and confuse our election process and join together to draft a law that treats all candidates and interests equally. It is only with a law that requires full disclosure of contributions and expenditure attributed to a candidate, without any loopholes to organized labor or business, that we can begin to restore public confidence in our political system.

It is high time that we abandon ill-conceived attempts at "reform" simply for the sake of reform—

And we do that all the time around here. Continuing:

and settle down to the task of protecting the interests of the people in a manner worthy of the trust they have placed in us.

Let us not add meaning to the definition of politics once expressed by Groucho Marx, who said politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly, and applying the wrong remedies."

The nominee now before us here in the Senate can offer us no prospect of relief from this frightening situation. Far from sharing our concerns, he would like to grant the FEC almost absolute power over Congress and remove from the people one of their most important means of controlling elections, the financing of election campaigns.

Federal financing of our elections would ultimately make each of us directly accountable to the FEC for every penny we spend in an election campaign. It would be the utmost folly to trust any agency with such vital information. How much more folly must it be to entrust it to such men as Thomas Harris? A creature of big labor—could a candidate for office who believes in the right to work, for example, expect Harris' complete confidence and impartiality? If the gentleman from New Jersey cannot forsee this eventuality from public financing, then he does not understand the character of the present FEC. And if he does not understand the situation, it is hard to see how he could ever alleviate it.

Perhaps the nominee does understand the consequences of public financing of Federal election campaigns just as we do. If so, then, he clearly looks forward to the exercise of such absolute power for himself. Any man who desires power without responsibility may be expected to exercise that power irresponsibly.

Faced with a candidate whose words decry either incompetence or ambition the Senate should be emphatic in its rejection of this nomination.

The Senate should reject, just as emphatically, the FEC itself if it continues its blatant favoritism to organized labor unions at the expense of legal justice.

Mr. President, I trust that my distinguished colleagues would find an article in Conservative Digest published in October 1978 of great relevance to this issue. The article is entitled "FEC: Big Labor's Newest Weapon":

FEC—The Federal Election Commission. Mark that name. It's an obscure Federal bureaucracy well on its way to becoming the instrument through which top union officials will impose their will on the U.S. Government.

Because its thumb rests on the jugular vein of representative government, the FEC provides an ideal body through which union officials can gain by government fiat that which they can never gain through the voluntary choice of the American people.

Through the actions of union-influenced public officials, key FEC positions are being filled with hand-picked union functionaries. Most recently, FEC commissioner Thomas E. Harris—a long-time lawyer and lobbyist for the AFL–CIO—tried to recruit organized labor's Sam Zagoria, formerly president of the Newspaper Guild, acted as big labor's mouthpiece on the U.S. Conference of Mayors (8 years), the National Labor Relations Board (4 years), and, in 1977, the Maryland Task Force on Collective Bargaining for Public Employees. President Carter reluctantly withdrew his nomination of Zagoria only after intense pressure from Republicans that started last year when the National Right to Work Committee (NRTW) exposed Zagoria's past.

Three cases well illustrate the FEC's loyalty to orgnaized labor chieftains.

The first case involves the Nation's largest single union, the National Education Association (NEA). From 1974 through 1977, the NEA automatically and illegally deducted an estimated $400,000 annually from teachers' paychecks as political "contributions"—without asking the teachers' permission.

The FEC refused to act on this gross violation of election law, although Commissioner Harris later admitted he knew all along the deductions were illegal. "No other union has conceived that it (the illegal paycheck deduction for politics) was permissible either under the 1974 Taft-Hartley Act or under the subsequent revisions," Harris testified before the House Administration Committee.

Yet it was only after the National Right to Work Committee obtained a court order that the Commission finally moved against the NEA. Had the FEC refused to act, the Right to Work Committee would have been allowed to prosecute the NEA to the fullest extent of the law. So the FEC prosecuted, but withheld important evidence and argued the weakest possible case.

The predictable result: Neither a fine nor a penalty, but just a gentle slap on the wrist and an order to set up a fund for teachers to get a refund if they request it.

The second case is that of an AFL–CIO conviction earlier this year. Although the organization was found guilty of illegally funneling $312,000 from its general treasury into its political war chest, the penalty was a meaningless $10,000 fine. Following the decision an AFL–CIO spokesman remarked, "We made $302,000!"

And they had. I continue:

The FEC lawyer assigned to the case remarked, "I'm pleased as punch!" Again, the FEC made its half-hearted effort to enforce the law only after the National Right to Work Committee filed complaints and obtained a court order that forced the FEC to act.

The third case is that of the National Right to Work Committee itself, a prime target on the "enemies list" of top union officials. Using its already legendary powers to tie up legitimate campaign operations, the FEC has effectively blocked National Right to Work from setting up a political action committee for over two years.

When in January 1976 the NRTW organized its PAC—called Employee Rights Campaign Committee—it asked the FEC for guidance on how to conform with the incredible array of vaguely worded rules governing campaign activity. The FEC, chaired by former AFL–CIO attorney Tom Harris, refused to give such guidance for month after month, despite repeated appeals and despite the fact that Federal law required such advisory opinion within "a reasonable time." Meanwhile, NRTW felt constrained in moving ahead with its PAC for fear of violating some ambiguous statute or ruling.

When, in January of 1976, the National Right to Work Committee organized its pact called Employee Rights Campaign Committee, it asked the FEC for guidance on how to conform with the incredible array of vaguely worded rules governing campaign activities.

The FEC, chaired by former AFL–CIO attorney Tom Harris, refused to give such guidance for month after month, despite repeated appeals and despite the fact that the law required such advisory opinions within a reasonable time.

Meanwhile, the National Right to Work Committee felt constrained in moving ahead with its pact, for fear of violating some ambiguous statute or ruling.

So what this points up, Mr. President, is the fact that you have a process and you have a structure that is strongly tilted so far as we Republicans are concerned on the other side. Under the terms of the law, the unions are heavily preferred. Under the procedure and the track record that we observe, since the enactment and creation of this commission, the Republicans, those who stand on the side of right to work and on a lot of these issues, are in peril.

It is for that reason that we, as Republicans, are concerned about this nomination. As obscure as it may seem in the total picture, it is key, it is critical.

When you get a vote situation such as we now have, in which every vote counts in terms of protecting our political flanks, it is no small wonder that we are exercised.

So, Mr. President, for these and other reasons, this Senator voices strong opposition to the nomination of Mr. Reiche to the position to which he aspires and joins strongly in this opposition with the junior Senator from New Hampshire.

(The following proceedings occurred earlier and are printed at this point by unanimous consent:)

Mr. HATFIELD. Will the Senator yield?

Mr. President, I ask unanimous consent, with the approval of both the Senator from New Hampshire and the Senator from Nevada, that the Senator from New Jersey (Mr. BRADLEY) be recognized for 2 minutes. Then the floor will be resumed by the Senator from Nevada, having been yielded the floor with unanimous consent by the Senator from New Hampshire.

The PRESIDING OFFICER (Mr. INOUYE). Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, I do not usually comment on matters that are really of concern to the opposite party from mine, but I feel that Mr. Reiche, as a resident of New Jersey, deserves some comment from one of the Senators from the State of New Jersey. I want to take this opportunity also to set the record straight about my own relationship or lack thereof with Mr. Reiche.

The first time that I met Mr. Reiche was last winter, after his nomination had already been suggested by the Republi-

can Party. Since he was from New Jersey, I did make a number of inquiries after that date, and I discovered from these inquiries that he was a fine public servant—honest, capable, a man who served in the New Jersey Election Commission in an outstanding capacity, a Republican and a fine public servant.

I think it is important today that these facts be laid before the Senate for our consideration so that the Senate may know that in New Jersey, based upon an independent inquiry on my part, his qualifications are considered outstanding. I think that consideration of Mr. Reiche for this post would be a very important matter, to be resolved in a positive form.

I thank the Senator for yielding the floor.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the remarks of the Senator from New Jersey be placed at the end of the remarks of the Senator from Nevada. I am very grateful to the Senator from Nevada and the Senator from New Hampshire for yielding for this purpose.

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

(Conclusion of earlier proceedings.)

Mr. HUMPHREY. Mr. President, I thank my colleague and friend from Nevada for his part in this discussion. I think his remarks brought out once again, for us to see, the bias shown on the FEC.

Unfortunately, it is a very partisan body; and if those of us on this side want our rights to be watched carefully and protected, we must have a strongly partisan representative on that Commission.

The nominee whose confirmation is in question today, it seems to me, has not made up his mind on some very important matters central to the opposition by my party to further growth in Government power—more particularly, further growth in Government power over the electoral process. I think that is the heart of it.

Mr. Reiche, in regard to extending taxpayer funding to campaigns for congressional elections, has said at various times that he is not philosophically opposed to it. He has not made up his mind. He has not had enough experience, he says.

I think all that is superfluous, at least the latter parts. I would like him to have made up his mind on the philosophical basis itself.

The surest way to extend Government control and power over the electoral process is to put the Government in the position of doling out dollars for campaigns.

Nearly every Government program comes with a multitude of strings. It is these strings that are choking our towns and our cities and our citizens across this land.

Does the Senator from Idaho seek recognition?

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

Mr. HUMPHREY. I yield, without losing my right to the floor.

Mr. HATFIELD. Yes.

Mr. President, I know the unanimous-consent request the Senator is about to state. I have not objected during the day to such unanimous-consent requests on the part of the Senator from New Hampshire, to yield the floor to some other speaker without losing his right to the floor, and thereby be within the limitation of two speeches in one legislative day, one calendar day.

The Senator from New Hampshire knows that I have made two speeches today. Therefore, I am precluded at this point from making a closing argument if there should be a motion or if there should be a move to make some kind of decision.

Therefore, before the Senator states his unanimous-consent request, I would like to ask unanimous consent that I be granted the right to make a closing statement prior to a vote or prior to a parliamentary action during this calendar day.

The PRESIDING OFFICER (Mr. BUMPERS). Is there objection

Mr. HUMPHREY. I raise no objection to that, Mr. President. However, I do wish it to be clear that in so refraining from objecting, I am not agreeing to a vote on the question of the nomination today.

Mr. HATFIELD. I did not designate the parliamentary action that might occur. I am merely saying that under any parliamentary procedure that might bring the Senate to a vote on an issue relating to this subject, such as a motion to recommit or a motion to lay on the table or some other motion that I understand may be made, before this calendar day is over, I would like a right to make a closing statement on this subject.

I am precluded from doing so now under the rule of the Senate that says that after a Senator has spoken twice on the same subject on the same calendar day, that Senator is finished. But I do want the right to make a closing statement prior to any motion.

The PRESIDING OFFICER. The Chair advises the Senator from Oregon that the rules provide that no more than two speeches may be made in 1 day on any one question. The pending question before the Senate, of course, is the confirmation of the nomination. Should there be a motion regarding the nomination, that would constitute a separate question, and therefore an additional two speeches would be in order.

Mr. HATFIELD. I thank the Chair.

A parliamentary inquiry. Let us assume some hypothetical circumstance, that this might reach a place in the Calendar today that would call for a vote up or down. Would the Senator from Oregon be privileged to make a closing statement under that circumstance, having already spoken twice today on that subject?

The PRESIDING OFFICER. The Senator would not be entitled to speak, if the point were raised.

Mr. HATFIELD. Therefore, I renew my unanimous-consent request that, under whatever circumstance, I not be precluded from making a closing statement on this subject concerning Mr. Reiche's nomination. I am not expecting to make a third speech unless it is needed as to some kind of conclusion or decision or some kind of parliamentary change of circumstance.

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. I have no objection, Mr. President.

Mr. McCLURE. Mr. President, reserving the right to object—and I do not intend to object, because I think the request of the Senator from Oregon is fair under the circumstances of the debate today—does it or does it not apply to the usual questions which are nondebatable? I would assume that it would not open a nondebatable question to debate.

Mr. HATFIELD. A motion to table, for example, is not debatable, and I would not expect to make a speech under those circumstances.

Mr. McCLURE. I thank the Senator.

Mr. HATFIELD. I thank the Senator from New Hampshire for yielding, and if he wishes to make his unanimous-consent request, I have no objection.

The PRESIDING OFFICER. The question is on the unanimous-consent request by the Senator from Oregon.

Mr. ROBERT C. BYRD. Mr. President, what is the request?

The PRESIDING OFFICER. The unanimous-consent request was that the Senator from Oregon be allowed to speak prior to a final vote, to make a closing statement prior to a final vote on the confirmation of the nomination, even though he may have spoken twice previously during the day on the subject.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, suppose it is a nondebatable motion, such as a motion to table?

Mr. HATFIELD. I say to the majority leader that I just responded to the Senator from Idaho on that point. No, I would not expect to have any violation of normal parliamentary procedure to give me that right to speak, but only under the general terms of parliamentary procedure where a closing statement would be in order.

Mr. ROBERT C. BYRD. I have no objection.

The PRESIDING OFFICER. Without objection, the unanimous-consent request of the Senator from Oregon is agreed to.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that I may be permitted to yield to the Senator from Idaho without losing my right to the floor, and with the understanding that the resumption of my remarks will not be counted as a second speech.

Mr. HATFIELD. Mr. President, reserving the right to object—and I shall not object—as I understand the parliamentary situation relating to the Senator from New Hampshire, he is in the midst of his second speech on this subject in this calendar day. Therefore, he may continue the use of the floor, with the intervening speech by the Senator from Idaho, and still be able to speak to this subject.

Once he yields the floor to an intervening speaker without unanimous consent,

the Senator from New Hampshire then would be precluded from speaking a third time. Is that correct?

The PRESIDING OFFICER. If this is in fact the second speech of the Senator from New Hampshire, the Senator from Oregon is correct. However, it is not self-enforcing, the Senator would have to be called to order for making a third speech.

Mr. HATFIELD. Does the Senator from New Hampshire agree to that analysis of the situation?

Mr. HUMPHREY. I do think so.

Mr. HATFIELD. I do not object, and I am happy to have the Senator to continue to use the floor.

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

The Senator from Idaho.

Mr. McCLURE. I thank the Chair, and I thank both the Senator from New Hampshire and the Senator from Oregon for making it possible for me to speak at this time.

Mr. President, I am concerned about the nomination not so much because of Mr. Reiche but because of the Federal Election Commission and the law under which we work and which will be the subject of the actions of the Federal Election Commission of which he would become a member.

Mr. President, I think we need to take a look at what the Federal Election Commission may or may not do in light of what it has or has not done. I call to the Senate's attention a special report which appeared in "The Nation," the issue of May 19, 1979, an article by Peter Peckarsky, an attorney, who is White House correspondent for the Washington Wire, a national news service. This article was in part supported by a grant from the fund for investigative journalism in Washington. I think it is pertinent to our discussion today because it focuses on one aspect of the deliberation and one area of responsibility of the Federal Elections Commission of which Mr. Reiche would become a part.

Mr. President, I read from the article that appears to which I have made reference:

During the past seven months scattered but increasingly linked reports have appeared in *The New York Times, The Washington Post,* on ABC television and most notably in the columns of William Safire, that cumulatively point to serious financial improperties in the financing of Jimmy Carter's 1976 Presidential campaign. On the basis of two years of research, more than 1,000 interviews with more than 200 people and a review of nearly 20 linear feet of documents, it is now possible to construct a mosaic of detail that, for the first time, provides a complete and plausible theory about the financial irregularities that may have put Jimmy Carter in the White House.

Before going any further, let us recapitulate what facts have already been made public. First, on October 19, 1978, *ABC News* reported (from information supplied by this correspondent) that discrepancies had been found in President Carter's tax returns. Second, as highlighted by William Safire in his column of November 6, 1978, Billy Carter took the Fifth Amendment in an appearance before a Federal grand jury investigating Bert Lance's financial dealings. Third, accounts surfaced in the national press, derived from a report of January 17, 1979, by the National Bank of Georgia, of which Bert Lance was formerly president, that there had been delays in the repayment of loans made by the bank to Carter's Warehouse. Fourth, *The Washington Post* on March 11, 1979, raised charges that Billy Carter had altered records of the Carter family peanut warehouse and failed to make timely payment of $500,000 owed by Carter's Warehouse to the National Bank of Georgia. The fifth charge, a matter of public record in 1976, concerned the extension of $645,997 in credit by the Gerald Rafshoon advertising agency to the Carter campaign. And finally, *The Washington Post* reported on April 8, 1979, that some bank loans to Carter's Warehouse, although due in the winter and spring of 1976, had not been paid back in full until July 14, 1976.

Thus far these separate bits add up to a suggestive, but far from coherent picture. In the following article, bringing to bear additional information, I shall demonstrate how funds may have been improperly transferred from the Carter family business to the Jimmy Carter Presidential campaign. This information also raises new questions concerning the role played by Gerald Rafshoon, assistant to Persident Carter for communications, in the financial affairs of the campaign.

On December 12, 1974, Jimmy Carter announced his Persidential candidacy. Almost immediately, his campaign committee, the Committee for Jimmy Carter, faced a problem: as of January 1, 1975, it had to comply with the Federal Election Campaign Act, which limited individual contributions to a Presidential campaign to $1,000 and forbade direct corporate contributions altogether.

On January 22, 1975, Bert Lance, Carter's longtime friend and commissioner of the Georgia Department of Transportation when Carter was Georgia's Governor, became president and chief operating officer of the National Bank of Georgia. Although the bank's major experience was in urban lending, Lance soon made Carter's Warehouse in rural Plains, Ga., one of the bank's biggest customers.

Carter nominated Lance director of the Office of Management and Budget in early 1977. But an investigation into Lance's banking activities led to his resignation on September 20, 1977. The main Justice Department probe of Lance has resulted in one indictment, is expected to produce more, and led to the appointment of a Special Counsel to investigate loans made by the National Bank of Georgia to Carter's Warehouse, a partnership owned by Jimmy Carter (62 percent), Billy Carter (15 percent) and Lillian Carter (23 percent).

The key to unraveling the intricacies of President Carter's campaign finances is understanding that $1 million in loans made in 1975 and 1976 by the National Bank of Georgia to Carter's Warehouse for purchasing a peanut sheller and for warehouse construction actually made little or no business sense. The reasons why this is so are explained on page 571, but the upshot is that the sheller purchase may have been a pretext that enabled Bert Lance's bank to loan President Carter's business an additional $5.8 million ($2.2 million in 1975 and $3.6 million in 1976)—ostensibly for buying peanuts to be processed with the new sheller. Actually, the sheer magnitude of these loans may have provided an opportunity to divert some of the money for use in the Carter campaign.

In fact, three separate sources attest that about $500,000 of these National Bank of Georgia loans—and perhaps more—was not properly accounted for on three separate occasions. The first two sources consist of documents that have already come to public light. But the third source's information involves a $500,000 shortage that coincided with the 1976 campaign and thus provides a reasonable and extremely troubling explanation of how National Bank of Georgia loans actually may have found their way into the Carter Persidential campaign.

The first discrepancy arose out of the Carter loan agreement which provided that the National Bank of Georgia would extend loans up to a maximum of 80 percent of the value of the peanuts in the Carter warehouse. In other words, the peanuts represented collateral on the bank loan. As the shelled peanuts were sold, i.e., as the amount of collateral on hand diminished, Carter's Warehouse was obliged under the terms of the loan to pay back the bank.

At the end of 1975 Carter's Warehouse had an outstanding loan of $1,690,000 from the National Bank of Georgia. For this loan to be properly secured, the warehouse should have had $2,112,500 worth of peanuts on hand. But in fact, an unaudited, uncertified Carter's Warehouse balance sheet of December 31, 1975, listed the market value of the peanuts on hand as only $1,499,403—or some $613,097 less than the loan agreement required.

The second public source to confirm another large discrepancy emerged on January 17, 1979, when the National Bank of Georgia Special Committee reported that on June 7, 1977, Robert Flynt, then the National Bank of Georgia's vice president in charge of Carter's Warehouse accounts, wrote Billy Carter to request payment of $500,000 to balance the peanut loan account. The overdue money was needed because Carter's Warehouse had withdrawn $476,000 worth of peanuts from storage without paying for them, meaning that there were no longer enough peanuts on hand to secure the bank loan.

Finally, a third, independent source—a person close to the Justice Department investigation now in progress—says that in the month before the decisive April 27, 1976, Pennsylvania Democratic primary, about $500,000 was transferred from Carter's Warehouse accounts at the National Bank of Georgia to Billy Carter's personal accounts in the same bank. Shortly after this transaction, Billy Carter reportedly withdrew the $500,000 from his personal accounts.

Thus, in addition to the two documents already on the public record, now a third piece of the puzzle is offered which also indicates a mysterious $500,000 discrepancy. This new source, whose previous reports on Carter's finances have proven correct, also says that "About $500,000 was redeposited into Billy Carter's National Bank of Georgia accounts in May and June 1976. Justice doesn't know where this money came from, but they were told that the money was then transferred from Billy Carter's personal accounts to the Carter warehouse accounts and then used to repay the delinquent peanut commodity loan."

On March 11, 1979, *The Washington Post* carried a story that quoted Jimmy Hayes (a bonded warehouseman who worked with Billy Carter) as saying that in the spring of 1976 he and Billy Carter repeatedly altered warehouse records; Hayes also said that Billy Carter had failed to make payments totaling $500,000 owed to the National Bank of Georgia. Billy Carter did not sign the overdue checks until June 1976, well after the pivotal Pennsylvania primary. Hayes was subsequently interviewed by F.B.I. agents. Although Hayes later publicly denied the quote attributed to him in *The Washington Post,* no one has previously reported what Hayes told the F.B.I. I can now report that after Hayes talked to the F.B.I., my source told me that Hayes confirmed *The Washington Post* account to the F.B.I.

Hayes has since refused to comment, other than to refer all questions to his first attorney, Ralph Smith of Bainbridge, Ga. Smith, nephew of President Carter's trustee and campaign organizer, Atlanta attorney Charles Kirbo, also refused to comment. Pet-

er Geer, of Albany, Ga., whom Hayes says now represents him, will not comment. Hayes, Sue Chambliss and David Reeves—all former employees of Carter's Warehouse—testified on May 3 before an Atlanta Federal grand jury investigating the warehouse finances.

In mid-January 1979, Assistant Attorney General Philip Heymann of the Criminal Division ordered a fast, thorough investigation of the Carter warehouse finances. In a series of interviews with this reporter, Heymann said that he had ordered his investigators to look into the question of whether money was diverted from President Carter's business to his campaign. When asked on April 5, 1979, whether the department had traced the money withdrawn from Billy Carter's accounts in the National Bank in the month before the Pennsylvania primary, Heymann replied that "the picture of somebody walking away with a satchel of money doesn't fit." When this reporter said that he had not meant to convey the impression that the money was moved in satchels, Heymann indicated that he wished that his earlier comment would not be reported and refused to comment further on the investigation.

The Justice Department's attempt to trace the flow of funds out of and back into Billy Carter's accounts was halted by Special Counsel Paul Curran on March 20, 1979, the day he was appointed, according to my source. When asked whether the F.B.I. was continuing its investigation, Curran refused to comment. When asked whether about $500,000, transferred from Carter's Warehouse accounts to Billy Carter's accounts, was withdrawn from the National Bank of Georgia in the month before the Pennsylvania primary, Curran hesitated a long time and said, "I don't know that." When asked whether the money was redeposited in Billy Carter's accounts in May or June, Curran said he would not comment on each allegation. I asked my source if there could be some explanation for Billy Carter's withdrawing the money other than a diversion of funds to the campaign. The source repiled: "If you believe that there's any other explanation you'd have to believe in the tooth fairy."

Jimmy and Billy Carter, Carter spokesman Jody Powell and Charles Kirbo, all of whom have previously denied that the money was illegally diverted from the warehouse to the campaign, as well as Robert Lipshutz, campaign treasurer, and Lillian Carter, were unavailable for comment. John Parks, Billy Carters Americus, Ga., attorney, refused to comment.

Both the source and a subsequent newspaper account indicated that Curran has in fact instructed the F.B.I. to resume tracing the money. Curran is believed to be focusing on the activities of Carter's Warehouse and Gerald Rafshoon Advertising Inc., of Atlanta, which was the Carter campaign's advertising agency.

THE RAFSHOON CREDIT

By May 31, 1976, Rafshoon's agency had extended credit of $645,997 to the Carter campaign, according to documents on file at the Federal Election Commission. The debt had grown during the early months of the campaign; the campaign committee owed Rafshoon $207,000 at the end of February 1976, $176,000 at the end of March and $350,000 at the end of April. The campaign's peak indebtedness to Rafshoon occurred during a period that roughly corresponds to the period from March 23 to May 20, 1976, when a Supreme Court decision halted Federal Election Commission certification of matching payments to candidates and made campaign financing more difficult.

Federal election law prohibits corporations from contributing to Presidential campaigns or from extending credit to these campaigns except in the normal course of business. In an interview, John Murphy, the Federal Election Commission's general counsel in 1976, interpreted the law to mean that if a corporation extends credit far beyond its usual billing cycle, or at a time when a campaign's credit rating is so feeble that no corporation would reasonably extend credit to it, there is a legitimate question as to whether the credit is an illegal corporate campaign contribution. Rafshoon's agency's actions seem clearly to have been outside the scope of normal industry practice. When I asked Harry Paster, senior vice president of the American Association of Advertising Agencies, what standard industry practice is in billing political campaigns, he replied: "Cash in advance."

Pennsylvania was the make-or-break primary for Carter. While Arizona Representative Morris Udall spent $217,368 and Washington Senator Henry Jackson spent $167,150, Carter, even though his campaign debt was almost $1 million at that point, spent $472,117—perhaps due to the $645,997 credit from Rafshoon's agency, much of which went toward media buys. Jackson and Udall spent almost all they had and lost. It was in Pennsylvania that Carter virtually wrapped up the nomination.

Robert Lipshutz, treasurer of the Carter campaign committee, who is now Carter's White House counsel, said to me that he does not know and did not ask about the source of Rafshoon's largess. Lipshutz claims that the Federal Election Commission said that the credit extension to the Carter campaign was "permissible." But a spokeswoman at the F.E.C. told me that she could find no record of the commission having told anyone at the campaign committee this. John Murphy, formerly at the F.E.C., said that he is sure there was no formal communication about the credit, and doubted that there was any informal communication.

On December 16, 1978, when I asked about the credit from his firm to the campaign committee, Rafshoon said: "I know what you're working on and you're screwed up." When I asked him where his corporation obtained $645,997 to loan the Carter committee, Rafshoon referred all questions to his attorney, William Stack Jr. of Atlanta. But both Stack and Howard Rothchild, who was an agency vice president at the time, told me they did not know where Rafshoon had obtained the money that enabled his agency to extend credit to the campaign committee. Finally, on January 3, 1979, Rafshoon came up with an explanation to this reporter, his suppliers extended credit to his firm and the firm took little or no profits. But he refused to say which suppliers had extended credit, how much credit each extended or what his agency's net profit margin was.

The explanation that the money came from profits does not hold water. The average net profit of an agency in Rafshoon's class is about 1 percent, according to figures supplied by Paster of the advertising association. If Rafshoon's profit margin was 1 percent of his firm's published 1976 total billings of $7 million, the 1976 net profits would be $70,000 and the credit to the Carter campaign committee would have represented a total of nine years' net profits. If Rafshoon's version is correct, the money for credit extended by the agency to the campaign committee would have had to come almost exclusively from suppliers. One of the agency's major suppliers, however, Williams Printing of Atlanta, which billed that agency a total of approximately $100,000 for campaign committee work, was always paid within thirty to forty-five days, according to John Pope of the firm. Don Sharp, Rafshoon's print production manager in 1976, said to me: "There were no long-term extensions of credit by suppliers." Pat Winstead, production coordinator at the Magus Corporation in Philadelphia, which produced the Carter campaign's television ads, told me that Rafshoon's corporation usually paid within thirty to sixty days.

Given that most of the ad money was spent for radio and TV time, for which stations require cash in advance, it is difficult to understand how credit from suppliers would have provided the agency with the money it needed to pay the broadcasters—unless the suppliers were supplying money (instead of materials). Rafshoon's explanation that the money for the credit came from suppliers and profits appears untenable on both counts. When asked whether the credit extended by his corporation to the Carter campaign committee was an illegal corporate campaign contribution in light of standard industry practice of demanding cash in advance from political campaigns, Rafshoon told me: "I do things differently."

Where did Rafshoon get the money? In April 1976, when the campaign committee's debt to Rafshoon's agency increased by $174,000, Bert Lance came to the rescue. On April 19, 1976, according to a National Bank of Georgia special report and a financing statement, the bank extended Rafshoon's firm a credit line of $155,000 secured by the agency's accounts receivable (including the receivables from the insolvent campaign committee). When asked where he would have obtained the money to extend credit to the Carter campaign without the loan, Rafshoon said: "I don't know."

But the Georgia bank only provided a credit line to the agency of $155,000 (and actually loaned less than that, according to Rafshoon's attorney, Stack). That leaves $490,000 or more unaccounted for (since the total credit to the Carter campaign committee was $645,997)—about the same amount of money that the Justice Department allegedly discovered was transferred from the Carter's Warehouse accounts to Billy Carter's personal accounts in the National Bank and then withdrawn in the month before the Pennsylvania primary.

If Rafshoon's agency did obtain its money from Billy Carter, the cash may have moved in this way: Bert Lance's National Bank of Georgia extended a loan to Carter's Warehouse specifically for the purchase of peanuts to be shelled. A condition of this loan was that receipts from the sale of these shelled peanuts would be used to pay back the bank's loan. However, Billy Carter failed to apply the receipts from the shelled peanuts to paying off these loans, instead transferring around $500,000 from the warehouse accounts at the National Bank to his own accounts at the bank. He then gave this money to Rafshoon, who in turn used it to pay Jimmy Carter's advertising bills. In May and June 1976, after Carter won the Pennsylvania primary and private contributions, bank loans and Federal matching funds started flowing in, the campaign committee reimbursed Rafshoon's agency. Rafshoon then returned the money to Billy Carter who redeposited it in his own accounts, and then transferred it to Carter's Warehouse accounts. Then, when there were sufficient funds in the warehouse accounts to cover the checks, Billy Carter repaid the now delinquent National Eank of Georgia loan with warehouse checks. Thus he made up for the $500,000 in checks Jimmy Hayes has said that Billy Carter refused to sign in March and April.

If such a manipulation of funds knowingly took place, Bert Lance, as an officer of the bank, could be charged with a misapplication of the bank's funds, a felony under 18 United States Code section 656. Billy Carter—and perhaps Jimmy and Lillian Carter—might similarly have committed a Federal felony by making a false loan application to an F.D.I.C. bank in violation of 18 U.S.C.

1015. If Robert Lipshutz and Gerald Rafshoon were aware that the National Bank of Georgia's money was being used to pay for the Carter campaign's TV, radio and newspaper ads, then they may have violated Federal election law by participating in what would appear to be an illegal corporate campaign contribution violation of 2 U.S.C. 441b. Further, everyone involved in this scheme might be charged with conspiracy to violate Federal law under 18 U.S.C. 371.

On February 11, 1979, Billy Carter was scheduled to appear on the CBS news program *Face the Nation*. The appearance was abruptly canceled by Billy Carter's attorney the day before, after Rafshoon's secretary called CBS to say that Rafshoon was "quite upset" and "disappointed" that Billy Carter was to appear. Rafshoon refused to discuss his actions.

On February 23, Billy Carter entered an Americus, Ga., hospital for treatment of bronchitis. On March 6, Billy Carter entered a military facility in California for alcoholism treatment which lasted seven weeks. Coincidently or otherwise, this gave Billy Carter a convenient excuse for avoiding Federal investigators as the three-year statute of limitations on prosecutions of criminal violations of Federal election law during the 1976 spring primaries was about to run out. Then, on or about March 1, 1979, the President, acting through his trustee, Charles Kirbo, paid his brother about $314,000 for some land in Plains, Ga.

The net profit to Billy Carter on the sale was about $190,000, according to Don Carter, the Gainesville, Ga., realtor who handled the sale.

In a previously unreported development, Billy Carter on April 25, 1979, as soon as he left the California institution, was briefed in the White House by President Carter in the presence of Presidential aide Hamilton Jordan on the Carter's Warehouse-National Bank of Georgia arrangement in case Curran subpoenaed Billy Carter. My source also said Billy Carter testified before an Atlanta Federal grand jury on May 9, 1979.

THE FRIENDLY INVESTIGATION

While the press has shown considerable interest in the questionable transactions surrounding Carter's campaign financing, they do not have the legal authority (i.e., subpoena power) to get the necessary documents.

As early as June 1977, some would argue, it was obvious from President and Mrs. Carter's Federal income tax returns why Jimmy and Billy Carter should have been called before a Federal grand jury and what they should have been asked. Yet the Justice Department waited until October 25, 1978, to call just Billy Carter before the Atlanta Federal grand jury investigating Bert Lance. When asked on November 22, 1978, about the delay, Walter Barnes, a department attorney on the Lance team, said: "No comment. There are many things I would like to say but the explanations will have to wait until after an indictment. I might not be able to speak even then."

There is an explanation, however. The effective-date section of the Special Prosecutor provisions of the Ethics in Government Act of 1978 allowed President Carter to prevent the legislation from applying to the investigation of his finances until April 24, 1979.

The Special Prosecutor bill provided that the legislation did not cover information "related to a matter which has been presented to a grand jury" and which is "received by the Attorney General within 180 days of the date of enactment of this Act."

The bill passed Congress on October 12, 1978. Sometime in the week of October 16–20, 1978, Billy Carter was subpoenaed, according to a Justice Department source. Not until the day after Billy Carter claimed his Fifth Amendment right not to incriminate himself in front of the grand jury did President Carter sign the bill. Thus, he delayed the application of the Special Prosecutor legislation to the investigation of his finances for six months.

Philip Heymann told this reporter that the Carter loans first came to his attention on August 13, 1978, as a result of the Lance investigation. When asked why it took so long to inquire into the loans, Heymann said he did not know. He cited the mammoth nature of the Lance investigation as a possible cause for the delay. Heymann said he was unaware that there had been press attention to the loans as early as November 1976.

CONCLUSION

Although serious questions had been raised as early as October 19, 1978 (on the *ABC News* report), the Justice Department's investigation of the numerous questionable transactions surrounding President Carter's personal and campaign finances did not really move into high gear until January 1979—after William Safire's question-raising columns—when Heymann ordered the inspection of Carter's Warehouse finances.

Because of the delay in appointing Special Counsel Paul Curran, President Carter and all his men are at the point where the three-year statute of limitations on prosecutions of criminal violations of the Federal election law in the 1976 primaries is about to run out. Prosecutions for banking law felonies, however, have a five-year statute of limitations and are still possible.

The responsibility is now Curran's to conduct a thorough investigation, and find the answers to the following questions, among others:

(1) Did the Internal Revenue Service properly audit President and Mrs. Carter's 1975 and 1976 Federal income tax returns? In particular, did the I.R.S. find proof (i.e., canceled checks) that all of the $1 million investment on which the Carters claimed an investment-tax credit was in fact spent on qualified business investments?

(2) What did Billy Carter do with the money he allegedly transferred from Carter's Warehouse accounts to his own accounts in the National Bank of Georgia and then withdrew before the Pennsylvania primary?

(3) Where did the advertising agency then owned by Gerald Rafshoon obtain the money it used to extend credit of $645,997 to the Carter campaign committee, including large sums for radio and TV time and newspaper space?

(4) When campaign treasurer Robert Lipshutz authorized repayment to Rafshoon's agency for the credit it had extended, did he know that Rafshoon may have intended to use this money to repay the Carter's Warehouse loan?

(5) Did Lipshutz and/or President Carter know where Rafshoon obtained the money that made the advertising credit possible?

(6) Did Lance know that the sheller-warehouse construction loan by his bank was dubious? Did the construction loan or the peanut loan constitute a misapplication of bank funds?

(7) Did Billy Carter withdraw money from Carter's Warehouse accounts just before the Pennsylvania primary instead of repaying the bank's peanut loan, and did Lance know about it?

(8) What was Gross's role in the F.E.C. audit of the Carter campaign committee books? If the role was improper, what was Lipshutz's role in placing Gross in the key F.E.C. position to control the Carter audit?

(9) What role was played in this extraordinary sequence of events by Attorney General Griffin Bell and his former law partner, Charles Kirbo?

(10) Did the March 1, 1979, payment of about $314,000 to Billy Carter by his brother's trustee (Kirbo) constitute an attempt to buy Billy Carter's silence and thus to obstruct justice?

As the evidence presented in his article strongly suggests, these questions have reached the flash point of scandal. Even worse, perhaps, than the campaign financial irregularities themselves, is the possibility that with the complicity of close Presidential associates and complacent Federal investigatory agencies, what we have is yet another cover up.

The evidence presented here goes deeper than what the press has vaguely and too glibly dubbed "Peanutgate." What it appears to constitute is nothing less than a prima facie case that funds from Bert Lance's bank were illegally used in the Carter campaign. If he had lost, candidate Carter could have expected that the alleged irregularities would have vanished in the post-election mists. If elected President, however, he could expect to assume control over the investigatory apparatus of the Government and control its inquiries. Can this really have happened so soon after Watergate?

Now, an independent Special Counsel has been appointed who is charged with uncovering the truth. Although hobbled by an inability to offer potential witnesses immunity from prosecution without Justice Department approval, Paul Curran has been invested with a public trust to seek the answers to the questions that the evidence insistently raises. One hopes he is able to provide them sooner rather than later.

On the night of December 12, 1974, when he announced his Presidential candidacy, Gov. Jimmy Carter said: "There are a lot of things I would not do for an office or honor in the world." Now it is vital that the people know just what he did do in pursuit of the Presidency of the United States.

Mr. President, I have taken the time to read this article in its entirety because it relates not just to the election of President Carter, not just to the question of whether or not the FBI or the various investigatory agencies have done their job, but because it also relates to the actions of the Federal Elections Commission itself. We are debating the nomination of a man to that Commission and it is important for us, as we debate the qualifications of that man and the job which he has been nominated to undertake, to look at what the Elections Commission has or has not done in one of its most critical areas of responsibility. I think the RECORD is more than replete with suggestions that they have been less than vigorous where it comes to the question of investigating the campaign finances of the Carter Presidential campaign.

Now we are told, Mr. President, that we must get this nomination done quickly in order that they can complete their work before he gets involved in the next campaign. I am concerned not just about when they complete their work, but how they complete their work. I think it is important for us to know that when this job is done, it is done fairly, it is done efficiently, it is done objectively, it is done without any attempt to avoid the consequences of the charges that are made in Mr. Percarsky's article.

Mr. President, I think there is substantial reason to question whether the Commission as now constituted has done what should have been done. I am concerned that, whether or not there is a change in personnel on the Federal Election Commission, we know that Mr.

Reiche, or whoever else may be nominated to that Commission will delve into these questions.

Did they, as a matter of fact, help in delaying the matters that were critical in timeframe as laid out in the article?

Mr. President, these are not simple charges. They are not casually repeated by me.

I do not know the truth concerning Mr. Percarsky's allegations in this article. The American people are entitled to know the truth about these allegations. We will never know whether they are adequately investigated unless we have faith in the people who are on the Federal Election Commission. We certainly must then very carefully scrutinize the qualifications and the commitment of any person who is elected to serve in that position, particularly where he has been nominated by the very man who must be investigated.

I think we are entitled to ask some questions. I think they are very serious questions. I think they need to be answered. We do not have the answers before us today.

Mr. President, I yield the floor back to the Senator who has control of the floor and who yielded to me.

The PRESIDING OFFICER (Mr. MOYNIHAN). The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I thank the Senator for his enlightened comments and for contributing to the debate.

I do thank the Senator from Idaho for assisting me in an endeavor which we see as one which seeks to protect the rights of our party—nothing more.

It is not to ruin anyone's reputation or cause irritation. We all have more important things to do. All of us have important things pressing on us.

I do not relish spending my time doing this. But I feel very strongly about this nomination. I feel very strongly about the importance of having, for the sake of our party and ultimately the sake of our country, a man on the Commission representing our party who has made up his mind before he takes that seat about how far we should go in empowering the Government to oversee the electoral process.

Mr. Reiche, the nominee, has been asked by various persons at various times if he favors extending taxpayer funding of campaigns to congressional elections.

He says he is not philosophically opposed. He says he has not made up his mind about it.

When asked if he favors giving the Federal Election Commission the power to prohibit a candidate from running for office again for a certain period of time if that candidate has been found guilty of a violation of the FEC rules, in response he said something like this: "Well, I don't know. We don't have experience with that. I don't have Federal experience."

It is not a question of experience, Mr. President. It is a question of philosophy, if you will.

Surely, a man who has been active in politics for a great deal of his adult life, who spent 6 years as chairman of a State Election Law Enforcement Commission, should by now have made up his mind about certain fundamental matters.

With respect to the question I just alluded to, the question of whether Mr. Reiche, when asked if he would like to see extended to the Federal Election Commission the power of prohibiting candidates from running for office for a period of time after being found guilty of a violation, the nominee replied in this vein, as it seems to me he always does in response to questions of this kind:

> With respect to the possible extension of this idea to Federal candidates, I would want to study the matter further before ever agreeing to such a suggestion.

I wish he had rejected it out of hand. I would not be here spending my time opposing his nomination. I wish he would have rejected that out of hand and rejected out of hand other proposals to give increased power to the Federal Election Commission.

It is powerful enough. It is the most dangerous agency in our Government. I do not personally want to see and will fight always against giving the Federal Election Commission further powers to regulate and control that one check which citizens have over the Government, the one check short of revolution the citizens have over their Government; namely, the electoral process.

For the benefit of my colleagues who have been busy otherwise and have been conducting business in other places, who have not been able to listen to the debate thus far on the intercom system, let me summarize it as I see the situation, Mr. President.

The statuory term of Mr. Vernon Thomson, who represents the Republican Party, occupying one of the three seats that is allocated to our party on the Commission, as there are three seats allocated to the other party, is expiring.

However, there is no crisis. There is no emergency. My party is still fully represented. We still have three Commissioners sitting. Mr. Thomson may, by statute, remain until his successor is confirmed. Mr. Thomson has indicated by letter to me that he is perfectly willing, even anxious, to stay on. In fact, in verbal conversation with him, he stated that he wished that he would be reappointed. He lives here and intends to keep on living in Washington.

There is no crisis. There is no need to rush. It is unfortunate this matter has come to the floor of the Senate because it is a party matter. I regret that it has to be discussed here, and I ask the indulgence and forbearance of our colleagues on the other side of the aisle in this delicate situation, and it is a delicate situation.

This is not a normal nomination. I am not talking about an everyday Government post.

We who sit on this side of the aisle have, in passing judgment on this nomination, more than our usual responsibility, more that is, because we have a responsibility not only to the citizens of this country, but a responsibility to our party, to make sure that we confirm a man who will adequately represent the interests of our party.

A seat on the Federal Election Commission is a peculiar Government position. It has peculiar responsibilities.

I know, for my part, I would not want to force on my colleagues on the other side of the aisle a candidate who was opposed, who was found wanting, by a substantial number on that side of the aisle.

By the same token, I am confident that they will not want to impose on those of us on this side of the aisle representation by someone who is opposed by a substantial number on this side.

It is not a question of whether the gentleman has professsional qualifications. He has. It is not a question of integrity or honor or character. I have never questioned this. It is a question of whether he is sufficiently partisan.

There happens to be a considerable difference between the approaches of the two major parties on the question of taxpayer funding of congressional campaigns. On the Democrat side, according to the party platform, they advocate extending taxpayer funding to congressional campaigns. For our part, on our side, by a resolution passed by the Republican National Committee this year, we are opposed to it, and elected Republican officials are urged to oppose it.

Unfortunately, this nominee, with respect to this question of extending taxpayer funding to congressional campaigns, says he is not philosophically opposed. Indeed, under sharp questioning by a member of our party, Senator PACKWOOD, the distinguished junior Senator from Oregon asked, "If I want to vote for someone who opposes taxpayer funding of congressional campaigns, should I vote for you or against you?" Mr. Reiche replied, "You should vote against me."

I take that to mean that, at the very least, the nominee does not oppose taxpayer funding of elections and therefore does not embrace the cardinal Republican position that bears on the electoral process which the Federal Election Commission regulates. Because he does not embrace this important Republican position, I question whether the gentleman has sufficient partisanship to protect our interests adequately.

The point has been made that the Federal Election Commissioners do not make policy. I only wish that were true in the absolute sense. They do make policy, just as any bureaucrat makes policy when interpreting the gray areas of the law. There are a great many gray areas. We in this body are human beings and therefore we make imperfect laws which must be interpreted by our public servants. When they interpret these gray areas, these ambiguities, it is only human for their prejudices to play a part in those decisions.

Beyond that, this Commissioner will have duties involving the hiring and firing of staff; and it is only reasonable to assume that his staff, in large measure, will reflect his own positions. The FEC, like all Federal bureaucracies, is so busy that the Commissioners themselves cannot oversee every last detail, any

more than we can as Senators. The staff will be making a lot of decisions and thus taking a lot of actions unsupervised.

The point is that Commissioners do not act in a vacuum, any more than any other executives or any other public servants.

So it seems to me an invalid point to raise the objection, the argument, that Commissioners do not make policy.

Judges do not make policy. However, there cannot be more than a handful of people in this country who do not know that there has been too much judicial activism, and thus judges making policy. Will a judicial nominee come before the Senate and say, "I am an activist; I use the bench to try to advance my own point of view"? You will never find anyone who will do that. They all say they do not. But we know, when we examine the entire evidence that in fact some do; that in fact the judiciary often has usurped executive and legislative powers; and I submit that some legislative powers are also usurped by some of these commissions.

If we cannot count on this nominee to use as the point of departure in making his judgments the official Republican position as enunciated by a resolution of the Republican National Committee, I do not feel confident that we can count on him to be sufficiently partisan in defending our interests before that commission. It is a partisan commission. Irrespective of what it should have been or was intended to be, it is partisan.

Members of my own party and perhaps members of the other party have suffered from that partisanship. I know of one candidate for the U.S. Senate who in the past year's election was badly harmed by the announcement of the FEC of an investigation of his campaign. After the election, the charges were brought. The candidate was cleared. But that did not erase the harmful effect on that candidate during the campaign.

As candidates, we all know that the FEC has the power, simply by announcing an investigation, to do very great damage to our campaign and even to cause our defeat. So we want to be very careful—each of us, on our own side, for our own part—that we have three very solidly partisan Commissioners representing our point of view.

There have been a great many 3-to-3 votes on the Commission, as Senators know. I and others who oppose this nomination fear that if the nomination is confirmed, we shall see 4-to-2 decisions going against our side.

So the matter is more than just philosophical. It is more than just a question of how much more power we want to give to the Government in regulating that vital process, the choosing of our leaders. It is more than that. It has practical effects as well.

Mr. President, in these influential positions, it is vital that we have people who will monitor carefully the activities of staff members who might be inclined to use their staff positions to promote personal social policies outside the mandate of statutes and official agency policy.

As an example, let me read the news release from the Federal Elections Commission on the appointment of Mr. William Oldaker as Federal Elections Commission General Counsel, effective January 1, 1977.

FEC NAMES WILLIAM C. OLDAKER GENERAL COUNSEL

WASHINGTON, November 24.—Vernon Thomson, Chairman of the Federal Election Commission today announced the appointment, by unanimous vote of the Commission, of William C. Oldaker as General Counsel of the FEC, effective January 1, 1977.

Mr. Oldaker presently is the Assistant General Counsel for Compliance and Litigation for the FEC. He will replace John G. Murphy, Jr., who has served as General Counsel since May 1, 1975, and who will resume his teaching post at Georgetown University Law Center on January 1, 1977.

Mr. Oldaker has been with the Federal Election Commission since 1975. In addition to his responsibilities for establishing and supervising the FEC's compliance and litigation programs, he also acted as a liason with Congress in an effort to reconstitute the Commission after the Supreme Court's decision in *Buckley v. Valeo*, January 30, 1976.

Mr. Oldaker, who is 34, received his B.A. and J.D. degrees from the University of Iowa. He also attended the Graduate School of Business at the University of Chicago.

Following his studies at the University of Chicago, Mr. Oldaker worked as an attorney advisor for the Federal Communications Commission. In 1969, he joined the Equal Employment Opportunity Commission as Special Assistant to Chairman William H. Brown, III. In this capacity, he served as a liason with Congress, and as Federal regulatory coordinator, and served on the Administrative Conference of the United States.

In 1972, he was appointed Assistant Regional Attorney for the Equal Employment Opportunity Commission in Denver, Colorado, where he directed the civil litigation efforts of the EEOC in various Southern and Southwestern states.

Mr. Oldaker is a Member of the Bars of the Supreme Court of the United States, the Court of Appeals of the District of Columbia, the District Court of the District of Columbia, the State of Colorado, and the State of Iowa.

Next let me read a news story from the Denver, Colo. Rocky Mountain News dated August 8, 1973 which indicates FEC general counsel Oldaker has in the past taken opportunities to expand Federal agency powers beyond the limits authorized by his supervisors.

This story is from the Rocky Mountain News, August 8, 1973, headline "5 EEOC lawyers suspended for falsifying records."

The regional attorney for the U.S. Equal Employment Opportunity Commission's (EEOC) Denver Litigation Center and four other lawyers assigned there have been suspended from their jobs for falsifying records submitted to Washington officials.

The Rocky Mountain News learned Tuesday that the five attorneys, aided by about 15 other employes, were involved in doctoring "reading files" that were especially prepared for a visit from William A. Carey, the EEOC's general counsel.

By altering the records, the group obliterated a three-word phrase indicating the Denver office defied orders from Washington about how cases were to be filed under the Civil Rights Act of 1964.

MAKING DECISION

Making the decision to falsify the documents were Regional Atty. William Oldaker and Associate Regional Atty. Michael L. Bender.

According to Bender, both men were demoted and received nine-week suspensions as punishment, effective July 27. The other three attorneys, whom Bender and other EEOC officials declined to name, received suspensions of up to five weeks. The other employes received lesser punishment or letters of censure.

Bender emphasized that the documents altered were not actual case files subject to court review and action. Changing case files would have made the attorneys subject to disciplinary action by the courts as well as by higher authorities in the EEOC.

NEVER IN WRITING

Bender said the directive from Washington that he and Oldaker ignored was never put in writing. It limited the filing of class action suits by the EEOC and therefore restricted the possibility of getting broadly applied court decisions.

Mr. DOLE. Mr. President, will the Senator from New Hampshire yield to the Senator from Kansas without losing his right to the floor and without considering it a second speech?

Mr. HUMPHREY. I ask unanimous consent that I may be permitted to yield to the Senator from Kansas without losing my right to the floor and without it being considered a second speech.

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

The Senator from Kansas.

Mr. DOLE. Mr. President, I do not want to interrupt the Senator's speech.

But, Mr. President, I have been listening to much of the debate through the electronic device that we all have on our desks in our Senate office and like every other Republican Senator I have been following this nomination with interest. I have listened with great interest to the distinguished Senator from Oregon, the distinguished Senator from Nevada, the distinguished Senator from Idaho, and the distinguished Senator from New Hampshire. The Senator from Oregon being in support of the nomination and the other Senators being opposed to the nomination.

Mr. President, I rise in opposition to the nomination of Mr. Reiche. It is not that I have any reservations regarding his integrity or his accomplishments. There is no doubt that he has achieved a great distinction as a practicing attorney in the Princeton, N.J., law firm of Smith, Shatton Wise & Heher. He served faithfully in the public sector and as everyone knows, most recently as the chairman of the New Jersey Election Law Enforcement Commission. Mr. Reiche has also held various posts within the New Jersey Republican organization. Based on these facts I do not think we can quarrel with his party credentials nor can we quarrel with his professional credentials.

Mr. President, I do believe however there exists some serious doubts as to his commitment and dedication to those traditional Republican views on election laws and public financing in particular.

I might say that the subject of public financing of congressional campaigns is one of the few areas and one of the rare times that all the Republicans were united during the last Congress. I do not suggest we must have unanimity on every issue. But on that issue 38 Republican Senators opposed public financing.

Mr. President, in 1976 I had the great honor of being the running mate of President Ford and by virtue of that position, I was a recipient of a certain amount of public financing. I have to say that one thing I liked about it is you did not have to raise money. There is nothing more demeaning for a candidate for public office than to have to go out and solicit funds.

I found myself after a hard day's campaign across the country not having to sit down in the evening to make phone calls to someone in New Jersey, Rhode Island, Kansas, or California asking for money.

Perhaps there are some of us who have had some exposure to public financing or who now are having some exposure to public financing and it may seem to some a little contradictory to stand on the floor and say we are opposed to Mr. Reiche because he may support the concept.

But Mr. President, the point was and is whether it should be extended to senatorial and congressional races, and who knows where it might end. It is not illogical to assume its extension to State and local races.

At the very time when we are having people in California and Kansas, everywhere in this country, telling us "We have had enough, let us alone," I do not believe the American people are ready for total public financing of Federal elections. I know if a poll were taken many people might express some interest in public financing.

Mr. President, I certainly believe the public should become involved in the campaign process. Politics is not a spectator sport. We must encourage participation whether we are Democrats, Republicans, or Independents. We have an obligation to focus on what I consider to be a very important issue that being voter participation. The extension of public financing, to Congressional campaigns coupled with increased Federal dictation and Federal regulation and Federal control over the electoral process will not increase the desired participation.

So Mr. President, I guess it is fair to conclude that the opposition of the Senator from Kansas and the opposition expressed by my Republican colleagues to the nomination of Mr. Reiche is due in large part to the public financing issue.

Our opposition is philosophical. I heard the argument made on the floor that we should not have single-issue arguments, and maybe that is the case. I have tried to avoid those. In fact, just yesterday on this floor I stood in this very same place supporting the nomination of Patricia Wald to be a judge of the Court of Appeals for the District of Columbia. I asked my colleagues on both sides, to support that nomination.

Now, there were some who were concerned about her background, about her activism, and about her liberalism. I remember standing on this floor years ago arguing to my liberal friends that they should not turn down Judge Clement Haynsworth just because he had a conservative philosophy. Well, he was turned down for the most part, because he was a conservative.

So I feel that someone's philosophy insofar as a judicial nomination is concerned should not be an overriding factor. I certainly had no hesitancy in supporting the nomination of Patricia Wald.

But that was a judicial matter, and I have no doubt she will carry out her duties admirably and professionally.

We are told that nominations for judicial positions are more or less removed from the sphere of politics. Well, that is not the case in the nomination before us today. This nomination is purely political, and we all know, when it comes to politics, philosophical differences do play and should play a major role.

The Federal Election Commission was created as a bipartisan Commission. It is composed of three Democrats and three Republicans, and I guess it is fair to say that all these members play a partisan role, not in the strict partisan sense, but at least they know they are Republicans, they know they are Democrats, and they know why they are selected and so they understand that there is some partisanship involved, whether we like to think about it or not, in their selection process, and it exists while they serve as Commissioners.

I do not suggest they make decisions based on whether or not the complaint is made by a Republican or by a Democrat, but there has been an effort to balance philosophies and balance the Commission.

(Mr. PRYOR assumed the chair.)

Mr. DOLE. While it was recognized during the original debate when the FEC was created that it should be an independent agency we did recognize that it would not be nonpartisan, and I assume that is the reason it was divided down the middle.

Mr. President, the original law provided that nominations to the Commission be made by the President upon consultation with the respective party leaders in the two Houses of Congress. It was thought then and is still recognized that anything less than that arrangement will endanger the Commission's credibility. The Senator from Kansas understands that the current nomineee was one of the individuals submitted to the President, when the prior Republican vacancy on the FEC occurred, and was subsequently filled by Mr. Max Freidersdorf. However, when the current vacancy opened a subsequent list was not forwarded to the President and he merely chose a name from the prior list submitted. I ask unanimous consent that the text of a letter from Congressman RHODES to Senator HUMPHREY, pertaining to the submission of FEC nominees to the President, be printed in full at this point in the RECORD.

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

OFFICE OF THE MINORITY LEADER,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., June 8, 1979.

HON. GORDON J. HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUMPHREY: Thank you for your letters of June 5 and 7. Naturally, I will be glad to be furnished with a copy of the answers that Mr. Reiche makes to your various questions.

I am not able to agree with the premise that the President acted unfairly in naming Mr. Reiche. Senator Baker and I could have submitted a new list after the Friedersdorf appointed but we did not. If there is any fault, I suppose the blame has to be on us.

I think you should know that both Senator Baker and I interviewed Mr. Reiche very carefully before putting his name on the list. In addition, the Republican members of the New Jersey Congressional delegation gave Mr. Reiche their endorsement. Even so, I welcome your initiative in making very sure that Mr. Reiche understands his duty to the Republican Party if he becomes a member of the Federal Election Commission.

Yours sincerely,

JOHN J. RHODES.

Mr. DOLE. Mr. President, now is not the time to argue the pros and cons of public financing of congressional campaigns. It is, however, the time to debate whether or not this seat be filled with an individual who strongly supports the tenets of the Republican Party in terms of public financing. It seems to be the Republicans who are divided on this nomination. I do not know of any Democrats who have spoken in opposition. I guess it is fair to say, it might have been better had we been able to settle this problem out of court. Unfortunately that did not happen, so we now have it before us in the Senate, and I hope it will be resolved at an early hour.

I am not certain what the party breakdown is, and I heard the Senator from Oregon say earlier this morning—and I can vouch for his strong opposition to public financing, so I do not think that to be the issue. I think every Republican would probably be as firm against extending public financing to congressional campaigns this year as they were last year. Maybe the views of Mr. Rieche really make no difference if he is a member of the Commission.

He will not be a legislator. He might however be asked to testify on the subject of public financing. There are some in the Republican Party who strongly believe in public financing of congressional campaigns, and I guess that is the right they have, and it certainly is a right they should have. We have a right to differ in the Republican Party, and those of us who were elected, I think, should express our differences. I do not know many who are reluctant to do so. I do believe that is the minority view within the Republican Party and I think it is also a minority view among the general electorate.

I think history and the records and the debates will show that the FEC was created, as I have indicated and others have indicated, as a balanced Commission. I know many in this body, including the minority leader and others, strongly opposed another nominee from the same State for good reasons.

Mr. President, had we known Mr. Reiche's views on public financing at the time the nominee's name was on the list submitted to the President, Mr. Reiche's name quite possibly would not have been on the list. There are no time constraints on this nomination. I was present yesterday at the policy luncheon when the distinguished Senator from New Hampshire read a letter from Vernon Thompson the former Governor of Wisconsin, and now an FEC Commissioner, who in-

dicated, that he was certainly in no hurry to leave the Commission. He served with distinction in the Congress of the United States and, has done a very creditable job serving as a Commissioner.

Mr. President, the Senate today is faced with acting on a partisan issue. There should be little, if any, Republican opposition to a Republican nominee to fill a Republican vacancy on this agency. The question I am constrained to propose to my colleagues on the other side of the aisle is this: "Would you accept or permit such misrepresentation to occur when filling a Democrat vacancy on the FEC"? I believe for many the answer would be no. I would suggest to my Democrat colleagues, that if the leadership does not withdraw the consideration of Mr. Reiche, they join with a majority of the Republican Members and vote down this nomination. I would prefer that those in charge around here let us work out our housekeeping problems amongst ourselves.

It ought to be a matter that Republicans could settle, but that is not the way it works. Perhaps another alternative could be that all the Democrats could vote "present," and permit the Republicans to make a final determination.

It has been suggested by some that maybe the Democrats, since there has been some indication that this name should be withdrawn, will see that division among the Republicans, and that that might be an opportunity for them to express their views not only on public financing, but on the balance of the Commission.

I am not certain that this matter rates in importance with all the other matters that are before Congress or the different committees. The Senator from Kansas and others were privileged to visit with President Carter yesterday, who talked to us about the energy crisis and his proposed solutions to the energy crisis. I think there has been at least an indication that he would like us to resolve some of the problems before we leave on the so-called August recess.

I am sure it does not do justice to the nominee to just set this action aside and set it aside and set it aside. I understand he has made sacrifices and made plans, and he would like to have the matter resolved one way or the other.

But aside from that, this is certainly not a matter of priority as far as the national interest is concerned, or as far as the Senate business is concerned.

I believe that the matter could be resolved without any division among Republicans. Our party is big enough and strong enough and has enough room for different opinions. It seems that the best course would have been to encourage the nominee to ask that his name be withdrawn from consideration. I have listened to the Senator from New Hampshire discuss his success in that State, and I guess in fact I would suggest that that success was because his views were firm as far as Federal intrusion, Federal controls, and Federal regulation is concerned, whether it be of the electoral process, or business, or labor, or whatever. Because of that philosophy, he won a major victory.

I would suggest that we are going to hear all the arguments over and over again. I do not know of anyone who has anything personal against Mr. Reiche. I have never met the nominee, so I have no quarrel with him personally. I think I may have voted against one or two, or maybe three other nominees in the 10½ years I have been in the Senate, so I do not do it lightly. I would just add that this is a commission and not a judicial monination. It is a commission which by law should be balanced, and therefore this nomination should not be approved.

Mr. President, the FEC must continue to function as it was originally intended. It was created with an evenhanded, concept and it must continue to administer its duties in that manner. Today, there are many who may seriously ask the question whether it serves any purpose to have a bipartisan commission if the membership is weighted to represent only one philosophical viewpoint.

I thank the distinguished Senator from New Hampshire for yielding to me without losing his right to the floor.

Mr. HUMPHREY. I thank my friend and colleague from Kansas, Mr. President. He has imparted to us some irrefutable words of wisdom, and I am proud to say that he, like Senator HATCH, campaigned for me during my campaign.

Think of it, a U.S. Senator campaigning for a candidate for the U.S. Senate who has never run for office before and is virtually unknown. That is an act not only of real friendship, but of courage as well. I am certain that, with a margin of victory of only 5,000 votes, the contribution made to my campaign and the credibility of my campaign by Senator DOLE, Senator HATCH, and others was of inestimable value.

Mr. President, I said earlier in my remarks that I would read into the RECORD the transcript of an interview between Senator PACKWOOD and the nominee. I think I shall not do that. I ask unanimous consent that it be printed in the RECORD at this point.

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

FRANK REICHE INTERVIEW WITH PACKWOOD

BP. Some questions I've got . . . and it revolves totally around public financing of campaigns. Congressional campaigns, specifically. Let me start out with the statement you got before the Rules Committee: "I am not philosophically opposed to public financing on the Congressional level."

FR. . . . on the Congressional level? Because . . .

BP. Take a look at the transcript.

FR. Because I didn't know—but I mean, it applies to both. I thought I said, 'I am not philosophically opposed to public financing, period. But that's all right, yeah. Sure, that's no problem. Because that's the way I feel, that I am not philosophically opposed. But neither am I in favor of it. Just as a philosophic concept, simply because we have not had sufficient experience, frankly. Funny thing about this is, I look back on the transcript of Max Friedersdorf's testimony, and I come down a lot closer to some of those who are opposing me than Max did. Now don't get me wrong. I have great respect for Max, and I also understand the why of it—they feel comfortable with Max, they knew him, they do not know me. So I appreciate that. But though that's the case, all I'm saying is I think the jury—just in the abstract, I'm only talking in the abstract—I think the jury's still out, because I just don't think there's sufficient information. It's not that I'm wishy-washy, I'm not dodging a controversial issue. I've thought about this, I've had to for the last few years, as Chairman of the New Jersey Commission. But I can see advantages, and I can see disadvantages. To me, the two most significant disadvantages are the fact that you discourage people from participating in the process. Secondly, it would require a tremendous bureaucracy. So just as a philosophic concept . . . when you get to the practical side of it, I see no way for it happening, in terms of Congressional elections. It's hard to put a time frame on it, but all of the bills, including H.R. 1, do not begin to solve the problems. It's not just the fact that you get 535 elections as opposed to one or whatever; but it's the diversity involved—someone running in South Dakota as opposed to someone running in Brooklyn. Somehow, if the people who favor public financing—and I am not one—if they intend to have such a system adopted, they've got to solve those problems. And there's nothing I've seen up to now that comes even close.

BP. Let me ask you—those are the practical objections opposed to it. What are your philosophical reasons for supporting it?

FR. I don't support it. But the advantage I can see is that if it takes the pressure off a candidate so that instead of having to go around during the campaign and spend a lot of time fundraising he can then speak more to the issues, that to me would be an advantage. A second advantage would be, if it thereby permits a person of relatively modest means to become a candidate. I think those are basically two I see. But I'm honest, Senator, when I say I haven't come to a final conclusion on the merits of it just in terms of a concept.

BP. Let me probe a bit more then. Because I have thought about it for a long period of time. I cannot find any philosophical nor practical grounds to justify public financing. A candidate of modest means, without putting himself in hock to any special interest, can raise sufficient money if that candidate is a good candidate, to run a very respectable Congressional campaign. The complaints I hear are from people who are not willing to ask 10 or 20 or 30 or 40,000 people to give them $5 or $10 to a campaign. The money's there. There are millions of people in this country who will give small amounts of money if asked.

FR. Well, you're alluding to something now about which I feel very strongly, and that is, to the extent we have public financing, Presidential and so forth, I for one strongly favor the private sector being able to contribute. I was saying to someone this morning, I don't care if a man gives a dollar. It's not the dollar—that doesn't amount to much, as we both know. But what does matter is that he then is committed to some candidate, whoever the candidate may be, and he's more interested in the election. And to me, that's extremely important.

BP. So why don't we drop public financing of the Presidential and gubernatorial and other races, and instead encourage people to give a dollar or 5 or 10 dollars to a campaign?

FR. Well, as I say, you believe that adequate monies can be raised by candidates, even though they're ones of modest means.

BP. I know they can.

FR. All right, you have practical experience, Senator, I'm not going to argue with you on that point. I would go then to the other point I made, as a possible advantage, and that is that it does occupy quite a bit of the time of certainly some candidates I have known. I don't know if it has in your case, but it has in many that I've known. I'd like to see some of that time spent on

discussing the issues more. Now, I'm being the devil's advocate when I raise this argument, because I'm just saying this is . . .

BP. I understand that. But when you're asking somebody to give you 10 or 20 dollars, and they say what do you stand for, that focuses you into thinking about the issues. Or they say, I might give you $10 or $20, but I'm opposed to abortion, and you're in favor of abortion, now you tell me why I should give you money when you and I don't agree on that subject. That makes you think about it.

FR. That's true. That's why I want to be sure that private contributions are a part of the scene. I don't care what method of financing they have, but there has to be an infusion of substantial sums from the private sector. And it's funny, I was talking a while ago with Jerry Milback in New York on this, and he's the first person who ever asked me the question. I said to him that I thought this was implicit. I know in the recommendations of the New Jersey Commission, we intended to, as far as our recommendations for the legislature go, to continue private financing, as indeed they do in New Jersey right now.

BP. Now I notice before the Rules Committee, you wanted to extend public financing to the primary as far as the gubernatorial level is concerned.

FR. Only because it was already in the general election.

BP. But why not go the other way and abolish it for the general election?

FR. That's not the province of the New Jersey Election Law Enforcement Commission. We are an enforcement agency, and it is not for us to become involved in policy. What we were saying to them was, that it was virtually unenforceable where you have it for the one election and not for the other. And as I also said in one of my statements here, there's no reason under the sun why you can't reverse the trend for both of them. We were merely saying—and, in fact, it's my understanding that many Republicans around here said it in 1977 in the Congress—that where you have it for one, it does not make sense not to have it for both elections.

BP. Well, I'm curious about your philosophical bent, because you can go one way or the other. You can say extend public financing to the primary, or you can say abolish it for both. Your preference is for public financing for both.

FR. No it is not. It is not. Now this is where some of the remarks I've made before, Senator, frankly, have been taken out of context. What I have said in New Jersey is that, since we had nothing to do with this becoming the law in New Jersey—public financing—this was a statutory enactment in 1974, we have never made recommendation pro or con. Why? Because that's a policy area, and it was not within our province. What we said was, since we have it, and we had a very bad experience with this in 1977, trying to administer a system in which you let candidates build up all sorts of warchests during the primary, and then you clamp down with an entirely different set of rules in the general election.

BP. Let me ask you then on your recommendation here, I'm quoting here from Page 35 of your testimony before the Rules Committee: "Our final recommendation is in New Jersey, first, that public financing of the gubernatorial election be extended to cover the primary." Why not recommend the other—get rid of public financing?

FR. That's a policy decision. This isn't an administrative decision. This was a recommendation based on an administrative experience. We felt that, as a Commission, Senator, that we did not have the right to argue the merits or demerits of public financing as such, which you would have been doing if you had said, get rid of the whole thing.

BP. You were saying it was such an administrative nightmare to have one election covered and not the other.

FR. Well, it's not only an administrative nightmare, but it's unfair to the candidates, and it's unfair to the contributors, because the problem there is to distinguish which contributions were made during one time frame, which during another, how do you attribute them . . .

BP. I understand that. So your recommendation was, to solve that problem, cover the primary also.

FR. As long as the State—not our Commission—as long as the State has adopted a policy of having public financing for a gubernatorial election, for the general election, our recommendation, basically administrative, was that it should be extended to the primary.

BP. Then let me ask your personal opinion: would you support and vote to get rid of public financing of the Presidential campaign? And if asked when testifying before hearings or any other time, say yes, I think it's an administrative nightmare, I don't like it, we ought to get rid of it?

FR. See, my problem there is that, frankly, I haven't had a lot of experience with that. If you asked me my feeling toward the New Jersey gubernatorial, I could answer.

BP. All right, let's take it in New Jersey then.

FR. In New Jersey?

BP. Get rid of it for the gubernatorial election.

FR. I don't think I would recommend it.

BP. Why?

FR. Why? Simply because we found that it worked rather well. Again, distinguishing between the executive situation and a legislative situation. And I make a very sharp distinction between those two.

BP. What did public financing enable a gubernatorial candidate to accomplish that could not have been accomplished through private financing?

FR. The one thing that I observed was, there seemed to be a greater concentration on the issues, and that they spent far less time than I had observed gubernatorial candidates in the past spend on hustling money. Because by the end of August both camps substantially had their money in hand, or they knew where it was coming from, and then they submitted to us for match and so forth. And it left the candidates and their staffs free to devote more time to the issues.

BP. Are you seriously saying that fundraising takes so much time a candidate cannot argue the issues?

FR. No, I'm not saying he can't argue the issues, Senator, but I'm saying it does detract from the time he has. And it's not only his time, but it's the time of his staff too. If they've got to spend a lot of time raising money, the time has to come from somewhere. Now, an alternative I suppose is to augment your staff, so that people are devoted exclusively to that, don't have anything else to do. But, Senator, you know, in terms of public financing, you and I may agree, we may disagree on public financing. I repeat what I've said before, and I believe it sincerely, that as far as the philosophic part goes, I told you, I do not have my mind made up on that at the present time. As far as the legislative elections, practicality, there is no way . . . And there's another reason too why, frankly, I would oppose public financing of Congressional campaigns. This is going further than Max did, but the FEC, as we both know, is under fire at the present time. I don't think it has many friends in court, if any. If there is any priority at all—and I doubt that there is, but even if there were some priority the people were striving to—its handling public finance with Congressional elections, it is such a low priority that I for one, if I were a commissioner, I would oppose it. Because they've got to set their house in order. Their primary job today is to restore the credibility that, frankly, they've lost, with the public and Congress.

BP. I want to come back to the philosophy. The argument about administrative regulation is an argument that is used by every bureaucrat around here. If we just had more people and more time, we could administer it all. Let me come back to the philosophy of the public financing of Congressional elections. Your position is, you have no philosophic position on this issue?

FR. It's not that I don't have a philosophical position, it's that I have mixed feelings. This is the same thing that in essence . . .

BP. Assuming the administrative problems could be solved, what would be your philosophical decision?

FR. If you could handle the administrative . . . well, then you go back to a sheer philosophic concept on public financing. And I've told you, that I . . . I'll put it this way: I have many more reservations about public financing of legislative election in the philosophic sense than I do about the executive.

BP. Except all the reservations you've given me so far are practical, not philosophic.

FR. Well, all right. Obviously, I've been involved in enforcement. And of course everybody now is talking policy, which I would have very little to do with, but nevertheless that's their wish, all right, fine, we talk policy. But I'm talking basically from an enforcement viewpoint because that's the viewpoint I know, it is also the viewpoint I would have to take if I were a member of the FEC. And, sure, Congress naturally asks members of the FEC what their experience is, and what they would recommend based on that experience. So to that extent, you share your experience with Congress. But the buck stops here, it doesn't stop with the FEC.

BP. You keep coming back to practical. Let me change it again. Let me ask this question: do you think that a new candidate running against an incumbent—if a candidate is a good candidate—can raise enough money privately to run a good campaign?

FR. I think he can. I think he can, but please, no spending limits, because if you have spending limits, obviously, that favors the incumbent. And this is one—in New Jersey, for example, our Commission took the view over a period of time in favor of spending limits until we had our experience in '77, and then each and every one of the four of us reversed ourselves, simply because, with that experience, we realized that it just was not a good idea. And this is one of the faults of H.R. 1, that they have spending limits.

BP. But, one, a good candidate can raise adequate money. The candidate that's a bad candidate probably can't raise enough money, but if it's a bad candidate it's not a good candidate anyway.

FR. Yes. But there are also the candidates in the middle. And there is also the fact that, should you place—and I'm saying this only for argumentative purposes because I'm not sure that I would adopt this position—but, should you place a greater burden on the shall we say "marginal" candidate, who's somewhere in between your fine candidate and your poor candidate, should that burden be placed on them? I don't know. But I think there is a burden that is placed.

BP. Can a, as you would call it a good or fine candidate raise adequate money without being "beholden" to special interests?

FR. As long as there are contribution limits, yes.

BP. So that, with contribution limits, and

we have those at the federal level now, you can raise money—sufficient money, if you were a good or a fine candidate—without being beholden to special interests?

FR. Well, and the other thing coupled with it is what we also have, namely, full disclosure.

BP. Oh, nobody's arguing about that. And nobody's arguing about the contribution limits. Do you think the contribution limits in the present federal law are adequate?

FR. I tend to think that they are, although frankly, Senator, I haven't had the practical experience with them. I'm not dodging your question, it's just that I'd like to have more experience before I say to you that, yes, I think they are, no, I think they're not. I think, for example—well, I'm not talking contribution limits, I'm talking spending limits—but I think the spending limits in the federal law, in the presidency and also in New Jersey, unduly restrict the campaigns.

BP. But here I want to stick with . . . Is $1000 too high a limit for an individual to be able to give?

FR. No.

BP. Is a $5000 limit too high for a political action committee to be able to give?

FR. I wouldn't think so, I don't think so.

BP. Okay, so the contribution limits are okay. And we agree that a good or fine candidate, given those liimts, can raise adequate money to run a good campaign.

FR. Right.

BP. Then the sole reason left for any kind of philosophical tilt at all toward public financing is the time that it takes to raise the money. Is there any other reason?

FR. No, that would be the primary one, probably for me. I've heard so many candidates—and I'm not talking from the experience of candidacy as you are—but I've heard so many candidates complain violently about the time they've spent. Maybe they were poor candidates, I don't know. But, times when they had to make an appearance at a cocktail party or this event or that event, just because they were $255/plate affairs. I am one who strongly favors the fullest possible discussion of issues. That may be idealistic on my part, but if it is, Senator, that's the way I am. That may be why it means more to me.

BP. For anybody to say that, that's almost a placebo. I've never found a campaign yet where the candidate lacked time to discuss issues because the candidate was also involved in raising money—or the candidates' staff. By the time a candidate gets to the congressional level, running for the House or the Senate, that candidate in many cases is not a babe in the woods. He's been around the track a couple of times, he's been in the legislature, been on the City Council in many cases, sometimes not, but they've thought about running. They're reasonably well-versed on the issues, and their problem is not, is there time to debate and discuss these issues—frankly, for a challenger, the time is getting the opponent to meet them in debate to talk about the issues.

FR. Well, yes, but they've got to have think-time, they've got to be able to formulate their views, and it's not really a case of having a staff do it for you. You've got to have some time to yourself. But, you know, Senator, I can't compare my experience in this area with yours, or with anybody who's here on the Hill. And this is the kind of thing which, if over a period of time by exposure to people who've been through it, if they keep telling me the same thing you're telling me, obviously this is going to have an impact on me. And on my view.

BP. I guess what bothers me is, any one of us in Congress, if we're on a Committee for two years or four years, has some very definite philosophical views. Here you've been in charge of administering a public financing law in New Jersey, and any time anybody's sufficiently immersed in something, they ought to know what's going on and have a pretty good grasp. And when he tells me they're not quite sure, I'm inclined to think they're telling me that because they're not on my side of the issue.

FR. That is not true in my case. First off, we didn't have public financing until 1977. You've got to remember too, I'm on a part-time basis, non-paid, as Chairman of the New Jersey commission, as are all the members. Now that I've left, they're now paying them, which is why . . . but I'm on that basis, with a full-time law practice, and many other activities as well, including being chairman of the Interstate Commission, which led to the formation of a grouping of state agencies on this business. Public finance has been a relatively small part, except for the '77 election.

Our problem there was practical on a day to day basis. We spent many months contriving regulations for it. But it was always geared to the practical side, and frankly, to have the time to just sit and philosophize, I haven't had that time, with everything else I've been doing. You don't have to believe me, Senator, but I'm telling you the truth. I am not fudging on anything. I'm telling you what I believe as of this point. And I am certainly willing to listen to the type of argument that you're making, because it makes an inroad with me, it makes a definite inroad. You can talk to anybody who knows me, Senator, I'm not that way. They can accuse me of many other things, maybe, but they can't accuse me of that.

BP. I guess I'm bothered when I look at a Rules Committee statement that says, quote: "I'm not philosophically opposed to public financing on the Congressional level."

FR. Okay. I stated that simply because I meant it to be broader, frankly, I am not philosophically opposed to public financing. But as I said in a subsequent answer to one of Senator Humphrey's questions, I have never publicly advocated nor opposed, in the philosophic sense, public financing. And I have not. And it's obvious, if I were down here on this scene, yes, it may well hasten my conclusion in the area of public financing, why, because it'll be part of my livelihood on a day to day basis. But we have so many other things we've been doing as a New Jersey Commission. When we have gotten into public financing, it's been largely nuts and bolts, and it has not been, "Is it a good idea?" because we have nothing to do with that. Our job was merely to develop a system which would work, and, fortunately, it appears to have worked reasonably well, the system that we contrived.

BP. That's what bothers me, when you say that.

FR. Well, Senator, I'm talking about how the candidate, I'm talking about just the administration of it. There's nothing wrong . . . I mean, we would've been derelict in our duty if we hadn't . . . given the responsibility, which we had nothing to do with then it was our job to try and do the best administrative job we could. We are merely an administrative enforcement agency, and you wouldn't have us not do a good job on that.

BP. No, but what I would like is a commissioner who's coming to the FEC who says I am unalterably opposed to public financing, it is unnecessary and unneeded, adequate money can be raised from small donors in sufficient amounts to run a good campaign, there is no point in adding to the administrative headaches of any administrative group, something that doesn't need to be publicly financed anyway. And I don't sense you're saying that.

FR. I am not unalterably opposed, Senator, and I'm not going to pretend that I am. But I have to suggest to you and I have to suggest to others that the basic criterion for doing a job on the FEC is not that. The basic criterion is, are you intelligent? Do you have integrity? Do you have experience? And do you, in this case, because there are people who are critical of me, they don't think I'm partisan enough. Well that is nonsense. I am well aware of the fact that it's a very sensitive partisan situation on the FEC. And when I talked to you before, many months ago, I didn't wait for you to bring it up, I raised that point myself, because it's not the situation we have in New Jersey where partisan considerations were minimal. I know it's a different ballgame here, and I would be very sensitive to that. I was talking to Joan Eikens (?) a while ago, and she said to me that the Democrats recently have been very partisan and she started to say something at that point, and I frankly interrupted her. I said, Joan, I know what you're about to say—namely, that that leaves you no choice. And she said yes, and I said, you're absolutely right, it leaves you no choice whatsoever. Senator, I'm not going to change what I have said before. If I did, I don't think you'd have any reason to have an ounce of respect for me. Disagree with me—that's your privilege, as I might disagree with others. But I just haven't come to a conclusion on it, and I can't put it any other way, in terms of the philosophy.

BP. Let me ask you this. If in that case I have come to the conclusion that I want to make sure that I support somebody for that position who is opposed to public financing of Congressional elections, should I vote for you or against you?

FR. If you've come to that conclusion, you should vote against me.

BP. Okay.

FR. But, if you've come to that conclusion, Senator, I'm going to be blunt: I will be very disappointed in you. I would be simply because I think under those circumstances you and others viewing it that way would have taken this issue and have tried to subject me to a litmus test to which you have not subjected other candidates—Max Friedersdorf and others included. Senator, I don't think that's fair to me. But forget that for the moment. The FEC needs one heck of a lot of work to be done. And I bring to it something that no one else has. I think I can be a credit to the Republican party there and I think I would have a fresher look than anyone's had because I would be coming from the outside, which no one has before. I think it's something that really would be an assistance to our party. It bothers me deeply that there are Republican Senators who are against me at this point, because I want their support. It is my party just as much as it is theirs, and it means a lot to me.

BP. Let me ask you this. Do you think in approaching people who were here for the nomination to the Interstate Commerce Commission, to the Federal Trade Commission, I should inquire of their philosophies before I decide whether to put them on the Commission or not?

FR. Philosophies, yes, because if you're talking about an agency where philosophy may affect their decision, I don't honestly believe that philosophy to any significant extent, on this, on the public financing, I doubt that will enter into decisions I might make as a commissioner of the FEC. I think that's true.

BP. Okay, that's all I need.

FR. If there are any other questions, Senator, please shout.

BP. Well, I may. I feel so strongly that what I want is a champion on the FEC, that says this whole process has proven unnecessary. I want somebody to come on as Alfred Kahn came on in the CAB, and said, let's abolish this. I don't sense that with you.

FR. Senator, I'm not going to pretend with

you, at least at this point, that I am that. For me to do it would be trooping under false colors. But frankly Senator I think I might have to disagree on one thing, there are other things that are needed at the FEC far more than that. If in fact the FEC is to be a viable agency, and I'm not downplaying it; you have your good reasons, I appreciate that. But the FEC has problems that transcend that.

BP. All of which would be non-existent if we abolished it.

FR. Yes, but if you abolish the FEC, to me it is a hope in this field. And I think the FEC can be improved, greatly improved.

BP. A "hope" in what sense? Assuming absent public financing, what do we need the FEC for?

FR. Well, someone has to monitor and audit the campaign finance reports which, under any system, are required.

BP. But why does that have to be the FEC?

FR. If it's not the FEC then it has to be someone else.

BP. If you mean monitoring in the sense of, did somebody indeed give you $100 when they say they did, the IRS monitors that.

FR. No, I'm not talking about that. I mean audit the reports, and investigate where necessary. This is something—the fact that the FEC has not completed its Carter audit in 3 years is unbelievable to me. Now, I know that New Jersey is just a microcosm of what happens on the federal scene. But although it is, my heavens, we would not countenance that type of delay in New Jersey. For many years I have been told, by Herb Alexander and others, that there are various state commissions which are ahead of the federal people in terms of administration. Frankly, I didn't believe them for quite awhile. I do believe them now. I know of some agencies, and he included ours among them, where we just wouldn't put up with that kind of thing.

BP. Let me come back again. If you have no public financing, if the IRS is going to check and make sure if you say, I gave $100, you gave $100, they do it on a spot-check basis—what would the FEC do? What would it monitor?

FR. Well, wait. You've talked only one side of the equation. The other part are the campaign expenditures, and where the money goes. The IRS wouldn't handle that.

BP. You're realizing we have total public disclosure as to where you've spent your money, nobody's talking about getting rid of that. What is the FEC's function then?

FR. Wait, the IRS isn't equipped to handle the other, and as a tax lawyer I know that, they can't handle it. All the IRS can do, is when they audit someone's return, sure, they can verify a contribution was made. But they're not equipped to handle that kind of thing.

BP. All I'm saying is, should they have any greater monitoring on whether you gave to the Catholic Church as opposed to whether or not you gave to a senatorial campaign?

FR. No.

BP. Okay, so the IRS can as well monitor contributions to politics as they do to anything else.

FR. No, because they're not equipped to make that information available to the public in timely fashion. This is why you need some agency—do whatever you will with the FEC—but you need some agency which is geared, as ours in New Jersey, for example, is, to getting the information out to the press within 24 hours after the reports are filed with us, so that it's available to the public and the individual goes into . . .

BP. All right, now, what happens . . . we go down, we file our reports on June 10th or July 10th, or the money received through July 1st of this year, and we file it. Why do we need an FEC? There it is, we filed it, there it is on public disclosure. What do we need an FEC for?

On that score——

FR. Okay, what I'm saying to you is that the IRS is not geared to——

BP. Forget the IRS, why do we need an FEC, so long as we file that report, there it is every dollar we've received, every dollar we've spent, what's . . . and if there were no public financing, what is the FEC's function?

FR. Simply because later on you're going to be filing spending reports, expenditure reports.

BP. We file those now.

FR. OK. But my point is, unless—if an agency is supposed to verify that the reports are accurate and contain all the information you are required to submit by law, then you've got to have an agency which has some expertise in this area.

BP. And what I'm saying is, again, why an FEC? You've got a public report, there it is: you gave me $100, I spent $100 to take 20 supporters to a barbecue lunch, and I have $100 spent at Jones' restaurant, and I've got a $100 contribution from you, and it's there publicly. What is the FEC going to do beyond that public information?

FR. Simply because, if you don't have an FEC-type agency, how do I the voter know that you've included all the information you should have? How do I know the information you've included there is correct? I don't.

BP. How do you as a voter know that a church has filed all the things it's supposed to file with whatever reports it makes to keep its tax-exempt status? How do you as voter know?

FR. As a voter, presumably I know because the IRS is geared to monitor these returns.

BP. That's contributions.

FR. Well, I'm sorry then, maybe I'm missing the point of your question.

BP. How does a contributor to a church—how does a voter know—whether or not the expenditures filed by the Church of Scientology are right?

FR. Simply because most churches have to submit complete accounting to their members, usually in an annual fashion. So they have a chance to monitor them.

BP. Assuming the filing is in accordance with law, right?

FR. Yes, we have an audit committee for churches.

BP. But there's no requirement they have an audit committee.

FR. There's no requirement, but I don't really see the relevance of this.

BP. Well, what you are saying is, you are presuming we're going to violate the law.

FR. No, I'm not saying that. I'm just saying that the voter has a right to know whether or not the individual candidate, political committee, whatever, has complied with the law. The voter is not qualified . . . someone has to make that determination.

BP. Cannot we presume that when the candidate files the report required by law that the candidate has complied with the law?

FR. I don't think you necessarily can.

BP. Why?

FR. Why, because they're very complex laws.

BP. But all the reports that any group ever has to file are complex laws, there's nothing unique about that. The reports these poor devils on OSHA have to file are complex, these reports that any small businessman or businesswoman has to file are complex.

FR. Yes, but in each of those cases, Senator—take OSHA. In each of those cases, you've got an agency with expertise in the area, which receives them, and which, for want of a better word, they evaluate them.

BP. Yeah, they receive them and file them, by and large.

FR. That's not what they're supposed to do. They may do that in practice, and I can't argue with you on that. But that's what not what their mission is, their mission is to be sure that they do.

BP. But in terms of the IRS, the function of checking them—on the returns, not just the contributions—is a spotcheck, and it's assumed that the returns are filed properly. It's assumed that the voter, or the organization filing, has complied with the law. Why not that same presumption for a campaign?

FR. I don't necessarily agree with you that it is assumed that everything has been filed correctly. They have their spot audits, and heaven only knows, I've been involved in many of them. All right, you can say, there's a presumption of innocence until proven guilty. But I don't look upon this, in terms of the filing of political campaign contribution information, I don't look upon it as an effort to try and seek out that someone has done wrong. I look upon it more as an interpretive effort on the part of the administering agency, to make that information available to the public in a form that the public can use.

BP. It is available!

FR. No. No, Senator, it's not, because if you go in on the reports, some of those reports, if the layman goes in, he's not going to have the foggiest. . .

BP. And if the layman goes in on a report filed with OSHA, or a report filed with the IRS, will the layman understand that?

FR. He may not understand that, but at least there is an agency to turn to.

BP. Spotchecking, spotchecking.

FR. . . . to interpret. In this case you're talking about voting, and to me, voting is more important. I just think you've got to have an agency which makes it available in timely fashion to the voters. I mean, all the rest of them have their agencies, this is ever so more important, in my view, because the voter . . . In the first place, it's in Washington, although you might have some reports throughout the country, but the voter in the main is not going to go into the FEC himself. But when he does, he's not going to know how to interpret some of those reports.

C.W. I'm terribly sorry to interrupt you, but we're 30 minutes behind schedule this morning.

BP. Okay, let's stop there. I may call you back.

FR. Okay. Thank you.

Mr. HUMPHREY. Instead of reading it in full, I would simply like to address certain parts of it.

Senator PACKWOOD put this question to the nominee:

Some questions I've got——

You have to remember this is dialog; it is not written and it is not perfect grammatically:

Some questions I've got . . . and it revolves totally around public financing of campaigns. Congressional campaigns, specifically, let me start out with the statement you got before the Rules Committee: "I am not philosophically opposed to public financing on the Congressional level."

Mr. Reiche, in replying to that question, gave the kind of reply that worried me very much about whether he would adequately protect our partisan interest. He said, with respect to taxpayer funding of congressional campaigns:

I think the jury's still out, because I just don't think there's sufficient information. It's not that I'm wishy-washy; I'm not dodging a controversial issue. I've thought about this; I've had to for the last few years, as

chairman of the New Jersey Commission. But I can see advantages and I can see disadvantages.

How relieved I would have been, Mr. President, if the nominee had simply said something along these lines:

I am concerned about extending it to congressional campaigns. I am concerned about the implied powers of the Federal Government to further regulate the electoral process.

It seems to me, Mr. President, that a man who had served as chairman of an election commission for 6 years and been involved in partisan politics for much of his adult life would have come to some basic conclusions about how much Government ought to regulate the electoral process.

But he has not. He says,

I think the jury's still out. I don't think there is sufficient information. I've thought about this. But I can see advantages and disadvantages.

Later on, when Senator PACKWOOD pressed him to find out whether his objections or his indecision on the subject were based on philosophical concepts or practical objections, and asked him this question:

Let me ask you—those are the practical objections opposed to it. What are your philosophical reasons for supporting it?

Mr. REICHE. I don't support them. But the advantage I can see is that it takes the pressure off candidates so that instead of having to go around during the campaign and spend a lot of time fund raising he can speak more to the issue. That to me would be an advantage. The second advantage would be if it thereby permits a person of relatively modest means to become a candidate. I think those are basic, too. But I am honest, Senator, when I say I haven't come to a final conclusion on the merits of it in terms of concept.

He is open, and I do not want a candidate, frankly, representing my party who is open on a question about which our party has made up its mind and said so by resolution in the Republican National Committee. Continuing:

Senator PACKWOOD. I wanted to come back to philosophy. The argument about administrative regulation is an argument that is used by every bureaucrat around here. "If we just had more people and more time we could administer it all. Let me come back to the philosophy of public financing of congressional elections. Your position is you have no philosophical position on this issue?

Mr. REICHE. It is not that I don't have a philosophical position. It is that I have mixed feelings. This is the same thing that is in essence——

and then he was interrupted.

He has mixed feelings, I do not know; some place else he says he has mixed feelings, other places he says he has not made up his mind. It is clear that he is not clear on this, is it not? It is to me.

After 6 years on the New Jersey Election Law Enforcement Commission. Continuing:

Senator PACKWOOD. But what I would like is a commissioner who is coming to the FEC who says, "I am unalterably opposed to public financing. It is unnecessary and unneeded. Adequate money can be raised from small donors in sufficient amounts to run a good campaign. There is no point in adding to the administrative headaches of any administrative group something that doesn't need to be publicly financed anyway." And I don't sense you are saying that.

Mr. FRANK REICHE. I am not unalterably opposed, Senator, and I am not going to pretend that I am.

The Republican Party is unalterably opposed. That is our position, and this gentleman wants to represent us before the FEC.

Then the conclusive question, in my opinion:

Senator PACKWOOD. Let me ask you this: In the case that I have come to the conclusion that I want to make sure I support somebody for that position who is opposed to public financing of congressional elections, should I vote for you or against you?

Mr. REICHE. If you come to that conclusion, you should vote against me.

Mr. PACKWOOD. OK.

And I say the same thing. OK.

There was an article in this morning's Post, Mr. President, which is a little bit more timely. Mr. Reiche was again being asked the question about whether he embraces the official Republican position of opposing extension of taxpayer funding of campaigns and he said:

While I have great reservations and objections in a practical sense I have honestly not made up my mind. I have to be honest with you.

Well, he is honest. If there is one thing consistent in his testimony, it is that he has not made up his mind. He is not philosophically opposed. He has not made up his mind. Perhaps he will make up his mind someday. Privately, I do not want to put words into his mouth. He has said,

I am not philosophically opposed. I have not made up my mind. The jury is still out.

I do not think it is out, myself, and the Republican Party does not think so. A great many of us on this side of the aisle in this body are opposed to this nomination. There is no great emergency to act on it. We are not unrepresented. We have all three of our Republican candidates on that Commission filled. There is no likelihood that we are going to find ourselves unrepresented. Mr. Thomson, whose term is expiring, has expressed his desire to remain. He would even like to be renominated. I am not here to argue for Mr. Thomson. I am simply stating what he has stated to me in writing, that he is willing to stay on as long as is necessary to find a successor to replace him. He may do so under the statute.

I would ask my Democratic colleagues to imagine themselves in our position. If they do, they will not act in such a way as to force on our party someone about whom there is considerable disagreement within our ranks.

Mr. President, before I yield to the distinguished Senator from Kansas, I wish to read some information which I believe illustrates the latitude which assistants and aides of important persons in the executive department of Government have in the conduct of their duties. They have considerable latitude. I would like to pick up where I left off.

I was reading a news story from the Rocky Mountain News of August 8, 1973. It follows:

Bender said the directive from Washington that he and Oldaker ignored was never put in writing. It limited the filing of class action suits by the EEOC and therefore restricted the possibility of getting broadly applied court decisions.

The order stipulated that all cases had to be filed under Title 7, Section 706, of the Civil Rights Act. Previously the Denver office had been filing cases under Section 707 as well, and according to Bender that section allowed the agency's attorneys to represent more effectively any groups that were discriminated against.

A spokesman for Carey's office in Washington, however, disputed this view. He said groups could still be represented under 706, and cases involving large industries could be filed under 707.

Bender termed the order from Washington "foolish." He and Oldaker continued to file cases under the forbidden section of the law.

Before Carey came to Denver on his visit, Bender and Oldaker ordered secretaries and other attorneys to re-type the front pages on four reading files so there would be nothing to indicate they were defying the order.

Bender said the document pertaining to only one Denver case was charged—that involving discrimination charges at the Ralston Purina chow plant at 9200 F. 90th Ave., Adams County.

The other documents pertained to the cases of Collins Radio Corp. of Dallas, Tex., the New Orleans Times-Picayune and Thiokol Chemical Corp. in Marshall, Tex.

Carey's office commented only briefly on the suspensions. The spokesman merely said there had been "violations" in the Denver Litigation Center and that action subsequently was taken against those involved.

Bender said he plans to stay on with the EEOC. Falsifying the documents was "stupid," he said, but he maintained the case filings under the prohibited section were in the best interests of effective litigation.

He said the other five EEOC litigation centers around the country apparently had obeyed Carey's order.

"They didn't question," Bender said. "Guys like me question and get in trouble."

The point is, Mr. President, that executives do not operate in a vacuum. It is not enough to argue that a man's views are irrelevant because he only carries out orders and he does not make policy, that Congress makes policy. That is a neat argument, but unfortunately, it does not work. As I said, we make unneat laws, imperfect laws that have to be interpreted by men. It is only human that in interpreting poorly written laws, laws written without sufficient clarity, the views of these executives would be taken into account and, furthermore, that in the hiring and firing and direction of staff, the views of these executives would be extended.

Aides and assistants have a great deal of latitude and a great deal of power in this Government, too much power. It cannot be helped, because we have taken on so many responsibilities. We are trying to create Nirvana down here, trying to relieve every last person of every last burden. In doing so, we have created the biggest bureaucracy ever known to man, one that is strangling us and crushing us, economically and spiritually.

The point, again, is that these executives, this commissioner, will not operate in a vacuum. His views are important. His partisan views are important, because this is a partisan position.

Next, Mr. President, I want to share a piece by columnist Tom Wicker in the

August 28, 1977, New York Times, in which Mr. Wicker makes several strong points about the dangers of the use of powers of the Federal Election Commission:

When public financing of elections was being discussed in the 1960's, I asked Robert Kennedy, then a Senator from New York, what he thought of the idea.

"The first thing I want to know," Mr. Kennedy said, "is who's going to hand out the money."

That puts it well, because when the Government gets involved in passing out money, you can be sure there are going to be some strings attached to it. More regulation and less freedom, in plain English. Continuing:

Cynical? Not really. If the person or the group that "hands out the money" is politically motivated or controlled, public financing could easily become a political process. That's why, when Congress authorized the first Federal financing scheme for the 1976 Presidential election, control of the system was put in the hands of a Federal Elections Commission with three Democratic and three Republican members.

Even so, the danger of political manipulation of the F.E.C. is ever present. When the commission had to be reconstructed after a Supreme Court ruling in 1976, President Ford's long delay in naming the new members prevented Federal funds from being paid out; that had the effect on Ronald Reagan's campaign of starving it for money during the crucial primary season. As President, Mr. Ford had less need for the Federal payments.

When Neil Staebler, a Democratic member, sided with the three Republicans in 1975 to rule that corporations, like labor unions, could organize political action groups, labor leaders and some Democrats, notably Speaker Tip O'Neill, were annoyed—with the consequence that Mr. Staebler apparently is not being considered for reappointment now that his term is expiring.

Just recently, it was to the F.E.C. that the White House turned for a ruling on those rides President Carter, as a candidate last year, took on an airplane owned by Bert Lance's First National Bank of Georgia. If they were political, they would be paid for with remaining campaign funds; if not, Mr. Carter had to pay from his own pocket. Obviously a commission empowered to rule in such matters has great potential for political influence and impact.

The F.E.C. functioned reasonably well in 1976, apparently without partisanship. But will that always be the case? Some of the signs are disturbing. Four members of the current commission, for example, two Democrats and two Republicans, are former members of the House, rather than independent or professional authorities in the field of campaign finance. And one of the duties of the F.E.C. is to receive and check the campaign spending records of members of Congress.

Speaker O'Neill, by all reports, is about to get what could be undue influence within the commission. One Democratic member, former Rhode Island Representative Robert O. Tiernan, was appointed by President Ford at Mr. O'Neill's behest. Now President Carter is reported to have decided to replace Neil Staebler with another Democrat chosen by the Speaker, John W. McGarry of Boston, formerly the counsel to a special House committee on campaign expenditures.

Two of the three Democratic members thus would be responsive to Tip O'Neill, even though one of them, Mr. Tiernan, is currently involved in controversy over the use of his government telephone credit card.

Mr. McGarry's appointment apparently was decided upon at the White House after the Speaker protested against the nomination of a professional in the field, Susan King, formerly of the staff of the Center for the Public Financing of Elections, now executive assistant to the F.E.C. chairman, Thomas E. Harris. Although she is a Georgian and would have been only the second woman on the committee, Mrs. King is reported to have been opposed to Mr. O'Neill and others as a crusading reformer.

Mr. Carter also is politically embroiled with Republican Congressional leaders over the replacement of former Illinois Representative William Springer, whose term on the F.E.C. is expiring, too. The names of James F. Schoener, minority counsel of the Senate Rules Committee, and Robert P. Visser, formerly counsel to President Ford's reelection committee, have been submitted by Senator Howard Baker and Representative John Rhodes, the Republican leader; but Mr. Carter balked at both, labeling them opponents of public financing of elections.

Let me digress from the text of the article, Mr. President, to state that I think there is a parallel between the Zagoria situation, and what is being discussed here: the President's appointment of a Republican who holds the Democratic point of view with respect to campaign funding.

The President is pretty well on record, I think, as always working toward getting on that commission commissioners, Republican or Democrat, who are in favor of taxpayer financing of elections and who are, therefore, in my opinion, in favor of extending government control over the electoral process. Continuing:

Mr. Rhodes then accused the President of attaching unfair conditions to the naming of Republican appointees.

Apparently, Mr. Carter wants to make both Democratic and Republican appointments to the F.E.C. at the same time, so nothing final has as yet been done about either. Mr. Baker and Mr. Rhodes have now suggested another former member of Congress, Charlotte T. Reid of Illinois. And it is reported that Mr. Carter might yet be dissuaded from giving Speaker O'Neill a second appointee to a supposedly non-political commission. Another name now being recommended to the President is that of Herbert E. Alexander of the Citizens' Research Foundation, well known as an independent authority on campaign financing, who would be nobody's "man" on the F.E.C.

For the information of my colleagues, Mr. President, I am hoping to be able to give to our colleague (Mr. JEPSEN), who has very strong feelings on the nomination, an opportunity to speak.

It is my further intention—irrespective of whether Senator JEPSEN is able to get away from his present occupation at the SALT hearings this afternoon—to make a motion to recommit this evening, to make the motion not too far distant in time to recommit this nomination to the Rules Committee, for the information of my colleagues.

Mr. HATFIELD. Will the Senator yield for a question?

Mr. HUMPHREY. Yes, for a question.

Mr. HATFIELD. Without losing his right to floor.

Mr. HUMPHREY. Yes.

Mr. HATFIELD. If I understand the Senator correctly, he plans to make a motion to recommit the nomination to the Committee on Rules and Administration. As I understood the Senator, he said that might be in the not too distant future.

Mr. HUMPHREY. Yes.

Mr. HATFIELD. Would the Senator be willing to agree that if—if—the motion to recommit fails, that the Senator would be willing to move to a vote on the nomination, an immediate vote on the nomination?

Mr. HUMPHREY. Yes. That is my intention.

Mr. HATFIELD. If the Senator will yield further for a unanimous-consent agreement, that contingent upon the Senator's motion to recommit, I ask unanimous consent that if that motion to recommit fails—if it fails—the Senate would then move for an immediate vote on the nomination.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATFIELD. I thank the Senator from New Hampshire.

Mr. President, I would like to exercise the unanimous-consent agreement that we reached some time ago on making a few minutes of closing statement at some time appropriate, whenever the Senator feels that would be appropriate, in relation to his motion to recommit.

Mr. HATCH. Will the Senator yield for a question?

Mr. HATFIELD. Yes.

Mr. HATCH. If we could, when would the distinguished Senator from New Hampshire desire to make this motion to recommit?

Mr. HUMPHREY. Well, I suppose I could make my motion now.

I wish to give Senator JEPSEN some time. He could address the motion to recommit. He need not——

Mr. HATCH. If I might make a suggestion, why does the Senator not make the motion to recommit precisely at 5 p.m., allow time for the ranking minority member of the Rules Committee to make his comments, the minority whip, our acting floor leader, to make his comments, and, of course, reserve perhaps the last 3 minutes for the Senator's closing comments on this matter.

Of course, the motion to recommit, as I understand it, is debatable.

So, once the Senator makes his motion, he could take 2, 3, or 5 minutes, or as much time as he would like. But perhaps we could do it in that framework and make some more comments, and perhaps we would then have the vote, assuming the motion to recommit fails, immediately following thereafter.

Does that sound OK to the distinguished Senator, my friend from New Hampshire?

Mr. HUMPHREY. I am concerned about allowing, if at all possible, Senator JEPSEN to speak on this topic.

Mr. HATFIELD. Will the Senator yield for a question?

Mr. HUMPHREY. Yes.

Mr. HATFIELD. Would the Senator be willing to agree to a one-half hour, equally divided, time agreement in which all these matters may be taken care of, which would bring a vote at approximately 5:15 on the Senator's motion to recommit?

Mr. HUMPHREY. Let me propose this, that I move now—this is not a motion, but let me propose this—I make the motion, and we will then be on new business. I will then be entitled to address the new business before the Senate, as the Senator will, even without exercising his previously granted unanimous consent.

Mr. HATCH. Will the Senator yield?

Mr. HUMPHREY. Yes.

Mr. HATCH. I chatted with Senator JEPSEN. I will make a statement also that I believe he will be favorably disposed to a vote at or near 5 o'clock, if we could meet those time constraints. But I will make every effort to get him here.

Mr. HUMPHREY. I think there is little doubt we will be able to dispose of this reasonably soon. But I do want to protect Senator JEPSEN in his wishes to address this issue.

Mr. HATCH. And I will make every effort to get hold of Senator JEPSEN.

Mr. HATFIELD. Has the Senator made his motion?

Mr. HUMPHREY. No, I have not.

Mr. HATFIELD. I am sorry. I did not hear the Senator's final remark.

Did the Senator indicate that he plans to make the motion and then make comments between now and a time certain?

Mr. HUMPHREY. I am willing to agree on a fixed period of time.

Mr. HATFIELD. I understand. I thank the Senator.

Mr. STEVENS. Will the Senator yield to me, just for the purpose of a question?

Mr. HUMPHREY. Yes.

Mr. STEVENS. It is my understanding the Senator from New Hampshire will make a motion then to recommit the Reiche nomination, and that we will have a short period time of debate and comment. We do have, on both sides, to put out notices to Senators. Some of them may be out of the building.

Could we indicate a vote would take place sometime between 5 and 5:15?

Mr. HUMPHREY. Yes.

Mr. STEVENS. I thank the Senator.

Mr. HUMPHREY. Mr. President, I move that the nomination presently under consideration be recommitted to the Committee on Rules and Administration, and I ask for the yeas and nays on that motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the vote on the motion take place not later than 5:15 and that the intervening time be equally divided.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Who yields time?

Mr. HATCH. Will the distinguished Senator yield?

Mr. HATFIELD. Mr. President, if we are under a time control system now, at approximately 12 minutes or 13 minutes per side, I would make a few remarks and yield myself 5 minutes.

Mr. HATCH. Will the distinguished Senator yield?

Mr. HATFIELD. I am happy to.

Mr. HATCH. It is my understanding there is already a unanimous-consent request that should the motion to recommit of our friend from New Hampshire fail, that immediately thereafter there would be a vote up or down on the Reiche nomination, unless somebody moves to table, but, in any event, a vote.

Mr. HATFIELD. That is correct.

Mr. President, I ask for the yeas and nays, if that motion fails, on the final confirmation of Mr. Reiche.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

ROUTINE MORNING BUSINESS

The following routine morning business was transacted today, as in legislative session:

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:18 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 33. A concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 4537.

At 5:41 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House disagrees to the amendments of the Senate to H.R. 4057, an act to increase the fiscal year 1979 authorization for appropriations for the food stamp program; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. FOLEY, Mr. DE LA GARZA, Mr. JONES of Tennessee, Mr. MATHIS, Mr. RICHMOND, Mr. PANETTA, Mr. NOLAN, Mr. GLICKMAN, Mr. AKAKA, Mr. HARKIN, Mr. WAMPLER, Mr. SYMMS, Mrs. HECKLER, Mr. GRASSLEY, and Mr. KELLY were appointed managers of the conference on the part of the House.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–1848. A communication from the Director of the Defense Security Assistance Agency, Department of Defense, transmitting, pursuant to law, notice of the proposed letter of offer to Israel for defense articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC–1849. A communication from the Director of the Defense Security Assistance Agency, Department of Defense, transmitting, pursuant to law, notice of the proposed letter of offer to Saudi Arabia for defense articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC–1850. A communication from the Director of the Council on Wage and Price Stability, Executive Office of the President, transmitting, pursuant to law, the report of the Council dealing with their findings and recommendations on the need to promote greater productivity growth; to the Committee on Banking, Housing, and Urban Affairs.

EC–1851. A communication from the Chairman of the Board of Governors of the Federal Reserve Board, transmitting, pursuant to law, the midyear monetary policy report of the Federal Reserve Board; to the Committee on Banking, Housing, and Urban Affairs.

EC–1852. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on loan, guarantee and insurance transactions supported during May 1979 to communist countries; to the Committee on Banking, Housing, and Urban Affairs.

EC–1853. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Protecting Consumer Rights in the Tour Industry: Who Is Responsible?"; to the Committee on Commerce, Science, and Transportation.

EC–1854. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to amend sections 503, 504, 606(6), 804, and 905 of the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

EC–1855. A communication from the Administrator of the Energy Information Administration, Department of Energy, transmitting, pursuant to law, volume 3 of the second Energy Information Administration Annual Report to Congress; to the Committee on Energy and Natural Resources.

EC–1856. A communication from the Acting Assistant Secretary of the Interior, transmitting a proposed contract with Jacuzzi Brothers, Inc., Little Rock, Arkansas, for a research project entitled "Small Diameter Corrosion Resistant Pumps for In Situ Leaching"; to the Committee on Energy and Natural Resources.

EC–1857. Report of the Comptroller General of the United States, transmitting a report entitled "The Economic and Energy Effects of Alternative Oil Import Policies," to the Committee on Energy and Natural Resources.

EC–1858. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Commercializing Solar Heating: A National Strategy Needed"; to the Committee on Energy and Natural Resources.

EC–1859. A communication from the Assistant Secretary of the Army for Civil Works, transmitting, pursuant to law, a final environmental impact statement on the mouth of the Colorado River, Texas in relation to an exemption for a navigation project; to the Committee on Environment and Public Works.

EC–1860. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a final environmental impact statement and supplemental information on West Kentucky tributaries, Obion Creek, Kentucky project; to

the Committee on Environment and Public Works.

EC–1861. A communication from the Administrator, United States Environmental Protection Agency, transmitting, pursuant to law, a report on the administration of the ocean dumping permit program; to the Committee on Environment and Public Works.

EC–1862. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Public Diplomacy of Other Countries: Implications for the United States," July 23, 1979; to the Committee on Foreign Relations.

EC–1863. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within 60 days after the execution thereof; to the Committee on Foreign Relations.

EC–1864. A communication from the Assistant Attorney General for Administration, Department of Justice, transmitting, pursuant to law, a report of a new system of records; to the Committee on Governmental Affairs.

EC–1865. A communication from the Legislative Counsel, Office of the Director of Central Intelligence, transmitting, pursuant to law, revised guidelines and procedures for the issuance of compartmented clearances to the Legislative Branch; to the Select Committee on Intelligence.

EC–1866. A communication from the Certified Public Accountant, American Symphony Orchestra League, transmitting, pursuant to law, an audit report for the fiscal year ending March 31, 1979; to the Committee on the Judiciary.

EC–1867. A communication from the Counsel, Pacific Tropical Botanical Garden, transmitting, pursuant to law, a report of audit for the Garden for the period from January 1, 1978 through December 31, 1978; to the Committee on the Judiciary.

EC–1868. A communication from the Executive Secretary to the Department of Health, Education, and Welfare, transmitting, pursuant to law, final regulations amendments for School Construction in Areas Affected by Federal Activities, Public Law 81–815; to the Committee on Labor and Human Resources.

EC–1869. A communication from the Administrator, Veterans' Administration, transmitting, pursuant to law, the annual report of the Administrator of Veterans' Administration for fiscal year 1978; to the Committee on Veterans' Affairs.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM–400. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Energy and Natural Resources:

"RESOLUTION

"Whereas, the current shortage of gasoline has caused many hardships to the people of the United States; and

"Whereas, the economic livelihood of the United States is dependent on gasoline to function properly; and

"Whereas, the only fair and reasonable way to distribute gasoline equally to all citizens is by some form of rationing; Now therefore be it

"Resolved, that the Massachusetts Senate respectfully urges the Congress of the United States to enact legislation for the rationing of gasoline; and be it further

"Resolved, that copies of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States, the presiding officer of each branch of the Congress, and to the members thereof from this Commonwealth."

POM–401. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Environment and Public Works:

"HOUSE CONCURRENT RESOLUTION No. 177

"Whereas, the area in and around East Baton Rouge Parish, Louisiana is subjected to flooding with increasing regularity causing repeated disaster and devastation to the property located in that area; and

"Whereas, most tributaries in and around East Baton Rouge Parish drain into the Amite and Comite Rivers and one of the major causes of such flooding conditions is the lack of depth of the Amite and Comite Rivers sufficient to accommodate these excess waters; and

"Whereas, this lack of depth is a result of these rivers not having been dredged since 1956.

"Therefore, be it resolved by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the legislature does hereby memoralize the Congress of the United States to take all action necessary and appropriate to direct the United States Army Corps of Engineers to dredge the Amite and Comite Rivers, including making necessary funds available for such purposes.

"Be it further resolved that copies of this Resolution be forwarded to all members of the Louisiana Congressional delegation and to the clerk of the House of Representatives and to the secretary of the Senate of the United States Congress."

POM–402. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION No. 246

"Whereas, the medical assistance program under Title XIX of the Social Security Act provides for needed medical assistance for the aged, the blind, and the handicapped; and

"Whereas, a substantial number of the aged persons receiving this assistance are recipients of retirement benefits; and

"Whereas, often times cost-of-living increases in such benefits render many persons ineligible for Medicaid assistance due to income limits; and

"Whereas, this creates a health care dilemma for many persons least able to secure needed health services for themselves.

"Therefore, be it resolved by the House of Representaives of the Legislature of Louisiana, the Senate thereof concurring, that the Congress of the United States is hereby memorialized to consider modifying the standards of eligibility for Medicaid assistance under Titles XV and XIX of the Social Security Act to provide that cost-of-living increases in income would not render a person ineligible for assistance.

"Be it further resolved that copies of this Resolution be transmitted to the clerk of the United States House of Representatives, the secretary of the United States Senate, and to each member of the Louisiana congressional delegation."

POM–403. A concurrent resolution adopted by the State of Louisiana; to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION No. 247

"Whereas, the medical assistance program under Title XIX of the Social Security Act provides needed medical assistance for the aged, the blind, and the handicapped; and

"Whereas, a substantial number of such persons live with incomes that are below the recognized poverty level; and

"Whereas, under present regulations, persons otherwise qualified for this assistance but who have incomes exceeding two hundred ten dollars per month do not qualify; and

"Whereas, this limit serves to create a health care dilemma for persons least able to secure health services for themselves.

"Therefore, be it resolved by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the Congress of the United States is hereby memoralized to examine the needs of the medically needy and to consider increasing the minimum income a person may receive and yet qualify for benefits under the Title XV and XIX Medicaid Program.

"Be it further resolved that copies of this Resolution be transmitted to the clerk of the United States House of Representatives, the secretary of the United States Senate, and to each member of the Louisiana congressional delegation."

POM–404. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Energy and Natural Resources:

"HOUSE CONCURRENT RESOLUTION No. 138

"Whereas, the United States government, as part of the Strategic Petroleum Reserve Program, is involved in the stortage of petroleum in the salt domes near Hackberry, Louisiana; and

"Whereas, one portion of this program involves the flushing of the domes with water from the Intercoastal Waterway and the disposal of the resulting supersaturated saltwater in the Gulf of Mexico; and

"Whereas, a thirty-six inch pipeline to be built for this purpose from Hackberry to the Gulf either is under construction or is proposed for immediate construction; and

"Whereas, the disposal of substantial amounts of supersaturated saltwater off the Louisiana coast poses a serious threat to the ecology of this state and to the shrimp and menhaden fishing industries in this state; and

"Whereas, the Legislature of Louisiana recognizes the urgent necessity to protect the ecology and the economic necessity to protect these industries which are vital elements in the economy of this state.

"Therefore, be it resolved by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the United States Congress, the United States Department of Energy, and Mr. James R. Schlesinger, United States Secretary of Energy, are hereby memorialized to take such steps as are necessary to prevent the construction of a pipeline from Hackberry, Louisiana to the Gulf of Mexico for the purpose of disposing of supersaturated saltwater used to flush the salt domes near Hackberry, and to prevent any disposition of such supersaturated saltwater which would adversely affect the ecology of the state of Louisiana, and the shrimping and menhaden fishing industries.

"Be it further resolved that the United States Congress, the United States Department of Energy and Mr. James R. Schlesinger, United States Secretary of Energy, are hereby memorialized to require that the United States Fish and Wildlife Service and the National Marine and Fisheries Commission have oversight over the brine discharge line area in the Gulf of Mexico near Hackberry, Louisiana and make regular observations and recommendations as to whether operations should be continued in the event that such discharge line be constructed.

"Be it further resolved that a copy of this Resolution shall be transmitted without delay to the presiding officers of both houses of the United States Congress, to United States Secretary of Energy James R. Schles-

inger, and to each member of the Louisiana delegation to the United States Congress."

POM–405. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION NO. 73

"Whereas, President Carter has announced to the nation a plan to implement the gradual decontrol of domestic crude oil prices; and

"Whereas, the removal of price controls on oil is designed to bring the price of domestic oil to the level of world prices, a decision which was made in an attempt to encourage and stimulate domestic exploration and development of vital oil supplies; and

"Whereas, it has been established that although production and reserves of oil have generally been declining, there does exist substantial recoverable reserves of oil which remain to be discovered; and

"Whereas, estimates of undiscovered recoverable oil resources indicate that many of these deposits are located in more subtle and/or deeper reservoirs which are increasingly more difficult to tap; and

"Whereas, for deposits deeper and more difficult to research it is probable that the ratio of dry exploratory wells to discovery wells will increase in the search for these deposits; and

"Whereas, increased exploratory drilling will be required to locate the remaining, more elusive, deposits and to define their productive limits; and

"Whereas, the development of deeper reserves will require the investment of millions of dollars of "risk money" which may or may not result in oil discovery; and

"Whereas, secondary recovery efforts also could be directed to stripper wells at a substantial risk and investment; and

"Whereas, that although deregulation of oil prices will provide some incentive to producers to engage in exploration and development, the correspondent excess profits tax will offset the great strides which otherwise could be made in exploration and development of deeper reserves.

"Therefore be it resolved by the House of Representatives of the Legislature of the state of Louisiana, the Senate thereof concurring, that the legislature hereby memorializes the President and the Congress of the United States and the Department of Energy to take into serious consideration the proposal to provide for a dollar for dollar exemption from the proposed excess profits tax on deregulated oil prices for those profits which can be shown to be reinvested in the exploration for and development of oil.

"Be it further resolved that a copy of this Resolution be transmitted without delay to the president of the United States, the vice president of the United States in his capacity as presiding officer of the United States Senate, to the speaker of the United States House of Representatives, to the secretary of the Department of Energy, and to each member of the Louisiana delegation in the Congress."

POM–406. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION NO. 218

"Whereas, the federal welfare recipient employment incentive program provides tax incentives to employers to hire welfare recipients in certain categories of work; and

"Whereas, under existing provisions of the program, the employee must be employed on a "substantially full-time basis;" and

"Whereas, many persons employed to provide service in child day care centers are employed on less than a full-time basis, thus excluding them from eligibility for the program; and

"Whereas, child day care center operators should be encouraged to employ welfare recipients; and

"Whereas, this legislation provides some desirable incentive for employers to hire these individuals, which in turn will tend to reduce the unemployment and welfare rolls by expanding eligibility to include part-time child day care center employees.

"Therefore, be it resolved by the House of Representatives of the Louisiana Legislature, the Senate thereof concurring, that the Congress of the United States is hereby urged and requested to enact Senate Bill No. 257 by Senator Russell Long, relative to the eligibility of child day care center workers for the federal welfare recipient employment incentive program, and the members of the Louisiana delegation in the Congress are hereby urged to exert every influence at their command to that end.

"Be it further resolved that a copy of this Resolution shall be transmitted to the Speaker of the House of Representatives of the Congress of the United States, the Vice-President of the United States and President of the Senate, and to each member of the Louisiana delegation in the Congress."

POM–407. A petition from a private citizen, petitioning the U.S. Senate to reject ratification of the SALT II Disarmament Treaty; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MUSKIE, from the Committee on the Budget, without amendment:

S. Res. 204. An original resolution increasing the limitation on expenditures by the Committee on the Budget for the procurement of consultants and authorizing expenditure by such committee for the training of its professional staff. Referred to the Committee on Rules and Administration.

S. Res. 202. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 111.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PROXMIRE, Committee on Banking, Housing, and Urban Affairs:

Brenton H. Rupple, of Wisconsin, to be a Director of the Securities Investor Protection Corporation.

By Mr. WILLIAMS, from the Committee on Labor and Human Resources:

Leroy D. Clark, of New York, to be General Counsel of the Equal Employment Opportunity Commission.

(The above nominations from the Committees on Labor and Human Resources and Banking, Housing, and Urban Affairs were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. TALMADGE (for himself, Mr. NUNN and Mr. CHILES):

S. 1569. A bill to require that regulatory impact statements are prepared during certain stages of the legislative and rulemaking processes; to the Committee on Governmental Affairs and the Committee on Rules and Administration, jointly, by unanimous consent.

By Mr. INOUYE:

S. 1570. A bill to amend section 203 of the Federal Property and Administrative Services Act of 1949 to authorize the donation of surplus real or personal property for use in connection with a public harbor; to the Committee on Governmental Affairs.

By Mr. PACKWOOD (for himself, Mr. RIBICOFF and Mr. MATSUNAGA):

S. 1571. A bill to amend the Internal Revenue Code of 1954 and the Energy Tax Act of 1978 to provide increased incentives for the utilization of energy sources other than oil and gas; to the Committee on Finance.

By Mr. HELMS:

S. 1572. A bill to exempt family farms from the Occupational Safety and Health Act of 1970; to the Committee on Labor and Human Resources.

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 1573. A bill to amend title V of the Motor Vehicle Information and Cost Savings Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BELLMON:

S. 1574. A bill the Federal Food, Drug and Cosmetic Act, the Federal Alcohol Administration Act, to provide for Health Warning Labels on alcoholic beverages.

By Mr. LEVIN:

S. 1575. A bill to establish a program to stimulate production of synthetic fuels; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TALMADGE (for himself, Mr. NUNN, and Mr. CHILES):

S. 1569. A bill to require that regulatory impact statements are prepared during certain stages of the legislative and rulemaking processes; to the Committee on Governmental Affairs and the Committee on Rules and Administration, jointly, by unanimous consent.

(The remarks of Mr. TALMADGE when he introduced the bill appear earlier in today's proceedings.)

By Mr. INOUYE:

S. 1570. A bill to amend section 203 of the Federal Property and Administrative Service Act of 1949 to authorize the donation of surplus real or personal property for use in connection with a public harbor; to the Committee on Governmental Affairs.

● Mr. INOUYE. Mr. President, the Surplus Property Act of 1944 allows the transfer of surplus Federal real property, without monetary compensation, to local governments for the development or improvement of public airports. Current General Services Administration regulations also allow the conveyance of surplus lands for public airport use, or for wildlife conservation, or historical monuments, as long as the lands remain in that use in perpetuity.

This treatment is due to the clear national interest in public airport development, improvement, operations, and maintenance. But we should not forget that these national interests exist with respect to our public harbor facilities which are presently excluded from the

kind of preferential treatment now given to public airports.

Mr. President, the legislation I am introducing today seeks nothing more than to correct this imbalance. It would amend section 203 of the Federal Property and Administrative Services Act of 1949 to authorize the donation of surplus real or personal property for use in connection with a public harbor. Under this bill, surplus real property conveyed for purposes of a public harbor shall be conveyed in perpetuity as is the case for public airports.

The bill also provides that the surplus property so conveyed shall be without monetary consideration, at no cost, as is the case with public airports.

Mr. President, as I have stated earlier, my bill seeks for public harbors no more nor less than the same preferential treatment accorded public airports in the disposition of Federal surplus real and personal property.●

By Mr. PACKWOOD (for himself, Mr. RIBICOFF, and Mr. MATSUNAGA):

S. 1571. A bill to amend the Internal Revenue Code of 1954 and the Energy Tax Act of 1978 to provide increased incentives for the utilization of energy sources other than oil and gas; to the Committee on Finance.

ALTERNATIVE ENERGY SOURCE AND CONSERVATION TAX INCENTIVE ACT OF 1979

Mr. PACKWOOD. Mr. President, today Senators RIBICOFF, MATSUNAGA, and I are introducing a bill designed to increase the role alternative energy sources will play in America's future. Alternatives to petroleum are no longer pipedreams. In most cases, the technology is here. Our bill will encourage investors to develop, produce, and market technologies which will wean Americans away from dependence on petroleum products generally, and OPEC oil specifically.

Events of recent months have convinced Americans that dramatic action is needed now. Congress has responded by proposing an unprecedented amount of energy-related legislation. The Senate Finance Committee is now dealing with the windfall profits tax. One week ago President Carter announced his energy program. His plan calls on the Federal Government to form and manage U.S. energy policy. We believe Carter's program puts too much emphasis on Government control. Our approach places more reliance on the taxpaying private sector. In many instances, the administration plan and our proposals strengthen each other.

This bill encourages solar, wind, geothermal, hydroelectric energy, and alcohol fuels, as well as residential and industrial conservation.

The bill has three basic parts: First, the Energy Tax Act of 1978 is extended to technologies not presently covered. In addition, this tax incentive is made more attractive and usable to homeowners, businesses and utilities.

Second, residential and industrial conservation measures are encouraged by expanding available tax benefits.

Third, this bill encourages increased use of alcohol as a motor fuel.

Fourth, our bill will encourage the growth of "van pooling," the most efficient form of transportation for metropolitan areas.

IMPROVING THE ENERGY TAX ACT OF 1978

The Energy Tax Act of 1978 (Public Law 95–618) created a broad range of tax incentives designed to promote both residential and business investment in alternative energy sources. We believe the act can be improved.

ENERGY TAX CREDITS FOR INDIVIDUALS

Present law provides a maximum tax credit of $2,200 for the purchase and installation of renewable energy source property such as solar collectors. The current formula allows a credit of 30 percent of the first $2,000, and 20 percent of the next $8,000. We would simplify and increase this incentive. The tax credit would be 30 percent of cost up to $10,000. The maximum credit would be $3,000.

In addition to increasing the dollar amount of the credit, this bill would increase its effectiveness by broadening eligibility for the tax credit.

RENTAL PROPERTY

Under current law, if the taxpayer installs alternative energy equipment on his own residence, he is eligible for the tax credit. However, if he installs such equipment on rental residential property which he owns, he is not eligible. Thus, the landlord is given no incentive to reduce the fuel bills of his tenants. The bill would allow the taxpayer to take the tax credit when he improves rental residential property.

BUILDER'S CREDIT FOR INSTALLATION OF EQUIPMENT

The first purchaser of a house is now allowed to take the energy tax credit for equipment installed by the builder. Our bill would permit the builder to claim the tax credit himself. He would retain the option of passing the credit through to the first purchaser. Last year, California enacted a similar law. It has been partially responsible for the dramatic increase in sales of solar equipment in California. With this provision, we hope to extend that growth throughout the country.

CREDIT FOR LEASE PAYMENTS

While solar, wind, and geothermal equipment can dramatically reduce fuel bills, many individuals are hesitant to commit relatively large sums of money to new, and to them uncertain, technology. This bill would encourage those individuals to lease energy-saving equipment by applying the 30 percent energy tax credit to lease payments. To qualify, the lessor must certify that he has not taken the energy tax credit on the equipment.

PRORATING THE TAX CREDIT AMONG JOINT PURCHASERS

Alternative energy equipment is well suited for community use. A proposed Internal Revenue Service regulation permits owners of various residences to take the energy tax credit for a prorated share of the costs of jointly acquired equipment. Our bill would put this rule in the statute.

PROMPT TAX BENEFITS

Another provision would help low- and middle-income persons finance alternative energy equipment and improvements. Currently, the taxpayer receives this energy tax credit when he files his annual return. Thus, he may have to finance the full purchase and installation cost for as long as 16 months. We want to reduce this burden by allowing the homeowner to receive the credit as soon as possible. Our bill would make the energy credit available against taxes paid the previous year. The taxpayer would file an amended return for the prior year, with the addition of his energy-saving expenditures. A similar procedure is available for disaster victims under section 167(k) of the Internal Revenue Code. The same concept was reported favorably by the Senate Finance Committee in 1978 as a part of H.R. 3340, legislation to allow taxpayers to receive a prompt tax credit for political contributions (S. Rept. 95–342).

PHOTOVOLTAICS

Photovoltaic systems use sunlight to generate electricity. They are a product of American efforts in space which now promise tremendous benefits on Earth. The U.S. Department of Energy projects that photovoltaics could displace up to 2.5 million barrels per day by the year 2000.

The Energy Tax Act of 1978 allowed a tax credit for business investment in photovoltaics, but not for homeowners. Our bill would extend this to homeowners.

GEOTHERMAL

Geothermal energy uses the temperature of the Earth's core. In those sections of the country blessed with geothermal resources, such as the West and Hawaii, geothermal is being used to heat homes and buildings. We want to encourage more use of this clean, inexhaustible resource. The President's Interagency Geothemal Coordinating Council has projected the potential contribution of geothermal to be the equivalent of 2.5 to 4 million barrels of oil per day by the year 2000.

The existing tax credit for individuals covers costs of installation of geothermal equipment. However, it is not clear whether the credit covers the cost of drilling the well necessary to reach the geothermal resource. This bill would expressly include such costs as eligible for the energy credit. A taxpayer would not be permitted to take the intangible drilling cost deduction if he elected the tax credit for drilling costs. The bill includes a similar provision for commercial geothermal investment.

ENERGY TAX CREDITS FOR BUSINESS

While the amount of energy consumed in private residences is considerable, it pales in comparison with that consumed daily by American business and industry. The U.S. Energy Information Administration estimates about 13 percent of total U.S. energy is consumed in private residences. Commerce and industry, not including transportation, consumed about 41 percent. The Energy Tax Act of 1978 addressed this industrial energy use by supplementing the existing 10 percent investment tax credit with an additional 10 percent tax credit for energy-related investments.

As is the case with residential tax credits for individuals, we believe certain improvements must be made in the existing tax credit formula to achieve the original goal of maximizing the use of alternative energy sources.

THIRTY-PERCENT TAX CREDIT FOR ALL SOLAR, WIND AND GEOTHERMAL APPLICATIONS

A basic goal of last year's energy tax legislation was to make solar and wind equipment eligible for a 20 percent total tax credit. Some solar applications do qualify the full 20 percent tax credit. Others, however, are allowed only a 10 percent credit. This is because the basic 10 percent investment tax credit is not available for structural modifications or components, such as building-wide heating and cooling systems or generators. That is particularly unfortunate since these are the primary uses of solar energy at this time. Energy Future, the report of the energy project at the Harvard Business School, edited by Robert E. Stobaugh, estimates that commercial use of solar waste and space heating can displace about 2.5 million barrels of oil a day by the year 2000.

Our bill addresses this problem in two steps: First, all solar and wind energy property, including structural modifications and components, will be eligible for the basic 10 percent investment tax credit. Second, an additional 20 percent energy tax credit is made available for solar, wind and geothermal expenditures.

The administration has proposed a 25-percent total credit for a single use of solar power—industrial process heat. We agree that the level of incentives must be increased. However, we believe that a 30-percent credit is necessary to stimulate solar and wind investment.

WIND-POWERED MECHANICAL ENERGY

We propose that certain technologies not included in the law passed last year shall now be eligible for the 30-percent tax credit. One such technology is the use of wind power to produce mechanical energy.

Wind-powered mechanical energy can be used to pump water for irrigation. New Mexico has included this excellent wind utilization among those applications eligible for its State energy tax credit. We want to encourage farmers and others in all States to take advantage of wind-powered mechanical energy. This bill would make wind-powered mechanical energy eligible for the 30-percent credit.

HYDROELECTRIC

While most dams during the past 40 years have incorporated electrical production, this was not true for older dams built primarily for flood control or to power small mills. The Army Corps of Engineers has estimated total unused hydroelectric potential at existing dams to be up to 54.6 billion watts annually, equivalent to the electrical output of 54 modern nuclear reactors. This includes the upgrading of generating capacity at existing hydropowered dams. New England is most often mentioned as benefiting from such conversion. But examples of wasted hydropower exist throughout the country, such as in the Pacific Northwest.

Last year both the Senate and House recognized the need to promote this clean and abundant resource. Both Houses passed bills which would have made hydroelectric equipment expenses eligible for the energy tax credit. Unfortunately, this was dropped in conference.

Our bill would add hydroelectric to the list of "alternative energy properties" for the proposed 20-percent energy tax credit. Eligibility for this new credit would be based on language adopted by the Senate 2 years ago. However, we do not propose to extend the credit to the structure—the dam. Rather, the credit is to be used to encourage retrofitting of existing structures with the necessary turbines and electrical generation and transmission equipment. The credit also applies to hydroelectric equipment using the flow of water but without a structure to impound water.

SOLAR AND WIND TAX CREDIT FOR UTILITIES AND OTHERS

Windpower can play a significant role in reducing our dependence on conventional sources of energy. The President's domestic policy review of solar energy identifies potential windpower equivalent to 3 million barrels of oil a day by the year 2000.

Unlike solar, the primary use of wind is not on an individual building basis. Rather, windmills are placed in locations with strong and constant winds such as on hilltops or near the ocean. The electricity generated is then transferred to numerous consumers.

In Oregon, a firm is presently negotiating with the Bonneville Power Administration to erect a "windfarm" a large number of windmills located together in a particularly windy spot, and sell the electricity thus generated to BPA. Also in Oregon, the Eugene Water and Electric Board has ordered a 140-foot tall windmill to be installed along the Pacific Coast.

These are cautious first steps which must be encouraged. Current law does not do so. The 1978 Energy Tax Act prevents utilities and private enterprises from taking the energy tax credit if they sell wind-generated electricity subject to State regulation. This bill would allow those entities to take the proposed 20 percent energy tax credit for purchase and installation of all wind and solar equipment.

CONSERVATION

In recent years, the term "conservation" has become associated with sacrifice, or a lower standard of living. This is not always accurate. The United States wastes as much energy as it imports. Our bill provides incentives to reduce both industrial and residential energy waste, in ways that will not hurt the quality of life. Industrial waste can be reduced through cogeneration. Residential energy conservation can be encouraged through extension of existing conservation tax credits. Heating and cooling efficiency can also be increased with heat pumps.

COGENERATION

"Cogeneration" is a relatively new name for an old and proven practice. Cogeneration denotes any form of simultaneous production of electrical or mechanical energy and useful thermal energy such as heat, steam or gas. A conventional industrial system produces either electricity or thermal energy; a cogeneration system produces both. For example, at a factory cogeneration might involve running high temperature gases through an electrical turbine before they are used for process heating.

In his national energy plan of 1977, President Carter cited cogeneration as an important technique for conserving domestic energy resources. Robert Stobaugh, in his recent book, Energy Future, called cogeneration "industry's North Slope." A 1975 study, done for National Science Foundation by Dow Chemical Co., concludes that by 1985 U.S. industry could meet approximately half of its own electricity needs through cogeneration. The study says this would amount to a savings of 2 to 3 million barrels of oil per day.

Cogeneration equipment is currently available. However, it is expensive and is not being purchased and used sufficiently. Our bill would make utilities and industry eligible for a 10 percent energy tax credit for purchase and installation of cogeneration equipment. This would be in addition to the existing 10 percent investment credit.

Last year both the Senate and House passed legislation calling for cogeneration tax incentives. These were deleted in conference in an effort to reduce the overall cost of the Energy Tax Act of 1978. We believe that incentives to encourage investment in cogeneration equipment are now more necessary than ever before.

HEAT PUMPS

Heat pumps extract and pump heat from a relatively cool area to a warmer area. During cold weather, a pump absorbs heat from the air outdoors and transfers it indoors. These devices can be reversed to cool a building during the summer.

Heat pumps have proven energy savings capability. According to the Energy Research and Development Administration, they offer an average of 20 percent savings over conventional heating and cooling systems. Furthermore, in some regions of the country the installation of a heat pump can reduce electricity use by 35 to 45 percent.

Our proposal would make heat pumps eligible for the 15 percent residential conservation credit and the 10 percent energy tax credit for business.

MAXIMIZING THE EFFECTIVENESS OF TAX CREDITS

Many of the tax credits which we would simplify and liberalize, expire at the end of 1985. These include tax credits for individuals and businesses who purchase solar, wind or geothermal equipment, as well as the conservation credit. Several manufacturers have begun producing equipment which qualifies for the various tax credits. This includes solar collectors suitable for residential use, windmills and cogeneration equipment for industry and utilities, and thermal windows for conservation purposes. Many other manufacturers are studying the feasibility of entering this market. A tax credit which expires 5 years from now is not conducive to a stable and predictable market. Thus, we propose to

extend the expiration date to the year 2000.

EFFECTIVE DATE OF THE CREDIT

Experience has shown that when Congress is considering alterations to existing energy tax credits, sales of energy-saving equipment drop. Businesses and homeowners are reluctant to purchase equipment now, when they anticipate a larger tax credit for purchasing the same equipment later. In anticipation of this dilemma, our bill will have an effective date of July 24, 1979. Prospective purchasers can buy and install the equipment during the summer and fall construction season with the assurance that they will qualify for any increased credit which may be enacted afterward.

GASOHOL PRODUCTION INCENTIVES

Automobiles and trucks account for 40 percent of American consumption of petroleum. For this reason, we believe that a comprehensive approach to the energy problem requires a careful look at transportation fuels.

Alcohol has proven itself to be an effective supplement and substitute for gasoline. Several Federal programs are funding alcohol-fuels production. President Carter's proposed Energy Security Corporation and Energy Mobilization Board would expedite construction and guarantee loans for alcohol production facilities. Our bill would complement this effort by making alcohol-gasoline mixtures cost-competitive, thus creating a strong market demand.

INCENTIVES TO INCREASE ALCOHOL CONTENT

Gasohol is a mixture of 10 percent alcohol and 90 percent gasoline. It is currently exempt from the 4 cent per gallon Federal gasoline tax. As a result, the retailer is encouraged to sell gasohol, but there is no incentive to increase the proportion of alcohol above 10 percent. We propose that the amount of tax incentives be matched to the amount of alcohol in the alcohol-gasoline mixture. An increased proportion of alcohol should earn increased tax benefits.

Our bill would do this by repealing the present 4 cents per gallon exemption. In its place, it provides a 40 cents exemption for each gallon of alcohol sold in the alcohol-gasoline mixture.

Under the present 4 cents/gallon formula, 10 gallons of gasohol—containing 1 gallon alcohol, 9 gallons gasoline—earn a 40 cents tax exemption. Under our proposal, the 10 gallons gasohol—containing 1 gallon alcohol—would receive a 40 cent credit. However, if the alcohol content increases to 2 gallons alcohol and 8 gallons gasoline, the present formula still allows only a 40 cent exemption, while our proposed formula would provide an 80 cent credit. In sum, this bill would create an incentive to increase the alcohol content in gasohol, while present law does not.

The 40 cents credit would apply against either the dealer's Federal gasoline or diesel tax payments, or against his income tax payments. This would guarantee that the alcohol incentive will be fully available to small, independent retailers who sell relatively little gasoline.

ASSURING A LONG-TERM MARKET

Under the 1978 Energy Tax Act, the gasoline tax exemption expires October 1, 1984. We believe that to induce this type of investment, we must assure marketing incentives throughout the useful life of the alcohol production facility. This bill would extend the termination date of the tax exemption to the year 2000.

PHASE-OUT OF THE INCENTIVE

Gasohol incentives are necessary because the price of alcohol-gasohol mixtures is higher than that of pure gasoline. However, with the increasing price of petroleum, alcohol-gasoline mixtures may eventually not need the tax exemption to be price competitive.

We propose that Treasury's annual gasohol report to Congress be expanded to include a calculation of the need for continued alcohol fuels incentives, and their appropriate level. The bill would also require that the report compare the cost of alcohols produced from corn, wheat, wood and other substances.

VAN POOLING

The Congressional Budget Office has concluded that of all types of urban transportation "van pooling can probably make the greatest contribution to energy savings on a per-passenger-mile basis." According to the Department of Transportation, each van pool saves 4,000 gallons of gasoline per year, in addition to reducing pollution and traffic congestion.

Last year, with the support of Senators RIBICOFF, BENTSEN and others, Congress adopted my proposal for a tax incentive to encourage employer-provided van pools. As a result, an employer is now allowed to take the full 10 percent investment tax credit for the purchase of a van for use by his employees, instead of only a 3⅓-percent investment tax credit under prior law. However, many van pools are not employer-provided, but are business ventures operated by third parties or owner-operators. This bill would allow them to take the same 10 percent investment tax credit available to employers.

Mr. President, I believe that through judicious use of tax incentives we can promote alternatives to continued dependence on oil imports. Enactment of the Energy Tax Act of 1978 was a positive step forward. This bill will continue and expand upon that initiative.

I am hopeful that our colleagues on the Finance Committee will give support and favorable consideration to this legislation. We welcome suggestions for strengthening this bill.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Alternative Energy Source and Conservation Tax Incentive Act of 1979".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. RESIDENTIAL ENERGY CREDIT.

(a) INCREASE IN AMOUNT OF CREDIT FOR RENEWABLE ENERGY SOURCE EXPENDITURES.—Paragraph (2) of section 44C (b) (relating to qualified renewable energy source expenditures) is amended to read as follows:

"(2) RENEWABLE ENERGY SOURCE.—In the case of any dwelling unit, the qualified renewable energy source expenditures are 30 percent of so much of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $10,000.".

(b) COSTS OF DRILLING GEOTHERMAL WELL.—Subparagraph (B) of section 44C (c) (2) is amended to read as follows:

"(B) CERTAIN LABOR AND OTHER COSTS INCLUDED.—The term 'renewable energy source expenditure' includes—

"(i) expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of renewable energy source property, and

"(ii) expenditures for the drilling of an onsite well drilled for any geothermal deposit (as defined in section 613 (e) (3)), but only if the taxpayer has not elected under section 263 (c) to deduct any portion of such expenditures.".

(c) MECHANICAL AND ELECTRICAL ENERGY.—Paragraph (A) of section 44C (c) (5) (relating to definition of renewable energy source property) is amended—

(1) by inserting "mechanical energy, or electricity (through photovoltaics or otherwise)" after "hot water" in subparagraph (i), and

(2) by inserting "including, but not limited to wind energy for the purpose of heating and cooling, providing hot water, mechanical energy or electricity" after "purposes", in subparagraph (ii).

(d) CREDIT ALLOWABLE TO LESSOR AND BUILDER AND FOR LEASED PROPERTY.—Section 44C (d) (relating to definitions and special rules) is amended by redesignating paragraph (4) as paragraph (6) and by inserting after paragraph (3) the following new paragraphs:

"(4) Renewable energy source expenditures by lessors and builders.—

"(A) LESSORS AND BUILDERS.—Notwithstanding any provision of this section requiring the taxpayer to use a dwelling unit as his principal residence or to be the original user of any item—

"(i) LESSOR.—If an individual who is the lessor of a dwelling unit which constitutes the principal residence of the lessee makes expenditures which, but for such provisions, constitute energy conservation or renewable energy source expenditures, then, for purposes of this section, the lessor shall be treated as having made energy conservation or renewable energy source expenditures in connection with such dwelling unit.

"(ii) BUILDERS.—If, in connection with the construction or reconstruction of a dwelling unit which is to be originally used as a principal residence by an individual, a person (other than such individual) makes expenditures which, but for such provisions, constitute renewable energy source expenditures, then, for purposes of this section, such person shall be treated as having made renewable energy source expenditures in connection with such dwelling unit.

"(B) WHEN EXPENDITURE MADE.—An expenditure with respect to an item shall be treated as made when the original installation of such item is completed.

"(C) ORIGINAL USER AND LESSEE.—For purposes of subsection (b) (3), the lessee or the individual with respect to whom the original use of the constructed or reconstructed dwelling unit begins shall be treated as having been allowed a credit under this section with respect to such dwelling unit for a prior taxable year in an amount equal to the

amount of the credit allowed to the lessor or the person described in subparagraph (A)(ii) for any taxable year with respect to such dwelling unit.

"(D) NOTICE TO ORIGINAL USER.—A person allowed a credit under subparagraph (A) shall provide a written notice to the lessee or individual described in subparagraph (C) containing information with respect to—

"(i) the nature and amount of the expenditures for which a credit was allowed, and

"(ii) the amount of the credit allowed such person by reason of subparagraph (A).

"(5) Leased renewable energy source property.—

"(A) IN GENERAL.—If a taxpayer leases renewable energy source property in connection with a dwelling unit which constitutes his principal residence, expenditures in connection with such leasing shall be treated as renewable energy source expenditures.

"(B) APPLICATION WITH ENERGY INVESTMENT CREDIT.—Subparagraph (A) shall not apply unless the lessor certifies to the taxpayer, in such form and manner as the Secretary may prescribe, that the lessor has not applied the energy percentage to such property in determining the amount of the credit under section 46(a)(2).".

(e) JOINT USE OF ENERGY PROPERTY.—

(1) IN GENERAL.—Paragraph (1) of section 44C(d) (relating to special rules) is amended by inserting ", or in the case of any energy conservation or renewable energy source property installed in connection with 2 or more dwelling units which are all occupied and used as principal residences by 2 or more individuals" after "2 or more individuals".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1)(A) of such section 44C(d) is amended by inserting "(or dwelling units)" after "dwelling unit".

(B) The heading for paragraph (1) of such section 44C(d) is amended by inserting "or use" after "occupancy".

(f) IMMEDIATE CREDIT.—

(1) IN GENERAL.—Section 44C (relating to residential energy credit) is amended by redesignating subsection (f) as (g) and by inserting after subsection (e) the following new subsection:

"(1) IN GENERAL.—Notwithstanding the provisions of subsection (a), the credit allowed by subsection (a) shall, upon application by the taxpayer, be allowed against the tax imposed by this chapter for the taxable year immediately preceding the taxable year in which the qualified energy conservation or renewable energy source expenditures were made.

"(2) AMOUNT OF CREDIT AND DETERMINATION OF QUALIFIED EXPENDITURES.—

"(A) AMOUNT OF CREDIT.—Except as provided in subparagraph (B), the determination of the amount of any credit allowed under paragraph (1) for the immediately preceding taxable year shall be made as if such expenditures were made in such preceding taxable year.

"(B) DETERMINATION OF QUALIFIED EXPENDITURE.—Any determination as to whether any expenditure with respect to which a taxpayer is claiming the credit allowed under paragraph (1) is a qualified energy conservation or renewable energy source expenditure shall be made on the basis of the taxable year in which the expenditure was made.

"(3) TIME FOR MAKING APPLICATION.—

"(A) EARLIEST DATE.—A taxpayer may not file an application under paragraph (1) before the day on which the taxpayer filed his return of tax for the immediately preceding taxable year.

"(B) LATEST DATE.—A taxpayer may not file an application under paragraph (1) on or after the earlier of—

"(i) the due date for the filing of the return of tax for the taxable year in which the expenditure was made (determined without regard to any extension of time for filing the return), or

"(ii) the day on which the taxpayer filed his return of tax for such taxable year.

"(4) INCLUSION IN EARLIER RETURN.—In lieu of making an application under paragraph (1), a taxpayer may elect to claim the credit allowed under paragraph (1) for the immediately preceding taxable year on his return of tax for that year if the expenditure for which the credit is claimed was made before the filing of that return.

"(5) IN LIEU OF ANY OTHER CREDIT.—Except as provided in subsection (b)(6), no credit shall be allowed for any other taxable year for any expenditure for which any credit is allowed under this subsection.

"(6) TREATMENT AS CLAIM FOR REFUND.—For purposes of this title, any application filed under pargaraph (1) shall be treated as a claim for refund except to the extent that such treatment is inconsistent with the provisions of this subsection.".

(2) FORMS.—The Secretary of the Treasury shall publish and make generally available a form specifically designed to enable a taxpayer to apply under section 44C(f) of the Internal Revenue Code of 1954 to have the credit allowed by section 44C of such Code applied to a preceding taxable year.

(3) INTEREST ON IMMEDIATE CREDIT.—Section 6611(b) (relating to interest on overpayments) is amended by adding at the end thereof the following new paragraph:

"(3) SECTION 44(C)(f) CREDIT.—In the case of a credit allowed under section 44C(f) for which an application has been filed under section 44C(f)(1), from the 61st day after the receipt of such application by the Secretary to the date of the refund check, whether or not such refund check is accepted by the taxpayer after the tender of the check to him. The acceptance of the check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.".

(g) HEAT PUMPS.—

(1) IN GENERAL.—Subsection (c)(4)(A) of section 44C (relating to definition of other energy conserving component) is amended—

(A) by striking out "or" at the end of clause (vii),

(B) by redesignating clause (viii) as clause (ix), and

(C) by inserting after clause (vii) the following new clause:

"(viii) a heat pump which replaces an electric resistance heating system, or".

(2) TECHNICAL AMENDMENT.—Section 44C(c)(6)(A)(i) (relating to regulations) is amended by striking out "(4)(A)(viii)" and inserting "(4)(A)(ix)".

(h) EXTENSION OF CREDIT.—

(1) IN GENERAL.—Section 44C(g) (relating to termination), as redesignated by subsection (f), is amended by striking out "1985" and inserting "2000".

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 44C(b)(6) is amended by striking out "1987" in the heading and text thereof and inserting "2001".

(i) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made after July 25 1979.

SEC. 3. ENERGY INVESTMENT CREDIT.

(a) REGULAR INVESTMENT CREDIT FOR CERTAIN ENERGY PROPERTY.—Subsection (a) of section 48 (relating to definition of section 38 property) is amended by adding at the end thereof the following new paragraph:

"(11) CERTAIN ENERGY PROPERTY.—Notwithstanding the words '(other than a building and its structural components' in paragraph (1)(B), solar or wind energy property (within the meaning of subsection (1)(4)) and alternative energy property described in subsection (1)(3)(A) (viii), (ix), or (x) which constitutes a structural component of a building shall, for purposes of applying the regular percentage to the qualified investment in determining the amount of the credit under section 46(a)(2) be treated as section 38 property.".

(b) HYDROELECTRIC AND COGENERATION ENERGY PROPERTY.—Paragraph (3)(A) of section 48(1) (relating to definition of alternative energy property) is amended—

(1) by striking out "and" at the end of clause (vii),

(2) by striking out the period at the end of clause (viii) and inserting a comma, and

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

"(ix) equipment (other than the dam structure) used in the production of energy by hydroelectric power, including (I) the turbine and equipment up to (but not including) the electrical transmission stage, and (II) subject to the limitations of subclause (I) equipment which does not use a dam structure or impoundment to produce such energy.

"(x) cogeneration equipment, but only to the extent that the cogeneration energy capacity of such facility is expanded. The term 'cogeneration equipment' means equipment which—

"(I) produces steam, heat, or other forms of useful energy (other than electric energy) to be used for industrial (including water purification or desalinization), agricultural, commercial, or space heating purposes, and

"(II) also produces electrical or mechanical energy.

(c) REFUNDABILITY OF CREDIT FOR GEOTHERMAL AND HYDROELECTRIC PROPERTY.—

(1) IN GENERAL.—Paragraph (10) of section 46(a) (relating to special rules in the case of energy property) is amended—

(A) in subparagraphs (a)(ii) and (iii), by inserting "of alternative energy property described in section 48(1)(3)(viii), and (ix)" after "solar or wind energy property" each place it appears, and

(B) in the headings of subparagraph (B) and (C), by striking out "solar or wind" and inserting "certain".

(2) CONFORMING AMENDMENT.—Subsection (d) of section 6401 (relating to amounts treated as overpayments) is amended by striking out "solar or wind" and inserting "certain".

(d) CREDIT TO PUBLIC UTILITIES.—Section 48(1)(3)(B) (relating to exclusion for public utility property) is amended by striking out "'alternative energy property', 'solar of wind energy property'," and inserting "'alternative energy property' (other than alternative energy property described in clauses (viii) through (x)),".

(e) INDUSTRIAL HEAT PUMPS.—Section 48(1)(5) (relating to specially defined energy property) is amended—

(1) by striking out "or" at the and of subparagraph (k),

(2) by redesignating subparagraph (I) as (M), and

(3) by inserting after clause (k) the following:

"(L) an industrial heat pump, or".

(f) INCREASE IN AMOUNT AND EXTENSION OF CREDIT.—Section 46(a)(2)(C) (relating to amount of energy percentage) is amended to read as follows;

"(C) ENERGY PERCENTAGE.—For purposes of this paragraph, the energy percentage is—

"(i) 10 percent with respect to the period beginning on October 1, 1978, and ending on July 24, 1979,

"(ii) with respect to the period beginning on July 1979, and ending on December 31, 2000—

"(I) 20 percent in the case of solar or wind energy property (within the meaning of section 48(1)(4)) or alternative energy property described in clauses (viii) and (ix) of section 48(1)(3)(A), and

"(II) 10 percent in the case of any energy property not described in subclause (I), and

"(iii) zero with respect to any other period.".

(g) EFFECTIVE DATES.—The amendments made by this section shall apply with respect to—

(1) property to which section 46(d) of the Internal Revenue Code of 1954 does not apply, the construction, reconstruction, or erection of which is begun or completed by the taxpayer after July 24, 1979, but only to the extent of the basis thereof attributable to construction, reconstruction, or erection during such period,

(2) property to which section 46(d) of such Code does not apply, acquired by the taxpayer after such date, and

(3) property to which section 46(d) of such Code applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d) of section 46 of such Code) attributable to qualified progress expenditures made after such date.

SEC. 4. VAN POOLING VEHICLES.

(a) NOT LIMITED TO EMPLOYERS.—Section 46(c)(6)(ii) (relating to special rule for commuter highway vehicles) is amended by striking out "the taxpayer's" subclause (I).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to vehicles purchased after July 24, 1979.

SEC. 5. GASOHOL.

(a) CREDIT FOR ALCOHOL FUELS.—

(1) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6429. ALCOHOL USED IN FUELS.

"(a) GENERAL RULE.—In the case of a taxpayer with respect to whom a tax is imposed under section 4041 or 4081(a), there shall be allowed as a credit against such tax for the taxable period for which the tax is imposed an amount equal to the product of—

"(1) 40 cents, multipled by

"(2) the number of gallons of alcohol mixed with the special fuel or gascline with respect to which the tax was imposed under such sections.

"(b) CREDIT FOR PERSON MIXING ALCOHOL FUELS.—If the taxpayer elects not to claim the credit under subsection (a) and a person other than the taxpayer has mixed the alcohol with the special fuel or gasoline, there shall be allowed as a credit against the tax imposed under section 4041 or 4081(a), an amount equal to the product of—

"(1) 40 cents, multipled by

"(2) the number of gallons of alcohol mixed with such fuels by such person.

"(c) LIMITATION.—The amount of the credit under this section shall not exceed the amount of the tax imposed under section 4041 or 4081(a) for such taxable period.

"(d) DEFINITION OF ALCOHOL.—For purposes of this section, the term 'alcohol' includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal.

"(e) CROSS REFERENCE.—

"For credit income tax for alcohol fuels, see section 39.".

(2) CREDIT AGAINST INCOME TAX.—

(A) IN GENERAL.—Section 39 (relating to credit for certain uses of gasoline, special fuels, and lubricating oil) is amended by adding at the end thereof the following new subsection:

"(c) ALCOHOL FUELS CREDIT.—For purposes of subsection (a), the amount determined under this subsection is equal to the amount of the credit allowable under section 6429 for any taxable period ending in such taxable year which is in excess of the limitation provided under section 6429 (c) for such taxable period.".

(B) CONFORMING AMENDMENT.—Subsection (a) of section 39 is amended by inserting "the amount determined under subsection (c) and" after "the sum of".

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Subsection (k) of section 4041 and subsection (c) of section 4081 are repealed.

(B) The table of sections for subchapter B of chapter 65 is amended by inserting at the end thereof the following new item:

"5429. Alcohol used in fuels.".

(4) IMPLEMENTATION.—Within 30 days after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate such technical and conforming amendments as may be necessary to carry out the provisions of this subsection.

(b) REPORTING REQUIREMENTS.—Paragraph (1) of section 221(c) of the Energy Tax Act of 1978 is amended—

(1) by amending subparagraph (C) to read as follows:

"(C) amount of revenue loss under section 6429,",

(2) by striking out the period at the end of subparagraph (D) and inserting a comma, and

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

"(E) a comparison of the costs of alcohol produced from different sources and added to fuels,

"(F) an analysis of the effect on the alcohol fuels industry of a termination or reduction of such credit, and

"(G) recommendations as to the appropriate level of subsidy to the alcohol fuels industry.".

(c) TERMINATION DATE.—Sections 221 (b)(2) and (c)(1) and (2) of the Energy Tax Act of 1978 are each amended by striking out "1984" and inserting "2,000".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 25, 1979, and shall apply to alcohol fuels sold on or after such date.

SEC. 6. NO INFERENCE AS TO PRIOR ELIGIBILITY FOR CREDITS.

Nothing in this Act shall be construed to infer that any property with respect to which sections 2 and 3 of this Act apply was not eligible for the credit allowable under section 44C or 38, respectively, before the effective date of sections 2 and 3 of this Act.

Mr. RIBICOFF. Mr. President, I am very pleased to be a cosponsor, with Senators PACKWOOD and MATSUNAGA, of the Alternative Energy Act of 1979. The purpose of the bill is to give every reasonable incentive to the private sector to bring renewable energy technologies into the commercial stream as quickly as possible.

The Congress made a start in this direction by passing the Energy Tax Act of 1978. This proposal would extend the present credits to the year 2000, broaden the types of technologies eligible for the credit, and clarify a number of uncertainties in the law.

Of particular importance are the inclusion of hydroelectric property, residential and industrial heat pumps, and cogeneration, wind and photovoltaic equipment. Each of these areas has great potential.

In the case of hydroelectric potential, for instance, in my own State of Connecticut there are only 18 operating units, but as many as 659 other dams which might be able to accept generating equipment. The Energy Advisory Board to the governor recently reported that it is feasible to expand Connecticut's hydroelectric generating capacity sixfold. It is my hope that the credit we include in this measure will hurry that expansion along.

Cogeneration is also a technique that could be of substantial assistance in reducing our imports of foreign oil. Only 5 percent of all electric power in the United States is produced by this method, as compared to 27 percent in Germany and 20 percent in England. A study done at the Harvard Business School indicates we should be able to increase American electrical generation fourfold through cogeneration. Market development of heat pumps, wind and photovoltaic technologies are in various stages of feasibility. We should pass up no opportunity to promote mass production, cost reduction and acceptance of these promising alternatives.

The President has announced a policy of accelerating the development of renewable technologies so that 20 percent of our energy supply by the year 2000 is derived from them. I fully support this goal, and believe that tax incentives are an important method to help achieve it through the private sector.

There has been recent concern over the accumulation of carbon dioxide into the atmosphere resulting from combustion of fossil fuels, particularly synthetic fuels. In light of this, it is prudent for us to accelerate market promotion of renewable energy sources that do not add to this accumulation.

I hope this measure will gain wide spread support in the Senate and that it will be enacted as part of the energy initiatives of the 96th Congress.

Mr. MATSUNAGA. Mr. President, I am pleased to join the distinguished Senator from Oregon (Mr. PACKWOOD), and the distinguished Senator from Connecticut (Mr. RIBICOFF) in introducing a bill to provide tax incentives to beat the energy crisis. To win the energy war, major action must be taken to promote conservation and American energy self-sufficiency. This bill provides for a congressional commitment to achieving those goals.

Our long festering energy problem erupted to public consciousness with the political situation in Iran and the dramatic increase in OPEC oil prices in the last 8 months. But these events only underscored our serious, unhealthy dependence on foreign supplies of oil. We as a Nation cannot continue to enjoy the freedom we boast about if the health of our economy is subject to the decisions of foreign powers. We must, as President Carter has suggested, cut our imports of foreign produced oil.

The least expensive and most immediate means of cutting imports is through domestic conservation. The inadequate supply of oil is our major energy problem today, but the lack of cheap, efficient alternatives presently contributes much to the problem. Encouraging the development and use of these alternatives will without a doubt lessen our dependence on oil and reduce our need to import foreign oil. One of the most effective and

proven ways to do this is to provide taxpayers with major incentives to seek out and use these alternatives.

It is a very sad fact that today, as during the Arab oil embargo of 1973, the American public does not believe that the oil shortage is real. According to opinion surveys, most Americans believe that the oil companies and the Government conspired to hold back supplies. The effective gasoline rationing systems recently instituted by a number of States have only increased public suspicion that, since gasoline prices have gone up, gasoline lines are now much shorter, and, in fact, there was no real gasoline shortage.

This public distrust makes it difficult for the Congress to convince the American people that there is a need to conserve petroleum products and to turn to alternative sources of energy. The increases in the price of gasoline did not result in any substantial decrease in demand. In the past 30 years, Americans have become happy to the point of consuming 30 percent of the world's energy supply, with never a thought that the supply would run short. But oil supplies have in fact run short, and it is the task of Congress, as much as it is that of the President, to convince the American public of this fact and to face it resolutely.

Alternative, inexhaustible sources of energy, such as solar, wind, and geothermal energy, and easily produced fuel such as ethanol and methane, are possible answers to our energy crisis. As it is inevitable, we must face the problem of changing American habits and ways of living, in order to convert to these other sources.

A sure and tested way of meeting this problem is to offer tax incentives for alternative energy use and concurrent petroleum conservation through the tax incentives Senator PACKWOOD, Senator RIBICOFF, and I propose today. Significant tax credits and deductions will effectively stimulate the development and use of solar, wind, and geothermal energy. Such tax incentives also have the added important benefit of fighting another major problem, the recession, by stimulating the economy. No other program which I can think of can as effectively address two of the major problems facing the country at this time.

President Carter on July 15, 1979 committed the United States to cutting our foreign oil dependence through conserving the oil resources we do have, and developing alternative energy sources. By acting on this legislation quickly, Congress will show that it is willing to work closely with the President to meet our Nation's gravest problem.

The passage of this bill will establish Congress' serious commitment to meeting and solving our country's energy problems.

By Mr. HELMS:

S. 1572. A bill to exempt family farms from the Occupational Safety and Health Act of 1970; to the Committee on Labor and Human Reseources.

FAMILY FARM OCCUPATIONAL SAFETY AND HEALTH AMENDMENT OF 1979

Mr. HELMS. Mr. President, I am very pleased today to introduce legislation I believe will benefit small farmers throughout the United States by exempting them from Occupational Safety and Health Act requirements.

The basis for this bill, I am proud to say, came from the actions of our former colleague from Oklahoma, Senator Bartlett, during the 95th Congress. In 1978, he offered the language of my bill as part of an amendment to legislation amending the Small Business Act. His amendment would have provided a permanent exemption for small farmers and relieved them of unnecessary haggling with OSHA. The Senate adopted the amendment, but unfortunately it was not retained in conference with the House. It is my hope that the Senate will renew consideration of the matter he brought to our attention, and ultimately approve this bill.

My bill seeks to permanently exempt any person who is engaged in a farming operation and employs 10 or fewer employees from OSHA rules, regulations and never-ending requirements. Farmers who maintain temporary labor camps are not exempted under the provisions of this bill.

This small farmer exemption has been contained in appropriations bills over the past several years, including H.R. 4389 presently under consideration, but of course its applicability only extended to a particular fiscal year. I feel it is about time we added this language to occupational safety and health law on the books and made it permanent. If we do not, I fear one day this language may be removed from appropriations language, losing its cozy position, and small farmers will once again become targets of OSHA inspectors.

Farm safety is important—to everyone. If our stalwart family farming system begins to suffer manpower loss due to injury, steady supplies of fruits, vegetables and many foodstuffs will suddenly slack and become scarce and more expensive. I have every reason to believe that small farmers adhere to safe farming practices and likewise encourage their employees to do the same. They cannot afford to do otherwise. On the small farms of the type we are concerned with, the loss of one employee due to injury could spell economic disaster if the crop could not be harvested on time, or livestock not properly attended. Practically without exception, the small farmer himself plays such an integral role in the day-to-day management of his farm that his injury-producing carelessness would mean an irrevocable loss of income if he were to be severely injured and hospitalized.

This exemption makes good commonsense because it will free the bulk of our farm families from the burdens of "OSHA watching," and will let them get on with the business of food and fiber production and attention to the needs of our rural communities. It was not too long ago, Mr. President, that OSHA issued its infamous pamphlet, "Safety With Beef Cattle," which among other things, cautioned farmers against the perils of stepping in slippery cow manure. I am not a farmer, and I certainly realize the risks—but I did not need someone to give me a booklet and remind me to read up on the subject.

Generally, on-farm employment has been dropping in recent years—primarily due to increased mechanization. The U.S. Department of Agriculture estimates that at least 70 percent of total farm employment is composed of the small farm operator and his family members. Also, 95 percent of all farms hire less than 1.5 man-years of labor and can be classed as small or family-run farms. I think that my colleagues should realize that while this legislation may affect a large number of farmers, this permanent exemption will save the small farmer time and expense, enable him to be a more viable producer, and ultimately, I believe, concern himself more with farm safety.

In fact, today marks the beginning of the 35th annual observance of "National Farm Safety Week." I want my colleagues to join with me in urging farmers all across our country to be especially mindful of safety on and around the farm and to extend this care throughout the year. I think promotion of safety education is more of what OSHA should be doing instead of looking for problems. They should take some of their time and money now used for inspection and channel it toward safety education of farmers and farm families. OSHA does have a program set up to do this very thing in cooperation with USDA's Extension Service and State cooperative extension service offices nationwide, but I wonder how much emphasis they really give it.

It must be hard for them to maintain a useful program, however, because the administration recommended that all $1,020,000 of this year's appropriation for Extension Service farm safety activities be stricken from the fiscal year 1980 budget. But, we must do our part too. It was unfortunate that the Senate Appropriations Committee did not approve House-passed language restoring and funding these farm safety efforts for the next fiscal year at the current level. Hopefully, the members of the Conference Committee will seek to restore some or all of this funding so that the very important farm safety program can continue within the Extension Service.

Farmers are smart people, Mr. President—they have to be to make it today. I think with proper encouragement and a little breathing room, they can conduct safe farming enterprises and even provide less reason for OSHA to be worried about their well-being.

Mr. President, I ask unanimous consent that the text of the Family Farm Occupational Safety and Health Amendment of 1979 be printed in the RECORD.

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

S. 1572

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 "Family Farm Occupational Safety and Health Amendment of 1979".

SEC. 2. Section 4 of the Occupational Safety and Health Act of 1970 is amended by inserting after subsection (b) the following new subsection:

"(c) This Act shall not apply to any person who is engaged in a farming operation, does not maintain a temporary labor camp, and employs 10 or fewer employees.".

By Mr. BELLMON:

S. 1574. A bill to amend the Federal Food, Drug and Cosmetic Act, the Federal Alcohol Administration Act, to provide for health warning labels on alcoholic beverages; to the Committee on Labor and Human Resources.

● Mr. BELLMON. Mr. President, I am introducing legislation which would give the Secretary of Health, Education, and Welfare the authority to require health warning labels on products containing beverage alcohol.

I believe that warning labels on products containing beverage alcohol are an appropriate and necessary part of a growing feeling among health specialists that individuals must assume greater responsibility for their own health. The only hope for containing spiraling health costs and making significant improvements in the quality of life for most Americans lies in prevention of disease and promotion of good health. Dr. Theodore Cooper, former Assistant Secretary for Health, has pointed out that the best medical care in the world would hardly add 1 year to the average life-expectancy in the U.S.[1] However, researchers at the University of California, Los Angeles, found that following seven simple rules of health could add up to 11 years to life-expectancy.[2]

In order to assume greater responsibility for their own health, individuals must have access to accurate, reliable information concerning health risks associated with their actions. Although warning labels may not inform consumers of all the risks associated with consumption of beverage alcohol, labels can sensitize individuals to the fact that specific risks do exist and encourage them to seek additional information.

I should note that the dangers associated with alcohol use are substantial, especialy for youth, pregnant women, and other high risk groups. Alcohol abuse is the third leading public health problem in the United States and adversely affects not only at least 10 million alcohol abusers, but imposes tremendous burdens on families who must try to cope with this serious illness.

Alcohol abuse has been referred to as our "$42 billion hangover," as it is estimated that this represents the economic costs of this illness. The cost in terms of human suffering and unnecessary death, disease, and disability cannot be measured. Alcohol abuse is a major contributing factor in most of the leading causes of death and disability, including cancer, cardiovascular disease, cirrhosis of the liver, diabetes, accidents, suicides, and homicides. Data from the National Center for Health Statistics show that annual alcohol-related deaths probably run as high as 205,000. Deaths which directly result from alcohol abuse, such as cirrhosis of the liver, accidents, and suicides, rank third as a cause of death in the United States.

In addition to these well-known risks associated with alcohol abuse, there is conclusive evidence that alcohol is directly involved in birth defects, and that the risk of fetal abnormality is correlated with the amount of alcohol consumed. These birth defects have been identified as the fetal alcohol syndrome and typically include developmental and performance deficiencies, craniofacial and limb abnormalities, and benign tumors. Both pre- and post-natal growth deficiencies are present and I.Q.'s of affected children average 30–40 points below normal.[3]

At the present time, there is no conclusive evidence concerning what may constitute a safe level of alcohol consumption by pregnant women. It is clear, however, that a definite risk is established by ingestion of three or more ounces of alcohol per day. There is some evidence that significant risks may occur at much lower levels of consumption and that periodic and very high blood alcohol concentrations are especially dangerous to the fetus. According to a recent study published in the Journal of Pediatrics, risks to the fetus are increased when smoking is combined with high alcohol consumption.[4]

It should also be emphasized that there is a growing awareness in the medical and scientific community that alcohol may produce serious and often fatal effects when mixed with other drugs. According to studies published by the New York Academy of Sciences, alcohol potentiates the depressive effects of tranquilizers and sedatives and this combination represents the leading cause of drug overdose and death in hospital emergency rooms.[5] Alcohol greatly affects the pharmacological actions of almost every class of therapeutic drugs including those used in the treatment of infections, blood disorders—including blood thinning agents used for cardiovascular disease—gout, pancreatities, diabetes, gastro-intestinal disorders, and liver diseases.[6]

The purpose of warning labels is not to restrict any citizen who may choose to drink alcoholic beverages. It is designed, rather, to assist and promote individual responsibility for his or her own health. Individuals who choose to drink alcoholic beverages have the right and responsibility to make an informed decision and hopefully select options which at least minimize risks to themselves and to others, including unborn children. At a minimum, labels should alert pregnant women to the risks of birth defects and inform all citizens of the potential hazards of mixing alcohol with other psychoactive and therapeutic drugs.

There is considerable debate over whether or not warning labels actually serve a useful purpose. While the answer to this question is far from conclusive, there is little doubt that appropriate ingredient labels are useful and can alert high risk persons to potential dangers.

Preliminary studies of the impact of labeling upon cigarette smoking are encouraging as there is some evidence of behavioral changes which reduce health risks—shift to filter cigarettes, reduction in level of consumption, and reduction in number of adults who smoke. Behavioral science research, however, suggests that information such as that provided on warning labels is most effective where there is a direct and immediate relationship between individual behavior and the consequences which follow from that behavior.

This is especially true if the consequences have a significant impact upon important values and goals such as the desire of women to produce healthy babies. For example, there was a significant decrease in the use of LSD among young women when scientists reported a possible link between LSD and birth defects. On the basis of past experiences, therefore, we have every reason to believe that warning labels could be useful in reducing the risk of birth defects and related problems associated with alcohol abuse.

Mr. President, I find it difficult to understand why Congress has not adopted a consistent policy for the development of warning and informational labels for products with known potential health risks. The Secretary has delegated such authority by regulation to the Commissioner of FDA for food, drugs, and cosmetics. In the last Congress, I introduced legislation (S. 3317), which would have developed a consistent policy by expanding this labeling authority of FDA to include alcohol and cigarettes. With regard to alcohol, the need for this legislation was created by a decision of the Federal District Court for western Kentucky (Brown-Forman Distillers Corp. against Mathews, 1976) which ruled that exclusive authority for labeling alcoholic beverages resides with the Department of the Treasury. Unfortunately, no action was taken on this legislation.

Again, I emphasize that major improvements in the health of our citizens will not be achieved solely by continuing to pour billions of additional dollars into acute care and treatment of chronic diseases. While we must continue to provide

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[1] U.S. Medicine, January 15, 1975.

[2] Nedra Belloc, Human Population Laboratory, California State Department of Public Health & Lester Buslow, School of Public Health, U.C.L.A.

[3] Kenneth Warren, "A Critical Review of the Fetal Alcohol Syndrome," National Institute of Alcohol Abuse and Alcoholism, June 1, 1977.

[4] James Hanson, et al., "The Effects of Moderate Alcohol Consumption During Fetal Growth and Morphogenesis," The Journal of Pediatrics, Vol. 92, 1978.

[5] Vessel and Baude, Interactions of Drugs Abuse, *Annuals of the New York Academy of Science,* Vol. 281, 1976.

[6] P. D. Hansten, *Drug Interactions,* Philadelphia; Lea and Febiger, 1973.

for treatment and rehabilitation of the sick, we must begin to shift our emphasis to disease prevention and the responsibility of individuals for their own health. To achieve this goal, we must inform citizens of the health risks associated with their actions. Unfortunately, there is a large gap in the law which precludes appropriate labeling of health risks associated with alcohol consumption. As these risks, such as the fetal alcohol syndrome, are more clearly identified through scientific research, it becomes more and more imperative that citizens have information necessary to make responsible choices in their use of those substances with known hazards. I urge members of the Alcohol and Drug Abuse Subcommittee to join with me and others in developing legislation which will insure that alcoholic beverages receive appropriate warning labels in order that citizens can make informed and responsible choices in their use of beverage alcohol.●

By Mr. LEVIN:

S. 1575. A bill to establish a program to stimulate production of synthetic fuels; to the Committee on Energy and Natural Resources.

SYNTHETIC FUEL REQUIREMENTS ACT OF 1979

● Mr. LEVIN. Mr. President, I rise to introduce a bill to establish synthetic fuel requirements and mandate their use by oil and natural gas companies. I send the bill to the desk and ask that it be appropriately referred.

The events of this summer have clearly illustrated the dangers of American dependence upon foreign sources of oil. The ongoing Iranian crisis and OPEC's recent decision to raise the price of crude oil have had and will have devastating effects upon the American economy. It is imperative that Congress take immediate action to stem American dependence upon foreign energy sources. It is in this vein that I propose the Synthetic Fuel Requirements Act of 1979.

This bill will stimulate production of synthetic fuels by requiring that a percentage of all petroleum and natural gas products that are consumed in the United States be derived from domestic nonpetroleum substitutes. The requirement would begin at a relatively low level for 1986 and 200,000 barrels equivalence per day and be phased toward a 1990 goal of 2 million barrels equivalence per day. This goal represents roughly one quarter of our anticipated foreign petroleum consumption.

The necessity for this legislation is clear. Other approaches to promote the production of synthetic fuels, while useful, are lacking in some respects. The first approach, dependence on the price mechanism has proven wholly unreliable. It has little capacity for predicting the sweep of Islamic revolutions, to provide just one example. The second approach, embodied in President Carter's plan, and Senator DOMENICI's and Representative MOORHEAD's bills, have great merit. They provide a system of Federal support and incentive. However, although we gain significant advantage through this approach, it may not prove to be enough. Witness the absence of a market for alcohol fuels. This is despite a $16.40 Federal subsidy on every barrel of alcohol. This bill, providing as it does market guarantees, will relieve the burden on the public and remove the inefficiency of Government purchase and management of the synthetic products.

Thus far, private industry has been reluctant to invest in synthetic fuels because of the uncertainty of the market. By mandating synthetic fuel usage, investors are assured of a market. If potential investors felt that they could market synfuels better than others in the synfuel industry they would have every reason to invest. The proposal also promotes maximum efficiency in that firms are free to choose the types of synthetic fuels they wish to use, and those which use more than their required share may negotiate certificates of purchase to others who find it inconvenient to use the synthetic fuels.

Administered reasonably this program may prove to be the best way to protect free enterprise and the free market. Each producer would be free to choose a preferred technology and marketing strategy: Government involvement would be minimized, both in terms of regulation and subsidization; and the pace of the phase-in could be adjusted to reflect real trends in world oil prices and domestic market conditions, up or down.

The concept of Federal mandatory requirements has been used successfully in the past in the auto industry. Original skepticism about meeting fuel economy and emission quality standards ranged high. Yet the industry, with minimal Federal aid, has successfully met the requirements, and has made great contributions to the solution of our energy problems. In fact, one of the prime initiators in making me aware of the potentials of this approach is Jacques Moroni, a policy planner at Ford Motor Co. I have equal confidence that the American oil and gas industries will meet synthetic fuel goals if they are clearly fixed, as proposed in this bill.

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

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

S. 1575

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 "Synthetic Fuel Requirements Act of 1979".

DEFINITIONS

SEC. 2. For the purposes of this Act the term—

(1) "Secretary" means the Secretary of the Department of Energy;

(2) "synthetic fuel" means fuel derived from domestic sources which may be used as substitutes for crude oil, natural gas or the products of crude oil or natural gas, such term shall not include coal directly burned as fuel;

(3) "Btu" means British Thermal Units;

(4) "United States" means each State of the several States and the District of Columbia; and

(5) "base year" means the calendar year two years prior to the year in which a requirement under section 7 is promulgated.

STATEMENT OF FINDINGS AND PURPOSE

SEC. 3. (a) The Congress finds and declares that—

(1) the lack of a constant supply of energy has the potential to cause devastating effects on the economy and general welfare of the Nation, and poses a threat to national security and world peace;

(2) a clear need exists to decrease reliance on foreign sources of energy and to promote the development and production of domestic sources of energy;

(3) there is an abundance of domestic resources from which fuels can be synthesized;

(4) many important synthetic fuel projects whose prompt initiation is clearly in the national interest have been delayed due to uncertain market conditions; and

(5) there is a lack of incentive for investment by the private sector in programs for synthetic fuel development and production.

(b) It is the purpose of this Act to establish a program of mandatory use requirements to stimulate the production of synthetic fuels from domestic resources.

COVERAGE

SEC. 4. (a) The requirements to use synthetic fuels as established by this Act shall apply to—

(1) all domestic and offshore refiners with regard to products sold in the United States;

(2) domestic petrochemical manufacturers;

(3) importers of petroleum products and first generation petrochemicals;

(4) final users of natural gas acquired through pipelines, gas gathering systems or from the user's own direct source; and

(5) operators of other energy producing facilitities which use crude oil directly.

(b) (1) The Secretary shall not grant exemptions from the requirements of this Act on the basis that synthetic fuels cannot be conveniently used.

(2) The Secretary may grant exemptions for small users and importers which import less than the equivalent of fifteen thousand barrels of crude oil per year.

REQUIREMENTS

SEC. 5. (a) The Secretary shall promulgate by regulation mandatory synthetic fuel use requirements by category and user. Such regulations shall be promulgated not later than two years prior to the first day of the calendar year in which such regulations are to become effective. Such regulations shall at a minimum require the use of the equivalent of 2 hundred thousand barrels (in the aggregate) per day of synthetic fuel during the calendar year 1986, and 2 million barrels (in the aggregate) per day during calendar year 1990.

(b) The Secretary may, by rule, amend the synthetic fuel requirement specified in subsection (a) for the year 1986 or for any subsequent year, to a level which he determines is the maximum feasible level for such year, except that any amendment which has the effect of increasing a synthetic fuel requirement to a level in excess of 2 million barrels per day, or of decreasing such requirement to a level below 2 hundred thousand barrels per day shall be submitted to Congress in accordance with section 551 of the Energy Policy and Conservation Act and shall not take effect if either House disapproves such amendment in accordance with the procedures specified in such section.

(c) Any entity described in section 4(a) which fails to meet its requirements estab-

lished under subsection (a) shall be liable to the United States and assessed a civil penalty, not to exceed an amount equal to $50 per barrel for each barrel under the required amount as determined by the Secretary.

(d)(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect within thirty days after the date of such notice to have the procedures to paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, or order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before a hearing examiner appointed under section 3105 of such title 5. Such assessment order shall include the hearing examiner's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Director assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Director, or the court may remand the proceeding to the Director for such further actions as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty.

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts invloved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part such assessment.

(C) Any electon to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2) or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3) the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or final judgment shall not be subject to review.

MEASUREMENT OF COMPLIANCE

SEC. 6. (a) The Secretary shall determine the compliance for all industry in meeting the percent requirements established under section 5(a) in accordance with the following formula where (1) "R" equals the percentage requirement for synthetic fuel use for all industry during a calendar year; (2) "T" equals the total synthetic fuel requirement for such period; (3) "C" equals the total of crude oil used during the base year; (4) "G" equals the total natural gas used during the base year; (5) "P" equals the amount of petroleum and petrochemical products imported during the base year; (6) "E" equals the amount of exempted exports; and (7) "A" equals the allowances for small users and importers:

$$R=(T\times 100)/(C+G+P)-(E+A).$$

(b) The Secretary shall determine the requirement for a particular user in accordance with the following formula where (1) "c" equals the total crude of use of the user during the base year; (2) "g" equals the total natural gas used by such entity during the base year; (3) "p" equals the petroleum and petrochemical product imports for such entity during the base year; and (4) "e" equals exempted exports imported by such entity during the base year:

$$\text{User's Requirement}=r/100\times(c+g+p-e).$$

(c) Quantities shall be measured on the basis of Btu content of crude oil or natural gas saved by the use of synthetic fuel.

(d) The Department of Energy shall publish standard estimates of the crude oil equivalence of petroleum products to facilitate the calculation of the requirements under section 5.

EXCESS USE CERTIFICATES

SEC. 7. The Department of Energy shall issue negotiable excess use certificates to users of synthetic fuels who exceed their requirement. Such certificates may be purchased and used by users of synthetic fuels who do not meet their requirements for the purpose of being deemed to have met such requirements.●

ADDITIONAL COSPONSORS

S. 105

At the request of Mr. WALLOP, the Senator from West Virginia (Mr. RANDOLPH), the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Louisiana (Mr. JOHNSTON) were added as cosponsors of S. 105, the Parental Kidnaping Prevention Act of 1979.

S. 123

At the request of Mr. INOUYE, the Senator from North Carolina (Mr. MORGAN) was added as a cosponsor of S. 123, a bill to amend the Social Security Act to provide for payment under medicare and medicaid of services by psychologists.

S. 715

At the request of Mr. BELLMON, the Senator from Missouri (Mr. DANFORTH) was added as a cosponsor of S. 715, to allow State and local governments to collect taxes on alcoholic beverages and tobacco products sold or consumed on military and other Federal reservations.

S. 949

At the request of Mr. BURDICK, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 949, a bill to amend the National Environmental Policy Act to provide a 180-day statute of limitations on the initiation of a judicial challenge to the adequacy of an environmental impact statement.

S. 1250

At the request of Mr. STEVENSON, the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Pennsylvania (Mr. HEINZ) were added as cosponsors of S. 1250, the National Technology Innovation Act of 1979.

S. 1411

At the request of Mr. CHILES, the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1411, a bill to improve the economy and efficiency of the Government and the private sector by improving Federal information management.

AMENDMENT NO. 329

At the request of Mr. HELMS, the Senator from New Hampshire (Mr. HUMPHREY) and the Senator from Idaho (Mr. MCCLURE) were added as cosponsors of Amendment No. 329 intended to be proposed to S. 1020, a bill to authorize appropriations for the Federal Trade Commission.

SENATE RESOLUTION 204—ORIGINAL RESOLUTION REPORTED INCREASING THE LIMITATION ON EXPENDITURES BY THE COMMITTEE ON THE BUDGET

Mr. MUSKIE, from the Committee on the Budget, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 204

Resolved, That section 2 of Senate Resolution 73, 96th Congress, agreed to March 7 (legislative day, February 22), 1979, is amended—

(1) by inserting "(1)" after "amount";

(2) by striking out "$80,500" and inserting in lieu thereof "$160,000";

(3) by inserting before the period at the end thereof the following: ", and (2) not to exceed $5,680 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act)".

SENATE CONCURRENT RESOLUTION 34—SUBMISSION OF A CONCURRENT RESOLUTION RELATIVE TO THE RIGHTS OF ROMANIAN CITIZENS

Mr. MOYNIHAN submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 34

Whereas the Socialist Republic of Romania enjoys "most favored nation" status in its trade with the United States; and

Whereas the Constitution of the Socialist Republic of Romania guarantees freedom of religion to all its citizens; and

Whereas the Romanian Government in 1948 suppressed the Byzantine Rite Catholic Church, forcibly joined it to the Romanian Orthodox Church and imprisoned its bishops and many of its priests; and

Whereas the Latin Rite Catholic Church also suffers severe restrictions in Romania, with the Government allowing no bishops to be appointed by the Holy See; and

Whereas vital archival materials have been confiscated from the Hungarian Reformed Church without granting the Church access to these important documents; and

Whereas churches are generally denied the right to select their own ecclesiastical leaders; and

Whereas the Romanian government has not allowed Catholic, Unitarian, Reformed and Presbyterian Churches to receive aid sent to repair their churches damaged in the 1977 earthquake; and

Whereas the United States of America and its Government place strong emphasis upon securing basic human rights for people all over the world; and

Whereas both the United States and Romania have pledged in the Helsinki Accords of 1975 to respect the religious freedom of their citizenries; be it

Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States call upon the Romanian Government to (1) restore legal

status and full religious freedom to the Byzantine and Latin Rite Catholic Churches, (2) permit the Holy See to appoint bishops in both the Latin Rite and Byzantine Rite Catholic Churches, (3) allow unlimited access to religious archival materials, (4) allow all congregations to choose their own religious leaders, and (5) permit all churches to receive and spend aid sent from abroad on the repair of their churches; and be it further

Resolved, That the Congress call upon the executive branch of our government to promote these goals in its negotiations with the Romanian Government.

RELIGIOUS FREEDOM IN ROMANIA

Mr. MOYNIHAN. Mr. President, lately our attention is rivited, and rightly so, on the enormous suffering of the Southeast Asian refugees, a large proportion of which are ethnic Chinese who have been systematically repressed and expelled by the Communist regime in Vietnam. Yet today I would like to make note of repression in a different part of the world, repression which, if not as brutal and destructive in terms of lives lost, is every bit as systematic and enduring. It is furthermore violence done to the mind, to the human spirit and soul, which are the content and meaning of life.

I speak of the decades-old restrictions on religious freedom in Romania, especially those aimed at the Catholic, Reformed, Unitarian, and Presbyterian churches. Like the Southeast Asian tragedy, there is a component of ethnic hatred in this attack upon Romania's "minority" churches; nearly all of those served by these churches are ethnic Hungarians who live in Transylvania. Loyal to the Stalinist model, the Romanian regime has sought cultural and national assimilation of its ethnically diverse population, and has attempted to supplant religious and spiritual values with obedience to the state.

This problem was given vivid and detailed examination in the course of the July 19 hearings before the International Trade Subcommittee, of which I am a member, on renewal of most favored nation status for Romania and Hungary. I had the distinct pleasure of receiving testimony from a number of Hungarian and Romanian Americans—people, I might add, who are well attuned to the political conditions in their native lands—and was struck in particular by the statements of Rev. Alexander Havadtoy, representing the Human Rights Commission of the United Church of Christ and the Human Rights Commission of the World Presbyterian Alliance, as well as that of Mr. Laszlo Hamos, chairman, Committee for Human Rights in Romania.

Their testimony provided not only detailed and factual information on the extent and nature of religious and ethnic restrictions in Romania, but it also managed to convey the human side of the suffering brought about by this repression. One of the most outrageous facts which emerged from these hearings was that the Catholic Church is not allowed to appoint its own bishops in both the Latin Rite and Byzantine Rite Catholic Churches. In the case of the Protestant Church, congregations are denied their ancient right to choose their own ministers and presbyters; the State retains a monopoly over the selection process.

Now, installing loyal puppets as church leaders is a practice not altogether unfamiliar to those who have studied the course of Communist development. But I can think of no surer way to insult and outrage a religious community's values and beliefs than to impose an obvious fraud as their leader. I can not protest this behavior strongly enough. The abuses are numerous and afflict all religions in Transylvania, and in general, Romania. I shall simply mention these two instances, assured that the committee record will chronicle the rest.

I am compelled to state these facts and to convey to the Romanian Government through this resolution a stern warning that the United States takes seriously the protection of human rights; we are not to be deceived and cajoled into automatic renewal of most favored nation status for Romania when these facts stare us squarely in the face. The power of the modern, pervasive totalitarian state is immense. I am convinced, however, that it will never destroy its people's religious, spiritual, and for that matter, cultural and ethnic values. Pope John Paul II's recent triumphant return to Communist Poland, reassured us all that such is manifestly the truth.

AMENDMENTS SUBMITTED FOR PRINTING

WATER RESOURCE PLANNING AUTHORIZATIONS—S. 480

AMENDMENT NO. 369

(Ordered to be printed and to lie on the table.)

Mr. DURENBERGER submitted an amendment intended to be proposed by him to S. 480, a bill amending the Water Resources Planning Act to authorize appropriations for fiscal years 1980 and 1981.

RECLAMATION REFORM ACT OF 1979—S. 14

AMENDMENTS NOS. 370 AND 371

(Ordered to be printed and to lie on the table.)

Mr. EXON submitted two amendments intended to be proposed by him to S. 14, a bill to amend and supplement the acreage limitation and residency provisions of the Federal reclamation laws, as amended and supplemented, and for other purposes.

● Mr. EXON. Mr. President, I am today submitting two amendments to S. 14, the so-called "Reclamation Reform Act of 1979." The first amendment should reinstate the residency requirement for the receipt of Bureau of Reclamation water, but would allow a waiver where such requirement would work a hardship, particularly in cases where an owner is a nonresident but has actively farmed the land for at least 10 years but decides to move; or where the land is owned by a surviving spouse or dependent of such a farmer. The second amendment would strike the provisions of the bill which would allow for unlimited leasing.

S. 14, as reported by committee seeks to abolish the residency requirement of the current law, and permits, in effect, unlimited leasing which provides a loophole to big landowners circumventing the acreage limitations thus opening up the right to receive federally subsidized water to landholdings far beyond the inintent of the Reclamation Act. The bill states that landowners can lease land for 1-year periods, for as many consecutive 1-year periods as they like, provided that they have no written right of renewal. These critical weaknesses in the bill must be changed.

Mr. President, the Reclamation Act of 1902 was passed in response to a need for federally funded irrigation works. The policies behind the act required that benefits from the reclamation program be available to the largest possible number of people, that family size owner-operated farms be promoted, and finally the law sought to preclude speculation.

The Reclamation Act has not been significantly re-examined since 1926. Consequently, the restrictions designed to promote the objectives of the act have not been uniformly or diligently enforced by those administering the law. Reform is necessary. However any reform this Congress undertakes should reaffirm the objectives and expectations which the 1902 law attempted to fulfill. At a minimum, reform of the present law should move us closer to, not away from, the original basic reclamation principals. As a step in this direction I have submitted these amendments and I urge their adoption by the Senate.●

PANAMA CANAL ACT OF 1979—H.R. 111

AMENDMENT NO. 372

(Ordered to be printed and to lie on the table.)

Mr. GRAVEL submitted an amendment intended to be proposed by him to H.R. 111, an act to enable the United States to maintain American security and interests respecting the Panama Canal, for the duration of the Panama Canal Treaty of 1977.

AMENDMENTS NOS. 373 THROUGH 384

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted 12 amendments intended to be proposed by him to H.R. 111, supra.

NOTICES OF HEARINGS

SUBCOMMITTEE ON AGRICULTURAL PRODUCTION, AND STABILIZATION OF PRICES

● Mr. HUDDLESTON. Mr. President, I wish to announce that the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices will hold hearings on agricultural transportation problems on July 30 and 31. Earlier this summer, Senators McGOVERN and ZORINSKY held field hearings on this subject under the auspices of my subcommittee. The upcoming Washington hearings will complete this series by soliciting the comments of representatives of Government agencies, national farm organizations, and the rail and

trucking industries to questions raised in the field.

The subcommittee will hear from invited witnesses only, but written statements submitted for the record are welcome. The hearings will begin at 9 a.m. in room 324. Anyone wishing further information should contact the Agriculture Committee staff at 224–2035.●

COMMITTEE ON VETERANS' AFFAIRS

● Mr. CRANSTON. Mr. President, I wish to announce for the information of Senators and the public that the Committee on Veterans' Affairs will conduct a hearing on August 2, 1979, on S. 1518, administration-requested legislation to permit the Veterans' Administration to disclose to consumer reporting agencies for certain debt collection purposes an individual's name and address and certain information pertaining to a debt that the individual owes to the VA. The hearing will begin at 8:30 a.m. in room 457 of the Russell Senate Office Building.

Persons interested in testifying should contact Kerry Shortle of the Committee staff at (202) 224–9126.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committee on Labor and Human Resources be authorized to meet during the session of the Senate today to hold a nomination hearing on William Hobgood to be Assistant Secretary of Labor for Labor Management Services.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs be authorized to meet during the session of the Senate today to hold a hearing on EPA management of its hazardous waste program, including implementation of the Resource Conservation and Recovery Act of 1976.

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

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Agricultural Research and General Legislation Subcommittee of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate today to hold an oversight hearing on USDA extension and research programs as they apply to family farms.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, July 26, 1979, to hear Patricia Harris.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Friday, July 27, 1979, to consider S. 446, discrimination against the handicapped in employment, and S. 1075, the drug bill.

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

ADDITIONAL STATEMENTS

FLEXIBLE EMPLOYMENT IN THE SENATE

● Mr. CRANSTON. Mr. President, last week's Washington Star included an article by Lucille Craft entitled "Job Sharing Splits Paychecks, Workweek and Boosts Morale," which featured two Senate employees, Ann Pearce and Peggy Luzadder, who have shared a position with the Veterans' Affairs Committee, which I chair.

Mr. President, I want to bring this article to the attention of my colleagues in the hope that Ann's and Peggy's success story will encourage others in the Congress to consider the benefits of hiring individuals on a less-than-full-time basis.

Ann and Peggy have alternately traded 2- and 3-day weeks as support staff for the committee. During particularly busy times, they each have worked 3 or 4 days per week. Their enthusiasm, hard work, and dedication have been a real bonus to the committee.

Mr. President, during my tenure in the Senate I have consistently employed individuals who work less than full time—particularly mothers with preschool or school-age children. The jobs undertaken have ranged from support staff to those with legislative and casework responsibilities. In some cases, as children have grown and the family responsibilities of these employees have diminished or changed, they have moved into full-time positions on my staff. This has proven to be an excellent opportunity for these individuals to move gradually back into the work force.

Mr. President, without exception these employment arrangements have proven to be most satisfactory.

I am committed to providing part-time, shorter workweek, and flexitime opportunities on my staff. These arrangements offer important opportunities for individuals who for one reason or another cannot or do not wish to work full time to be productively involved and develop their potential in the work force. It also provides me with topnotch and dedicated employees with fresh and valuable perspectives.

Recognizing the value of nontraditional work arrangements, President Carter has called for greater part-time and flexitime opportunities in the Federal civil service, and has signed into law legislation to that effect. Mr. President, I urge my colleagues to take the time to reassess their own staffing needs with a view toward supporting and initiating similar employment opportunities.

Mr. President, I request that the complete text of the Washington Star article of July 11 be printed in the RECORD.

The article follows:

JOB SHARING SPLITS PAYCHECKS, WORKWEEK AND BOOSTS MORALE

(By Lucille Craft)

In wistful moments, Sandra Tepper and Kathy Sheehy fantasized about finding a job they could do together. Neither wanted to neglect her home life, but both needed a respite from housekeeping.

Tepper and Sheehy faced a dilemma familiar to middle-class, well-educated married women. Money wasn't a problem; but Tepper, who has a master's degree in counseling, and Sheehy, a former social worker, craved stimulating work outside the home.

Because she didn't want a full-time commitment, however, Tepper reluctantly turned down an attractive managerial position. But her friend, weary of part-time typing, contacted the company to see if there was some way the women could split the job, and the paycheck.

The tenaciousness paid off. The two interviewed together, and now manage a thriving contact lens store in Bethesda, Md.

Tepper and Sheehy are members of a small but growing legion of women across the country who "job-share," enjoying the challenge of full-time work with the flexibility of a 20-hour work week.

A Fairfax-based group, Job Sharers Inc., helps sell employers on the idea and matches aspirants with similar backgrounds and job preferences. Most jobs can be split, and the benefits to employer and employee can boost morale and production, the firm claims.

"Productivity is up, because two people put out more work," said Judy Hodges, executive director who shares her reins with co-director Carol Parker. "Because they (employees) can get away from it, they're more invigorated. And there is continuous job coverage; if you're ill, your partner will come in."

Hodges and Parker, former neighbors who shared a consulting job in Fairfax, modeled their alternative job campaign two years ago after a program called New Ways to Work in San Francisco. Nearly 350 have participated in training programs with them so far, and 200 are learning the ropes now.

They admitted that at least half the battle is convincing employers that job sharing is successful. They now are looking for funding for surveys that will pique employer interest, "for industry to say 'Look, XY company has 50 job sharing positions and they've saved money—let's do it," Hodges said.

Because the high cost of living here virtually prohibits employees from supporting themselves on half-time salaries, Hodges said, Job Sharers caters largely to middle-income females, many married and of retirement age.

"The typical client is a woman who left the job market 10 to 15 years ago," she said. "She wants to be in the working world but can't commit herself to a 40-hour job."

Hodges said Job Sharers can put the plums—accounting, legal, teaching, graphic arts and writing positions—within reach of clients who otherwise would have to settle for low level, part-time jobs.

"The only thing we've found that's impossible to job share is a high level administrative job," she said.

Peg Binney, 47, of Alexandria, recently joined the job sharing corps after seeing her child into college, and nearly 20 years after her last job. Many of her contemporaries, she says, comprise "a large employment source that's being wasted" because of the scarcity of professional part-time work. "And there are many (full-time) women now who are neglecting their homes.

"I've got other responsibilities. I want to

be able to do something productive but not necessarily on a full-time basis," said the recent public administration graduate. "I don't want to play bridge and dig in my garden the rest of my life."

Job sharers generally can slice responsibilities any way they want. Peggy Luzadder and Ann Pearce alternately trade 2 and 3-day weeks to split a staff position with the Veterans Affairs Committee.

"We divide the days according to what we want to do at home," said Luzadder, 45, of McLean. "I'm a golfer, and Tuesday's the day I like to golf. Ann has a commitment to the church choir, so there's a certain day she likes to do that."

For Luzadder, who attended college for two years of college and has spent most of the time since as a housewife, the part-time Capitol Hill job has ushered her into the working world at her own speed.

"It was pretty difficult after 18 years to get myself up by my bootstrings to get a job," she said. "Money was not my primary concern. I was just kind of bored with being president of the women's golf club."

Luzadder and her partner take turns managing the committee office, screening constituents and taking notes at hearings. While they enjoy the luxuries of tailoring work to leisure time, Luzadder said the arrangement has been a boon for the committee as well. When the workload gets heavy, both work Wednesdays.

"I think they really get a lot more work out of two people," she said. "And we have time for having the car repaired or going to the dentist without having to take time off. (And) they know if they need us for double time, we can both come in."

Although she'll have to leave the job when she moves out of the area soon, Luzadder pointed out that having one job sharer remain on the job means a smoother transition.

Job sharing, its proponents say, also enables the unemployed to find work in fields that have few openings. Marilyn Tucker, 38, of Rockville, had trouble finding work that would exploit her master's degree in guidance and counseling. She and another woman now split a regular eight-hour shift as course and career advisors at Northern Virginia Community College in Alexandria.

"I'm gaining the flexibility that I need," said the mother of two. Her hours, 9 a.m. to 2 p.m., normally allow her to be with her children when they come home from school.

Tepper and Sheehy, managers of Peyton Contact Lens Associates on Montgomery Lane, Bethesda, said six months ago they knew little about contact lens and less about running a business. But job sharing helped them conquer a job interview and unravel the intricacies of business management.●

THE 27TH ANNIVERSARY OF THE COMMONWEALTH OF PUERTO RICO

● Mr. DOLE. Mr. President, today, July 25, marks a day of great importance for the U.S. citizens of Puerto Rico and Puerto Rican descent. On July 25, 1952, the people of Puerto Rico adopted a commonwealth status and established a new relationship with the U.S. Congress, an imaginative experiment in democratic self-government: An experiment which over time has proven that a people committed to preserving their own particular cultural roots can yet maintain their relationship with a political entity differing in geographic scale, history, and power. In commemorating this event we pay tribute to the contributions and important roles that citizens of Puerto Rico have played in America's progress.

A PROGRESSIVE PUERTO RICO

The fruition of what may be called modern Puerto Rico has emerged over the last 40 years, as Puerto Ricans have made energetic progress in their efforts at improving health, education, and job opportunities for all their citizens. Political ideals, as varied as they may be, have joined, through history, a rich heritage, America's contributions, and Puerto Rico's own unique characteristics to achieve a well-established and successful means for enacting change and yet maintaining continuity through democratic processes. We have a common commitment, as Americans, to individual freedom and the democratic tradition of representative government. Our common concern for economic growth and political development binds us in a unique relationship with our fellow Americans from Puerto Rico.

U.S. COMMITMENT TO THE PRINCIPLE OF SELF-DETERMINATION FOR THE PEOPLE OF PUERTO RICO

Mr. President, the nature of a commonwealth status carries with it the inherent obligation to examine, and if necessary, reinterpret the political aspects of that relationship.

Mr. President, the relationship between Puerto Rico and the United States is long overdue for a thorough evaluation and revision. The question of political status in Puerto Rico has sometimes been a source of confusion, yet we remain committed to the fundamental principle of self-determination of the people of Puerto Rico; whatever decision the people may make.●

TAX SIMPLIFICATION OF INSTALLMENT SALES

● Mr. LONG. Mr. President, in May of this year I introduced two bills for the simplification and clarification of certain provisions of the Internal Revenue Code.

On June 22 Senator HARRY BYRD, chairman of the Subcommittee on Taxation and Debt Management of the Committee on Finance held a hearing on these two bills. On the House side, a hearing on the bills is scheduled for July 27 before the Subcommittee on Select Revenue Measures of the Committee on Ways and Means.

The testimony at the hearing on June 22 included both enthusiastic support for the general program of technical tax simplification and also many valuable suggestions for improving and adding to the bills. It is my purpose today to comment on one point which was raised by several witnesses in relation to the bill on installment sales.

As introduced, one provision of the bill barred the use of the installment method for sales between related parties. This rule was originally included to deal in the simplest way with a tax planning device involving resale of the property to a third party. The witnesses pointed out, however, that the bill went too far in barring all sales between related parties. For example, it would apply to the sale of a family farm from father to son for installment payments. Accordingly, it was recommended that the provision be limited to the cases involving resales at which it was originally directed, and the Treasury agreed with this recommendation. Nevertheless many citizens have continued to be concerned on the subject, and I want to make sure that this provision of the bill is amended so as not to affect normal sales of farms or other property between related parties where resales are not involved.

Senator DOLE, the cosponsor of this bill, and Mr. ULLMAN and Mr. CONABLE, who sponsored the corresponding bill in the House, also favor this change.

In addition to the specific change involving related parties the staff is reviewing the other changes in the bill on installment sales suggested at the hearing on June 22 and they will also, of course, take into account the testimony at the hearings on July 27. We hope that at the completion of the full legislative process this bill will represent an excellent example of cooperation between Congress, the Treasury, and private tax practitioners in revising and simplifying a troublesome area of the tax law.●

● Mr. DOLE. Mr. President, I support the thrust of the statement made by the distinguished chairman of the Finance Committee.

The tax simplification project is extremely important and it has my full support. The intention of the tax simplification program is to bring certainty and fairness to our tax system. I think that S. 1062 and S. 1063 gives us a good start on the tax simplification process. After introduction of these bills, we had some very constructive hearings in which some areas of concern were identified. While the basic framework of the simplification legislation is sound, some changes seem appropriate. As the chairman points out, a particular area of concern is the "related parties" rule in S. 1063, the installment sales simplification bill. Based on the hearings, I believe legitimate transactions between related parties should be permitted. For example, we clearly should not have a policy which prohibits the continuation of the family farm or other closely held businesses. I hope that we can modify this aspect of S. 1063 to address this and other concerns.●

NON-FEDERAL INITIATIVES TO CONTROL RISING HOSPITAL COSTS

● Mr. MORGAN. Mr. President, Congressman ROSTENKOWSKI issued an important and far-reaching challenge to the hospital industry during consideration of hospital cost containment proposals in the 95th Congress. He told the industry to come up with their own program to control unnecessary cost increases, adding that if they failed to do the job on their own they were going to have to deal with Federal controls.

Mr. President, in at least one State, my home State of North Carolina, there has been a unique response to this challenge, one that I am confident will prove to be successful in controlling costs. Part of the hospital industry's nationwide "voluntary effort," this program has been undertaken jointly by the North Carolina Hospital Association, the North Car-

olina Medical Society and Blue Cross/Blue Shield of North Carolina in conjunction with and with the cooperation of other insurance companies and business and civic leaders. I have a description of this program here, one prepared by the NCHA, and request that it be printed in the RECORD following these remarks.

It is expected that every hospital in the State, with the notable exception of the Federal hospitals, will be taking part in this cost control plan in spite of the fact that North Carolina's hospitals already have one of the best records in terms of holding down costs in the country. Charges per inpatient day are lower than those in 43 States, about $37 per patient per day below the national average. In spite of this already excellent record, hospital cost increase in North Carolina were less than the national average last year. The hospital occupancy rate is 78.2 percent, ninth in the Nation.

Mr. President, I have been and still am uncommitted with regard to the hospital cost containment proposals before the Congress. But I do have a number of concerns with them. They tend to rely on regulatory, as opposed to market, forces and would significantly increase the bureaucracy. More than half the hospitals would be exempted, and covered hospitals would have over half their costs exempted. Possibly most important, some of the proposals before us discriminate against hospitals that have been efficient.

With all these problems, and considering the cost containment activities that are already being carried out in North Carolina, activities which I hope and assume are being duplicated elsewhere, I am skeptical about the need for legislation. My skepticism is reinforced by the fact that I do not know of a single case where stand-by controls did not in fact become a mandatory program. If I am to vote for hospital cost controls, somebody is going to have to make a good case supporting them, one devoid of inflammatory rhetoric and one which explains how the controls will actually work.

The statement follows:

DESCRIPTION

I. SYNOPSIS OF PLAN

Each year by February 15, the North Carolina Steering Committee on Health Care Cost Containment will establish a calendar year goal for limiting the rate of increase for total health care expenditures. This goal will be established annually and reviewed on a semiannual basis to reflect changes in economic activity.

A separate, independent External Review Committee will then establish a specific expenditure goal for each hospital before its fiscal year begins. Prospective budgeting data and periodic financial reports will be required of participating institutions to assist in setting numeric screens and to monitor progress toward the expenditure goals. Hospitals that meet their expenditure goals, submit voluntary effort resolutions, maintain a cost containment committee, satisfy VE reporting requirements and maintain a program to keep their medical staffs informed about hospital costs will be Fully Certified as cost containment hospitals by the Steering Committee on Health Care Cost Containment. Wide media disclosure will be given to hospitals that are certified by this process.

Technical assistance programs through a variety of sources, including the Carolinas Hospital and Health Services (CHHS), are available to help hospitals improve their management in general or to specifically assist institutions in meeting their expenditure goals.

The Steering Committee on Health Care Cost Containment will hear any appeals by individual hospitals concerning their voluntary effort goals as established by the External Review Committee. The decision of the Steering Committee is final.

The overall goal of this program is to provide health care to the people of North Carolina at the lowest cost consistent with good medical practice.

II. HISTORY AND PURPOSE

The Voluntary Effort was created as a response to Representative Rostenkowski's (D-Illinois) challenge to the health care industry to control its own costs. The voluntary program was established jointly in November, 1977 by the American Hospital Association, the American Medical Association and the Federation of American Hospitals. The concerns of the Voluntary Effort are broad based, including hospital costs, physician's fees, hospital supplier charges, as well as the roles of business, labor and the consumer in health care cost containment.

The goals of the Voluntary Effort nationwide are to reduce the rate of increase of total hospital expenditures from 15.6 percent in 1977 to 13.6 percent at the end of 1978 and to 11.6 percent at the end of 1979. Thereafter, the VE is to hold down the rate of increase in hospital expenditures to that level established by the National VE Steering Committee and consistent with increases in the gross national product.

In North Carolina, the state Steering Committee was formed in August of 1978. This Committee followed the national VE model in that it sought representation from commerical insurance companies, Blue Cross, physicians, hospitals and local government. Full time staff was assigned to the Steering Committee in December, 1978. The initial draft of the VE plan was distributed in March of 1979.

The VE plan focuses primarily on hospital costs and is an expression of concern for the rising costs of health care. When implemented, it is designed to voluntarily limit the North Carolina rate of increase in hospital expenditures at a level that is consistent with the increase of the gross national product.

III. CERTIFICATION PROGRAM

The Voluntary Effort in North Carolina grants to individual institutions certification as being Cost Containment Hospitals on two different levels of performance.

A. Provisional certification

Granted to a hospital when both the governing body and the medical staff pass resolutions in support of the Voluntary Effort (Appendix A).

This classification is also assigned to Fully Certified hospitals that subsequently fail to meet all of the requirements for Full Certification or fail to make expenditure goals for three consecutive quarters.

B. Full certification

Granted to a hospital when the following are completed:

(1) The resolution required under Provisional Certification are submitted.

(2) The required financial reports are submitted to the Voluntary Effort offices within the time frames allowed.

(3) The VE expenditure goals are matched on a semiannual basis.

(4) A copy of the bill of the first patient discharged by a physician each month is given to that physician within 30 days.[1]

5. A list of 20 common procedural charges is given to each member of the medical staff and is posted at each nursing station.[2]

(6) A multidisciplinary cost containment committee is established with representation from administration, medical staff and department heads. This committee is to meet at least quarterly. Summaries of minutes are to be submitted to the Voluntray Effort office quarterly.[3]

(7) The hospital participates on a timely basis in any administrative or management technical assistance surveys as requested by the Steering Committee.

Once fully certified, a hospital that fails to meet any of the above steps will be given a change of status from Full Certification as a Cost Containment Hospital to Provisional Certification. However, hospitals that exceed their expenditure screens without sufficient justification for two consecutive quarters will not fully lose certification unless they fail to accept a technical assistance survey for the following quarter. Technical assistance survey recommendations will be filed with the External Review Committee. Fully certified hospitals that fail to meet their expenditure screens without justification for three consecutive quarters will automatically revert to a Provisional Certification status.

Releases to the news media will be made listing hospitals that are Provisionally Certified or Fully Certified as cost containment hospitals. Listings of Provisionally Certified hospitals will indicate in what criteria they are deficient. The progress of the state's institutions in meeting statewide expenditure screens will be published quarterly by the Steering Committee on Health Care Cost Containment. All numerical hospital information will be in aggregate form only. No numerical information concerning an individual institution will be released publicly without written permission from that facility.

Hospitals will receive certificates suitable for display that indicate they are Fully Certified or Provisionally Certified as cost containment hospitals. Sample releases will be included for the local news media.

The Steering Committee always welcomes written public comment concerning any aspect of the North Carolina health care delivery system. Each year, three public VE symposia will be held in widely scattered locations across the state to give interested citizens an opportunity to hear first hand about the progress of the VE and to speak directly with the Steering Committee.

IV. EXTERNAL REVIEW COMMITTEE

Each year the chairman of the Steering Committee on Health Care Cost Containment, with the advice of that Committee, will appoint an External Review Committee composed of 12 members. Six of these members are to be hospital administrators or controllers, each of whom is from a different state Hospital Association district. The balance of the Committee is to be non-hospital members who have both an interest in and a knowledge of health care financing.

The External Review Committee at its first meeting shall elect its own chairman who shall be a voting member. The chairman shall also be an ex officio member of the Steering Committee. Terms of the External Review Committee are to be for three years each with the initial appointments serving one, two or three years to establish membership rotation. After serving two full terms of three years, a

[1] The Steering Committee recommends that a complete itemization of charges be given as well as a copy of the claims form.

[2] An existing program to bring about physician awareness of hospital costs, as a result of their pattern of practice, may be substituted for criteria four and five, if the External Review Committee rules that such a program is comparable.

[3] The Steering Committee suggests that steps are taken as needed to insure physician participation on this Committee.

member may not serve for at least one year before being considered for reappointment.

The External Review Committee is responsible for establishing individual hospital annual expenditure screens and for monitoring the success of North Carolina's hospitals in meeting their screens on a quarterly basis. (Greater detail in Section VI)

Any appeals concerning the final actions or decisions of the External Review Committee are to be made to the Steering Committee on Health Care Cost Containment. (See Section VIII—Appeals)

V. DATA COLLECTION

One month before the beginning of its fiscal year, every paritcipating hospital shall submit a budget summary projection to the Steering Committee on Health Care Cost containment on the prescribed forms (See Appendix B). This budget is to be broken down by quarters and is to include capital equipment.

Monthly reports shall also be submitted to the Voluntary Effort offices 25 days after the close of each month (Appendix C). In addition, each institution shall submit copies of its American Hospital Association Annual Survey as these are completed. Special surveys may also be required if the Steering Committee on Health Care Cost Containment feels that the results of such surveys will be in the best interest of North Carolina's hospitals.

VI. ESTABLISHMENT OF STATEWIDE AND INDIVIDUAL HOSPITAL EXPENDITURE SCREENS

The statewide goal for limiting the rate of hospital expenditure increase for the calendar year will be established annually by the Steering Committee on Health Care Cost Containment by February 15. Thereafter, on a semiannual basis, the Steering Committee will announce extensions of the expenditure goal limitation 12 months ahead and into the next calendar year. Appropriate economic indicators of the Federal government and the American Hospital Association will be utilized.

Three months before the beginning of the hospital's fiscal year, the External Review Committee will issue a preliminary numeric screen setting the rate of expenditure increase for the forthcoming year. Several factors will be considered by the External Review Committee in establishing individual numeric screens. These are:

(1) A mathematical equation that considers a hospital's three-year history of actual increases and the actual performance of other hospitals in the state over the same period (Appendix D).

(2) The American Hospital Association's "Amendment to Statement on Financial Requirements of Health Care Institutions and Services" (Appendix E).

Hospitals, upon receipt of their expenditure screen, may desire to submit additional information to the External Review Committee to better justify a change in the expenditure goal. The Committee, after reviewing the information, may request additional documentation or a meeting with representatives of the facility to negotiate an agreed upon expenditure target. After such further considerations, the External Review Committee will reaffirm or revise the hospital's expenditure goal (Appendix F).

Revision of an institution's goal may be based upon the following:

(1) Demonstrable changes in patient volume or intensity of service.

(2) Mandated expenditure increases, such as minimum wage.

(3) Other conditions beyond the hospital's control that seriously impacted its ability to manage its expenditures.

The net effect, however, of the individual hospital expenditure limitations must be such that the statewide goal for reducing the rate of hospital expenditures is met or exceeded.

VII. MONITORING THE PROGRAM

Within 50 days of the close of each calendar quarter, the Voluntary Effort staff will submit to the External Review Committee summary reports of data from hospitals that have exceeded their expenditure screens.

The External Review Committee, within 60 days of the close of the calendar quarter, shall conduct an analysis of each institution's expenditure data and any accompanying documentation and make one of the following determinations:

(1) Based on the data and supporting documentation, the External Review Committee may determine that the facility's justification for failure to meet its screen is acceptable and will require no further action; or it may decide that the facility's justification for failure to meet its goal is unacceptable and make recommendations for improving the hospital's performance.

(2) Based on the review and supporting documentation, the External Review Committee may conclude that it will require additional information from the institution and will request that the facility submit such material. The External Review Committee will then suspend further consideration pending receipt of that additional information.

(3) Based on the data and supporting documentation, the External Review Committee may request a meeting with representatives of the health care facility. The purpose of such a meeting will be to provide opportunity for the institution to further explain its submitted documentation and other points that may clarify the hospital's position.

Any facility may, at its option, request a meeting with the External Review Committee or its designated representatives to explain the circumstances contributing to its expenditure performance. Any hospital may request a meeting with the External Review Committee at any time following the submission of its quarterly data. Hospital requests may be submitted in writing to the chairman of the External Review Committee. Any External Review Committee requests for meetings will be forwarded in writing directly to the hospital.

Upon completion of the analysis process, the External Review Committee may make recommendations to the hospital under review. These recommendations are intended to provide assistance to the facility in meeting its approved budget. Institutions shall be requested to comply with the recommendations of the External Review Committee, including but not limited to, acceptance of technical assistance as described in Section IX of this plan. Failure to follow the recommendations of the External Review Committee on a timely basis will result in loss of certification as a Cost Containment Hospital. Minutes and recommendations of the External Review Committee shall be documented by the Voluntary Effort staff and forwarded to the state Steering Committee and the concerned institution. These minutes and recommendations are confidential and are not to be disclosed publicly (See Appendix G for abbreviated descriptions of this process).

VIII. THE APPEAL PROCESS

Any institution may appeal to the state Steering Committee any decision or recommendation of the External Review Committee after it has completed the review process. An appeal must be filed with the state Steering Committee within 14 days of the conclusion of discussions between the individual hospital and the External Review Committee. The state Steering Committee, or its designated representatives, then have 45 days in which to schedule a hearing with the aggrieved hospital. The location and time of such a hearing will be determined by the Steering Committee. Notice of this hearing must be delivered in writing at least ten days before the meeting is scheduled.

Should the Steering Committee fail to provide a hearing within this time frame, the hospital's appeal is upheld.

IX. TECHNICAL ASSISTANCE PROGRAM

The primary purpose of the technical assistance program is to identify and provide resources to assist hospitals in making improvements in their operations management and thus operate within their approved budgets.

Participation in a technical assistance program may be a requirement of any hospital as a result of recommendations from the External Review Committee, or an institution may at any time request technical assistance.

Principle resources for the technical assistance program will be the Carolinas Hospital and Health Services (CHHS) divisions. These divisions encompass management and industrial engineering, plant and clinical (biomedical) engineering, group purchasing, a medical claims collection bureau and support services in hospital construction and renovation projects. Technical assistance surveys from CHHS will be made available at their usual man-day fees.

Other significant resources for technical assistance are the American Hospital Association and various hospital and management consulting firms.

The External Review Committee is to receive copies of the technical assistance summaries from those hospitals that are required to have such assistance.

X. FUTURE ACTIVITIES

The Steering Committee of the Health Care Cost Containment Committee affirms that setting expenditure limitation on hospitals addresses but a small part of the total problem in reducing the cost of health care to the people of North Carolina. Other components of the entire health care field will be looked at as well.

The Steering Committee will move ahead rapidly and seek to impact the areas of consumer health awareness, health insurance, physicians' practice patterns and health supplier prices.

Only by vigorous activity across the whole field of health will long lasting effects be made without significant sacrifices in the quality of patient care.●

AMBASSADOR SMITH ON SALT II

● Mr. KENNEDY. Mr. President, the SALT II hearings currently taking place in the Senate have served to focus attention both on the specific details of the SALT II agreement and on the contribution of SALT II to our national security and foreign policy interests before the SALT II Treaty Conference in New London, Conn.

In a recent speech, former ACDA director and chief SALT I negotiator Gerard Smith makes a strong case for SALT II. After pointing to the achievements of the ABM Treaty and the SALT I interim agreement, Ambassador Smith persuasively refutes criticisms of the SALT II agreement. I share Ambassador Smith's belief that "our choice is to continue to modernize our forces for some 6 years under agreed SALT II ceilings with certain limitations on Soviet and American weapon systems or to go back to an unlimited contest."

Mr. President, I ask that Ambassador Smith's impressive and thoughtful speech be printed in the RECORD.

The speech follows:

SPEECH BY AMBASSADOR GERARD SMITH

I

I see I am billed as the Architect of the SALT II Treaty. I wish that were the case, but it is not so.

It is more than six years since I had responsibilities for SALT I negotiations and I will use that fact as an excuse for sparing you a lot of the detailed arithmetic of SALT II. It is expected that SALT II agreements will be signed and made public in Vienna in the coming days. There have been many reports in the press but no official texts are yet available. They will be formidable documents but their important provisions are not too hard to understand. Let me say to relieve your minds, that nothing in this treaty would require any alteration in the Trident submarine program.

Right at the start I would stress that with or without SALT we are in for a continuation of a fateful competition with the Soviet Union in the field of strategic weapons. Since the time before SALT—almost a decade ago when the Soviets were catching up—they have been mounting large, broadly based missile programs. We have also been modernizing our forces but in the case of our land-based intercontinental missiles (ICBMs) with less dynamism. Despite this we are not in an inferior position. We have doubled the number of our strategic warheads since SALT I started. That comes to a rate of increase of 3 additional warheads each day since SALT started. We have installed over 500 modern ICBMs, and almost 500 modern SLBMs. I hardly need say here that a new fleet of missile submarines, the Tridents, will soon be joining the strategic forces. Strategic cruise missiles will also soon be deployed. We lead the Soviets in a number of important areas. Our forces are more survivable and diverse. But even if SALT II comes about, we will go in for extensive improvement measures (e.g., M/X) to avoid in the future a perceived imbalance between the Soviet and American forces. The basic question is—can we improve our strategic position with less risk and cost with SALT II controls than in the absence of these controls.

II

Let us first look briefly at the experience under the SALT I agreements of 1972.

The main product there was the Anti-Ballistic Missile Treaty limiting ABM sites to two for each nation. Many of us think that that treaty avoided a risky, costly and perhaps absurd competition to try to build defensive ballistic missile systems. In the late 1960's there were outspoken proponents for deploying defensive missiles to reduce damage which attacking Soviet missiles could do to population centers and to our Intercontinental Ballistic Missiles. (Even in those days we worried about the ICBM vulnerability problem—of which more later.) Then it was realized that any such defensive system could probably be neutralized by the other side's simply deploying more offensive missiles—and to the extent that an ABM system did promise to be effective, it could be destabilizing if it lead a nation to believe it could attack while expecting the ABM's to deflect the brunt of the retaliation. Our offensive forces had been planned in the 1960's to penetrate predicted thousands of Soviet ABM's. Now these thousands of American warheads are deployed and there are only 67 Soviet ABM's for them to have to penetrate. That struck me as very much to America's security interest.

I think it is generally recognized that this Treaty has worked. Secretary of Defense Brown recently said it had contributed greatly to stability. The limit was later reduced from two to one site for each side and we later decommissioned the one site which we had built. The Soviets have not completed their one existing system around Moscow. The ABM Treaty was reviewed by the parties in 1977 and found to be effective. It is to be reviewed again in 1982.

The second SALT I agreement was called an "interim freeze". Its purpose, as we saw it, was to hold down the number of Soviet missile launchers while negotiations for treaty limitations continued. The aggregate number of land and sea based ballistic missile launchers was limited to approximately the number which were then deployed or under construction. Heavy bombers in which we had superiority were excluded. We also had significant leads in warheads and technology, but the Soviets had substantially more ICBM launchers and were permitted to keep most of them. In this respect the freeze had an appearance of inequality although such was not the case when our other strategic forces were taken into consideration. Psychologically, the freeze got off to a poor start. And for some reason there was an expectation in some quarters that the Soviets would not substantially modernize and improve their ICBMs as permitted under the freeze, an expectation which was disappointed. I think that is a major factor in the negative attitude which some people now have towards SALT II.

Also agreed upon during SALT I were two arrangements of special significance for the problems of accidents involving nuclear weapons—certain measures to reduce the risk of outbreak of nuclear war and for modernization of the Washington-Moscow Hot Line. They are largely forgotten, but the Hot Line has more than once proved its use in emergencies and the war risk reduction agreement could be of importance in the future.

As part of SALT I, it was agreed the fulfillment of the commitments could be verified by what were called "National Technical Means of Verification", a smooth term for some of the intelligence systems of the two sides, including satellite photography. This proviso, in effect, legitimized the use of intelligence systems for arms control, a development which seemed to me an extraordinary thing for the Soviets to agree to.

The two sides also took commitments not to interfere with the operation of these intelligence systems and not to conceal from them the weapons systems limited by the agreements. These "no interference and no concealment" understandings have been an important plus for U.S. intelligence systems. With or without SALT we need to keep track of Soviet strategic force development and deployments. But without SALT, the Soviets could take any concealment measures available, thus making our monitoring task harder.

There was also established by SALT I a Standing Consultative Commission whose function is to consider ambiguities which might arise and clarify doubts as to possible violations. This group has met frequently and has operated successfully. A number of ambiguities have been clarified. On some occasions practices by both sides which were considered inconsistent with the agreements have ceased. Presidents Ford and Carter have certified that there have been no violations of the SALT I agreements. Although by its terms the "freeze" expired in 1977, both countries have stated they would do nothing contrary to it while SALT II negotiations continue. In fact, the Soviets even now are decommissioning some ballistic missile submarines in order to stay under a ceiling called for by this freeze. This, I think, shows that the Soviets take SALT seriously.

I would say that (largely because no added ABM systems have been deployed by the USSR) American security is better now, after almost 7 years of operating under SALT I, than if the ABM Treaty and the missile freeze had not been approved by the Congress in 1972 and an unlimited competition had continued. We have gained confidence that certain commitments taken by the Soviet Union in strategic arms limitation can be verified. We are approaching SALT II not as something new and untried, but as a continuation of a process that we have learned to live under and to count on.

III

The SALT II negotiation has been going on since November of 1972. It is some measure of the difficulty of this work that it has taken almost 7 years to reach an agreement which will expire in some 6 years. The American Delegation is made up of diplomats, technicians, and officers of the Army, Navy and Air Force. At times Members of Congress have participated to good effect and Congressional Committees have been kept fully and currently informed. It is our expectation that the treaty and related documents, when and if submitted by the President to the Senate for advice and consent, will have the support of the Joint Chiefs of Staff, the Secretary of Defense and the Secretary of State.

It is reported that the main effects of the treaty would be as follows:

The total number of strategic nuclear delivery vehicles (i.e., heavy bombers, and launchers for ballistic and long range cruise missiles) on each side would be subject to equal ceilings—2400 at the start and 2250 by the end of 1981.

The Soviets would have to dismantle some 270 launchers to get under this ceiling. The United States would not have to dismantle any systems that currently are operational and could, in fact, build about two hundred additional launchers before reaching the ceiling.

There would be equal sub-ceilings on various categories of launchers for missiles containing MIRV's (which are multiple warheads that can target more than one aim point).

Each side could only test and deploy one new type of ICBM which could not contain more than 10 warheads.

The number of warheads that could be placed in existing missiles would be frozen at the maximum number tested in present missiles. This limit is especially important. It restricts the Soviets' ability to capitalize on their present missile throw-weight advantage. One type of Soviet missile, for example, without this constraint could contain 30 or more warheads. It is worth recalling that in SALT I, the U.S. had proposed a treaty with no limits at all on warhead numbers! This seems much better.

Testing and deployment of mobile ICBMs (such as the M/X which President Carter recently approved) would be prohibited during the first 2 years but after that would be permitted under the treaty.

There would be a number of additional limitations on the throw-weight of missiles.

The treaty would lapse at the end of 1985 but either side could terminate it sooner on giving 6 months notice.

In sum, SALT II would—for the first time—place limits on all types of central strategic systems.

For the first time it would partially reverse the arms competition in offensive systems and require reduction from an existing force level.

For the first time it would put some constraint on the total number of warheads the sides could have. It would not solve the ICBM vulnerability problem (which I will touch on later), but it would put finite limits on the size of this threat.

For the first time it would put restraints on the competition to develop and field new and better ICBMs by limiting each side to testing and deploying only one new ICBM by 1985.

IV

Proponents point out that these are significant restraints and that if SALT is rejected, there will be a renewed open competition with large additional costs as well as increases in the risks of escalation and war.

In the absence of SALT II, the Soviets could substantially increase their forces. It is estimated that in 6 years of an open competition the Soviets could have as many as 3,000 strategic launchers as opposed to the SALT LIMIT of 2,250. They could also have two to three thousand more warheads than SALT II would allow.

V

What is the case against SALT II? It is said that SALT I didn't stop the Soviets' strategic programs which may become superior to our forces, so why agree to SALT II? And SALT I did not lead to the expected relaxation of Soviet-American tensions. During the past six years the Soviets have engaged in an adventurist foreign policy which has been destructive of a number of U.S. aims.

Here I would point out that useful arms control arrangements should not be limited to times of superpower good behavior. The treaty prohibiting nuclear tests in the atmosphere followed shortly after the Cuban missile crisis. SALT I was concluded only a few weeks after the U.S. started bombing Haiphong in Vietnam, a Communist ally of the USSR. In fact, if the USSR is to continue an adventurist foreign policy, it might be better if its strategic arms were under some agreed controls.

I think that underlying most of the opposition's arguments is a belief that in an open competition not limited by arms control, United States superior technology would give us some advantage. Claims are made that the existence of the arms control relationship tends to moderate our reaction to Soviet bad behavior abroad and that SALT II would be a psychological constraint on modernization of U.S. forces.

It is said that the SALT process has lulled us into inertia and has had no such effect on the Soviets and in the absence of agreed arms limitations we would be more keenly aware that we had to make a greater effort. To some critics rejection of the treaty by the Senate would mean reinvigoration of American programs. As for rejection's effect on Soviet programs, critics are either silent or apparently inclined to trust that the Soviets would not expand their strategic programs.

Critics of SALT are especially concerned about the predicted vulnerability of our land-based ballistic missiles, the ICBM vulnerability problem. It is now believed that the Soviets will have the capability to destroy almost all of our ICBMs using but a fraction of theirs, a threat which critics think will tend to make the United States reluctant to stand up to the Soviets in a crisis. I would inject here this thought—if ever the Soviets were tempted to such a desperate act as attacking our ICBMs, they would have to make the risky calculation that the Americans would never fire their missiles before Soviet missiles hit American targets. I wonder. I am not urging that the U.S. adopt a procedure of "launch on warning." But the possibility that we would is a not unreasonable contribution to Soviet uncertainties. The Soviets would also know that if they struck our ICBMs, the U.S. would still have 5 to 6 thousand warheads in the alert bomber force and on its missile submarines at sea. Nevertheless, this ICBM vulnerability question needs more attention. It can be remedied under SALT limits and that is what the new missile system, the M/X, will be designed to do.

Critics also emphasize that the Soviets could keep some 300 launchers for very large ballistic missiles now in their force while the United States could not deploy any. U.S. force planners have consistently chosen not to match the Soviets in heavy missiles and to emphasize more important characteristics. The main consideration has been "What are our requirements?" not "Let's copy the Soviet forces."

Admittedly, it would look better if the United States had the right to build the same number of such launchers as the Soviets now have whether or not we ever wanted to exercise it. But it seems to me that this would have no practical effect on U.S. forces during the life of SALT II. The U.S. has no use for and does not plan to deploy this kind of missile.

The situation will be exactly the same if the treaty is not ratified. On the Soviet side there will be some 300 such launchers (if not more), while we would not deploy any. Nothing in the treaty would prevent the testing or deployment of the new missiles, the M/X. It is important to know that the heavy Soviet ICBMs are not the proximate cause of our prospective ICBM vulnerability. That situation would exist even if the Soviets had no heavy ICBMs. Accurate and MIRVd light ICBMs would offer a similar threat.

Critics also don't like the fact that effective limitation would not be placed on the Soviet bomber "Backfire" which, though not truly intercontinental, does have some capability to strike targets in the United States. But here the U.S. does have the right to build unlimited numbers of an aircraft of this type. More numerous than Backfires are the nuclear capable NATO fighter bombers which can strike targets in the USSR and which also would not be SALT limited nor would the strategic missile forces of our allies, the UK and France, be limited. (I understand that the Soviets have agreed not to increase the present production rate of Backfires—some 30 a year.)

Certainly there are weaknesses in our strategic forces that need correction and certainly SALT does not solve all our strategic problems. But I believe the treaty would make these problems more manageable. I have been advised that the SALT constraints would not prohibit any U.S. programs designed to reduce or eliminate present weaknesses. What modernization measures are necessary involves important issues needing enlightened debate. But a judgment about SALT should not depend on whether one favors these improvements or not. SALT does not require or prevent any of them. Secretary of Defense Brown recently said that SALT II would make the strategic balance more predictable and would place important limits on the threat we will face.

I have a hunch that some SALT criticism reflects the frustrating knowledge that it is easier to persuade a third of the Senate to vote no to a treaty than it is to persuade a majority of both House and Senate to vote for very large increases in defense budgets for years to come. But that hardly seems to warrant a negative conclusion about SALT II.

Critics believe that the Soviets do not hold to our doctrine that the main function of strategic arms is to deter the other side from using or threatening to use its strategic forces. They say that the Soviets are planning not only to deter but, if necessary, to fight a nuclear war to a successful conclusion with damage limited by their weapon systems and by a large scale civil defense program to protect their people. These critics feel that strategic arms control will not work to our interest in the absence of acceptance by the USSR and the U.S. of a common strategic doctrine. Only a few critics stress, however, that to be credible such an alleged Soviet strategic doctrine, if imitated by the U.S., would require, among other things, a massive civil defense program in this country.

Looming behind much of the criticism of the SALT package is doubt on the part of criticis as to verifiability of commitments to be taken. They fear that the Soviet will violate the agreements and steal a march on the United States. By the same token, in SALT I an anxiety of some Americans was that the Soviets would violate the ABM limits by using anti-aircraft systems for anti-ballistic missile purposes—the so-called Sam upgrade problem. They didn't.

In addition to SALT I—our intelligence has confirmed that the Soviets are living up to other arms control agreements, the Limited Test Ban Treaty which curbed the pollution of the atmosphere, the Antarctica Treaty, the Seabeds Treaty and the Outer Space Treaty. And now they know that their performance will be under closer scrutiny than ever.

In considering verification, keep in mind that it does not involve trusting the Soviet. It does involve confidence that our intelligence systems have already proved capable of monitoring performance of SALT I obligations and can check on Soviet performance under SALT II. In addition, in SALT II (by a provision which is unique in modern arms control arrangements) the sides have disclosed the exact composition of their present strategic forces and have agreed to update this "data base" to reflect future changes. Secretary of Defense Brown recently said, "We are confident that no significant violation of the treaty could take place without the U.S. detecting it." We would be able to respond with appropriate actions before any seriously adverse impact on the strategic balance could take place. The relatively short life of the treaty, which would end in 1985 and in addition could be terminated on 6 months' notice, is good insurance that the Soviets cannot gain any advantage from not living up to its provisions. Even such a tough SALT scrutinizer as my friend, Paul Nitze, takes a somewhat relaxed view of the matter. In an article in Foreign Affairs in 1976 he wrote, "I personally take the verification issue less seriously than most because the limits are so high that what could be gained by cheating against them would not appear to be strategically significant." But the President has assured us that he will not approve any agreements that cannot be adequately verified. I think that assurance can be relied on.

VI

Intelligence about Soviet strategic arms is a combination of knowledge about present capabilities and estimates about future developments. SALT helps in both respects. Present deployments can be more precisely determined since the Soviets are not permitted under the agreements to conceal weapons systems which are limited and they have agreed not to interfere with our National Technical Means of Verification (intelligence systems). As for estimating future deployments, the agreement spells out the maximum permitted levels of the limited systems, thus simplifying somewhat the problem of prediction of future force levels. The absence of this "predictability", which would result from a SALT rejection, would make the future strategic balance more uncertain and would thus be destabilizing.

VII

You may be wondering whether in the Soviet Union there are also critics of SALT. While we don't hear their voices, I suspect that there are. Here are a few points they may be making:

1. The USSR would have to reduce its forces while the Americans could increase theirs.

2. The Americans will have many highly accurate air-launched cruise missiles during the life of the treaty and the Soviets will have few or none at all.

3. Soviet submarines are noisier and Soviet access to the high seas is much more constrained than America's. And the Americans have forward bases for their missile submarines in Europe and the Soviets have none.

4. The Soviets have four nuclear adversaries with strategic forces—the U.S., the

UK, France and China—and the Americans have but one.

5. The Soviets have an inferior heavy bomber force. The United States has over 300 truly intercontinental bombers.

6. The Soviets have nearly three-quarters of their warheads in vulnerable ICBMs while the United States has nearly three-quarters of its warheads in less vulnerable systems—bombers and submarines.

7. The United States can count on many hundreds of nuclear capable fighter bombers deployed close to the Soviet Union which could destroy hundreds of targets in Russia. These systems are not limited by the agreement.

VIII

There is another angle of criticism coming from some liberal politicians, academics and church people. Unlike our conservative and more weapon oriented critics, they find the SALT package to be too little, too loose, too permissive; some call it a sham. They want sharp reductions and tighter constraints on weapons characteristics. They seem to forget that the Soviets quickly rejected our 1977 proposal for significant reductions. But SALT II would include unprecedented and significant qualitative and quantitative constraints. Sometimes such critics remind one of Aesop's wry remark, "It is easy to propose impossible solutions."

I have not attempted a comprehensive survey of criticisms of the SALT package, but I think these will give you an idea of what is troublesome to our SALT opponents.

IX

There are several other important considerations to have in mind before drawing conclusions.

My responsibilities are now in the field of nonproliferation—to try to control the spread of nuclear weapons around the world. This is called horizontal proliferation, as opposed to vertical, which refers to the build-up by the two superpowers of their nuclear forces.

To my mind the threat to American security from horizontal proliferation is substantially greater than that presented by the continuing improvement in Soviet forces. Imagine the instabilities that would be created if and when more nations have nuclear weapons or even a weapons potential. This is no empty anxiety. Some of you may have seen this week a TV news report that Pakistan appears headed in that direction. It is not difficult to think of other areas in the world where—continuing to carry out traditional rivalries will be much more dangerous with nuclear weapons present. A key country for our nonproliferation efforts is India which exploded a nuclear device 5 years ago. One can hardly expect India formally to give up a weapons option if the SALT treaty is rejected and there is little prospect that the superpowers are going to agree to put their strategic weapons under some constraints.

One of the main instruments to contain the spread of nuclear weapons is the Non-Proliferation Treaty which has been in force for almost ten years. Over 100 countries have taken commitments not to go for nuclear weapons. But there is a basic bargain embedded in this treaty. Those non-weapons countries' commitments are contingent on Soviet and American progress in controlling their nuclear arms. If the efforts to this end of the last six years are rejected by the Senate, the integrity of this essential Non-Proliferation Treaty will be cast into doubt and our task of trying to control proliferation will be substantially increased. That, to my mind, is a very important reason for getting on with SALT II. President Carter repeatedly has stressed this important aspect of SALT.

X

If SALT II is rejected, the continuance of the ABM Treaty could be in doubt and we could once again face a competition to deploy defensive missile systems. When, in 1972, the first SALT agreements were presented to the Congress, they included a statement which I had made to the Soviets at the direction of President Nixon that if a SALT II treaty limiting offensive forces to match the ABM Treaty was not reached, that could constitute a justifiable cause for abrogation of the ABM Treaty. If SALT II is rejected, there will be calls for terminating the ABM Treaty—especially from those concerned with the defense of our vulnerable ICBMs. In fact, one group of SALT opponents has already proposed such abrogation. And the U.S.S.R. could take the same position that we had reserved for ourselves in 1972. Then, whether the ABM Treaty survived or not would be entirely up to the Soviets—who face nuclear threats from three smaller nuclear powers for which ABMs might be effective.

If the ABM Treaty is lost, we would again be in an unlimited strategic competition in which the Soviets would no longer be committed not to interfere with our technical means of verification and not to conceal their launchers. Gone also would be the S.C.C. consulting mechanism which has worked well to clear up ambiguities. I think these would be substantial losses for our intelligence capabilities.

Our turning away from SALT limitations would increase the relative Soviet advantage in an area where they already have clear superiority—in their command of information. They have the ability to predict the size and quality of American strategic forces of the future merely by studying our defense budgets and reading Congressional documents. Before SALT I we had to depend solely on hard won intelligence. In SALT I we obtained a degree of predictability about what Soviet force levels would be during the ABM Treaty and at the end of the 5-year freeze. We also gained an advantage from the Soviet commitment not to interfere with our means of verification or to conceal limited arms from them. As a result, so-called worst case planning has had less of a role in Pentagon thinking. Without SALT ceilings for the future, our uncertainties would increase. This would hardly make for stability.

XI

It has been said that SALT will prejudice the interests of our allies, but the leaders of France, England and Germany expressly and publicly endorsed the SALT package at a recent meeting in Guadalupe. Last month Chancellor Schmidt said that rejection of SALT would be a "catastrophe".

I couldn't put the case for SALT better than Schmidt did recently in the Bundestag, "SALT II can be concluded only in the form of a compromise . . . if everyone involved will accept something that is not fully in line with their own interests—it is necessary to differentiate between critical remarks involving individual aspects of this package . . . and the great world political significance of the whole treaty—otherwise the whole world will suffer a most serious confidence crisis."

XII

Perhaps the most serious loss that the SALT rejection would entail would be the conclusion by our friends and antagonists abroad that the U.S. Government was incapable of conducting a coherent foreign policy. If the product of more than six years of negotiation is brought to naught, what would be the chances for success in other negotiations like the Comprehensive Test Ban and Mutual Balanced Force Reductions?

And in the current, uneasy state of relations with our allies, rejection would prejudice economic and political cooperation as well as defense policy coordination. U.S. prestige, influence and leadership around the world would suffer badly.

XIII

What about possible Senate approval but with proposed amendments or reservations? If they were substantive and required that the negotiation be reopened and the bargaining resumed, it seems likely to me that the renegotiation would fail. Agreed Soviet-American arms limitations are reached only as a result of concessions and counter-concessions which in turn are the result of internal bargaining in Washington and I believe also in Moscow. Nothing is agreed until everything is agreed. To start afresh would mean to reopen the whole bargain—not just to negotiate for one or more additional provisions. How would we feel if, after reaching total agreement, Moscow then said that there were just a few more items on which we must reach agreement before we had a deal?

XIV

Our choice, therefore, it seems to me, is to continue to modernize our forces for some 6 years under agreed SALT II ceilings with certain limitations on Soviet and American weapons systems *or* to go back to an unlimited contest. Is it in our interest to continue the deadly competition but with some ground rules to make it somewhat less costly, somewhat safer? On balance, I believe the United States will be in a relatively better position if we pursue force modernization programs under the SALT II package than if we go ahead in unlimited competition. But I think we should recognize that SALT II is no panacea, that it does not warrant the great expectations generated at the time of SALT I, and that it is a step, a necessary move toward more significant reductions and constraints which we should press for in the years ahead. In fact, the negotiations for major force reductions should start promptly.

While the Senate alone has the constitutional mandate to give its advice and consent to treaty ratification, the collective common sense of the American people, all of whom have a very high personal stake in the outcome, will also be of crucial importance.●

THE FEDERAL ELECTION COMMISSION AND THE CITIZENS FOR REAGAN SUIT

● Mr. HUMPHREY. Mr. President, here is an example of the kind of administrative nonsense that characterizes the present Federal Election Commission.

I do not know whether they pursue a particular course of action because they have nothing else to do between elections, or because of a particular philosophical bias against a particular candidate or party. Perhaps a combination of both.

The rules of the Federal Election Commission require that contributors to political parties or individual candidates, those contributing $100 or more, indicate their occupation and principal place of business.

Well, in the course of time, the Commission decided that the citizens for Reagan campaign had a "substantial percentage of 40 percent of error in disclosing occupation and principal place of business."

That is, 35 percent of the contributors failed to indicate their occupation and principal place of business. Another 4.5 percent omitted only place of business, and a minuscule 0.48 percent omitted the address of their principal place of business.

From this they got a total of in excess of 40 percent omissions.

Now, believe it or not, but this omission was the object of a full-blown law suit filed against the Citizens for Reagan in the United States District Court for the District of Columbia.

Happily for the taxpayers of the Nation, not to mention serious political candidates, the court tossed out the case.

Earlier this month, the distinguished Senator from Nevada, Mr. LAXALT, asked the Commission to come up with a figure as to the costs to the taxpayers for this abortive, and, I might add, ridiculous cause of action.

The Commission failed to specify the exact amount of this exercise in futility.

It merely lumped a figure to include both the Reagan case and the abortive action against Eugene McCarthy, and his candidacy in 1976 respecting the reporting of honoraria from certain universities. It came to $166,541.

Now what was this heinous offense committed by the Citizens for Reagan?

Answer. The committee (not the contributors) failed to report such vital information as the occupation and principal place of business.

Now I doubt whether there is a single Member who does not understand the realities of political campaigning—even if, as it obviously is, that the Federal Election Commission does not.

I do not propose to engage in a treatise of campaign accounting, but for the edification of the FEC, let me say that most compaign organizations, particularly those of challengers, do not have staffs of accountants and lawyers to examine and comply with every minuscule detail of a complicated Federal election law; moreover, a law which had just been enacted prior to the 1976 campaign and was thus susceptible of considerable difference of opinion and interpretation.

When the contributions come in—perhaps I should have prefaced that remark with—if they come in—in most cases it is all a treasurer can do to record those contributions and get them in to the committee bank account.

Invariably the treasurer has other duties in connection with a political campaign, so that he is not wedded to the books looking for minor deficiencies as they occur. His prime concern, I dare say, is to insure that he is not receiving a corporate contribution forbidden by law. He rarely has time to scrutinize every detail of every receipt to insure 100 percent compliance with the disclosure provisions of the law.

And no committee, can afford to take the time, then and there, to try to identify and locate the contributor to secure the information on his occupation or the address of his principal place of business.

Note, Mr. President, that the laws put the burden not on the contributor, but the committee. But it surely does not require the committee, in the midst of an active campaign, to come to a halt, to contact contributors from around the Nation to supply relatively minor items of information.

Now note that in the case of the Carter campaign, 25 percent of the contributors failed to indicate either occupation or principal place of business; in the case of the Udall campaign it was 25 percent; the Governor Brown campaign 29 percent; 25 percent for the Jackson campaign.

However, the Federal Election Commission chose to bring a Federal law suit against the Reagan campaign.

Mr. President, I think it is incredible, in the wake of the revelations of the Carter campaign financing of recent weeks, that the Commission would devote expensive manpower, time, and tax funds to an assault on the Reagan campaign for the heinous crime that 35 percent of its contributors, failed to indicate their occupation or place of business.

The FEC pursued the matter relentlessly, however. In response to the Commission's request for additional information, the treasurer of the Citizens for Reagan replied:

> During the campaign, our committee attempted several times to acquire occupations and places of business from our contributors. The audit staff of your commission has been aware of this procedure. Whenever we succeed in obtaining additional information we informed the commission and will do likewise on this occasion.

The treasurer, Mr. Buchanan, obviously felt he was acting in good faith and attempted to provide the missing information—information really not essential to the proper functioning of this agency—in the best possible time available.

The campaign admitted to sending a letter to each contributor, requesting the necessary information.

In recounting the facts, the Federal Election Commission places the word "letter" in quotes, as if to cast doubt upon the truth of this statement.

It castigates the Reagan treasurer because the followup letter, requesting the additional information, happened to include another appeal for funds; in fact, the Commission memo editorializes this:

> In this case the Citizens for Reagan would receive the information required for the earlier contribution only if the contributor was motivated to give money a second time.

The Reagan treasurer thus decided on a third effort to obtain the required information, and I would like to remind this body that we are speaking of literally thousands of contributors from all parts of the Nation. Certainly, this was a formidable undertaking at considerable expense to the campaign committee.

And how did the Election Commission characterize this good faith effort to secure information, the absence of which was common to all candidates running for the respective nomination of their parties that year?

The Commission memo, from which I quote, states: "The second 'effort' " and effort is in quotes, "according to the CFC counsel was a final solicitation mailed to all contributors on the committee's microfilm list. This 'letter' "—and the word "letter" is again in quotes.

Query: Was it a letter or was it not? And if it was in fact a letter, why does the Commission's memo continue to identify it only in quotes?

"This letter," the memo continues, "was the same solicitation envelope previously mailed. Again, the information would only be obtained if another contribution was to be made." End of Commission memo.

Mr. President, is there anything in the laws of the Federal Election Commission that says that a committee seeking to identify the occupation and principal business address of previous contributors, may not, while they are at it, request another contribution?

And yet the Federal Election Commission somehow treats this as a violation of the spirit of the law if not the law itself.

And in this regard, I am constrained to ask, when the Carter, or the Jackson, or the Brown committees sought to complete their records, did they scrupulously refrain from soliciting first-time contributors in the process? The Commission memo is silent on this point.

Mr. President, the Commission's memorandum which set forth the complaint against the Citizens for Reagan is the most palpably feeble, trivial and nitpicking action that an agency is capable of filing.

Can this body conceive of an agency of the Federal Government, spending almost $175 thousand of the taxpayers' money to bring an action against an authorized Presidential campaign committee, not because of any inherent derelictions of the committee itself, but because a number of contributors failed either through inadvertence or deliberately, to identify their occupation and principal place of business.

And this despite the repeated assurances of the campaign committee that it had made mailings at considerable cost to secure the information needed.

In my opinion, Mr. President, my staff having reviewed the complaint, one can only conclude that the Federal Election Commission was motivated either by political bias, or because—as has been alleged in many quarters—it simply does not have enough work to keep itself busy.

Surely a truly independent and objective Commission would not have authorized this witchhunt.

> In the present matter it appears that citizens for Reagan made little effort to obtain occupation and principal place of business for contributors who initially failed to furnish this information. The only effort, a following solicitation letter, to such contributors, is in marked contrast to the efforts undertaken by the other presidential nominees.

Mr. President, I repeat, there is nobody in this body that can fail to appreciate the Commission's tenuous or perhaps, specious reasoning.

Consider the circumstances. It is only a month or two after the elections of 1976.

The committee has received millions of dollars from perhaps hundreds of thousands of contributors.

We all know how these contributions come in. Often there is no return address. Often the checks do not contain printed identification. The contributor often ignores the requirement that he identify his occupation and place of business. Any number of omissions, some inadvertent, some, perhaps deliberate, occur. Who can say?

And remember we are not talking about a race for a county row office. This is a Presidential campaign on behalf of an individual with thousands of supporters, contributing millions of dollars throughout the country.

And using the efforts of other Presidential candidates as a guide, the Election Commission majestically includes that the Reagan committee has violated the law by its lack of diligence.

To write "The End" to this sorry account of bureaucratic ineptitude, Mr. President, let me add, that the Reagan organization tendered a reasonable effort at compromise which the Election Commission—eager for its pound of flesh, refused.

In a letter to the Reagan committee dated May 8, 1978, the Commission said that it will not accept the statement which reads:

> The citizens for the republic will continue to make best efforts to comply with the relevant provisions in all future mailings, because it implies that best efforts have been made by the committees from the beginning.

Mr. President on March 1 of this year, the Federal District Court of the District of Columbia put a halt to this sorry exercise by granting summary judgment in favor of the citizens for the Republic—successors to the Reagan campaign committee of 1976.

Mr. President, it is my contention that unless and until we determine that the composition of the Federal Election Commission is truly independent and impartial, we can continue to expect litigation such as that which I have described. Motivated, not by a desire to right some egregious wrong, but to satisfy a purely political or philosophical predilection.

This is why I am objecting to the nominee. Unless we insist on a nominee who will truly reflect the prevailing philosophy of the party he is supposed to represent on the Commission, we will continue to wallow in prejudice toward a particular candidate or party.●

CONGRESS SHOULD BE IN SOCIAL SECURITY

● Mr. MORGAN. Mr. President, I recently introduced legislation which would bring Members of Congress and all legislative branch employees into the Social Security System. I have received a great deal of mail supporting this bill, which is cosponsored by Senators NUNN, RIEGLE, HATFIELD, and DANFORTH, but one of the best letters came from a young man living in Shelby, N.C. I think his letter accurately reflects the views held by many of our young people, and I request that it be printed in the RECORD.

The letter follows:

MICHAEL R. PRICE,
Shelby, N.C., June 6, 1979.

Senator ROBERT MORGAN,
U.S. Senate,
Washington, D.C.

DEAR MR. MORGAN: Please accept my sincere thanks for the work you are doing on your Social Security bill, S. 1249.

I am 25 years old, and like the students in your poll, I do not believe I will ever receive any benefit from the Social Security system. Certainly I will not receive benefits comparable to my contribution. Like most government programs, the Social Security system has been mismanaged.

With the changing nature of our national work force, the system will not survive the 1980's in its present form without absurdly high taxes to support it, impossible for the diminishing number of contributors to pay.

I consider the Social Security system a lead weight hung around the necks of working Americans. If the taxes are raised again, I will seriously look for a legal way that I can refuse to pay into the program. Of course, the refusal to pay could mean jail, and this in itself is a forced taxation of the type that inspired the American Revolution.

By bringing the legislative branch into this mess, perhaps something will be done about it.

Sincerely,

MICHAEL R. PRICE.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million, or in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that three such notifications were received on July 11 and 20, 1979.

Interested Senators may inquire as to the details of these preliminary notifications at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 11, 1979.

In reply refer to: I-5055/79ct.

Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) 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 a Northeast Asian country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 20, 1979.

In reply refer to: I-4662/79ct.

Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) 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 a Middle East country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 20, 1979.

In reply refer to: I-364/79ct.

Dr. HANS BINNENDIJK,
Professional Staff Member, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) 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 a Middle East country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

PROPOSED ARMS SALES

Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my 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 8 notifications I have just received.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

In reply refer to: I-4898/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-54, concerning the Department of the Army's proposed Letter of Offer to the Federal Republic of Germany for defense articles and services estimated to cost $32.1 million. Shortly after this letter is

delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST CRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

[Transmittal No. 79-54]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(B) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Federal Republic of Germany.

(ii) Total Estimated Value: Major Defense Equipment * other, $32.1 million; total, $32.1 million.

(iii) Description of Articles or Services Offered: Spare parts for M48-series tanks and related tracked vehicles.

(iv) Military Department: Army (BCE).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

In reply refer to: I-6024/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-55, concerning the Department of the Army's proposed Letter of Offer to Singapore for defense articles and services estimated to cost $75.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, U.S.A., Director,
Defense Security Assistance Agency.

[Transmittal No. 79-55]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Singapore.

(ii) Total Estimated Value: Major Defense Equipment*, $4.8 million; Other, $70.2 million; Total, $75.0 million.

(iii) Description of Articles or Services Offered: Improved Hawk air defense system consisting of three assault elements, associated radar and command and control equipment, basic load of missiles, maintenance equipment and spare parts, and training and technical assistance.

(iv) Military Department: Army (UNT).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

In reply refer to: I-6076/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-56, concerning Letters of Offer to Egypt for defense articles and services estimated to cost $560.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

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*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

Transmittal No. 79-56

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Egypt.

(ii) Total Estimated Value: Major Defense Equipment*, $75.2 million; Other $484.8 million; Total, $560.0 million.

(iii) Description of Articles or Services Offered: Improved Hawk air defense system configured up to 12 batteries, basic load of missiles, acquisition radars, ancillary support equipment, spare parts, training, and related services.

(iv) Military Department: Army (UAI, UAJ, OAK, OAL), Navy (LAB), and Air Force (DAA).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

In reply refer to I-6025/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-57, concerning the Department of the Army's proposed Letter of Offer to Egypt for defense articles and services estimated to cost $134.4 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

Transmittal No. 79-57

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Egypt.

(ii) Total Estimated Value: Major Defense Equipment*, $88.2 million; Other, $46.2 million; Total, $134.4 million.

(iii) Description of Articles or Services Offered: Five hundred fifty (550) M113A2 armored personnel carriers, fifty (50) M106 A2 107mm mortar carriers, fifty (50) M125A2 81mm mortar carriers, fifty (50) M548 cargo carriers, fifty (50) M577A2 command post carriers, basic load ammunition, spare parts.**

(iv) Military Department: Army (UAK, UAM, UAP, UAX, OAF, OAG).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

In reply refer to: I-6032/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-58, concerning the Department of the Army's proposed Letter of Offer to Israel for Defense articles and services estimated to cost $125.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director, Defense Security Assistance Agency.

**And support equipment, and training.

[Transmittal No. 79-58]

NOTICE OF PROPOSED LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Israel.

(ii) Total Estimated Value: Major Defense Equipment*, $113.0 million; Other, $12.0 million; Total, $125.0 million.

(iii) Description of Articles or Services Offered: Six hundred forty six (646) M113A2 armored personnel carriers, ninety eight (98) M577A2 command post carriers, fifty six (56) M548 cargo carriers, supporting equipment, and spare parts.

(iv) Military Department: Army (XIQ, XIR, XIT, XIU).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

U.S. Senate, Washington, D.C.

In reply refer to: I-6033/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-59, concerning the Department of the Army's proposed Letter of Offer to Israel for defense articles and services estimated to cost $293.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director, Defense Security Assistance Agency.

[Transmittal No. 79-59]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Israel.

(ii) Total Estimated Value: Major Defense Equipment,* $216.0 million; Other, $77.0 million; Total, $293.0 million.

(iii) Description of Articles or Services Offered: Two hundred (200) M60A3 tanks.

(iv) Military Department: Army (XIM).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

In reply refer to: I-6034/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Ams Export Control Act, we are forwarding herewith Transmittal No. 79-60, concerning the Department of the Army's proposed Letter of Offer to Israel for defense articles and services estimated to cost $162.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

[Transmittal No. 79-60]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Israel.

(ii) Total Estimated Value: Major Defense Equipment,* $141.0 million; Other, $21.0 million; Total, $162.0 million.

(iii) Description of Articles or Services Offered: Two hundred (200) M109A1B 155mm self-propelled howitzers.

(iv) Military Department: Army (XJH).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 23, 1979.

In reply refer to: I-6100/79ct.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-61, concerning the Department of the Navy's proposed Letter of Offer to the Netherlands for defense articles and services estimated to cost $11.7 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

[Transmittal No. 79-61]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Netherlands.

(ii) Total Estimated Value: Major Defense Equipment*, $10.3 million; Other, 1.4 million; Total, $11.7 million.

(iii) Description of Articles or Services Offered: Twenty-four hundred (2,400) MK20-6 Cluster Bomb Units.

(iv) Military Department: Navy (ADH).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: July 23, 1979.

PROPOSED ARMS SALES

Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of propsed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I request to have printed in the RECORD at this point the notification I have just received:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., July 24, 1979.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 79-63, concerning the Department of the Navy's proposed Letter of Offer to Saudi Arabia for defense articles and services estimated to cost $70.6 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.

[Transmittal No. 79-63]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Saudi Arabia.

(ii) Total Estimated Value: Major Defense equipment,* $0.0 million; Other $70.6 million; Total, $70.6 million.

(iii) Description of Articles or Services Offered: Repair parts, spares and supplies for initial stock outfitting of a Naval Supply Center and Naval Supply Depot to be located at Jubail, Jidda, and Dammam, Saudi Arabia in support of ships, training and communication equipment being provided under separate**

(iv) Military Department: Navy (BAS).

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be paid: None.

(vi) Date Report Delivered to Congress: July 24, 1979.●

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

**FMS cases.

ASSISTANCE FOR FLOOD VICTIMS

Mr. FORD. Mr. President, once again, a number of my constituents in Kentucky have suffered the anguish of unexpected flooding. On Sunday morning, July 15, a torrential downpour resulted in 5 deaths and the displacement of nearly 300 families who watched helplessly as water, mud, and debris flooded their Pike County communities.

Today, 125 of those families are still displaced from their homes. One hundred homes were totally destroyed. Another 150 homes were severely damaged. Kentucky's division of disaster and emergency services has advised me that preliminary estimates of damage already surpass $6 million and that destruction is far more extensive than what we witnessed in the 1977 flooding of that same region.

Roads are washed out. Bridges are gone. The only thing that seems to remain the same is the Federal Government's hand-wringing and mourning that "we've got to do something about these areas that keep flooding."

Mr. President, this year we have already witnessed major flooding that resulted in Federal disaster declarations in 15 States. The Federal Insurance Administration is literally buried under a mound of flood insurance claims that 2 months ago passed the entire number received in all of 1978.

Yet, the Congress has failed to take several immediate steps which are now pending that would improve Government's ability to assist these individuals in time of need and would control the threat of future floods.

We have failed to reduce SBA interest rates on disaster assistance loans that shot up in October of 1978—that we have had legislation pending to reduce since shortly after a disaster of great magnitude hit much of Kentucky in December of 1978.

And we have failed to provide adequate appropriations for flood control measures that will protect these communities which yearly face being covered by floodwaters.

I submit, Mr. President, that now is the time to give these people hope that Congress does care about them, that the Senate will take action in their behalf. We simply must act by legislation to reduce this constant threat of flooding which hangs over the heads of not only my fellow Kentuckians but people throughout the entire Nation.

Let me assure my colleagues that I will work diligently with them toward this goal. This is a battle we must win, and we must win it soon—working together—if we are to keep the confidence of the people.

Thank you, Mr. President.

ENERGY SAVING STEPS BY KENTUCKY NATIONAL GUARD

Mr. FORD. Mr. President, the Kentucky National Guard trains its forces for combat, but the battle it is most recently fighting is in response to President Carter's energy message. Year after year, long convoys have moved across neighboring States as Kentucky's National Guard moved to training facilities with terrain and equipment suited to its needs. Next summer, however, the Guard will train in Kentucky.

As a result, 147,000 gallons of fuel will be saved. In addition, Kentucky Adj. Gen. Billy G. Wellman has taken steps that will result in significant energy savings this summer. Troops now training in Texas were transported there by bus rather than by the numerous vehicles of the convoy. To provide vehicles for training, the Kentucky National Guard has borrowed equipment from the active Army and from the Texas National Guard.

Such changes have required cooperation, and it speaks well for all those units and States involved that plans have thus far run smoothly and efficiently. This is a massive shift that could have an impact upon training capabilities. However, the adjutant general's office is already working to improve the training opportunities within Kentucky.

Such an expansive attempt to contribute to energy conservation deserves high praise, and I call upon all units of the National Guard to examine their priorities and seek out changes that will result in significant energy savings. I am proud that Kentucky's National Guard is a leader in this move.

This is a timely example of what all of us can do if we will stop a minute to study our personal energy uses and where those uses can be cut back. The Kentucky National Guard will save 147,000 precious gallons of fuel. In the process, it will contribute to pollution control. This is the simple good neighbor policy, an act that carries out the golden rule. All of us will be the beneficiaries. And all of us will live with one less worry if we do the same.

I ask unanimous consent to have

printed in the RECORD a news release from the office of the adjutant general of Kentucky.

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

NEWS RELEASE

FRANKFORT, KY.—In response to President Carter's message on energy, Kentucky Adjutant General Billy G. Wellman announced today that virtually all Kentucky Army National Guard units will train in the state next year.

That will result in a fuel saving of about 147,000 gallons.

"We have to plan our annual training programs three years in advance," Wellman noted, "but the urgency of this fuel crisis has enabled us to very rapidly change our plans. We've received great cooperation from everyone even though it involves a massive shift in our program."

In the past, Kentucky units have trained at sites with the best available terrain and equipment, primarily in Texas and Mississippi.

"President Carter made the importance of the energy 'war' very clear and Governor Carroll has already expressed his support," the general said. "And I want the people of Kentucky to know that their National Guard intends to fight and help win this war."

General Wellman explained that some changes in plans had already been made to help units now training in Texas conserve fuel. For example, the units borrowed equipment from the active Army and from the Texas National Guard and left their own vehicles in the state. Buses were used to transport troops.

Wellman said that while this change will have some impact upon training capabilities, members of his staff are already working to improve the training opportunities within the state.

"We're going to be looking at many other ways to save energy," Wellman concluded, "because we want to make a significant contribution."

TRIBUTE TO MEMORY OF KENNETH M. BIRKHEAD

Mr. FORD. Mr. President, the Senate has lost a good and valued friend with the passing of Kenneth M. Birkhead. He has been a loyal worker in a variety of positions from the U.S. Department of Agriculture to the Democratic senatorial campaign committee.

Ken was a former staff director of the Democratic senatorial campaign committee. Not only politics, however, absorbed his interest. He dedicated most of his adult life to preserving human and civil rights for all Americans. Early in his career, Ken assisted his father, the late Rev. L. M. Birkhead, in fighting native Facism through the organization his father founded, Friends of Democracy.

In 1948, Ken worked in President Truman's campaign and was named to a position with the Democratic National Committee. He served that body in a variety of offices. The Senate will perhaps be most familiar with his work as assistant to the Senate majority whip from 1953 to 1955.

His interests extended to work as national director of Rural Americans for Johnson-Humphrey and as national executive director of Citizens for Humphrey-Muskie in 1968. He also served as national director of the American Veterans Committee.

Ken's death last week brought expressions of sympathy from many corridors. I join those who mourn his passing.

SOME GOOD THINGS ABOUT THE OIL COMPANIES

Mr. MOYNIHAN. Mr. President, on Sunday a week ago, in Washington, President Carter concluded a national address on the energy crisis by calling on each of us, "Whenever you have a chance, say something good about our country."

The next day he journeyed to the Midwest and commenced to say some, on the whole, unpleasant things about our oil companies.

All this got lost rather in the days that followed, when the White House began to say some less than pleasant things about the Cabinet as well. The week did not end as well as it had begun.

Accordingly, I would ask leave of the Senate to try to pick up where we left off that distant Sunday evening, and see if we can finish this week a bit stronger than last. Practice in these matters surely cannot hurt.

As my contribution I would like to try those Midwest speeches over again. I propose to say something good about oil companies.

Let me acknowledge that I do not know a very great deal about these companies, much less the oil industry in the large. But this, as it happens, is the principal point I would wish to make.

It is a point that occurred to me many years ago, in the mid-1950's, when as an aide to Governor Harriman in New York I came upon the fact that prices per gallon of gasoline ranged very considerably, and with no apparent pattern or logic, across the Northeast. The Ida Tarbell in me—and which of my generation was not touched by that formidable publicist—sensed the possibility of exposing a vast price conspiracy. I fell to work with some diligence. Alas, at the end, I found what I was least looking for. There was no contrived pattern to the price variations produced by the oil companies, but there was one singular fact.

This was that all the prices were astonishingly low.

Gasoline, which will do work, sold in the 1950's cheaper than bottled water.

This as it happens led me to some quite different concerns. If petroleum energy was so cheap were we not probably misallocating other resources because of this distortion, if that is the word, in the market. I became something of a critic of the Interstate and Defense Highway System, then just enacted. I thought it would thin out on cities much too rapidly, with seriously declining resources bases as a result. A paper of mine, "New Roads and Urban Chaos" appeared in the old Reporter magazine, and had some influence on President Kennedy's pronouncements on this subject during his 1960 campaign. On the strength of this I sought afterward to get myself appointed Deputy Under Secretary of Commerce for Transportation, but in the manner of reform administrations, the job went to a Los Angeles Cadillac dealer.

But I went on thinking that overabundant energy, cheap energy that is, explained a good many things in our society, most of them quite positive, but not all. Nothing is perfect.

Much later I served for a period as Ambassador to India and came upon the reality—that unmeasured, overwhelming reality—of a vast society that was energy poor. A society in which most food is cooked over fires made of dried animal feces, a society in which most energy is still generated by muscle contraction, that of humans or beasts. I was not surprised to find in this society a widespread hostility to the vast energy consumption of the United States, with the accompanying charge that our oil companies, by transferring so much wealth in the form of petroleum to the United States, were significantly responsible for the immizeration of Asia.

Still, I knew little about this subject, the point being that it was almost entirely a free-market industry with many players. Many more than I imagined, but I did grasp that there were more than seven sisters involved. I sensed that one of the reasons there was relatively little "information" about the system was that being a market system it got most of the information it needed from prices. A thousand, a hundred thousand prices, prices the world over, prices changing hourly, were the circuitry that operated the system.

Then came the 1973 war in the Middle East, the briefly successful OPEC oil embargo, and the stunningly successful quintupling of crude oil prices by the newly established cartel. It had been for some time an association: Now it was a cartel. I was still in India at the time, and was struck by two things. First—it is called clientitis in the lingo of diplomacy—was that the price increase would be devastating to the subcontinent. The green revolution rested on three elements in the production of food. First, new seeds. Second, fertilizer. Third, irrigation water. The last two were almost wholly derived from petroleum—irrigation being in the main pumped groundwater. The poor of Asia would remain poor.

Returning to the United States in 1975 I gave the commencement address at Stanford University on the theme that the OPEC price increase would now lead inexorably to the proliferation of nuclear powerplants to the Third World that could now no longer afford oil, and with that the proliferation of nuclear weapons as well.

A second thought had come to me, just touched upon in my commencement address. The OPEC cartel would lead to the largest and most persistent intervention by Government in the private sector of the economy than at any other time in our history.

The one exception, the Second World War, was temporary. It lasted 4 years. We are already in our fifth year of OPEC with no end in sight. Moreover, in contrast to all previous interventions, which were accomplished through legislation that arose from internal political process in which the entire electorate participated, this new intervention had come creeping in upon us like some silent meningitis attacking the very nervous system of the American economy.

Government responded in successively more bungled ways. We are now into our third administration in this regard. Here my earlier point about the information in the system is relevant. When a government runs something, it typically acquires information about that, whatever it is, by systems of formal inventory and strict accounting. It is a near universal characteristic of government behavior. Thus if a Secretary of Defense asks the Chief of Staff how many tanks the Army has, the Chief is expected to know and—right or wrong, the system never being perfect—thinks he does know. Similarly a Secretary of the Treasury is supposed to know how much gold there is in Fort Knox, and usually does, I trust; nothing is perfect.

Now this, of course, is very different from a market mode, in which supply information is essentially communicated by prices, in mathematical terms, a kind of algorithm mysterious to some, but sufficiently plain to those working within the system.

Those outside the system—those inside Government, for example—are often baffled by such spare notations. Moreover, as price controls began to spread throughout the energy system, ending at the gasoline pump itself, even prices became a less informative system of notation. Pretty soon nobody knew what was going on, really. The Government kept demanding inventories from an industry that did not keep inventories. The industry kept looking for signals from a price system in which the signals were being encrypted.

Not surprisingly, the industry has been asking for fewer controls, and the Government has been asking for more auditors.

I have no megathoughts on this problem. But I am convinced that we will not reach anything approaching an optimal solution unless we all come to see the central transformation that is taking place here, which is that the supply and the price of energy is becoming politicized. In the future governments will be held responsible for unfavorable movements in either price or supply, and they will be tempted in turn to hold the industry responsible, as the President was doing in Kansas City a week ago.

In that neither the Government nor the industry is responsible for the turn of events against us in the Middle East, it seems to me we are going to waste a lot of energy (sic) on mutual recrimination unless we learn to think a bit more clearly about this subject, and even to be a bit more honest.

For example, I would say it is dishonest—in the large, Orwellian sense—of the administration to describe the excise tax on oil production which is not before the Congress as a windfall profits tax. It is nothing of the sort. It is an excise tax, a severance tax if you please, Treasury officials promptly admit this: Some even volunteer it. Can anyone doubt that if we enact this tax—and I have assured the President that as a member of the Finance Committee I will support something of the kind, before the 1980's are out some independent oil producer is going to go broke because this windfall profit tax turned out to be greater than his actual profits.

I much prefer the colorful candor of Charlie Schultz, chairman of the Council of Economic Advisers when he first briefed us on the President's plan. He described the ongoing aspect of the oil tax as simply the OPEC ripoff tax. Which is to say that whenever OPEC raises its prices above the general rate of price increases, part of that windfall is collected by the Government in a special tax. The OPEC ripoff tax. Plain words. Clear meaning.

At the same time, I would hope the oil companies will try to understand the Government a bit better. This is not easy for them. But it is necessary. I also recall in the 1950's journeying out to Detroit—literally, I did just that, moved as the Soviet authorities might say, by "paranoid delusions of reform"—to try to convince automobile executives that unless they took the initiative themselves in the matter of automobile safety design they would end up with design regulated by the Federal Government. The general reaction, and this is now in the literature, was that the idea of such legislation was unthinkable. It was 6 years from the time I first published this thought, again in the Reporter, to the enactment of the Federal statute that imposed that regulation.

Here I would offer a word of encouragement to those companies which have taken to buying advertising space in newspapers and magazines to set forth their views in short essays. This is a perfectly legitimate exercise. To date, the essays give the sense, rather, of an advertising copywriter trying to write like he thinks Daniel Bell writes, or maybe the way he thinks his readers think Daniel Bell writers. In this regard I would commend the example of Albert Shanker of the American Federation of Teachers who writes a weekly column—paid for as advertising—for the Sunday papers in New York City which is a model of lucid, openly partisan, and enormously effective advocacy.

But, Mr. President, I do not rise to lecture or advise. I rise simply to say some thing good about oil companies in the thought that they might need a little encouraging this week. I make no commitments for the week to come.

SYNTHETIC FUEL, NOT RATIONING

Mr. MOYNIHAN. Mr. President, among the sectors of our economy whose efficiency and productivity are jeopardized by the current gasoline shortage is the installment industry, also known as the direct selling credit industry. The board of directors recently passed a resolution calling for the vigorous development of synthetic fuels and warning of the difficulties posed by gasoline rationing. These points, and their significance for this important industry, are further developed in a thoughtful editorial by Edward L. Sard, executive director of the National Association of Installment Companies, published in the June 1979 issue of Installment Retailing. This should provide additional impetus to our efforts to make such development a high priority in our national energy plans.

I ask unanimous consent that the text of this editorial be printed in the RECORD.

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

SYNTHETIC FUEL—NOT RATIONING—IS THE ANSWER

It should never have happened. Never. We're talking about the current gasoline crisis. It is not as though we never received a warning. We had our warning in 1973–74 when there were long lines at the gas pumps, when New Jersey, among other states, instituted the red and green flag system at its gas stations to indicate whether or not the station had gas. (All too often the red flag indicated that there was none and the green flag produced mile-long lines.) That gas shortage, brief though the period of its duration, was a nightmare. Particularly for those industries like ours that are so dependent on cars.

And now five or six years later, it appears that we are once again facing the same kind of shortage. During that entire period of time, nothing was done to provide this country with an alternate fuel supply, with some form of synthetic gasoline.

While Brazil developed a fuel based on alcohol and South Africa did the same with coal, our political leaders fiddled. President Ford soothed and President Carter placed his emphasis on conservation. All the while, the focus should have been and should be today, the development of synthetic gasoline.

What now? We are faced at the moment with the specter of gasoline rationing. As we go to press, a plan for standby rationing proposed to the Congress by President Carter, is about to be considered by the House of Representatives after its original defeat in committee. So far as we are concerned, any form of gasoline rationing is sure to be disastrous.

One thing is absolutely certain. Much as we feel that the current gas shortage was avoidable, we cannot ignore it, cannot pretend it does not exist. It does exist and we know it every time we go to the gas station to fill up. Gas prices are going up every day and there is little doubt that the price will go well over a dollar in the not too distant future.

If that is all that happens, if it is simply a matter of increased prices—unpleasant as that prospect is——we will survive. We will have to make all manner of adjustments. (For a number of specifics suggested by NAIC members see my article on the gasoline crisis elsewhere in this issue.)

We will have to use more fuel efficient cars, change our manner of collecting, raise car allowances, even raise prices. We will have to use gas as an incentive. In other words, we will have to be as creative, as original, as inventive as we can be.

From our own past—both distant and recent—we know that we are infinitely flexible. We have proved that we know how to cope with adversity. We can and will survive an increase in the price of gasoline. We cannot survive rationing. It will drive us out of business.

As an Association, we must make our voice heard on this subject of vital concern to our industry. We must campaign, lobby, joining with others who have similar interests, against gasoline rationing. And we must also press for the development of synthetic fuel. The oil interests may not be enthusiastic, may not welcome that development but the people of this country do want and need an alternate fuel supply. And, as others have proved, it is a realistic expectation that can and should be accomplished.

Our estimable antique door-knocker, L. T. Shoemaker has, as usual, a number of astute and cogent things to say about our current crisis elsewhere in this issue. The very title of his column, "To 'Yield' Doesn't Mean 'Give Up'!" might be taken as our motto.

In the midst of this emergency, there is a note of optimism. If we suffer the expensive effects of the increase in gas prices, our customers are among the first to feel the pinch. They are more and more hesitant about driving their cars as usual. We are in a position to provide them with a service that is more valuable today than ever before. Shopping at home.

We can drive our cars to their homes carrying the kind of merchandise they want and need, saving them not only time and trouble but the price of gas, as well.

So let us go on from there. Let us prepare to absorb the rising price of gas and, at the same time, work hard to press for the development of an alternate supply of energy. Nothing short of that, nothing short of the development of synthetic gasoline, will solve the country's energy crisis.

W. MICHAEL BLUMENTHAL

Mr. MOYNIHAN. Mr. President, the departure of W. Michael Blumenthal from the Treasury saddens me. Mike Blumenthal is one of the best friends I have and one of the most loyal allies New York City will ever have. He will be sorely missed.

A refugee and immigrant, he became a fine economist, a successful businessman, and a selfless and distinguished public servant. No one has a clearer understanding of domestic and international economics, a firmer grasp on the linkages among fiscal, monetary, and tax policy, a better grounding in the subtleties and significance of trade, or a greater ability to translate his understanding of the Nation's economic needs into the practical terms of contemporary government. He has been an immense asset to the President, an ornament to the executive branch, and a powerful force for wise and effective public policy in countless domains of domestic and international activity. He deserves our lasting gratitude and deep respect.

SENATOR HATCH AND THE BUDGET PROCESS

Mr. HELMS. Mr. President, in the July 9 issue of Barron's National Business and Financial Weekly there was an outstanding article by our colleague, the junior Senator from Utah (Mr. HATCH).

Senator HATCH eloquently emphasized one of the major problems in the Senate budget process. It just is not doing the job of holding the U.S. Federal Government within a responsible budget.

It is an indictment, I believe, of the Congress that the American people's support for a constitutional amendment requiring a balanced budget has reached such high levels. I have offered such a constitutional amendment myself and I hope that we can soon amend the Constitution to require a balanced budget. Why? Because Congress obviously needs that discipline.

As Senator HATCH points out, in 1974 when the Budget Act was approved it was lauded as a means of restoring budgetary discipline. In fact, during the past 5 years we have seen deficit after deficit, higher and higher inflation rates, and more and more justifiable public resentment toward the U.S. Congress free spending habits.

Senator HATCH in his article, entitled "Congressional Irresolution," lists the ways the budget process is used to protect costly Federal programs and to thwart budget cutting.

Of particular note is the orthodox Keynesian approach of the Budget Committee economists. The reliance on the part of the Budget Committee staff upon "demand stimulus" is a reflection that the staff subscribes to a theory of economics that is behind the times and a theory of economics that serves big government.

It is not inconceivable that Congress will reform its ways. I hope it does so. Unfortunately, we see little promise that it will. Unless we heed Senator HATCH's warning the voter in 1980 may make significant changes in the makeup of Congress.

Mr. President, I ask unanimous consent that Senator HATCH's excellent article be printed in the RECORD.

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

CONGRESSIONAL IRRESOLUTION

(By ORRIN G. HATCH)

"Major Recession Now Forecast by Hill Budget Office," front-paged the Washington Post on Sunday, June 10. The story, by Star Writer Art Prime, revealed that the "nonpartisan Congressional Budget Office has privately warned Congress to expect a full-fledged recession this year and through most of 1980, with inflation continuing at a double-digit pace and the jobless rate rising to 7.5%."

Having dispatched this missile, Prime presumably went back throwing darts at old posters of Richard Nixon, dozing at his typewriter and whatever else they do at the Washington Post during the current lull in American politics. Within the Capitol Hill beehive, furious activity broke out. The worker bees of the Congressional Budget Office and the Senate Staff swarmed around angrily, and even came to communicate their agitation to the elected queen bees of the legislative process.

This was done through memos from Staff Director John T. McEvoy and Congressional Office Director Alice M. Rivlin to those of us who sit on the House and Senate Budget committees. Reading these memos, I became uncomfortably aware that although they repeatedly referred to Pine's "inaccuracies," there were few concrete examples. Indeed, the attached statistical table seemed to support him. The CBO had not finished revising its January forecast, but it had already reduced its estimate of real GNP growth for the next two years from levels which even then had assumed two negative quarters. There will probably be double-digit inflation in the early quarters of 1980, and although average 1980 unemployment was not projected at 7.5% exactly, it seems likely to be pretty close. One might almost think senators are expected to read only the memos' stinging prose, and not their rather stickier figures.

Ms. Rivlin, according to the memos, intended "to complain to Ben Bradlee," the Post's Executive Editor. It was hard to imagine the Watergate Warrior being impressed. (After all, here was an editor who at one point publicly reaffirmed the Post's version of Hugh Sloan's grand jury testimony even after his own reporters had told him they'd got it wrong.) Nevertheless, 11 days later, the Post ran a groveling apology. It reproached itself for "significant errors" about unemployment's peak, whether the CBO had specifically forecast more than two quarters' decline, and whether Congressional leaders had seen an official forecast. Skilled students of Washington nuance will note that the Post had been persuaded to apologize for things its reporter had not originally said. As they say, it's a company town.

REMOTE TARGET

The whole episode was all the more puzzling because a rather negative view of U.S. economic prospects is not uncommon, outside Washington. But that's not what the Carter Administration, which has been consistently more optimistic, wants to hear.

It is hardly surprising that Pine caused trouble with his assertion that "the CBO's calculations were made known privately to Congressional leaders before the final passage of the initial budget resolution last month, but sources said that the two Budget committees decided to shelve them for the moment in what was described as a gamble that the economy might improve." With the budget as currently planned, such an economic performance would lead to a $4–$8 billion increase in expenditures. And that's even before the second budget resolution, due in the fall, starts knee-jerk countercyclical spending. The target of a balanced budget by fiscal 1981, confirmed in May amid much Democratic self-congratulation along with the $23 billion deficit projected out of $532 billion outlay in fiscal 1980, seems more remote than ever.

The fact is that the Congressional Budget process, which seemed like a good idea when enacted in 1974, has simply turned out to be an engine for the relentless expansion of government. The system co-opts those taking part—including some from the minority party and supposedly impartial civil servants—and provides a pseudo-scientific rationale for the continued care and feeding of the spending constituencies that elect the politicians happily presiding over the decline of our Republic. It has not brought greater discipline to Congress' spending. Many authorizing committees habitually miss their deadlines. And it has totally failed to perform what is commonly understood to be the budget process: cutting your coat to suit your cloth. Symbolically, the first thing the Senate Budget Committee did in 1979 was to defeat a motion that would have required them to look first at their cloth—anticipated government revenues—instead of (droolingly) at spending.

INFLATION PUSH

This year's Senate Budget Resolution covered the next three fiscal years, including fiscal 1980 (which begins this October). It projected a small surplus of $0.5 billion for fiscal 1981, and one of $0.7 billion for fiscal 1982. Additionally, there was provision for tax cuts of $55 billion in 1982, and somewhat larger ones thereafter, although this assumes there will also be GNP growth substantially above historic averages.

Total tax revenues, however, will rise as inflation pushes taxpayers into higher brackets. The Senate Budget Resolution was passed after three days of debate in con-

ference committee. The compromise resolution confirmed the strategy, albeit with a smaller 1980 deficit. A surplus of $5.6 billion was predicted for 1981, $4.1 billion in 1982; a smaller tax cut was planned. Over the summer, the various appropriation committees will complete their detailed work, and there will be a final adjustment for current conditions in the second Budget Resolution this fall.

The system's failure can be measured in at least two ways. The most obvious is that in 1979, the fourth and probably final year of economic recovery, the U.S. federal budget is nowhere near coming into balance. And yet this is the time, according to Keynesian theory, when we should be in surplus, in order to balance out over the entire business cycle, so as not to blow the roof off with inflation when we stimulate the economy in the face of recession.

And nominal surpluses, the sort allegedly expected in 1981 and 1982, aren't good enough. The system has to *balance*. There has to be a surplus to match the $45 million deficit of President Carter's first year in office. Needless to say, our born-again budget balancers on the Budget Committee don't mention that.

"SPENDING SHORTFALL"

As a matter of fact, the U.S. has balanced its budget only once since 1960. But its performance over the life of the Budget Committee has been particularly disgraceful. A low point was 1977. Directly after the federal election, the Democrats discovered a "spending shortfall" and introduced an extraordinarily third budget resolution, ending all hope of a surplus in this cycle and coincidentally paying off a number of supporters. Moreover, the Budget Committee is now estimating that tax revenues in 1980 will be 20% of gross national product. The average since 1956—except for the 1968–70 Vietnam surcharge—has been 18.6%. Any budget-balancing that is going on is hurting the taxpayer, not the government employee. (The federal government's impact is, of course, also felt in the economy through the $12 billion or so of off-budget items and the $150-odd billion loans made or guaranteed each year by government agencies.)

The Senate debate on the budget resounded to talk of hacking, slashing, chopping, and cutting. At times it sounded more like a spree in a slaughterhouse. But little blood was actually shed. Federal Government spending will still grow 9.1% in 1980, and there has been no major cuts in permanent programs. This did not prevent both the Washington Post and the New York Times from congratulating us for what the Times called "self-discipline on Capitol Hill." It pointed out that our spending was "slightly smaller than the President proposed" (well, yes, by $0.3 billion) and that our final deficit figure was $6 billion less than the President's (although it was still $23 billion; the difference was mainly that we figured higher inflation would just force more people into higher tax brackets). However, it seems that no one on Wall Street had the least expectation the budget would ultimately be balanced. The Budget Committee staff's public relations apparently cut little ice there.

Fiscal conservatives thought that the budget process would compel liberals to accept responsibility for their spending programs. But it hasn't worked that way. Instead, it is the conservatives who are constantly being confronted with an unpalatable choice: between deficits and economic dislocation, unemployment and, ultimately, larger deficits. Without the stimulus of government spending, they are told, unemployment will rise. This will cause expenditures on welfare programs to rise and tax receipts to fall. Which will create a larger deficit next year, hence attempts to balance the budget in reality, as opposed to in rhetoric, are made to seem irresponsible, and an attack on the budget process itself.

This trap is set right at the beginning of the process, when the various spending committees of Congress submit their estimates. These are fairly generous. The appropriations committees always include a little amiable padding, and there are usually some symbolic new programs designed to reassure the constituents of powerful congressmen that they are still loved. The Budget Committee can claim credit for subsequent shrinkage.

Then the Congressional Budget Office's econometric models are consulted to see what level of federal spending is necessary to keep the economy at full employment. By a miracle rather similar to the annual liquefaction of St. Janarius' blood, this turns out to be pretty much what the spending committees had (actually) in mind. At various points in the business cycle, deficits can be justified to stimulate or sustain economic expansion. Or, when there is worry about overheating early in the year, as in 1979, there can be much talk of austerity in the confident expectation that some signs of downturn, perhaps triggered by tight money, will materialize in time for all. Whatever the rationale, the result remains the same: more spending, and more frustrated conservatives.

So frustrated, in fact, that they have had heretical thoughts about the impartiality of the oracles that so consistently prophesy disaster if conservative ideas are implemented: the econometric models favored by the Congressional Budget Office. At close quarters, of course, these are not quite so awe-inspiring. Essentially, they are herds of equations, chivied along by the arbitrary assumptions of the economists organizing them. In recent years, the CBO began to find itself criticized because the models it relies upon—notably those of Data Resources Inc. and Wharton—tend to neglect the dynamic supply-side effects of cuts in the tax rate.

A tax rate reduction would affect gross national product in three ways. It would stimulate production, because people would not have the fruits of their labors filched from them. It would promote investment, because investing would have become more attractive than immediate consumption, and this would create jobs. And it would increase everyone's disposable income by the amount not taxed from them, stimulating demand. This demand surge is the only result of cutting the tax rate that the models, and consequently the CBO, take seriously. They are still operating in the shadow of Keynes, or, more accurately, Keynesians. Demand still dominates debate. (Oddly enough, one major modeling service, Chase Econometrics, seems to have declined in favor with the CBO precisely when it began to discover and adjust for the supply side.)

JUGGLING MULTIPLIERS

The immediate impact of this is that, for purposes of the budget resolution, a dollar spent by the government is assumed by the CBOE to be more stimulating than a dollar of tax cut, some of the proceeds of which would be saved and not immediately boost demand. So government spending appears to be a cheaper way of keeping the economy at full employment.

When they finally realized what this was doing to them, Senate conservatives began to complain. Last year, for the purpose of the Senate Budget Committee "mark-up"—the preliminary meetings by staffers at which the resolution is roughed out—the government spending and tax cut multipliers were conceded to be equal. This year, however, it emerged in the course of debate on the Senate floor that this principle had been quietly abandoned.

Because budget-making involves so many esoteric technical questions, the Budget Committees are unusually vulnerable to the influence of their staff. But the process has other weaknesses which are endemic in the legislative branch today. The Democrats have controlled Congress for the past three decades. Complaints that they have begun to act as if they owned the joint no doubt owe something to Republican paranoia. But just because you are paranoid doesn't mean someone isn't trying to get you. Largely unnoticed in the country, there has in recent years been a steady erosion of Congressional parliamentary procedures, all designed to make life easier for the majority. Last year's extension of the deadline for states to ratify the Equal Rights Amendment, a rule-change designed solely to rescue a defeated liberal cause at the cost of general derision and possible judicial reversal, was merely one case of manipulation which caught the public eye. On the Hill, it happens all the time.

In 1978, for example, Republican Rep. Marjorie S. Holt of Maryland offered amendments to the budget that would have maintained the current deficit, but lowered spending and taxes in tandem. Speaker Tip O'Neill, forced through rules that will compel Representative Holt to specify how much less each spending program will receive if her low figures are adopted. This totally contradicts the 1974 Budget Act, which says that the Budget Resolution should set a total spending figure and leave the Appropriations Committee to divide the pie. But it throws the proposers of such amendments very much on to the defensive, and also means that any Congressman voting for one would immediately become the target of all the injured spending lobbies, a distressing prospect.

I tried to deal with another aspect of the institutionalization of majority power this year. I proposed an amendment to prevent certain types of appropriations being passed into law prior to the Second Budget Resolution, so as to preserve the Senate's maneuvering room should the desire to cut taxes suddenly become overwhelming in the fall. Appropriations would be passed, but they would be "held at the desk" and not implemented before the Budget Committee completed its work. There was provision for this in the original 1974 Budget Act. However, the amendment was defeated. It was argued that the provision was a "fail-safe" device, intended as a last resort if Congress got into the habit of irresponsibly appropriating more than the Budget Committee had provisionally agreed. And, of course, this hasn't happened. With a Budget Committee like ours, it wasn't necessary.

The Senate is a profoundly traditional institution. The precise legalities of their situation often matter less to its members than the extension of courtesies between them. The common experience of working together on something like the Budget Committee seems likely to have a chilling—or more accurately, perhaps, a mellowing—effect on the opposition's determination to oppose the Resolution when it reaches the Senate floor. This tendency is actively encouraged by the Majority. Being present at the creation of one of these customs is like watching the Rocky Mountains rising from some primeval sea in a speeded-up tempo—fascinating, but alarming once you realize that it is squarely in the road to fiscal discipline.

In the debate on the Senate floor, the custom takes the form of an attempt to persuade those of us who offered amendments, particularly on matters of detail, that they (a) concerned matters of detail, and should therefore be left to the relevant oversight committee; or else that they (b) should have been offered in the Budget Committee itself, which is somehow slighted by being ignored. If you appeal to the sovereignty of the Senate, the attempt is abandoned. But it is always later renewed.

For example, I proposed cutting federal overtime, travel allowances and film-making,

partly because of evidence of waste cited in reports of the General Accounting Office. Ed Muskie, the Senate Budget Committee Chairman, objected:

Mr. MUSKIE: ". . . Now, you never offered this."

Mr. HATCH: "Is the Senator suggesting that I am not acting within my rights to bring this to the floor of the Senate rather than before the Budget Committee?"

Mr. MUSKIE: "I never suggested that. Since you played a very active role in the Budget Committee, and the Senator will agree to that, you never offered this amendment and you never offered the evidence to substantiate it. Is that not a statement of fact?"

Mr. HATCH: "That is a statement of fact on this particular amendment."

Mr. MUSKIE: "That is all I said. . . ."

But it wasn't. The debate became heated, as Senator Muskie made the same point again:

Mr. HATCH: "Mr. President, may I ask who has the floor?"

Mr. MUSKIE: "And the Senate as a whole is not in as good a position to consider the details of your case as the committee was. So why do you think you could get a better hearing here than you could in the Budget Committee?"

Mr. HATCH: "I know I will get a better hearing here."

Mr. MUSKIE: "All right."

Mr. HATCH: "I do not have any doubt about it."

Mr. MUSKIE: "That is your judgment of the Budget Committee."

This may not enlighten readers as to whether or not Budget Committee members are supposed to assume collective responsibility for the Budget Resolution. But it helps explain why Americans typically elect as senators men who are larger than average, at least in lung capacity.

There are two lessons to be drawn from a study of the budget process. The first is that the momentum of federal spending is formidable. Such spending is squarely in the interest of a powerful New Class of bureaucrats, politicians and their academic and journalistic acolytes, as well as the spending constituencies who form their electoral base. This class is tenacious in defense of the status quo. It is currently fighting on two fronts, against the supply-side fiscalists who are advocating a tax cut to stimulate production in the manner popularized by economist Art Laffer, and the more traditionalist budget-balancers, who were stealthily advancing on their goal of a constitutional amendment until loudly joined by Gov. Jerry Brown of California.

THE NEW CLASS CONSOLIDATES

Last year, with Proposition 13 gnashing its teeth, the Budget Committee cut $95 billion from its 1979 fiscal spending. But after the November elections some $7 billion snuck back in again. But there is still fear that the tax revolt has not been entirely finessed, which accounts for the talk of some tax cuts sometime, maybe the year after next. The balanced budget movement is a more familiar problem. Eventually, recession will galvanize the spending constituencies and frighten everyone else. Until that happens, the plan seems to be to move towards balance essentially by allowing taxes to rise indirectly, as inflation lifts taxpayers into higher brackets. *That* should teach them to whine about fiscal discipline! Meantime, the New Class consolidates, spending its time whittling away at the concepts like "tax expenditures"—money not extracted from the public because of various loopholes and concessions. These will ultimately be used to raise yet more revenue and further the idea that all property and income actually belongs to the government. And its servants.

The second lesson is equally simple. Financial rectitude cannot be imposed by gimmick. The Budget Committee process is not better than sunset laws or (remember?) zero-based budgeting. There is no substitute for political will. Without it, the Budget Committee can't work, and with it, we would not need a Budget Committee. In its absence, I can only endorse Sen. Edmund Muskie's proposal, although he made it rhetorically in debate while irritated at impertinent rebels:

"Why not write the budget on the floor of the Senate in total, and see how you can do it?"

CAB DECISION DISPUTED

Mr. McGOVERN. Mr. President, on last Saturday, the Civil Aeronautics Board on a 3-to-1 vote instructed the CAB staff to prepare an order disallowing the merger application of Western and Continental Airlines (Docket 33465).

The merger application was strongly supported by 10 States, 36 communities, and an equal number of chambers of commerce—along with Members of Congress from the States concerned—including the unanimous support of the South Dakota congressional delegation.

The application has been approved by an administrative law judge who held extensive and detailed hearings on the merger request.

The Airline Deregulation Act of 1978, Public Law 95–504, clearly expresses the intent of Congress in relation to these merger applications by an amendment to section 408 of the Federal Aviation Act of 1958 which directs, in part:

The Board shall not approve such transaction (if) the effect of which in any region of the United States may be substantially to lessen competition, or to tend to create a monopoly or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are outweighed in the public interest by the probable effect of the transaction in meeting significant transportation conveniences . . .

The intent of the Congress is quite clear in this instance, namely, that if the results of not merging would substantially deteriorate existing service—then the merger should be allowed.

A strong case can be made that the CAB has sidestepped its responsibilities here and, instead, has embarked on a course that will not only reduce service—but in South Dakota's situation—probably eliminate it entirely as far as Western Airlines is concerned.

Mr. Dominic P. Renda, president and chief executive officer of Western Airlines, has been quite specific on what would happen in the event the merger is not approved, as now appears to be the case.

In sworn testimony, before the CAB on December 13, 1978, Mr. Renda pointed out that:

There are a number of routes which are part and parcel of our system which are nonprofitable. In keeping with the overall responsibility of providing the public service under a regulated environment, we have provided services to many of those communities as on offset from the profit made on more profitable route segments.

Once these two carriers are merged and we look at what we have presented here by way of operating plan and project earnings that whether or not you continue service on that small segment . . . which produces a minimal loss is a matter which is not that important. . . . In my best judgment, looking at the overall picture and being able to see the opportunity that flows from the merger operation and the higher level of profitability . . . we would continue serving those communities north of Denver and Salt Lake City.

But if there is no merger those would be two areas we would look at first because I know right now they are not profitable.

Mr. Renda was even more precise in a letter to me under date of February 1, 1979, where he said, in part:

The approval by the Civil Aeronautics Board of the merger would assure a continuation of service to the communities of South Dakota. However, disapproval of the merger could result in less, or even a loss of, service to those communities.

The point was made again in testimony by Western Airlines before the Senate Commerce Committee's oversight hearings on Public Law 95–504 on April 27, 1979.

Certainly the carrier is not at fault here. They have been very straightforward and up front on their plans. Neither can I fault South Dakota in this case since well over half of the 500,000 passengers we board in our State each year do so on Western Airlines. Load factors on the carrier's flights through our State are excellent.

But the hard fact of the marketplace in a deregulated airline environment is that linear route structures—of the kind presently utilized by Western—are not profitable as they tend to develop only the short-haul passenger.

The thrust of Western's merger application with Continental was to provide both carriers with the equipment and routes to convert to a hub and spoke system that encourages the short-haul passenger to remain on the same carrier for his complete trip.

No matter how many passengers we board for intrastate air travel in South Dakota on Western airlines—or for travel to our major hubs in Minneapolis/St. Paul or Denver—the airline is not making a profit because the passenger simply does not remain on Western for enough route miles.

This same situation exists today for many communities presently served by Western in their general market area north of Denver and Salt Lake City.

The Civil Aeronautics Board came to this merger application after affirmative action on other requests involving North Central/Southern and acquisition efforts involving National Airlines.

There are those who suggest that the CAB felt some pressure to deny a merger application to maintain the credibility of the Board's process and procedures on these matters. If that is true, the Western/Continental application simply came along the CAB pipeline at the wrong time.

It would be a serious breach of the authority entrusted to the CAB by the Congress if factors other than the merits of the application were determinative in their decision. Yet a case can be made that is what happened.

As a result of the CAB decision, the losers in this case are the air travelers in South Dakota's three Western served

communities—Sioux Falls, Rapid City, and Pierre—and the thousands of others who journey to those airports to have access to Western service. The same will be true in other States and other cities as Western, as they are forced by the pressures of the marketplace to maximize the utilization of their equipment in the absence of the proposed merger, makes downward service adjustments.

The Airline Deregulation Act of 1978, which many of us questioned at the time, was designed to permit air carriers some flexibility in their approach to the service they provide. This standard appears to have been ignored in this case.

It is perhaps premature to determine at this point if some legislative remedy will be necessary by way of amending Public Law 95–504.

But those of us from States so adversely affected by the statute and/or its interpretation by the CAB, may well have to consider a legislative initiative if our air service continues to decline.

SEPARATING FACT FROM FICTION IN THE MILITARY BUDGET

Mr. McGOVERN. Mr. President, the current debates over SALT, the military budget and other national security issues reveal that diplomatic perceptions play an important role in policy planning. Administration officials and policy analysts appear to advocate a certain policy, such as real growth in military spending or the MX ICBM, for the purposing of creating a diplomatic perception that the United States intends to maintain an active global foreign policy.

Reasonable people can differ over whether new increments in military programs yield political or diplomatic dividends abroad. I happen to believe that we put too much emphasis on the military foundations of international influence while ignoring the political and economic roots.

However, even before reaching this issue, we need to make sure that American defense programs are being accurately portrayed. We can never evaluate the perceptions theory if we give out inaccurate or misleading information about our military budget or other programs. In fact, misleading information can undermine our diplomatic credibility by generating false impressions abroad and by creating a divisive debate at home.

The Center for Defense Information has just published an analysis of the Department of Defense's recent claims that military spending in the United States has fallen to a 30-year low. The Center's study, "Measuring the Military Burden: Fact and Fiction," concludes that the Pentagon's budgetary presentation has turned the guns versus butter argument on its head by presenting selected data that show the case for military spending in a distorted light. As the Senate debate on the military appropriations bill approaches, I hope my colleagues will consider these arguments closely.

I have always maintained that we should spend what we need to buy the forces we need for our national defense. But in this era of scarce budget resources and high taxes, we simply cannot afford to spend military funds just to create the appearance of real growth or to offset an alleged decline in the percentage of our GNP marked for defense.

Mr. President, we may have disagreements here about the diplomatic perceptions concept, but none of us can disagree that we need an accurate picture of our national security investment as a basis for whatever perceptions are created. This new study by the Center for Defense Information is an important contribution to the search for accuracy and realism in our defense debate, and for that reason I ask unanimous consent to have it printed in the RECORD for the benefit of my colleagues.

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

MEASURING THE MILITARY BURDEN: FACT AND FICTION

DEFENSE MONITOR IN BRIEF

Military spending has been increasing steadily, in both current and constant dollars, for the past four years. The FY 1980 military budget will be the largest ever.

The Pentagon has mounted a powerful public relations campaign to minimize the growing military burden. Tricky statistics are being used to persuade Congress and the public that military spending has fallen to a thirty-year low.

Inflated estimates of Soviet military expenditures have been widely publicized to gain support for a bigger Pentagon budget in this year of the "austere" federal budget.

The total federal budget is presented in a form which gives a false impression of the military burden borne by the general taxpayer.

An objective analysis of the federal budget shows that high military spending is the major cause of the huge federal deficit and a significant factor in fueling inflation.

The grand illusion in Washington is that military spending has been decreasing. A carefully designed public relations effort has succeeded in persuading most Americans that the military establishment has fallen on evil times—despite these easily vertifiable facts: (1) Military spending has increased every year since 1976 in real, inflation-adjusted dollars, and (2) The new 1980 budget calls for the largest real peacetime military outlays in more than a decade.

Many citizens around the country observe at close hand the high pay and profits and general affluence surrounding most military bases and Penatgon contractors. It contrasts sharply with the abandoned factories, growing welfare rolls, curtailed public services, chronic unemployment, and subsistence pay levels in many cities, towns and small farms that depend on civilian markets. Yet we are told by the federal government that we are at the end of a long period during which expenditures on "human resources" have skyrocketed while military spending has languished.

President Carter told a press conference last November that, "Over the last number of years, including since I have been in office even, the percentage of our total budget and our gross national product that goes into defense has been decreasing. . . ." Secretary of Defense Harold Brown, defending the Pentagon's proposed budget in February, made an even more dramatic statement, "If both the FY 1979 supplemental and FY 1980 budget are passed as requested," he warned, "U.S. defense, will, by these significant measures, still receive the lowest fraction of our resources in 40 years."

When such distorted images find their way into the statements of top government officials, it becomes vitally important that accurate, objective information about the dimensions of the United States' military burden be made available to the American people.

THE PENTAGON'S FUDGE FACTORY

The way in which the federal government spends our money is a matter of great concern to all Americans. In the face of mounting tax revolts and a threatened constitutional convention to put a balanced budget requirement into the Constitution, every politician in Washington must face hard choices about where scarce tax dollars should go.

Simple, accurate statistics showing how the money is now being spent can provide a firm basis on which to make intelligent choices for the future, and most people would expect the federal government to provide them. It would also seem natural for this function to be performed by the Office of Management and Budget, the arm of the Executive Office of the President that is charged with major responsibility for resolving conflicting claims for money from all federal agencies.

But that's not how it works in Washington. The agency that provides the most information about the relative burden of each major federal program on the U.S. taxpayer is the Department of Defense. In a publication titled "National Defense Budget Estimates for FY 1980," it presents detailed statistics, from 1939 to 1980, on spending not only for the military but also for major nondefense programs. By doing this, the Pentagon is able to structure the argument about guns versus butter and to present Congress and the President with selected data that show the case for increased military spending in the best possible light.

MANUFACTURING STATISTICS

The Penatgon's techniques for building an image of poverty while consuming the lion's share of our taxes are effective in misleading laymen, but well known to clever practitioners of the statistical arts. Here are some of them:

1. Use relative rather than absolute numbers. Everyone can count, but few people realize that a number expressed as a percent or share of something else can be decreasing at the same time that the number itself is increasing. To make an increasing series seem to be decreasing, all you have to do is express it as a percentage of something that is growing even faster.

2. Use adjusted data wherever possible. "Real" spending and "constant FY 1980" dollars are numbers which never really exist except in the base year, and they keep the reader confused. Nobody ever spent 1980 dollars in 1960.

3. Pick a favorable base year, preferably in the distant past, that can give you a startling—even if irrelevant or meaningless—comparison with today.

4. Develop new concepts which obscure the facts by adding together items whose separate magnitudes are more informative than the combined total; for example, Direct Benefit Payments to Individuals, Social and Economic Programs, or even the unified federal budget itself, which mixes together programs like military spending which are supported entirely by general taxes with those like social security that are entirely self-funded through trust fund contributions.

The effect of the Pentagon's statistics is to distract attention from two items of great significance to the American people: How much money is being spent by the military and who is paying the bills?

A DECLINING PENTAGON BUDGET—RELATIVELY

In defending the proposed 1980 budget calling for military outlays of $126 Billion, Secretary Brown stressed that,

"These totals will provide 3.1 percent real increase in spending over . . . FY 1979. . . . Even with this level of funding, Defense outlays will be about:

4.9 percent of the expected Gross National Product; in constant buying power the level will be 4.6 percent, the lowest since FY 1940;

23 percent of all Federal spending—with the exception of FY 1978 the lowest level since FY 1940;

Less than 15 percent of all public spending—including State and local—again, the lowest levels since FY 1940."

This is a classic example of the relative number technique. Note that neither the actual amount of the new budget nor its dollar increase over FY 1979 is mentioned. What Mr. Brown calls the "real" increase is actually the inflation-adjusted increase. The real "real" increase, in money appropriated by Congress, will be $11.3 Billion, or 9.9 percent.

The other selected facts which the Secretary chooses to highlight have nothing to do with national defense requirements. What they really tell us is that the Gross National Product, total federal outlays, and total public spending have been growing even faster than the military budget.

THE MILITARY DRAIN: MASSIVE AND UNABATING

Citizens in a democracy must decide how much of their wealth should be spent to provide them with adequate military forces. To make this decision intelligently, they must have answers to only two questions: "What forces are required?" and "How much must we pay for them?"

What does spending for social security or unemployment insurance have to do with U.S. military needs? What can the ratio of military spending to total federal outlays or to the Gross National Product tell us about defense requirements? What do increases in State and local government spending have to do with our need for military power? The answer, of course, is "Nothing." Yet these are the relationships on which Secretary Brown builds his image of a steadily shrinking military budget.

To get an accurate view of military spending trends and a true measure of the military burden on U.S. citizens, one needs only three sets of numbers: The military budget, the Consumers Price Index (CPI), and the U.S. population.

By using the CPI to adjust for inflation, we can measure the military burden in "constant" terms, constant in the sense that a billion CPI-adjusted dollars spent in any year represents the same amount of self-denial on the part of the taxpayers as in any other year. Population growth can then be used to calculate "real military spending per person."

MILITARY SPENDING SINCE WORLD WAR II

When military spending is calculated in this way and charted for the 1948 to 1980 period, several facts become clear.

Since the Korean War, military spending has remained on a very high plateau. Expressed in the FY 1980 dollars the Pentagon favors, military spending has not fallen below $113 Billion throughout this period. For every one of the past 27 years, the Pentagon has spent more than $550 for every man, woman and child in the United States.

Because the "peacetime" military establishment has been so huge, even the fighting of a hot war brings only a fractional increase in the military budget. At its peak in 1953, the Korean War required an increment of only $27 Billion over the $113 Billion "floor," while Vietnam at its height boosted the budget by only $57 billion above this post-Korean low.

In real spending, total or per capita, the military budget has not experienced any significant decline for 30 years. Total spending shows a slight upward trend, while spending per capita exhibits an equally faint downtrend. What this chart suggests to an economist is that the U.S. military establishment has become an autonomous institutional force which commands a certain large percentage of our economic resources year-in and year-out, impervious to change as a result of changing security needs. It is a politico-economic phenomenon, difficult to explain on purely military grounds.

DECODING THE FEDERAL BUDGET

Taxpayers who suspect that the Pentagon's data may be biased are in a difficult position. If they attempt to refute the claims of creeping starvation that emanate from the Department of Defense, they will find it necessary to make an independent analysis of the entire federal budget.

This is not easy. The federal budget as presented in the four books issued in January by the President's Office of Management and Budget is a masterpiece of obfuscation. One who digs into this mountain of statistics quickly learns that nothing adds up.

FANCY FEDERAL BOOKKEEPING

The public pays money to the federal government and the government spends it. That is simple enough. But it is also true that the government spends money it does not have, some agencies borrow money from other agencies, some receive interest from other agencies, a few receive direct payments from the public, some "federal funds" appropriated by Congress go directly into "trust fund" programs, a small amount moves the other way, the trust funds themselves exist more as bookkeeping entries than fund accumulations, many programs get "offsetting receipts" which make their net outlays much smaller than their gross expenditures, and some programs, called "off-budget federal entities," are not even included in the budget total because the law says they should not be! Making sense out of this accountant's nightmare is not easy, but it must be done if we are ever to regain control of military spending.

THE NEW "IMPROVED" FEDERAL BUDGET

For most of the years since the American revolution, the federal budget was a simple "administrative budget" that showed how much tax money would be collected and how it would be spent. In fiscal year 1969, however, the new "unified" federal budget came into being. It expands the concept of the federal budget to include the trust funds. These are funds that are collected directly through contributions from the same group which benefits from the particular program, whether it is social security, Medicare, unemployment insurance, or highway construction.

The only characteristic that federal and trust funds have in common is that both involve money that goes in and out of the U.S. Treasury. In the case of the trust funds, Congress may pass laws affecting future rates and rules for contributions and payouts, but it does not appropriate the funds for each year's payouts.

The trust fund programs are mostly self-supported. The only big exception is the "State and local government fiscal assistance trust fund," better known as general revenue sharing. It is a trust fund in name only; all $6.9 Billion of these outlays in 1980 will be paid for out of general taxes.

MAKING BUDGET PIE

The President's budget mixes these two funding systems together to create the widely circulated "pie charts" which conceal much more than they reveal. All of the 24 cents for the military comes out of income taxes while most of the "Direct Benefit Payments to Individuals" come from "Social Insurance Receipts." By combining two mostly separate accounts of income and expenditure, the federal government obscures the essential information about who pays for what.

The real federal budget looks much different. It shows that about one-third of the federal government's cash flow goes into and out of trust funds automatically each year, with no Congressional action required. It makes clear the fact that Congress has only about $361 Billion in federal funds to allocate, that $57 Billion of this is already obligated as interest on the federal debt, and that that real fight for funds in Congress centers on the $304 Billion that is left in the federal funds pool. And this is where the guns-versus-butter shoot-out takes place.

MILITARY SPENDING STILL NO. 1

Military spending ($126 Billion) and veterans benefits ($20 Billion) are to get nearly half of all the federal funds available in FY 1980. This is the uncomfortable truth that the Pentagon does not like to dwell upon. If federal spending is becoming an unbearable strain on the taxpayers, a major share of the blame must be placed on military spending, the largest by far of all federal fund programs.

As Edward Jayne, Associate Director of the President's Office of Management and Budget, put it, " . . . the impact of any pressure to reduce Federal outlays falls heavily upon defense. . . . Simply put, it is difficult to drive the deficit down significantly on the expenditures side without affecting defense programs. . . ."

In late May when the House of Representatives overwhelmingly rejected a compromise fiscal 1980 budget resolution because of differences with the Senate on the defense budget, the Washington Post reported:

"Yesterday's vote was a thorny one for Republicans, who were caught between a general desire to approve higher outlays for defense and a historical opposition to high budget deficits. . . ."

If the Pentagon's claim of massive growth in nondefense programs over the past three decades were true, it should be easy to cut the budget without cutting military spending. Obviously it is not.

NATIONAL PRIORITIES IN THE SEVENTIES

One of the most deceptive charts circulated by the Pentagon in the early stages of this year's guns-versus-butter debate shows two trend lines for the years 1950 to 1980. One is labeled "DOD Military" and the other "Non-Defense." The two lines move along fairly evenly until the late Sixties, when the Non-defense line begins to shoot up dramatically, passing $400 Billion by 1980 while the DOD Military only gets up to about $125 Billion.

To the untutored reader, the message is plain: The federal government has gone hog-wild on social welfare spending while our military needs have been ignored. Like other summaries prepared by the Pentagon, however, this one conceals more than it reveals.

First, it counts veterans benefits as a "non-defense" item. While these rapidly growing expenditures do not buy any current military capability, they are a direct result of past military efforts, and like the pensions of retired military personnel, which are included in the military budget, are simply deferred military costs. To include veterans benefits as social welfare expenditures not only is conceptually inaccurate but also obscures the fact that these men and women earned the right to them in the service of their country.

Second, and perhaps more important, the Pentagon's chart itself is based on the "unified budget," which adds together the social insurance programs funded through employee contributions and the programs like "national defense" which are supported entirely out of federal income and other general taxes. The "DOD Military" line represents an expenditure financed entirely

by the general taxpayer and in direct "competition" only with other programs similarly funded. The "Non-defense" line includes the huge social security, unemployment insurance, medicare and highway and airport programs, each of which is funded by contributions and taxes that may not be used for any other purpose and are not subject to annual Congressional appropriations.

It is also inaccurate to include interest on the national debt, a $57 Billion item in the FY 1980 budget, as a "non-defense" expenditure. About two-thirds of this debt was incurred through military spending.

WHAT OUR INCOME TAXES BUY

If the Pentagon chart is a false picture of the trends in federal spending, how can an objective chart be constructed? First, we should eliminate all trust fund programs, since they are not in competition with the military for tax dollars. The resulting chart will show, as the President's budget does not, just where our income taxes have been going.

Military spending continued to grow in the Seventies; it still constitutes the largest single expenditure from general revenues. Also growing rapidly over the decade was interest on the federal debt, which now accounts for almost one-sixth of all federal funds expenditures, and is due primarily to the government's unwillingness to raise taxes enough to pay for a huge military establishment and expanded social programs.

ADJUSTING TO HIGH UNEMPLOYMENT

Expenditures for non-military programs grew at about the same rate as those for the military until the economic situation took a a turn for the worse in 1973. The Arab oil embargo started the chain of unhappy events which brought home to the American people the special vulnerabilities of a highly industrialized nation heavily dependent on imported petroleum and losing ground in competition for consumer goods sales in world markets.

The oil crunch also spawned the expensive but not very effective Department of Energy, whose antecedents spent only $1 Billion in 1970 as compared with $6.8 Billion budgeted for 1980.

The middle Seventies brought escalating unemployment rates, with resulting increases in government spending for public assistance and special training and employment programs. The CETA (Comprehensive Employment and Training Act) program, which did not exist before 1974, will require expenditures of $11 Billion in federal funds in FY 1980. Expenditures for public assistance shot up from $5.7 Billion to $35.3 Billion over the decade. Neither of these programs can fairly be charged to an increased government commitment to "social welfare." They are simply "disaster relief" programs triggered by the failure of national economic policy to maintain adequate employment levels.

RACING THE RUBLE

The declining-ratio method of concealing the rising cost of the U.S. military establishment is the Pentagon's major weapon in its never-ending battle to boost its budget. Second, but close behind, is the new "creative accounting" developed to measure how much the Soviet Union is lavishing on its Armed Forces. Like the husband who learns that his neighbor's purchase of a fur coat constitutes a powerful if not entirely rational argument for buying one for his wife, the American taxpayer cannot help feeling guilty if he thinks we are not keeping up with the Russians.

The Soviets, however, are not very cooperative; they do not publish comprehensive, reliable data on how much their government spends. It is strange but true that our intelligence services have much better information on the number of Soviet missiles, aircraft, tanks, ships and artillery pieces than on how much it is costing their government to buy, man, operate and maintain them.

USING RUBBER YARDSTICK

If the Soviet civilian economy is difficult to understand by Western standards, the military sector is doubly so. Methods of paying and equipping soldiers and sailors, providing them with housing and medical care, using them in non-military construction activities, purchasing weapons, and performing other financial management tasks are much different than in the United States.

Faced with these complexities, our military establishment has developed another winner in its arsenal of special-purpose concepts. This one is called the "Estimated Dollar Cost of Soviet Defense Programs." It shows how much it would cost the United States to support the armed forces of the Soviet Union, assuming that each item there costs the same amount as it does here. What makes this procedure laughable is that there are huge disparities in what each side pays for specific budget items. Soviet manpower comes much cheaper than ours while highly sophisticated aircraft, ships and missiles probably represent a larger proportional drain on Soviet resources than ours. When all these complexities are considered, it becomes obvious that no serious analyst would place much confidence in the line showing the "Estimated Dollar Costs of Soviet Defense Programs" in the Pentagon's chart. It does not represent the plotting of independently derived statistics; it is simply a hand-drawn illustration of a foregone conclusion.

All that can be said with any assurance about Soviet military spending is that it has been growing at a moderate but steady pace. To quote Defense Secretary Brown, ". . . this growth has been . . . at about the same rate as the growth in the overall Soviet economy."

THE MOST EXPENSIVE GAME IN TOWN

One fact is clear about the Soviet-U.S. military competition: It is a heavy drain on the economic resources of both nations, and both have lost considerable ground—in terms of relative economic strength—to those industrialized nations which have managed to get by with smaller military budgets.

As for the proposition that the Soviets are now spending more money than the United States for military purposes—$50 Billion more, according to the Pentagon's dubious chart—it is unsupported statistically and meaningless practically. Nations do not go to war with money but with a particular combination of trained men and weapons. The country whose armaments are best fitted to its needs will be better off. Waste, poor planning, and lack of popular support can easily make the big spender the big loser when the final test comes, as the deposed Shah of Iran well knows.

It is Secretary Brown's and President Carter's task to determine what combination of armed forces and weapons can best defend the United States against likely threats. There is nothing that fairyland statistics on Soviet military spending can tell them about that. The only possible reason for manufacturing such figures is to create public acceptance for an even larger U.S. military budget.

THE RISKS OF MILITARY OVERSPENDING

The most critical decisions the federal government must make are budgetary decisions—how much to spend on military strength, economic development, services to the public, preservation of natural resources and environmental assets, assistance to the disadvantaged. Because all the programs funded from general revenues are in direct competition with each other, the President and Congress must make trade-offs among a variety of "federal fund" programs. It is a disservice to the Congress and the public to present a federal budget which obscures the real dimensions of these choices by combining federal funds with trust funds in the major summaries of federal spending.

Spending too much on the military can be as injurious to a nation's long-term welfare as spending too little. As history shows, the conflicts ultimately forced upon a nation are rarely those for which it was best prepared. The future is always uncertain: those who believe that the uncertainty can be removed by spending to the limit for military forces delude themselves. Excessive military spending introduces only one element of certainty: It insures a future of growing regimentation, declining living standards, and accelerated depletion of nonrenewable resources. America in the Eighties deserves a better fate.

VOLUNTARY AGENCIES AGREE ON PROGRAM FOR INDOCHINA REFUGEES

Mr. McGOVERN. Mr. President, the international meeting in Geneva last weekend was a major step forward in addressing the tragedy of the boat people and other refugees in Southeast Asia. Sixty-five countries developed a consensus on both immediate humanitarian relief efforts and a longer term framework for refugees in Southeast Asia. While the meeting did not address the political and diplomatic conflicts which are the fundamental cause of the refugee problem, the humanitarian measures agreed to will help create a climate in which these basic problems can be discussed and, I hope, resolved.

An important aspect of the meeting in Geneva was the consultation arranged by the International Council of Voluntary Agencies between the most important and respected voluntary agencies in the world to discuss a program of action on the Indochina refugee problem. This consultation brought together 52 agencies, including the World Council of Churches, the International Catholic Migration Commission, Oxfam, the Union of American Hebrew Congregations, the American Friends Service Committee, and the Salvation Army.

The statement agreed to by these organizations presents a positive program for action which governments as well as private relief organizations should support. The statement included the following recommendations:

First, support for the United Nations High Commissioner for Refugees' plan of action, including the procedures for orderly departure from Vietnam agreed to by the Vietnamese Government and the UNHCR.

Second, immediate humanitarian measures to relieve the overcrowding and intolerable living conditions in the camp facilities in Southeast Asia, including increased annual acceptance quotas in resettlement countries, emergency reductions in camp populations, and the establishment of additional holding and processing centers under the inspection of the UNHCR.

Third, a rationalization of the criteria and processes of selection by the resettlement countries, especially regarding the plight of families and unwanted children.

Fourth, improved means for rescue at sea operations and greater respect for the principles of asylum and nonrefoulement under established international law.

Fifth, an appeal to governments involved to review their decisions against working closely with the countries of Indochina on matters of relief, reconstruction and development assistance.

Mr. President, the voluntary agencies which attended the consultation prior to the international meeting are to be commended for their concrete measures of assistance and for the constructive program they put forward. I am convinced that their proposal had a major influence on the unexpected success of the international meeting.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement released following the ICVA voluntary agency consultation on the Indochina refugee problem for the benefit of my colleagues who are concerned about this critical issue.

There being no objections, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT FOLLOWING ICVA VOLUNTARY AGENCY CONSULTATION ON THE INDO-CHINA REFUGEE PROBLEM

Motivated entirely by a spirit of compassion and compelled by the appalling conditions under which hundreds of thousands of our fellow human beings exist in refugee camps in Asia and deeply concerned for the needless loss of human life, over fifty international and national voluntary agencies directly involved in all phases of assistance to the Indochinese refugees met in Geneva on 18 and 19 July, 1979 under the auspices of the International Council of Voluntary Agencies.

Our millions of constituents demand that we be concerned about people not politics; about salvaging lives not placing guilt. Those we represent want an immediate humanitarian response. This is a time for greatness of the spirit, a time to extend the horizons of our abilities, and a time for governments to give assurance that the world human family will be permitted and enabled to meet its responsibilities each to the other.

The voluntary agencies' consultation place these conclusions before the governments assembled in Geneva.

1. They unanimously endorse the Plan of Action contained in the High Commissioner's note to governments for this meeting and pledge full support and cooperation in its implementation.

2. The greatest potential to reduce the present tragic exodus from Viet Nam rests with implementation of the orderly departure understanding made between UNHCR and the Socialist Republic of Viet Nam, since an assured programme of emigration would deter people from taking unnecessary risks.

3. The camp facilities in South-East Asia are far below the minimum standard of decency for any human being. These camps are grossly overcrowded with a suffering, frustrated and humiliated mass of humanity. This abominable congestion leads to the physical, social and moral decay of the refugee, a dangerous and wasteful development which destroys the very qualities which the receiving countries expect and hope for when trying to integrate these refugees into their communities.

The tedious bureaucratic procedures of interviews, questions and forms create a gauntlet of insecurity and debilitating delay that is costly to both the refugees and governments concerned.

To relieve crowding and to improve conditions we urge:

A. For the duration of the emergency, annual acceptance quotas be increased to a humanitarian standard in relation to the size of this exodus. For example, countries of resettlement should strive to find places for approximately 1,000 refugees for each million inhabitants.

B. There should be an emergency reduction of the camp populations throughout Asia by the immediate transport of at least 150,000 refugees to humane facilities in the countries of resettlement. This emergency action should not be at the expense of the present monthly flow of refugees for settlement.

C. To further relieve crowding in the camps, to improve the subhuman conditions in some, and to relieve the anxieties of those who have already been four years in others, additional holding and processing centres should be established and the facilities for inspection and control granted to UNHCR should be strengthened.

4. The criteria and processes of selection by countries of resettlement must be related to the crisis. It is imperative that all countries committed to the acceptance of refugees adopt procedures which will avoid the tragedy of large numbers of unwanted refugees debarred from any meaningful future. Acceptance criteria should incorporate a full and generous understanding of the sufferings of families and unaccompanied children and the problem of family reunification. The UNHCR and the voluntary agencies should be involved in the selection process and be allowed to fully counsel refugees.

5. There must be respect for the principles of asylum and non-refoulement and improved and coordinated means of rescue at sea and protection of refugee boats from piracy in international waters. Where governments or voluntary agencies seek to save lives from the sea by the use of rescue vessels, full recognition and support for their humanitarian efforts should be afforded. Other vessels in the area must meet their international obligations.

6. Since the consequences of conflict in Indo-China should not be followed by the ravages of hunger and to prevent the economic situation exacerbating the conditions which are forcing the refugees to leave their homeland, we appeal to our governments to review their approach towards aid for relief and rehabilitation within Indo-China and particularly within Kampuchea. The voluntary agencies reiterate their wish to work closely with the countries of Indo-China in matters of relief, reconstruction and development assistance.

The voluntary agencies call on the governments to treat these conclusions as a minimal programme. We urge the meeting to take dynamic and daring measures to deal with this catastrophe. The voluntary agencies have done, are doing and are willing to do what is necessary to assist. The world in the past has sometimes failed to meet its obligations in times of human crisis. Let us not allow further generations to say this of us.

LIST OF PARTICIPANTS

American Council of Voluntary Agencies for Foreign Service, Inc.
American Friends Service Committee.
American Joint Distribution Committee.
Australian Council for Overseas Aid.
British Council for Aid to Refugees.
Brot für die Welt.
Caritas Austria.
Caritas Hong Kong.
Catholic Relief Services.
Centre d'Information des Organisations Internationales Catholiques (Geneva).
Citizens Commission on Indochinese Refugees (USA).
Comité Européen pour le Bateau pour le Vietnam (France).
Comité National d'Entraide Franco-Vietnamien, Franco-Laotian et Franco-Cambodgien (France).
Comité pour l'Accueil Immediat de 50,000 réfugiées (France).
Comité Viet Nam pour sauver les Réfugiés de la Mer (France).
Concern (Ireland).
Conseil Européen des Services Communautaires Juifs.
Coordination Européenne des Comités pour l'Accueil des Réfugiés (France).
Danish Refugee Council.
Finnish Refugee Council.
France Terre d'Asile.
Free China Relief Association.
Help the Aged (UK).
HIAS (USA).
Hong Kong Christian Service.
International Catholic Migration Commission.
International Committee of the Red Cross (Observer).
International Council of Voluntary Agencies.
International Rescue Committee (USA).
International Social Service.
International Union for Child Welfare.
League of Red Cross Societies (Observer).
Lutheran World Federation.
Norwegian Refugee Council.
Ockenden Venture (UK).
Office Central Suisse d'Aide aux Réfugiés.
Oxfam (UK).
Quaker House (Geneva).
Rädda Barnen (Swedish Save the Children Fund).
Rädda Barnen International (Geneva).
Salvation Army.
Save the Children Fund (UK).
Secours Catholique (France).
Standing Conference on Refugees (UK).
Tolstoy Foundation Inc. (USA).
Union of American Hebrew Congregations.
Vluchteling 1976 (Netherlands).
World Alliance of Young Men's Christian Associations.
World Council of Churches.
World University Service.
World Vision International.
World Young Women's Christian Association.

THE GENOCIDE CONVENTION AND THE POWER OF EXAMPLE

Mr. PROXMIRE. Mr. President, the United States has been the leader in the field of human rights for over 200 years. Our very revolution inspired other revolutions designed to achieve equality in human relations and to protect human life. But perhaps most importantly, we have been able to lead because our Nation is a prosperous example of a community where compassionate respect for the worth of man and belief in human dignity are paramount. By serving as an example, we have promoted the rights of man all over the world. And it is the power of example that is the most potent and the most influential power we have.

Unfortunately, Mr. President, there is a spot on our human rights record. A spot that lingers. The United States has failed to accede to the Genocide Convention and, thus, has jeopardized its role as a beacon in the area of human rights. As Chief Justice Earl Warren said:

> We as a nation should have been the first to ratify the Genocide Convention.

As much as I would like to turn back the clock, America will never go down in history as the first Nation to accede to the Genocide Convention.

Nevertheless, the United States can still serve as an example of a compassionate and concerned Nation willing to keep this issue alive and willing to reverse its stance.

Certainly, we have not lost our commitment to human rights. That commit-

ment is as firm and as vigorous as it ever was. Because of our unremitting faith in the rights of man, we must demonstrate our determination to protect man's most valuable right—the right to life—by ratifying the Genocide Convention.

THE MX AND HARD TARGET CAPABILITY

Mr. PROXMIRE. Mr. President, the hard target capability of the MX missile, documented in the Library of Congress study referred to by the Senator from Oregon (Mr. HATFIELD) is of paramount importance to the SALT II debate.

Why is hard target capability of strategic interest? Well, it is of interest because of the potential reaction it will cause within the defense hierarchy of the Soviet Union. Consider that the Soviet Union has pursued a dogmatic, almost single-minded buildup in land based ICBM's. They have pursued this goal of land based emphasis with great resolve. They have based their entire strategic retaliatory and war fighting strategy on this doctrine of the primacy of the land based forces. It is true that they have large missile forces at sea and in the air. But the primary emphasis in the past and most likely in the future has been the land based ICBM forces.

With this fact in mind, it is possible to consider what the potential effects might be of a U.S. strategy designed to place the heart of the Soviet retaliatory system in peril, in jeopardy, in danger of being destroyed in a first strike attack.

How would the Soviet military bureaucracy react to such a circumstance which would threaten the fundamental security of their strategic position? They could not accept such a state of affairs lightly. They could not accept a situation of perceived vulnerability. After all, they have the same responsibility as does our military command—protection of the capability of the strategic forces to carry out its mission. If all of a sudden the heart of your retaliatory capacity—the 75 percent of your total force that is committed to land based systems—is brought into a state of vulnerability, then drastic measures will have to be taken.

This measure might be difficult to predict. The Soviets could well view the MX hard target capability with such alarm that they would review the prospects of future arms control agreements in a negative light. They might decide to respond with huge new strategic programs in reaction to a hard target MX deployment. They might decide to deploy an unverifiable mobile ICBM system. They might decide to move more of their strategic deterrent to sea. They might decide to emphasize new mobile ABM programs or abrogate the ABM treaty. They might consider moving ahead more strongly with exotic weapon systems such as laser or space based particle beams or some other advanced development which in turn could threaten the stability of the strategic relationship between the U.S.S.R. and United States of America.

The point is, Mr. President, that most of these options would be inimical to U.S. interests. We would be forcing the Soviet Union, out of its own self interests, to take measures which would degrade our own security, which would make our retaliatory capability less secure, which would increase the chances of accidental war, which would make verification more difficult if not impossible, which could set off a new arms race.

This is the price that awaits our MX decision. The MX may commit us to a new type of arms race, a new round in the action-reaction cycle so often perceived to drive both countries further down the road to mutual vulnerability rather than mutual security.

Therefore we must view the MX program with a perspective that will concentrate not only on the present but also the future—a future which could well be less secure than what we now know.

Mr. ROBERT C. BYRD. Will the distinguished Senator yield to me for a request? Who has the floor?

Mr. HATFIELD. I have the floor, and I yield.

ORDER OF PROCEDURE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, first, let me inquire of the Chair, the meeting hour has been set for 9 o'clock tomorrow morning; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. There are no orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. The time to begin the debate on the Panama Canal legislation, I believe, is set for 9:30 a.m.; am I correct?

The PRESIDING OFFICER. The Senator is correct.

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

ALLOTMENT OF TIME FOR THE LEADERSHIP TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time for the two leaders tomorrow morning be confined to 2 minutes each.

Mr. STEVENS. That might be appropriate. I might be able to keep my foot out of my mouth in that period of time. [Laughter.]

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

SPECIAL ORDERS FOR TOMORROW; ORDER FOR ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the two leaders on tomorrow, Mr. JEPSEN be recognized for not to exceed 10 minutes, Mr. BAKER be recognized for not to exceed 10 minutes, and that the intervening time between that point and 9:30 a.m. be utilized for routine morning business, and that Senators may speak therein up to 2 minutes each.

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

ORDER FOR CONVENING OF THE SENATE TOMORROW IN LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the nomination of Mr. Reiche, the Senate stand in recess until the agreed hour and that when the Senate convenes tomorrow, it do so in legislative session.

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

ORDER OF BUSINESS

Mr. HATFIELD. Mr. President, I ask the Chair what the parliamentary situation is.

The PRESIDING OFFICER (Mr. TSONGAS). The Senator from Oregon has yielded himself 5 minutes, and he has used 2 minutes and 45 seconds.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time that I use not be charged against the distinguished Senator from Oregon.

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

Mr. HATFIELD. I thank the majority leader.

NOMINATION OF FRANK P. REICHE OF NEW JERSEY TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

The Senate continued with the consideration of the nomination of Frank P. Reiche.

Mr. HATFIELD. Mr. President, I would like to observe once again, as I did earlier, the particular circumstances in which we find ourselves on the nomination of Mr. Reiche.

I must say that in my period of time in the Senate, I have not observed a more thorough analysis of a candidate for an executive commission than we have had in the case of Mr. Reiche. This is due to the careful scrutiny and the tenacious way in which the Senator from New Hampshire has pursued this matter.

We have both indicated that this certainly is not a personal matter between us, because we both understand that there can be legitimate differences of opinion without impairing the personal working relationship.

I want to make an observation, and I suppose this is a sign of age or seniority; I do not know which. Perhaps it is a little of both, especially as one begins to observe the performance of freshman Senators on the floor. I must say that in the time I have been in the Senate, I have not observed a more tenacious manner with which an issue has been pursued than the Senator from New Hampshire has pursued this matter.

I say that, as I indicated earlier, in a favorable, complimentary way. I do not agree with his findings nor his thesis. I do not agree with some of the data he has presented. Nevertheless, that in no way diminishes my respect for the way in which he has pursued this matter.

Having said that, I know that there are more important issues confronting this country than this nomination; but I believe we cannot lose sight of the fact

that there are certain basic issues that at least have to be summarized on behalf of Mr. Reiche:

First of all, I want to underscore and emphasize again that at no time have the opponents challenged the personal integrity or the professional capability of this nominee. I think that says a lot for the quality of the nomination, as well as for the quality and the character of Mr. Frank Reiche. Rather, the arguments have fallen along the lines of issues that are near and dear to the heart of each Member of the minority party.

In no way do I want it to be inferred that my support for Mr. Reiche puts me on an opposite side of the issue of public financing for congressional elections; nor do I think Mr. Reiche is on the opposite side from that of the majority of the Republican Party of the Senate.

I want to underscore one simple matter in the debate today, and that is that Mr. Reiche does not have a vote on this issue of public financing, will not have a vote on this issue, and will have no determination on this policy. This will be an issue strictly and exclusively determined by the Senate and the House of Representatives.

I also have heard this afternoon many complaints and criticisms, and I have made a few myself, in relation to the performance record of the Federal Election Commission. However, we are not determining the record of the Federal Election Commission here today, as unhappy as we may be with it. But we are going to affect the future of the Federal Election Commission by confirming the nomination of such an able and well-qualified man as Mr. Reiche.

If we are unhappy today, we can rest happier tomorrow with the knowledge that we are putting on that Commission, for the first time in the history of that Commission, a man who brings direct experience in election procedure. He is the only person to serve on that Commission so far who has brought to the FEC this kind of experience.

So, for all the unhappiness we have heard today, I say that if Senators vote for the confirmation of Mr. Reiche, they certainly will go far in diluting the possible unhappiness with the FEC of tomorrow, because he stands in a position to add great stature, great ability, and expertise and experience to the Commission.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HATFIELD. I yield myself 2 additional minutes.

Mr. President, I also regret, as I indicated earlier, that this matter has had to be primarily a debate within the minority party of the Senate. I note the Democrats have been very quiet today. They have been very considerate and very polite. They have stayed out of this argument, and for that we are grateful.

What I do not want to imply, however, is that somehow we have an irrevocable division in our party on this side of the aisle.

I feel strongly about the qualifications of Mr. Reiche and the rightness of his nomination. Mr. HUMPHREY feels the opposite. When this nomination is confirmed, I am certain we can regroup ourselves and be the responsible, accountable minority, the loyal opposition, again.

So do not take any solace, I say to my friends on the other side of the aisle, in this little exercise today, that somehow this is going to slop over into 1980. I have no expectation that it is going to last more than 24 hours, perhaps not that long.

Because of the gentlemanly way in which Mr. HUMPHREY and his colleagues have conducted this matter today, I commend him; and I commend Mr. HATCH, Mr. MCCLURE, Mr. LAXALT, Mr. HELMS, Mr. DOLE, and Mr. JEPSEN if he speaks, as well as anyone else who has spoken on the opposing side, for maintaining a high professional manner of presentation of the issue.

However, let me again emphasize the fact that this is the recommendation of the leadership of the Senate and the House. Mr. Carter did not dig up Mr. Reiche from someplace. This was a name that was sent to the White House by our Republican leadership. It carries the support of our Republican colleagues in the House of Representatives from the State of New Jersey. It carries the support of the chairman of his hometown Republican committee.

Mr. Reiche carries credentials and recommendations and testimonials from people whose loyalty, whose partisanship, and whose Republicanism, I believe, are above reproach.

So I urge the Senate to vote down the recommital motion. I hope the Senate will do that, and at that time I urge the Senate to vote for the confirmation of the nomination of Mr. Frank Reiche.

Mr. President, I yield 4 minutes to the Senator from Alaska, the assistant minority leader.

Mr. STEVENS. Mr. President, when it became apparent that this matter did involve a potential division within the minority side, I sought out the Senator from New Hampshire and suggested that we discuss the Reiche nomination.

Subsequently, the Senator from New Hampshire and I visited with the minority leadership in the House, and together we spent time discussing this matter.

The Senator from New Hampshire presented his views to Congressman JOHN RHODES, the minority leader in the House, very forcefully, as a gentleman, and discussed his point of view completely and in such a manner that there was no way to misunderstand his position regarding Mr. Reiche's nomination.

I think the Senate has learned that when the Senator from New Hampshire takes a position on an issue he takes it strongly; that he will express his views and articulate them in a way that is consistent in pursuing his goals.

The difficulty with this matter arises as a result of the history of this Commission, and the prior action of Congress, in giving the leaders of the opposition party in Congress the right to name its members. That was stricken down, as we all know, in the prior form of the law. In spite of that action, President Ford continued to turn to the leaders of the opposition at that time, the majority party in the House and the Senate, and did accord them the prerogative of naming the Democratic members of the Commission.

When the administration changed, after some problems developed over a particular nomination, President Carter then accorded the same privilege to the majority and minority leaders, and they submitted the list, and one of the names on the list was Mr. Reiche.

I think all of us who have had now a substantial number of conversations with the Senator from New Hampshire understand his deep commitment to the principle that there should not be Federal financing of congressional campaigns, and to that I think we are almost unanimously committed on this side. By virtue of the manner in which he has raised the objections to this nomination, he has reaffirmed our commitment, I think, to that point of view.

But on behalf of Senator BAKER and myself, I publicly commend the Senator from New Hampshire, as a new Member of the Senate, for his courtesy on the floor today. We all know there are things that he could have objected to here in the last 2 or 3 days. He could have ensnarled the Senate at a most critical time—just as we are trying to get to some very important things, such as the problem we deal with tomorrow in terms of the Panama Canal implementation legislation and other matters that require unanimous consent. Instead, he has been a gentleman, and his stubborn commitment to principle reflects well the traditions of the Members of this body who have faithfully served the people of New Hampshire, the Granite State.

So we do thank him for his courtesy and we thank him also for expressing so forcefully the positions that we all believe in—I think we all believe in—concerning the financing of Federal campaigns. I also do express my support for——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STEVENS. In his absence I yield myself 1 additional minute.

Mr. HATFIELD. I yield 1 additional minute.

The PRESIDING OFFICER. The Senator does not have any time remaining.

Mr. STEVENS. He said 1 additional minute.

The PRESIDING OFFICER. The remaining time is controlled by the Senator from New Hampshire.

Mr. HUMPHREY. I yield whatever time the minority whip wants.

Mr. STEVENS. I am sorry. I did not know I was going that long.

But I do also commend the Senator from Oregon for his point of view. As I have explained to the Senator from New Hampshire, I feel committed to support the nomination because I participated in the decisions concerning the matters relating to leadership involvement in nominations. I did not participate in selecting Mr. Reiche but the process which was set up I was involved in, and I feel it is a good one. Under the circumstances, when we are not involved in control of the executive branch, this is the way we must go; that is, we must

support our leadership when they have submitted the names to the President.

Again I do thank, however, the Senator from New Hampshire for his courtesy and graciousness in handling this matter.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. The minority welcomes that as he knows.

How much time do I have, Mr. President?

The PRESIDING OFFICER. The Senator has 10½ minutes remaining.

Mr. HUMPHREY. Mr. President, as my friend and colleague from Oregon has pointed out, the qualifications of the nominee have not been called into question nor his character, integrity or honor been called into question. But what I call into question, is the partisanship of this candidate.

A Commissioner on the Federal Election Commission does not operate in a vacuum. We do not make perfect laws here in Congress and Commissioners must, as other members of the executive branch, interpret the laws we pass. In interpreting these laws it is only human that their views will come into play and it is only human that their views will influence the hiring and direction of staff and, as we all know, staff has a great deal of latitude in this town, unfortunately so, but necessarily so.

So, Commissioners do not act in a vacuum. It is true that they do not make policy in the strictest sense but I believe that in less than a strict sense they do and very significantly.

The nominee, Mr. Reiche, as I have stated, does not embrace the cardinal Republican position dealing with the electoral process, namely opposition to taxpayer funding of campaigns. Interestingly enough his nonembrace of the Republican position puts him in a position of coming closer to the Democratic platform on this particular question. The Democratic platform calls for the extension of taxpayer funding to congressional campaigns.

I find it unfortunate in the extreme that the man who wishes to represent us on the FEC is on this cardinal issue closer to the Democratic position than the Republican position.

But what disturbs me almost as much is the fact that after 6 years serving as chairman of the New Jersey Election Commission, Mr. Reiche claims he has not reached any conclusions on what amounts to this question of whether we should give the FEC greater powers over the electoral process in this country. He has reached no conclusions. I think that is shocking. I think that it is shocking that the Senate should be asked to seriously consider such a nominee and I worry very greatly that a man who apparently intends to learn on the job is in a position of gaining that seat on the Federal Elections Commission.

Mr. Reiche evidently sees no danger in granting these greater powers to the Government. I see great dangers, Mr. President. I believe there is no more dangerous agency in this Government than the FEC.

It must be so. Any agency which has the power to control the electoral process, the very means that the citizens have to change their Government, is an agency with a great deal of power and one to be watched very carefully.

I do not want a man going down there to represent my party who has not made up his mind on this fundamental issue.

Let me say also that it is up to us Republicans here in the Senate to be the final judge of who will represent us on the FEC. Yes, the New Jersey delegation in the House of Representatives favors this nomination, but we are here not to please the New Jersey delegation. But we as Republicans acting on FEC nominations must protect the interests of all of the States, not just the State of New Jersey.

I must point out that while Mr. Reiche may have the support of his New Jersey delegation in the House of Representatives, he does not have the support of the chairman of the Republic National Committee. I submit that Mr. Brock is more representative of the Republican Party nationally than the House delegation from the State of New Jersey.

Mr. Reiche's nomination does not—think of it—this nomination for a Republican seat on the FEC does not have the support of the national Republican chairman. Neither does this nominee have the support of the chairman of the Republican Party in New Jersey in the home State of the nominee.

So I urge my colleagues to vote to recommit this nomination to committee for further consideration.

If I may have the temerity to do so, I suggest to my colleagues on the other side of the aisle that, perhaps, they might like to consider on this question voting "Present."

That is the substance of my feelings on this question, Mr. President. It is a question of how much power shall we give to the Government over the electoral process.

Mr. Reiche has not made up his mind. I hope my colleagues have.

I yield the remainder of my time.

The PRESIDING OFFICER (Mr. TSONGAS). All time having been yielded back, the question is on agreeing to the motion to recommit by the Senator from New Hampshire. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL) is necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

The PRESIDING OFFICER. Is there any Senator in the Chamber wishing to vote?

The result was announced—yeas 28, nays 70, as follows:

[Rollcall Vote No. 218 Ex.]

YEAS—28

Armstrong	Garn	Jepsen
Bellmon	Goldwater	Laxalt
Boschwitz	Hatch	Long
Byrd, Harry F., Jr.	Hayakawa	Lugar
	Heinz	McClure
Dole	Helms	Morgan
Domenici	Humphrey	Packwood
Roth	Thurmond	Warner
Schmitt	Tower	Zorinsky
Simpson	Wallop	

NAYS—70

Baucus	Glenn	Pell
Bayh	Hart	Percy
Bentsen	Hatfield	Pressler
Biden	Heflin	Proxmire
Boren	Hollings	Pryor
Bradley	Huddleston	Randolph
Bumpers	Inouye	Ribicoff
Burdick	Jackson	Riegle
Byrd, Robert C.	Javits	Sarbanes
Cannon	Johnston	Sasser
Chafee	Kassebaum	Schweiker
Chiles	Kennedy	Stafford
Church	Leahy	Stennis
Cochran	Levin	Stevens
Cohen	Magnuson	Stevenson
Cranston	Mathias	Stewart
Culver	Matsunaga	Stone
Danforth	McGovern	Talmadge
DeConcini	Melcher	Tsongas
Durenberger	Metzenbaum	Weicker
Durkin	Moynihan	Williams
Eagleton	Muskie	Young
Exon	Nelson	
Ford	Nunn	

NOT VOTING—2

Baker	Gravel

So Mr. HUMPHREY's motion to recommit was rejected.

The PRESIDING OFFICER. The question is: Will the Senate advise and consent to the nomination of Frank P. Reiche, of New Jersey, to be a member of the Federal Election Commission. The yeas and nays have been ordered and the clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, this rollcall vote will conclude the business for today. This will be the last rollcall for the day.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL) is necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee (Mr. BAKER) would vote "yea."

The result was announced—yeas 73, nays 25, as follows:

[Rollcall Vote No. 219 Ex.]

YEAS—73

Baucus	Glenn	Nunn
Bayh	Hart	Pell
Bellmon	Hatfield	Percy
Bentsen	Hayakawa	Pressler
Biden	Heflin	Proxmire
Boren	Hollings	Pryor
Bradley	Huddleston	Randolph
Bumpers	Inouye	Ribicoff
Burdick	Jackson	Riegle
Byrd, Robert C.	Javits	Sarbanes
Cannon	Johnston	Sasser
Chafee	Kassebaum	Schweiker
Chiles	Kennedy	Simpson
Church	Leahy	Stafford
Cochran	Levin	Stennis
Cohen	Long	Stevens
Cranston	Magnuson	Stevenson
Culver	Mathias	Stewart
Danforth	Matsunaga	Talmadge
DeConcini	McGovern	Tsongas
Durenberger	Melcher	Weicker
Durkin	Metzenbaum	Williams
Eagleton	Moynihan	Young
Exon	Muskie	
Ford	Nelson	

NAYS—25

Armstrong	Dole	Hatch
Boschwitz	Domenici	Heinz
Byrd, Harry F., Jr.	Garn	Helms
	Goldwater	Humphrey

Jepsen	Packwood	Tower
Laxalt	Roth	Wallop
Lugar	Schmitt	Warner
McClure	Stone	Zorinsky
Morgan	Thurmond	

NOT VOTING—2

Baker Gravel

So the nomination was confirmed.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I ask unanimous consent that the President be notified of the confirmation of this nomination.

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

RECESS UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 9 o'clock tomorrow morning.

Whereupon, at 5:48 p.m., the Senate, in executive session, recessed until tomorrow, July 26, 1979, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate July 25, 1979:

DEPARTMENT OF STATE

William D. Wolle, of Iowa, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Arab Emirates.

MERIT SYSTEMS PROTECTION BOARD

Ronald P. Wertheim, of the District of Columbia, to be a Member of the Merit Systems Protection Board for the remainder of the term expiring March 1, 1981, vice Ruth T. Prokop.

CONFIRMATION

Executive nomination confirmed by the Senate July 25, 1979:

FEDERAL ELECTION COMMISSION

Frank P. Reiche, of New Jersey, to be a Member of the Federal Election Commission for a term expiring April 30, 1985.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—*Wednesday, July 25, 1979*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Almighty God, we give You praise for all people whose lives of dedication and courage in days past continue to brighten our path and strengthen our faith. We give thanks for all heroes who have sought to walk in righteousness and speak the truth in love.

We laud those men and women of today, who, by their faithfulness to Your word and by their zeal for justice, inspire us all. O Lord, may their witness lift us from the routine of life to see Your glory, that being filled with Your spirit, we may touch those we meet with the healing power of Your presence. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 4591. An act to make technical corrections and miscellaneous amendments in certain education laws contained in the Education Amendments of 1978, and for other purposes; and

H.R. 4712. An act to delay conditionally the effective date of certain rules of procedure and evidence proposed by the U.S. Supreme Court, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R 4057. An act to increase the fiscal year 1979 authorization for appropriations for the food stamp program.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 4057) entitled "An act to increase the fiscal year 1979 authorization for appropriations for the food stamp program," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. TALMADGE, Mr. MCGOVERN, Mr. STONE, Mr. LEAHY, Mr. MELCHER, Mr. HELMS, Mr. HAYAKAWA, and Mr. LUGAR to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 544) entitled "An act to amend title XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KENNEDY, Mr. WILLIAMS, Mr. NELSON, Mr. CRANSTON, Mr. PELL, Mr. SCHWEIKER, Mr. JAVITS, and Mr. HATCH to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 585 An act to authorize the Secretary of the Interior to engage in a feasibility study of the Yakima River Basin water enhancement project;

S. 737 An act to provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce; and

S. 1309. An act to increase the fiscal year 1979 authorization for appropriations for the food stamp program, and for other purposes.

U.S.-U.S.S.R. MILITARY BALANCE—MYTHS AND FACTS V

(Mr. BINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker, a statistic often cited by those who would have us believe that the Warsaw Pact's military power is far superior to NATO's is the number of troop divisions each side claims—226 for the pact compared with 41 NATO divisions. While these figures sound threatening, a closer look shows the balance is not so one-sided.

First. The pact total includes all the divisions of all the pact members, including 61 Soviet divisions assigned to the often tense Sino-Soviet border which pose no threat to the West.

Second. The pact total includes divisions which are at as little as 25 percent of full strength. Pact divisions are divided into three categories; category I divisions are at least 75 percent of full strength, category II divisions are 50- to 75-percent combat ready, and category III divisions are at only 25 to 50 percent of full strength. Only about one-third of all pact divisions fall into category I.

Third. NATO divisions tend to be much larger than their pact counterparts and are kept at a much higher state of readiness. In addition, NATO assigns many of its troops outside of a division structure. It has been estimated, for example, that if the United States reorganized its troops along the lines of the Soviet military it could form from 80 to 90 divisions instead of its current 19.

Fourth. If the 50,000 French troops which are stationed in Germany are included, NATO could claim 1,250,000 combat and direct support troops compared to 1,240,000 pact troops. Furthermore, the Warsaw Pact countries cannot blithely ignore the 400,000 man French Army, since it is inconceivable that France would stay neutral in a European conflict.

Fifth. NATO, unlike the pact, is a true alliance whose members belong by choice and share common interests. There is no real question concerning the loyalty of our NATO allies, particularly in the event of an attack on Western Europe. The Soviet Union cannot speak with such confidence about its pact "allies."